

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.30513 of 2016

G.Dhayalan

.. Petitioner

versus

1. The Senior Divisional Electrical Engineer,
Union of India,
Southern Railway, Madras Division,
NGO Annexe Building,
Park Town, Chennai 600 003.
 2. The Divisional Electrical Engineer (Works),
Southern Railway, Madras Division,
NGO Annexe Building,
Park Town, Chennai 600 003.
 3. The Assistant Divisional Electrical Engineer,
TL, Southern Railway, Madras Division,
NGO Annexe Building,
Park Town, Chennai 600 003.
 4. The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Buildings,
Chennai 600 104.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records, relating to the impugned order of the fourth respondent in O.A.No.280 of 2011, dated 27.03.2014, upholding the order of the first respondent in No.M/CON/E/1452, dated 16.11.2010, the order passed by the second respondent in No.M/CON/E/1452, dated 28.07.2010 and the order of the third respondent in No.M/CON/E/1452, dated 19.11.2009, quash the same and direct the respondents 1 to 3 to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.P.Monhanraj

For Respondents 1 to 3 : Mr.P.T.Ramkumar

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order passed by the Central Administrative Tribunal, Madras Bench, Chennai, in O.A.No.280 of 2011, dated 27.03.2014, by which, the Tribunal has declined to quash the order, dated 16.11.2010, of the Senior Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai, the first respondent herein, confirming the orders of the Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai, the second respondent herein, dated 28.07.2010 and the Assistant Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai, the third respondent herein, dated 19.11.2009 and consequently, declined to direct respondents 1 to 3 herein, to reinstate the petitioner in service, with all consequential benefits.

2. Short facts leading to the writ petition are that the petitioner was appointed as a temporary Khalasi, on compassionate grounds, in the Electrical General Services, Madras Division, by an order, dated 31.03.1994. A Charge memo, dated 02.05.2007, was issued to the petitioner, to wit that, "he had secured appointment on compassionate grounds on 06.04.1994, as Khalasi, fraudulently in Railways, by suppressing the fact of the earlier appointment of his elder brother, Mr.G.Sanjeevi, in Railways on 16.09.1991, who got appointment on the very same grounds, consequent to the demise of his father, Mr.P.C.Gopal, Ex.Fitter/HS.II/TNPM and by the abovesaid act, the petitioner has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant and thereby, violated Rule 3.1 (i) and (iii) of the Railway Services (Conduct) Rules, 1966.

3. The petitioner submitted his explanation, denying the charge. His explanation was not accepted and an enquiry officer was appointed. The enquiry officer submitted his report, holding the charge, as proved. Copy of the enquiry report was furnished to the petitioner, by letter, dated 16.03.2009 and on 06.04.2009, the petitioner submitted his representation to the enquiry officer's report. Going through the material on record and accepting the enquiry officer's report, vide order, dated 19.11.2009, the Assistant Divisional Electrical Engineer, TL, Southern Railway, Madras Division, Chennai, the 3rd respondent herein, removed the petitioner from service.

4. Being aggrieved by the same, the petitioner has filed an appeal, dated 09.12.2009, before the Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai, the second respondent herein. Vide order, dated 28.07.2010, the appellate authority, rejected the appeal. The revision petition, dated 16.08.2010, filed by the petitioner was also rejected on 16.11.2010, by the Senior Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai, first respondent herein. Aggrieved by the orders, stated supra, the petitioner has filed O.A.No.280 of 2011, before the Central Administrative Tribunal, Madras Bench, Chennai, and prayed to quash the same. Consequently, he has prayed for a direction to the respondents, to reinstate him, in service, with all consequential benefits.

5. Before the Tribunal, the petitioner has contended that the order of the Senior Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai/revisional authority, first respondent herein, dated 16.11.2010, is a non speaking order and that the authority had not adverted the grounds raised in the revision petition. He has further contended that the first respondent has failed to follow the procedure, contemplated in Rule 25 of the Railway Services (Discipline and Appeal) Rules, 1968.

