

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 449 OF 2014**

Shri Daniel Simao Baretto, 50 years of age,
s/o late Manuel Barreto, r/o H. No. 1020,
Primeiro Bairro, St. Cruz, Ilhas-Goa. ... Petitioner

Versus

Goa University, Through its Vice Chancellor,
Taleigao Plateau, Taleigao, Bambolim, Goa. ... Respondent

Shri Nigel Da Costa Frias with Ms. Maria Correia, Advocates
for the Petitioner.

Smt. Anarkali Agni, Senior Advocate with Ms. M. Mody and Ms.
D. Bakal, Advocates for the Respondent.

CORAM : C.V. BHADANG, J.

Reserved on : 24th February, 2018

Pronounced on : 28th February, 2018

JUDGMENT:

The challenge in this petition, under Articles 226 and 227 of the Constitution of India, is to the penalty of compulsory retirement, imposed by the respondent on the petitioner.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That, the petitioner was appointed as Laboratory Assistant by the respondent in the year 1991 and was posted in the University Work Division (UWD), Department of Zoology. In the year 2008, the petitioner came to be transferred to the Department of Microbiology.

3. The petitioner was served with a memorandum dated 11.05.2009 by the Vice Chancellor, who is the Disciplinary Authority, by which, a departmental inquiry was initiated against the petitioner under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (Rules of 1965, for short).

The petitioner was charged under three distinct heads of misconduct, namely:-

Article 1: Purposely delaying the file of the Day Care Centre to the Registrar's office, although, the matter was of urgent nature. It was alleged that the petitioner delayed the submission of the file, inspite of earlier penalty and warning issued on 05.07.2006. It was also alleged that when the petitioner was called by the Registrar in his chamber on 04.07.2008, to clarify the matter, the petitioner in presence of some other employees behaved arrogantly and made an attempt to assault the Registrar;

Article 2: That on 22.11.2008 and 28.11.2008, the Head of Department of Microbiology had complained about the petitioner's negligence towards his duties and misbehaviour with the Head of the Department of Microbiology and the petitioner was warned vide memorandum dated 29.11.2008 to avoid such misbehaviour with his superiors and to maintain the decorum, failing

which, the petitioner was put on notice that disciplinary action as deemed fit will be initiated against him and

Article 3: That earlier, the petitioner was placed under suspension on 26.02.2011 for his misbehaviour with the Head of the Department of Zoology and in pursuance of departmental inquiry held in respect of the said charge, the Disciplinary Authority imposed the penalty of withholding his promotion for a period of three years. The petitioner was also warned that in the event, there is repetition of similar acts, appropriate disciplinary action would be initiated against him.

In so far as the charge under Articles 2 and 3, essentially, the alleged misconduct which is subject matter of Article 1, was a repetition of his earlier acts of misbehaviour, misconduct and insubordination, despite clear warning and as such, was in breach of GOID No. 23 below Rule 3 of the CCS Conduct Rules (Conduct Rules, for short).

4. The petitioner filed his reply and refuted the charge. It was contended that the act of the Disciplinary Authority is vindictive and is politically motivated, as the petitioner had complained to the then Chancellor about the harassment meted out to him. Insofar as the incident dated 04.07.2008 is

concerned, it was denied that the petitioner had behaved arrogantly or made an attempt to assault the Registrar. It was denied that the petitioner had purposely delayed the file of the Day Care Centre. It was contended that the petitioner was purposely posted in the UWD, when he was supposed to work as Laboratory Assistant. He claimed that it was necessary to assign him the duties of the Laboratory Assistant to avoid any conflict at the work place. It was contended that the UWD had very heavy work load, where the petitioner worked alone. The allegations which are subject matter of Articles 2 and 3 of the memorandum were also denied.

5. Before the Inquiry Officer, the evidence of Shri Damodar Kalangutkar, UDC, Shri Krishnaprasad Naik, Junior Engineer, Shri Damodar Naik, Finance Officer and Shri R.S. Parsekar, Assistant Engineer, came to be recorded.

