

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3368 of 2005**

Bhagwan Das Ukey aged 53 years S/o Shri Jago Rao Ukey, Assistant Grade III (Lower Division Clerk) Commercial Tax Officer, Rajnandgaon (M.P.)

---- Petitioner

Versus

1. State of M.P. Through the Secretary, Commercial Tax Department Vallabh Bhawan, Bhopal
2. Commissioner, Commercial Tax, Madhya Pradesh, Indore
3. Divisional Deputy Commissioner, Commercial Tax, Durg (M.P.)

---- Respondents

Shri Vinod Sharma, counsel for the petitioner/s.
Ms. Sunita Jain, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****09/11/2017**

The petitioner had filed an original application before the State Administrative Tribunal, Bench at Raipur, assailing legality and validity of order dated 04/10/1999 passed by the Divisional Deputy Commissioner, Commercial Tax by which a penalty of reduction to the lowest stage of pay scale was imposed on the petitioner in a departmental enquiry. During the pendency of the application, the Tribunal was abolished and the case was transferred to this Court for decision.

2. In respect of the period of posting of the petitioner as Reader-cum-Clerk in the office of the Assistant Commissioner, Commercial Tax, Durg from 04/06/1992 to 01/07/1995, an allegation was made against the petitioner that he withheld the files

relating to tax assessment in respect of the assesseees i.e. M/s. Batra Iron and Steel Works and M/s Batra Bandhu. A charge sheet was issued to the petitioner by suspending him on 30/06/1995. As many as three charges were leveled against the petitioner. At this stage, it would be relevant to mention that the departmental enquiry was also instituted against some of the officers posted in the same office on the allegation of causing loss of revenue to the Government. The petitioner was afforded opportunity of filing reply and engaging defence assistant. The petitioner also produced number of witnesses and documents. The petitioner was afforded opportunity of cross examination followed by an opportunity to lead defence witness. On the basis of the material collected during enquiry by the enquiry officer, enquiry report dated 10/02/1999 was submitted before the disciplinary authority. In the enquiry report, out of three charges, only charge no.1 was held proved against the petitioner whereas charge no.2 and 3 were not proved against the petitioner. The disciplinary authority / respondent No.3, by impugned order dated 04/10/1999, accepting the findings of the enquiry officer, imposed penalty of reduction of pay to the lowest stage of pay scale i.e Rs.3050---4590/-. Against the order of penalty, the petitioner preferred a departmental appeal. The departmental appeal was not decided and kept pending and ultimately, the petitioner approached the Tribunal by filing Original Application.

3. Learned counsel for the petitioner argued that the finding of guilt on charge no.1 has been recorded against the petitioner only on conjuncture and surmise, without there being any concrete, oral and documentary evidence or any incriminating circumstances to prove that the petitioner had any role to misplace the records much less theft of the same. According to learned counsel for the petitioner, the relevant records that were directed to be produced were not traceable, therefore, could not be produced because of the reason that the records

were stolen for which the petitioner could not be held responsible. The petitioner had taken a specific defence that there was no proper facility in the office for safe custody of departmental files under the charge of the petitioner. The petitioner had taken a specific defence that on 03/04/1995, the office of Assistant Commissioner, Sales Tax, Durg, where the petitioner was posted, had requisitioned to the Commissioner, Sales Tax, Madhya Pradesh, Indore for making available steel Almiras and rakes but such materials were not supplied in the office. He would further submit that the petitioner had taken a specific defence substantiated from the oral evidence produced during the enquiry that during the period the petitioner was on leave, the higher authority i.e. Assistant Commissioner – Mr. M.L.Kashyap and some other officers had come to the office at unusual hours followed by entry of the Proprietors of Batra Iron and Steel Industry and Batra Bandhu. The allegations related to misplacing of certain files of these two assesseees. Therefore, it is clear that the petitioner had no role to play in misplacing the file and whatever happened, it was not attributable to any of the fault or negligence on the part of the petitioner. Later on, admittedly, the records were found near the compound hall of another premise and recovered. Therefore, the finding of guilt is not tenable in law. The other submission is that as the petitioner was not held responsible for any financial loss caused to the Government, imposition of penalty of reduction to the lowest stage of pay scale which he was drawing was highly excessive and disproportionate. In similar circumstances, one Smt. Majinder Kaur, Lower Division Clerk, posted in the Circle Office, Durg was imposed similar penalty of reduction to lower stage of three years with cumulative effect which was modified in appeal as a minor penalty of withholding two increments with non-cumulative effect. Therefore, on the quantum aspect also, the impugned order is liable to be interfered with.