6. The petitioner has further contended that both the appellate and revisional authorities, being the fact finding authorities, ought to have assigned valid reasons, for rejecting the explanation submitted by the petitioner. He further contended that even before the death of his father, his elder brother got appointment, in Southern Railway and was living separately with his wife, and he did not extend any financial support to the family. In the abovesaid circumstances, explaining the indigent circumstances of the family, petitioner's mother, Thanjammal, submitted a representation, dated 21.03.1993, seeking employment assistance, on compassionate grounds. Only after due enquiry, compassionate appointment was given to him. Therefore, the allegations levelled against the petitioner are baseless.

7. Assailing the correctness of the orders, before the Tribunal, the petitioner has further contended that the respondents have failed to consider that no documentary evidence was produced before the enquiry officer to prove the charge of suppression of fact. He has further submitted that witnesses from the Personnel Branch were not examined before the enquiry officer and therefore, the finding recorded by the enquiry officer, on the charge of suppression, is on mere surmises and conjunctures.

8. Before the Tribunal, the petitioner has further contended that even assuming, without admitting that a mistake had occurred, while securing appointment, on compassionate grounds, as 15 years had already elapsed from the date of his appointment, i.e., on 31.03.1994, the punishment of removal is inappropriate to the charge. He further submitted that both the appellate and the revisional authorities have mechanically passed orders. On the above contentions, the petitioner has prayed to set aside the orders passed by the authorities.

9. Before the Tribunal, the respondents, in their reply statement, have submitted that petitioner's father, Late P.C.Gopal, was appointed in Railways on 26.10.1961. While in service, he died on 17.09.1990, leaving behind his family members, viz., (1) G.Sanjeevi - Son, (2) G.Dayalan - Son, (3) G.Shanthi - Daughter, and (4) Thangammal. Wife was given the service benefits. The 1st son of the deceased, Mr.G.Sanjeevi, was appointed in service on 16.09.1991, on compassionate grounds and posted to work under the control of Chief Traction Foreman, Office of the Ambur, till 14.09.1995 and thereafter, under the control of the Senior Divisional Electrical Engineer, Rolling Stock, Avadi. Subsequently, the petitioner has obtained appointment on compassionate grounds, on 06.04.1994, vide letter No.M/PB/CS/22/Group 'D'/Male, dated 12.02.1994 and posted to work under the Senior Electrical Foreman/AC/MAS.

10. The respondents have further contended that the Vigilance Department of Southern Railway, conducted a preventive check, on the complaint, alleging that two appointments have been made on compassionate grounds, consequent to the death of P.C.Gopal. Based on the preliminary enquiry, the disciplinary authority issued a Charge Memorandum No.M/CON/E/1452, dated 02.05.2007, to the petitioner, stating that he had committed a grave misconduct, in securing appointment on compassionate grounds on 06.04.1994, as Khalasi, by suppressing the fact of earlier appointment of his elder brother, Mr.G.Sanjeevi, in Railways on 16.09.1991, on the very same grounds, on the demise of his father, Mr.P.C.Gopal, as Fitter at Tondiarpet. By the abovesaid act, the petitioner has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant and thereby, violated Rule 3.1(i) and (iii) of the Railway Services (Conduct) Rules, 1966.

11. The respondents, in their reply statement, have submitted that the enquiry officer relied on nine documents, service registers of Shri.G.Sanjeevi and Shri.G.Dayalan, personal file of Shri.G.Sanjeevi and the statement of Shri.G.Sanjeevi, elder brother given to the Vigilance on 15.02.2001 and 23.12.2003 and four other documents. The respondents have further submitted that the petitioner has given his statement of defence, contending inter alia that he was not

aware of the rules for compassionate appointment; that he had not submitted any application; and that his elder brother worked previously as casual labourer, before the death of the petitioner's father.

12. The respondents have further contended that before the Vigilance on 15.02.2001, the petitioner himself has admitted that his brother had secured appointment on compassionate grounds and both applications of the brothers have been processed by one Mr.Balu Pillai, a Union Official. The enquiry officer submitted its report. The petitioner has submitted his further representation on 06.04.2009. The disciplinary authority came to the conclusion that the charge as proved and vide order, dated 19.11.2009, imposed a penalty of removal from service.

13. Before the Tribunal, the respondents have further contended that though vide appeal, dated 09.12.2009, the petitioner reiterated the very same grounds, the appellate authority, after careful consideration of facts and material on record, examined, as to whether, the procedure contemplated, has been followed, whether a reasonable opportunity has been given to the petitioner. The appellate authority has also examined, as to whether, the findings of the disciplinary authority, was warranted on record. After careful consideration of above parameters, the appellate authority, vide order, dated 28.07.2010, has confirmed the penalty.

14. The respondents have further submitted that the revision petition, dated 16.08.2010, has been considered, in terms of Rule 25 of the Railway Servants (Discipline and Appeal) Rules, and after considering the entire case file, the Senior Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai/revisional authority, 1st respondent herein, concurred with the views of others.

15. According to the respondents, there is no need to examine the Personnel Branch, to prove the charges and documents, such as, service registers of the Shri.G.Sanjeevi and Shri.G.Dayalan, personal file of Shri.G.Sanjeevi and statement given by the elder brother, Shri.G.Sanjeevi, to the Vigilance, on 15.02.2001 and 23.12.2003 respectively, would prove the factum of suppression of earlier appointment secured by his elder brother, on compassionate grounds.

16. Added further, the respondents have contended that the petitioner himself has given a statement, before the Vigilance authority, accepting the abovesaid facts. Contention has also been made that the orders of the authorities are elaborate and speaking. Though the petitioner has contended that 15 years have elapsed, since the date of his appointment, considering the conduct of suppression and deceit, the respondents have

contended that the length of service cannot be an extenuating factor, to condone the charge.

17. Having regard to the rival submissions, the Central Administrative Tribunal, Madras Bench, Chennai, at Paragraph 8, in O.A.No.280 of 2011, dated 27.03.2014, ordered as hereunder:

"8. The facts as revealed from the pleadings and the submissions made before us clearly indicate that the applicant as well as his elder brother have secured appointment in the respondent organisation on compassionate grounds following the demise of their father. A perusal of the submissions from either side also indicates that the charge against the applicant was enquired into by conducting departmental enquiry following the due process prescribed under the Rules. The applicant has been given opportunity to present his case during the enquiry. The enquiry officer has relied upon documentary evidence which includes the statement given by the elder brother of the applicant to the vigilance, as well as the Service Registers of the applicant and his elder brother. We have perused the enquiry report in the vigilance case enclosed in the reply statement. We find that the charge against the applicant has been clearly established and held as proved by the enquiry officer through the enquiry conducted following the due process of law. The disciplinary authority after considering the representation from the applicant has accepted the findings in the enquiry report and imposed the penalty of removal from service considering the grave nature of the charge against the applicant. The appellate authority, i.e., the second respondent has considered the records pertaining to the case and the findings of the disciplinary authority and concurred with the findings of the disciplinary authority and confirmed the punishment imposed on the applicant. The first respondent who is the revisional authority has also considered the case in detail and concurred with the orders passed by the disciplinary authority as well as the appellate authority and thereby confirming the penalty of removal from service. In the end, we find that the grounds raised in the OA are devoid of merit and we are of the view that in the light of the gravity of the charge against the applicant, the disciplinary authority has imposed the penalty of removal from service. We also find that the appellate authority as well as the revisional authority have given careful consideration to the material facts relating to the case against the applicant and have confirmed the penalty of removal from service. The judgements cited by the learned counsel for the

applicant have no direct application to the facts of the present case. Hence we find no reason to interfere with the impugned orders. The OA being devoid of merit is liable to be dismissed and accordingly it is dismissed. There will be no order as to costs."

Heard Mr.P.Mohanraj, learned counsel for the writ petitioner, who assailed the correctness of the Tribunal, on the same grounds, as stated supra and perused the materials available on record.

18. Material on record discloses that the petitioner was given an opportunity to participate in the enquiry. Indisputably, petitioner's elder brother, G.Sanjeevi, has been appointed in Railways on 16.09.1991, on compassionate grounds. The fact remains that there are two appointments on compassionate grounds. Service Registers of both the brothers have been considered.

19. During the course of hearing in this writ petition, we posed a question, to Mr.P.Mohanraj, learned counsel for the petitioner, as to whether, the petitioner had disclosed the factum of employment to his elder brother, in Railways, on compassionate appointment, in his application. There is no direct answer, but he contended that the application was given by the petitioner's mother.

20. Though the petitioner has contended that his elder brother was initially appointed as casual labourer and thereafter, appointed on regular basis, in Railways and that he was living separately with his family, without extending any support to the family, and further contended that due to indigent circumstances, the petitioner's mother made a separate application on 21.03.1993, for compassionate appointment and only after due enquiry and verification, the petitioner was appointed on compassionate grounds and therefore, the same does not amount to suppression, this Court is not inclined to accept the same.

21. Perusal of the order, dated 19.11.2009, of the Assistant Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai/disciplinary authority, the third respondent herein, makes it clear that after providing a reasonable opportunity of hearing and considering the evidence on record, the said authority has given a categorical finding of suppression of fact of the earlier appointment of his elder brother, Mr.G.Sanjeevi, in Railways on 16.09.1991, on the very same ground, consequent to the demise of his father, Mr.P.C.Gopal, Ex.Fitter/HS.II/TNPM and by the abovesaid act, the

petitioner has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant and thereby, violated Rule 3.1(i) and (iii) of the Railway Services (Conduct) Rules, 1966. Therefore, the contention of the petitioner that the findings recorded by the disciplinary authority, on mere surmises and conjectures, cannot be accepted.

22. The enquiry officer has considered the service registers of both Mr.G.Sanjeevi and Mr.G.Dayalan, petitioner herein. "Surmise" and "conjecture" as defined in the Chambers 21st Century Dictionary, means "an information based on incomplete evidence" and "to conclude something from the information available, specially when the information is incomplete or insubstantial."

23. In Santosh Yadav v. Narendra Singh reported in 2002 (1) SCC 167, the words "guess work, speculation, surmise or conjecture" as have been explained as, "acting on a mere possibility".

24. When the authorities have considered the service registers of both the petitioner and his elder brother, in securing employment assistance on compassionate grounds and arrived at a clear finding of suppression, it cannot be contended that the finding is on surmises and conjectures. It cannot be contended that information available with the department and considered for reaching the conclusion of suppression, as either incomplete or insubstantial, or based on speculation.

25. Judicial review of administrative action, under Article 226 of the Constitution of India, can be exercised only on the grounds of perversity, extraneous and irrelevant considerations, mala fides and other infirmities. [Organo Chemical Industries v. Union of India [1979 (4) SCC 573], Babubhai & Co., v. State of Gujarat [1985 (2) SCC 732] and Workmen v. Meenakshi Mills Ltd., [1992 (3) SCC 336]].

26. In Government of A.P., v. Mohd. Narsullah Khan reported in 2006 (2) SCC 373, at Paragraph 11, the Hon'ble Supreme Court held that it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.

27. In *Bachan Singh v. Union of India* reported in 2008 (9) SCC 161, the Hon'ble Supreme Court reiterated that judicial review under Article 226 of the Constitution of India is not directed against the decision, but it is confined to the decision-making process. Judicial review is not an appeal, but a review of the manner, in which, the decision is made. The Court sits in judgment only on the correctness of the decision-making process and not on the correctness of the decision itself.

28. While considering the appeal, dated 09.12.2009, the Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai/appellate authority, the second respondent herein, has taken note of the factors to be considered, as per Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.

29. In *Divisional Forest Officer, Kothagudem & Ors. v. Madhusudan Rao* reported in 2008 (1) Supreme 617, after considering the Constitutional Bench judgment in *State of Madras v. A.R.Srinivasan* [AIR 1966 SC 1827], *Som Datt Datta v. Union of India* [(1969) 2 SCR 177], *Tara Chand Khatri v. Municipal Corporation of Delhi* [(1977) 1 SCC 472], *R.P.Bhatt v. Union of India* [(1986) 2 SCC 651] and *Ram Chander v. Union of India* [(1986) 3 SCC 103], the Hon'ble Apex Court, at Paragraph 19, held as follows:

"19. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum, but in our view, in the interests of justice, the delinquent officer is entitled to know atleast the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum."

30. In the light of the above decisions, let us consider, as to how, the appellate authority has passed the orders, on the appeal of the writ petitioner. The order of the appellate authority, is extracted hereunder:

"In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, I have carefully gone through your appeal, dated 09.12.2009, along with the connected records and observed that:-

(a) You have been imposed with the penalty of Removal from Service by the Disciplinary Authority (ADEE/TL/MAS) under RS(D&A) Rules, 1968, for having committed a grave misconduct inasmuch as you had

secured appointment on Compassionate Grounds on 06.04.1994 as Khalasi in Railways by suppressing the fact of the earlier appointment of your elder brother G.Sanjeevi in Railways on 16.09.1991, who got appointed on the very same account, consequent to the demise of your father late P.C.Gopal, Fitter-HS II/TNPM.

(b) The procedure laid down in the RS(D&A) Rules, 1968, has been complied with and you had been given reasonable opportunity to defend the case.

(c) The findings of the Disciplinary Authority are warranted by the evidence on records.

(d) The Penalty of Removal from Service imposed on you is adequate and commensurate with the gravity of the offence committed by you.

"I have gone through the case filed against Shri.G.Dayalan, AC Helper-II/AC/MAS. An inquiry was held and the employee was given all facilities to defend himself. The Inquiry Officer found the employee guilty. The DA agreed with the findings of the Inquiry Officer and imposed the penalty of Removal from service.

After careful scrutiny of the case, I am also of the opinion that the charges against the employee are grave and hence, I confirm the penalty of removal from service imposed by the DA."

Hence, the penalty of Removal from service under D & A Rules, 1968, with effect from 20.11.09 issued by the Disciplinary Authority, vide letter No.M/CON/E/1492, dated 19.11.2009, is hereby confirmed.

However, if you prefer, you may submit your revision petition through proper channel to the prescribed Revisionary Authority under Rule 25 of RS (D&A) Rules, 1968, to Sr.DEE/MAS within forty five days from the date of receipt of this order.

The Revision Petition shall not contain improper or disrespectful language and shall be complete in all aspect."

31. Reading of the appellate authority's order, shows that after going through the entire records, he has categorically considered the charge, findings and the consequential penalty and also the factors, as to whether, the procedure laid down in the Railway Services (Discipline and Appeal) Rules, 1968, has been complied with, whether there has been a reasonable opportunity to the petitioner. He has also considered, as to whether, the findings of the disciplinary authority, was warranted, on the material on record, before him. Proportionality of the penalty has also been considered.

32. Though Mr.P.Mohanraj, learned counsel for the petitioner assailed the order of the appellate authority, dated 28.07.2010 that there is a failure in complying with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, this Court is not inclined to accept the same.

33. A contention has been made that the revisional authority, being the fact finding authority, has failed to advert to the grounds raised by the petitioner, on the perverse finding, recorded on surmises and conjectures. Material on record discloses that while considering the revision petition, the Senior Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai/revisional authority, the first respondent herein, has passed an order, dated 16.11.2010, confirming the order of removal of the petitioner, from service and that the same is reproduced hereunder:

"In terms of Rule 25 of the Railway Services (Discipline and Appeal) Rules, 1968, the Revisionary Authority has carefully gone through the case and passed orders, as under:

"I have gone through the complete case file investigation by vigilance department and supporting document for case. In my view, it is proved by the records that G.Dayalan has been appointed on compassionate ground. It is also proved that brother of G.Dayalan, Mr.G.Sanjeevi, was also given compassionate appointment. Hence, it is proved that G.Dayalan was not entitled for the appointment. However, knowingly Mr.G.Dayalan has requested for compassionate appointment and mis-guided the administration by hiding the correct information. I am of the opinion that the charges are grave and the punishment of "Removal from service" is justified as imposed by ADEE/TL, ie., Disciplinary Authority. Hence, I confirm the penalty for removal from service."

Accordingly, the penalty of "Removal from service, with effect from 20.11.2009, imposed by ADEE/TL/MAS vide his letter no.dated 19.11.2010 is subsequently confirmed by the Appellate Authority, vide his letter, dated 28.07.2010, is again confirmed."

34. Though the petitioner has assailed the correctness of the orders of the abovesaid authority and sought for interference with the order of the Central Administrative Tribunal, Madras Bench, Chennai, in O.A.No.280 of 2011, dated 27.03.2014, on various grounds, going through the orders, extracted supra, this Court is of the view that there is absolutely no merits in the writ petition, warranting interference, on the grounds of surmises and conjectures, in

recording the finding of suppression or on the failure in not considering the factors, which the authorities are mandated to take note of.

35. On the contention that the petitioner had been in service for 15 years and therefore, the penalty imposed is disproportionate, this Court is not inclined to accept the same. When suppression of fact in securing employment is categorically proved and thus, when the petitioner has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant and thereby, violated Rule 3.1(i) and (iii) of the Railway Services (Conduct) Rules, 1966, employment secured cannot be allowed to be perpetuated. Penalty imposed is not disproportionate to the charge and it does not shock the conscience of this Court.

36. In *Union of India v. G. Ganayutham* reported in 1997 (7) SCC 463, the Hon'ble Supreme Court summed up the legal position relating to proportionality and at Paragraphs 31, held as follows:

31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegally or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not *bona fide*. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the *Wednesbury* test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards....."

37. In *State of Meghalaya and others Vs. Mecken Singh N. Marak*, reported in (2008) 7 SCC 580 at paragraph Nos.14 to 17, the Hon'ble Supreme Court held as follows.

"14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court,

to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the position of trust where honesty and integrity are in-built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands.

.....

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

38. In Chairman cum MD, Coal India Limited v. Mukul Kumar Choudhuri reported in 2009 (8) MLJ 460 (SC), after referring to a catena of decisions on the proportionality, the Hon'ble Supreme Court, at Paragraph 26, held as follows:

"26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."

39. In Lucknow K.Gramin Bank (Now Allahabad, U.P.Gramin Bank) & Anr., Vs. Rajendra Singh, reported 2013 (12) SCC 364, on the Doctrine of Proportionality, at paragraph No.16, the Hon'ble Supreme Court, summarised as follows :

"16. This, according to us, would be the harmonious reading of Obettee (P) Ltd. and Rajendra Yadav cases.

The principles discussed above can be summed up and summarized as follows:

(a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

(b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

(c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;-

(d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter

back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."

40. None of the contentions raised by the petitioner, deserve merit. There is no perversity in the finding and the same satisfies the test of preponderance of probability. No serious flaw in the procedure is made out. In the light of the above decisions, penalty of removal, cannot be said to be disproportionate to the charge. In the light of the above discussion and decisions, this Court is not inclined to reverse the order impugned.

41. In the result, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

सत्यमेव जयते

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Sub Assistant Registrar

skm

To

1. The Senior Divisional Electrical Engineer,
Union of India,
Southern Railway, Madras Division,
NGO Annexe Building,
Park Town, Chennai 600 003.
2. The Divisional Electrical Engineer (Works),
Southern Railway, Madras Division,
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3. The Assistant Divisional Electrical Engineer,
TL, Southern Railway, Madras Division,
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4. The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Buildings,
Chennai 600 104.

+lcc to Mr.P.T. Ramkumar, Advocate, S.R.No.59438

+lcc to Mr.P. Mohanraj, Advocate, S.R.No.59741

GJ(CO)

EU(28/11/2016)

W.P.No.30513 of 2016

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