6. The petitioner did not lead any evidence in defence.

7. The Inquiry Officer vide his report dated 10.07.2010 held all the three charges to be proved. The Disciplinary Authority acting on the inquiry report imposed a major penalty of compulsory retirement on the petitioner vide its order dated

23.09.2010. The petitioner challenged the same before the Executive Council, which is the Appellate Authority. The Appellate Authority vide order dated 06.01.2011, dismissed the appeal. Feeling aggrieved, the petitioner is before this Court.

8. I have heard Shri Costa, the learned Counsel for the petitioner and Smt. Agni, the learned Senior Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

9. It is submitted by Shri Costa, the learned Counsel for the petitioner that the imposition of the earlier penalty, as referred to in the articles of the charge, has not been proved. It is submitted that the Registrar had not stated in his evidence that there was an attempt to assault him, by the petitioner and in such circumstances, the evidence of the other witnesses to the effect that there was an attempt to assault the Registrar, would be of no consequence. The learned Counsel has taken me through the evidence of the Registrar and the other witnesses in order to show that the Registrar had also raised his voice and all that has come on the record is that the petitioner was taken out of the chamber of the Registrar. He submitted that there is no evidence to show that there was any

attempt on the part of the petitioner to assault the Registrar. It is thus submitted that a finding to that effect is based on no evidence, which would justifiably require interference from this Court.

10. It is next submitted that the inquiry report is practically unreasoned and does not deal with the reply filed and the evidence led. It is submitted that although, the Disciplinary Authority has made an attempt to supply the reasons, this will not cure the defect in the inquiry report.

11. It is next submitted that the Appellate Authority has also failed to properly deal with the matter by adverting to the individual heads of charge, the evidence led and the findings recorded by the Inquiry Officer and the Disciplinary Authority. It is submitted that in its capacity as first Appellate Authority, it was incumbent upon the Appellate Authority to deal with the matter threadbare, which has not been done. It is also submitted that the petitioner was entitled to an opportunity of personal hearing, which was not granted by the Appellate Authority. The learned Counsel would submit that an opportunity of personal hearing has to be read into Section 30 of the Goa University Act, 1984 (Act of 1984, for short) if, a

major penalty is proposed to be imposed.

12. Lastly, it is submitted that the minutes of the meeting of the Appellate Authority had neither been supplied to the petitioner nor produced on record. He therefore submits that this is a case where, interference by this Court would be required.

On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in the case of **Ram Chander Vs. Union of India & Others, (1986) AIR (SC) 1173; Narinder Mohan Arya Vs. United India Insurance Co. Ltd. & Others, 2006 4 SCC 713; Roop Singh Negi Vs. Punjab National Bank & Others 2009 2 SCC 570 and Oriental Bank of Commerce & Another Vs. R.K. Uppal, (2011) 5 Supreme 490** and the decision of the Gujarat High Court in the case of **V.M. Mehta Vs. Gujarat State Financial Corporation, 2006 2 GCD 1255.**

13. On the contrary, it is submitted by Smt. Agni, the learned Senior Counsel for the respondent that the scope of interference under Article 226 read with Article 227 of the Constitution of India, is limited. It is submitted that unless the findings recorded by the Inquiry Officer/Disciplinary Authority

are perverse and are based on no evidence, interference is not called for. It is submitted that the inquiry proceedings are quasi judicial in nature and elaborate reasoning is not required to be given by the Inquiry Officer. It is pointed out that under Rule 14 of the Rules of 1965, the Disciplinary Authority can itself conduct an inquiry. It is submitted that this is not a case where there is no evidence as there are at least three witnesses examined, who have stated about the incident that happened on 04.07.2008 and the attempt made by the petitioner to assault the Registrar. It is submitted that the sufficiency of the evidence, cannot be gone into by this Court. The learned Senior Counsel has pointed out that the Disciplinary Authority has given elaborate reasons, which is sufficient compliance. It is submitted that the petitioner has indulged into similar misconduct and his unruly behaviour, amounts to gross insubordination and had failed to improve, inspite of a warning given. It is thus submitted that the Disciplinary Authority was justified in imposing a punishment of compulsory retirement, which cannot be said to be disproportionate to the misconduct, proved against the petitioner. The learned Senior Counsel pointed out that there are no allegations as regards, breach of principles of natural justice and as such, the penalty imposed, cannot be said to be