4. Learned State counsel would submit that the petitioner did not wait for

decision of the appeal and approached the Tribunal. He would submit that in the absence of there being any violation of principles of natural justice or statutory violation in holding departmental enquiry, the impugned order is not liable to be interfered with by the Writ Court because the Writ Court is not a Court of appeal. The petitioner's argument, it is submitted, are more to seek re-appreciation and re-assessment of oral and documentary evidence on record. Replying to the quantum aspect, learned State counsel would argue that the petitioner being custodian of certain records and the records having been misplaced, even if the petitioner is not held responsible for theft of records, he would certainly be responsible for not keeping files in safe custody. For want of production of relevant records, the State Government suffered revenue loss of more than Rs.30 Lakhs. Even though the petitioner may not be directly responsible for the revenue loss caused to the State Exchequer, misplacement of files certainly proves misconduct and if the petitioner has been imposed a penalty of reduction to the lowest stage of pay scale, it cannot be said to be shockingly disproportionate to the gravity of misconduct found proved. The grounds raised by the petitioner do not relate to violation of principles of natural justice or violation of any statutory provisions in the matter of holding departmental enquiry. The enquiry report speaks that the petitioner was supplied with a charge sheet, afforded opportunity to file reply, allowed to engage defence assistant, cross examine the prosecution witnesses and produced his own defence witnesses. Moreover, there is no pleading or ground to show that in the matter of holding departmental enquiry, any of the provisions of the Rules of 1966 were violated.

5. Before advert to aforesaid submissions made and ground raised in the petition, to assail the order of penalty, it would be profitable to restate well settled judicially evolved principles in the matter of scope of judicial review and interference in the departmental enquiry. One of the well settled principle is that the Writ Court

would not assume to itself, the role of appellate authority while examining the legality and validity of the departmental proceedings and the order passed therein by re-appreciating the oral as well as documentary evidence led by the prosecution and the delinquent employee to reach its own conclusion and substituting its finding of fact in place of what has been recorded by the Enquiry Officer and the disciplinary and appellate authority. It has been succinctly held in plethora of decisions that the Courts can interfere where the authority held the enquiry proceedings in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the ambit and scope of enquiry and imposing punishment or where the conclusion or finding reached by the disciplinary authority is based on no evidence or such that no reasonable person would have ever reached. It has been held that it would be outside the scope of judicial review to re-appreciate the evidence. The High Court can interfere with the conclusion reached in the departmental enquiry, if there was no evidence to support the finding. If there is some legal evidence, on which, finding could be sustained, then adequacy or reliability of that evidence would not justify interference in exercise of writ jurisdiction under Article 226 of the Constitution of India. Thus, the scope of judicial review is confined to determination as to whether the decision making process suffered from illegality, procedural irregularity or irrationality. The principle of “Wednesbury” unreasonableness and doctrine of proportionality have been made applicable as the grounds on which interference would be permissible in exercise of writ jurisdiction.

6. Historically, the scope and ambit of judicial review of administrative action was set in the case of **Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.**¹ and the principle laid down therein came to be known as “Wednesbury” principles, wherein it was held that when a statute gave discretion to

¹ (1947) 2 All ER 680 (CA)

an administrator to take a decision, the scope of judicial review would remain limited and interference was not permissible unless order was contrary to law or relevant factors were not considered or irrelevant factors were considered or the decision was one which no reasonable person would have taken. “Wednesbury” principle was reiterated by Their Lordships in the Supreme Court in the case of **Om Kumar v. Union of India**,² The doctrine of proportionality was explained by Their Lordships of the Supreme Court in the case of **Union of India v. G. Ganayutham**³, to mean that the question whether, while regulating the exercise of fundamental rights, appropriate restrictive choice of measures have been taken by the authority so as to achieve the object or the purpose of administrative order. The principle of proportionality is applicable to find out as to whether the penalty imposed on delinquent employee is shockingly disproportionate to the gravity of misconduct or not. Thus, it is not enough that the decision should be made reasonable, the decision should also not be disproportionate to the gravity of the misconduct. This Court feels it pertinent to refer to the observations made by Their Lordships in the Supreme Court in the case of **State of Andhra Pradesh and Others v. Chitra Venkata Rao**⁴, wherein the principles relating to judicial review has been summarized as below:

“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of Andhra Pradesh v. S. Sree Rama Rao*, [1964] 3 S.C.R. 25. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him,. the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal of Inquiry the High Court in a petition under Article-226 of the Constitution is not competent to declare the order of

2 (2001) 2 SCC 386

3 (1997) 7 SCC 463

4 (1975) 2 SCC 557

the authorities holding a departmental inquiry invalid. The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

7. Keeping in forefront the aforesaid well settled principles in the matter of scope of interference by the Writ Court in the matters of domestic enquiry, I shall deal with the grounds raised by the petitioner.