vitiated. It is submitted that the only ground raised on behalf of the petitioner is that the order of the Inquiry Officer is perfunctory, which cannot be accepted. Insofar as the Appellate Authority is concerned, it is submitted that the Rules do not contemplate personal hearing being afforded to the delinquent employee. It is submitted that in any event, the petitioner has not claimed personal hearing before the Appellate Authority and thus, cannot be permitted to raise the issue for the first time before this Court.

On behalf of the respondent, reliance is placed on the decision of the Supreme Court in the case of **Union of India & Others Vs. P. Gunasekaran, (2015) 2 SCC 610**.

14. I have carefully considered the rival circumstances and the submissions made and I do not find that a case for interference is made out. The scope of interference available in judicial review, in service matters and interference with the disciplinary proceedings, fell for consideration of the Hon'ble Supreme Court in the case of **P. Gunasekaran** (supra). The Supreme Court after taking survey of several decisions has held that under Articles 226 and 227 of the Constitution of India, the High Court cannot re-appreciate the evidence or interfere with the conclusion in the inquiry proceedings, which is conducted

in accordance with law. Equally, the High Court cannot go into the adequacy of the evidence. It is not open for this Court to interfere, if there is some legal evidence, on which, the findings can be based and it would be impermissible to correct the error of fact, however, grave it may appear to be or to go into the proportionality, unless it shocks judicial conscience. The aspects which can be gone into are (i) whether, the inquiry is held by a competent authority and is according to the procedure prescribed in that behalf; (ii) whether, there is violation of principles of natural justice in conducting the proceedings; (iii) whether, the authorities have disabled themselves from reaching a fair conclusion by some considerations, extraneous to the evidence and merits of the case or whether, the decisions are influenced by irrelevant or extraneous considerations; (iv) whether, the conclusion reached, on the very face of it, is so arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (v) whether, the Disciplinary Authority has erroneously failed to admit admissible and material evidence or has admitted evidence which is otherwise inadmissible and which has influenced the finding and lastly; (vi) whether, the finding of fact is based on no evidence (see paras 12 and 13 of the judgment in the case of **P. Gunasekaran** (supra)).

15. Coming to the present case, it is not even claimed on behalf of the petitioner that the inquiry is held by an officer, who was incompetent or about the inquiry being held in breach of principles of natural justice. The only contention raised, insofar as the inquiry is concerned, is that the report of the inquiry is unreasoned or in other words, the Inquiry Officer has failed to advert to the individual heads of charge in the context of the reply filed by the petitioner and the evidence adduced on record. It is contended that although, the Disciplinary Authority made an attempt to give certain reasons, while affirming the findings recorded by the Inquiry Officer, the same will not cure the defect of the inquiry report being unreasoned.

16. In order to appreciate the contention, it would be necessary to look into the report of the Inquiry Officer, as also the order passed by the Disciplinary Authority. Before doing so, it may be mentioned that several witnesses were examined in the disciplinary inquiry before the Inquiry Officer including Dr. M.M. Sangodkar, Registrar, against whom there was an alleged attempt of assault. On behalf of the Disciplinary Authority, one Shri D. J. Naik, Finance Officer, Shri Parsekar, Shri Krishnaprasad Naik and Smt. Surekha Naik came to be

examined. The statement of the petitioner recorded on 23.03.2010 would indicate that the petitioner did not dispute that he was called to the chamber of the Registrar on 04.07.2008 and at that time, apart from the Registrar, Dr. Sangodkar, Shri Krishnaprasad Naik, Shri Kalangutkar and Shri Parsekar were present there. It can thus be seen that the presence of these three witnesses, at the time of the alleged incident, is not in dispute. The evidence of Dr. Sangodkar indicates that on 04.07.2008 he had called Shri D.J. Naik, Shri Parsekar, Shri Krishnaprasad Naik along with Smt. Surekha Naik to discuss the file regarding the Day Care Centre in order to expedite the matter. This was at around 10:30 to 11:00 a.m. Dr. Sangodkar was informed that the file was already put up before the petitioner and hence, the petitioner was called to the chamber of the Registrar. It has come in the evidence of Dr. Sangodkar that when he had asked the petitioner as to why, he did not put up the file, the petitioner got annoyed, lost his temper and asked the Registrar as to why he was put in the UWD, when he was supposed to work as Laboratory Assistant. It has come in the evidence that the petitioner raised his voice saying that he was harassed for eight years. The petitioner was taken out, however, he again came in, folding his sleeves, but, was again forcibly taken out. By and large, the evidence of the

other witnesses is also on the same lines. It appears from the evidence led before the Inquiry Officer that there was an incident, which happened in the chamber of the Registrar on 04.07.2008, wherein there was some heated exchange between the Registrar and the petitioner, on the point of the alleged delay on the part of the petitioner in putting up the file pertaining to the Day Care Centre. The grievance of the petitioner appears to be that he was made to work in the UWD, although, he was supposed to work as a Laboratory Assistant. It is not possible to go into the grievance of the petitioner in this regard. The fact remains that there is evidence on record to suggest that on being asked about the delay in putting up the file pertaining to the Day Care Centre, the petitioner got enraged and argued with the Registrar as to why he is put in UWD. There is also evidence to suggest that the petitioner was taken out, but, he again came in folding his sleeves and was again required to be taken out.

17. It is trite that the standard of proof, in a departmental inquiry, proceeds on preponderance of probability. As noticed earlier, it is not open to this Court in the exercise of the jurisdiction under Article 226/227 of the Constitution of India to re-appreciate the evidence or even to

examine the sufficiency of the same. It is only where, the finding is based on no evidence or is so palpably absurd and improbable that no prudent person would come to the conclusion on the basis of the evidence led that this can justifiably interfere. I do not find that this is a case in which there is no evidence or the finding recorded can be said to be perverse or so improbable that no reasonable person can come to such a conclusion on the basis of the evidence. A perusal of the inquiry report shows that the Inquiry Officer has adverted to the individual heads of charge, recorded the rival contentions including the case set up by the petitioner, referred to the evidence of the four witnesses and has then held that the charge on Articles 1, 2 and 3 stands proved.

18. Insofar as the charge on Article 2 is concerned, the evidence of Dr. S.K. Dubey (PW-3) would show that at the time of practicals, the petitioner did not support the laboratory work. It appears that on behalf of the petitioner, it was claimed that the duties were not assigned in writing, however, this was not found sufficient by the Inquiry Officer on the ground that the petitioner cannot wait for a written order/duty list to be issued. The Inquiry Officer has further observed that, whether, the petitioner had asked the Head of the Department, that without

such order he will not be able to work, is not clear. The Inquiry Officer has then concluded that the petitioner was not even doing the laboratory work, which is the work of a Laboratory Assistant.

19. Insofar as the charge Article 3 is concerned, the Inquiry Officer has noticed that previously, departmental proceedings were initiated against the petitioner in the year 2001 and has found that the acts of the petitioner are repetitions of his earlier acts of misbehaviour, misconduct and insubordination, despite of clear warning by the Disciplinary Authority, in the earlier proceedings. I have carefully gone through the report of the Inquiry Officer and I do not find that the same can be branded as an unreasoned report. It is obvious that the proceedings before the Inquiry Officer are quasi judicial proceedings, where the Inquiry Officer is not expected to write elaborate judgment. The report of the Inquiry Officer should indicate that the Inquiry Officer has considered the nature of the charges levied, the defence taken relating to each of the charges, the evidence led by the Disciplinary Authority and the delinquent Officer, if any and then arrive at a finding as to whether, the charge can be said to be proved or not. On a perusal of the report of the Inquiry Officer, it is clear that the

Inquiry Officer on the basis of the evidence led has come to the conclusion and to my mind rightly so, that the various charges stand proved.

20. The Disciplinary Authority after considering the inquiry report, the representation and the submissions made by the petitioner has concurred with the same and has set out its own reasons in its order dated 23.09.2010.

21. In a challenge of the present nature, this Court is essentially required to consider three aspects, namely (i) that the inquiry has been conducted in compliance with principles of natural justice and in accordance with the procedure prescribed (ii) that the findings recorded are based on the evidence, as led and (iii) that the penalty is not shockingly disproportionate to the delinquency proved.

22. I have already held that the findings recorded by the Inquiry Officer are based on the evidence led and this is not a case where it can be said that the findings so recorded are absurd or perverse or are based on no evidence. It is also not claimed on behalf of the petitioner that there is breach of principles of natural justice while conducting the inquiry,

except that the Appellate Authority should have afforded an opportunity of personal hearing, to which, I will presently deal.

23. The learned Counsel for the petitioner has advanced two fold contentions in this regard. Firstly, it is submitted that the Appellate Authority is obliged to “consider the appeal” which presupposes that it is with due application of mind. It is submitted that the Appellate Authority is under an obligation to consider the entire material and the evidence afresh and then to record a finding one way or the other. It is submitted that the order of the Appellate Authority, dismissing the appeal, does not show that there is due application of mind. It is submitted that the appeal has been disposed of in a slipshod manner. Secondly, it is contented that the Appellate Authority ought to have granted an opportunity of personal hearing and absence thereof, has resulted in failure of principles of natural justice.

24. Insofar as the first contention is concerned, there cannot be any manner of dispute, that the Appellate Authority, being the fact finding Authority, has to consider the evidence and the material and then record a finding concurring with the order passed by the Departmental Authority or otherwise. In

the present case, the order dated 29.01.2011 shows that the Appellate Authority has first considered the aspect of principles of natural justice being followed during the course of the departmental inquiry. The Appellate Authority has noticed the procedure as contemplated under Rule 14 of the Rules of 1965 and secondly, the Appellate Authority has considered the evidence in relation to individual charge on Articles 1, 2 and 3. It appears that it was urged before the Appellate Authority that the charges have to be proved beyond reasonable doubt. However, the Appellate Authority has held and to my mind rightly so that in disciplinary proceedings, the standard of proof is of preponderance of probability. It was also contended before the Appellate Authority that there was delay in disposal of the case, where the Appellate Authority has found that the same has not vitiated the inquiry. The Appellate Authority has then found that the petitioner had "almost admitted" that he had raised his voice and that he was agitated and lastly, the Appellate Authority has considered the issue of the proportionality of the penalty imposed and while upholding the penalty, has taken note of the fact that the petitioner was previously warned in the year 2001 and inspite of this, the petitioner had indulged into similar misconduct. Thus, I find that the Appellate Authority has adverted to the relevant

aspects of the matter and has dismissed the appeal. The sufficiency of reasons, would be a matter peculiar to facts and circumstances of each case. However, considering the nature of the evidence led before the Appellate Authority, the statement of the petitioner and the order passed by the Disciplinary Authority, I do not find that the Appellate Authority could have reached to a different conclusion. Thus, the first contention that the Appellate Authority has not properly considered the matter to my mind cannot be accepted.

25. This takes me to the contention about grant of an opportunity of personal hearing. In this regard, strong reliance is placed on behalf of the petitioner on the decision of the Supreme Court in the case of **Ram Chander** (supra). In that case, the Hon'ble Supreme Court *inter alia* held that after the 42nd amendment (doing away with the second show cause notice before imposing of the penalty) as interpreted in **Tulsiram Patel's** case, (AIR 1985 SC 1416) , it is of utmost importance that the Appellate Authority must not only give a hearing to the Government servant, but, must also pass a reasoned order dealing with the contentions raised in the appeal.

It is significant to note that in a later decision in the

case of **R.K. Uppal** (supra), the Hon'ble Supreme Court has held that the case of **Ram Chander** (supra) does not lay down as an absolute preposition, that in the matter of departmental appeal, the Appellate Authority as a rule afford a personal hearing to the delinquent. It can thus be seen that as held by the Hon'ble Supreme Court in the case of **R.K. Uppal** (supra), it is not an universal rule or absolute preposition that an opportunity of personal hearing should be afforded. In the present case, such opportunity was not even claimed by the petitioner before the Appellate Authority. Even assuming for a moment that such an opportunity was claimed and was required to be granted, I do not find that the parties can be relegated to the Appellate Authority, as in my considered view, no different conclusion can be arrived at, on the basis of the evidence led before the Inquiry Officer.

26. In the case of **Narinder Mohan Arya** (supra), the appellant was an Inspector, working with the United India Insurance Company. The appellant had issued four cover notes out of which, one cover note was allegedly antedated by the appellant. The Inquiry Officer found the appellant guilty and was eventually relieved from service. The departmental appeal was dismissed, which order was confirmed by the High Court

and the matter reached the Supreme Court. The Hon'ble Supreme Court found that the issue fell for consideration before the competent Civil Court, in a suit in which it was found that the purported forgery, was not proved. The Appellate Authority had failed to take into consideration the finding, recorded by the Civil Court in a dispute inter parties and in such circumstances, it was held that the order of the Appellate Authority exhibited total non application of mind. It can thus be seen that the case turned on its own facts.

27. In the case of **Roop Singh Negi** (supra), the appellant was working as a Peon with the Punjab National Bank and a complaint was lodged by the Manager of the Bank, alleging that some drafts purported to have been issued from the Mall Road branch of the Bank have in fact not been issued from the said branch. An FIR under Section 380/120B of IPC came to be registered, in which, the Investigating Officer opined that the integrity of the appellant, who had since been transferred to Rampur, Shimla is doubtful. It appears that the Criminal Court eventually discharged the appellant, however, the Disciplinary Authority found him guilty. The Regional Manager acting as a Disciplinary Authority, without assigning any reasons and without considering the fact that the appellant

has been discharged in the criminal case, imposed a penalty of dismissal from service. The departmental appeal also came to be dismissed, which was confirmed by the High Court. The Hon'ble Supreme Court found that the Disciplinary Authority had merely produced certain documents before the Inquiry Officer including the FIR, which were not duly proved and the Disciplinary Authority failed to consider the material circumstance about the discharge of the appellant by the competent Criminal Court. It was in these circumstances found that the penalty was unsustainable.

28. It is not necessary to deal with the judgment of the Gujarat High Court in the case of **V.M. Mehta** (supra), in view of the later decision of the Supreme Court in the case of **R.K. Uppal** (supra) holding that there is no universal rule that the Appellate Authority has to invariably grant an opportunity of personal hearing to the petitioner.

29. This takes me to the last contention about the penalty being disproportionate to the delinquency proved. Here again, the scope of interference is quite limited and unless and until the penalty is found to be shockingly disproportionate no interference is called for. In the present case, in the

previous departmental proceedings, on account of similar insubordination, the petitioner was warned. In the present case, the petitioner has been found guilty of unruly behaviour and an attempt to assault the Registrar. Considering the overall circumstances, it is not possible to accept that the penalty imposed is shockingly disproportionate to the delinquency proved. It is significant to note that the penalty imposed is one of compulsory retirement, where unlike the penalty of dismissal or removal, the petitioner is entitled to all retiral benefits and to that extent it can be said that the Disciplinary Authority has taken a lenient view. Taking an overall view of the matter, the penalty cannot be said to be shockingly disproportionate to the delinquency proved.

Thus, the petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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