8. The petitioner has not disputed the fact that he was posted and working as Reader-cum-Clerk in the office of the Assistant Commissioner, Commercial Tax,

Durg during the period from 04/06/1992 to 01/07/1995. It is also submitted that as per work distribution memo dated 02/12/1992 of Assistant Commissioner, following duty was entrusted to the petitioner -

“आबंटित कर निर्धारण प्रकरणों, अभिलेखों को अपने चार्ज में रखेंगे, प्रकरणों में नोटिस जारी करना, आवक –जावक का कार्य एवं अन्य प्रशासनिक कार्य सहायक आयुक्त के निर्देशानुसार किया जाना।”

Out of three charges leveled against the petitioner, first charge which alone was found proved against the petitioner was as below -

“संभागीय उपायुक्त वाणिज्यिक कर, रायपुर के द्वारा दिनांक 06.06.95 को दिए गए स्पष्ट निर्देशों के बावजूद श्री उनके निम्न श्रेणी लिपिक द्वारा निम्नलिखित कर निर्धारण प्रकरण जान-बूझकर उपलब्ध नहीं कराए गए।

<u>अ.क्र.</u>	<u>व्यवसायी का नाम</u>	<u>प्रकरण क्र.</u>	<u>अवधि</u>
1.	मेसर्स बतरा आयरन एवं स्टील वर्क्स, जी.ई.रोड, कुम्हारी पंजीयन क्र.डीआरजी/दो/669	<u>18/90</u> <u>30/93</u> रिमाण्ड	1.4.89 से 31.3.90
2.	मेसर्स	<u>61/92</u>	1.4.89 से 31.3.92
3.	मेसर्स	<u>12/92</u>	1.4.92 से 31.3.93
4.	मेसर्स बतरा बन्धु जी.ई.रोड, कुम्हारी डीआरजी/दो/3593”	<u>59/91</u>	1.4.90 से 31.3.91

9. It is not in dispute that when the Deputy Divisional Commissioner, Raipur gave an instruction on 06/06/1995 for production of the records mentioned in

charge No.1. These records were not produced before him by the petitioner by stating that the records were not available. It is interesting to note that when the records were summoned, but not produced by stating that they were not traceable, action was taken against the petitioner as also against the then Assistant Commissioner - Mr. M.L.Kashyap and Reader to Assistant Sales Tax Officer - Mr. J.P.Agrawal as also Reader to Sales Tax Inspector - Mr. K.P.Patel. The petitioner was suspended and soon thereafter, all of a sudden, part of relevant records were recovered on 03/07/1995 lying on a lane behind the go-down of Patel complex.

It is, therefore, clear that the records were taken out from the office of the Assistant Commissioner, Commercial Tax, Durg and as per the work distribution, these files were supposed to be in the custody of the petitioner. The petitioner claimed ignorance. It cannot be ignored that only when on 06/06/1995, the Deputy Divisional Commissioner, Durg summoned the records that the petitioner, for the first time, disclosed that the records were not traceable.

The defence of the petitioner that for want of proper facility, there was no arrangement for the safe custody of the records, may only save the petitioner from the allegation of being involved in theft of the records but not from the allegation of being negligent in safe keeping of the records and files. The petitioner being the custodian of the records and the records having been stolen from the office, the petitioner cannot escape from the liability, atleast for some amount of negligence on his part also, even if it is held that he is not involved in theft of records. From the enquiry report, it was revealed that there were two assesseees in whose favour, certain orders were passed by the assessing officer extending them undue advantage in the matter of payment of commercial tax which they were otherwise liable to pay. It was only when the higher authority, i.e. the Deputy Divisional Commissioner summoned the records for the purpose of taking those assessments

under *suo moto* revision that the records were suddenly misplaced and then suddenly, recovered also from an open place. This clearly shows that there were involvement of one or the other officer or employee in the office in removing those records, the petitioner being the custodian of the records is the first person to be held guilty of negligence, if not of theft.

The requirement of proof of charges in departmental enquiry is not as high as in criminal cases. Preponderance of probability is good enough to sustain charges. The circumstances in which the records were suddenly misplaced and then again found in open place coupled with the fact that the petitioner was the custodian of the records and that he never reported this fact until the records were summoned by the higher officer, is sufficient to draw reasonable inference of negligence on the part of the petitioner.

As far as quantum of punishment is concerned, this Court does not find that it is shockingly disproportionate and thereby warranting interference by this Court. The petitioner has not been dismissed or removed or compulsorily retired from service. These are the extreme form of major penalty under Rule 10 of the Rules of 1966. He has been reduced to the lowest stage of pay scale which he was drawing. The petitioner has not demonstrated as to what was the extent of financial loss caused to him due to such reduction. Therefore, the aforesaid impact of the impugned order is only of some of financial nature, the extent of which has not been indicated. Moreover, even during the course of arguments of this case, learned counsel for the petitioner could not demonstrate that the said order of penalty resulted in supercession of the petitioner in future and that many juniors were promoted. Looking to the nature of misconduct, the penalty does not appear to be shockingly disproportionate. The parity with the punishment imposed on one Smt. Majinder Kaur, Lower Division Clerk is misplaced. In that case, due to

misplacement of records, a total financial loss of Rs.3,23,176/- was alleged whereas in the present case, the State Government suffered financial loss of more than Rs.30 lakhs. Therefore, no interference is warranted.

10. In the result, I do not find any merit in this petition. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge