IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4412 OF 2004

L. N. B. Raju ...Petitioner
Versus
Union of India & Ors. ...Respondents

Mr. Sandeep Marne for Petitioner.
Mrs. Anjali Helekar i/b. Mr. A. R. Gole and Anu Menon for Respondents – UOI.

CORAM: SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

Date of Reserving the Judgment : 12 July 2018
Date of Pronouncing the Judgment : 24 July 2018

JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 11th June 2003 made by the Central Administrative Tribunal (CAT) dismissing the petitioner's Original Application No. 221 of 2000 questioning the penalty of removal imposed upon him.

3] Mr. Marne, the learned counsel for the petitioner submits that two charge sheets dated 8th May 1996 and 21st

July 1997 came to be issued to the petitioner alleging gross irregularities in the matter of authorisation of excess payment in favour of Chargemen Grade II through their pay bills. Mr. Marne submits that the charges in the two charge sheets are almost identical except that they relate to different periods of time. Mr. Marne submits that the enquiry officer appointed to enquire into the charge in charge sheet dated 8th May 1996, though has held the charges as proved, but, has categorically recorded findings that there were defects / loopholes in the system of preparation of pay bills, which can lead to such mistakes; that sole responsibility could not have been affixed upon the petitioner; that the petitioner has not gained anything, since ultimately, the excess payments have been recovered from the Chargemen and consequently there was no loss to the department.

4] Mr. Marne submits that the respondents chose neither to act upon or even to take into consideration the aforesaid first enquiry report, but rather, have acted upon the second enquiry report in pursuance of charge sheet dated 21st July 1997 and on such basis, imposed the major penalty of removal from service upon the petitioner. Mr. Marne submits that the findings in the second enquiry report, apart from being in contradiction with the findings in the first enquiry report, are perverse and not supported by the material on record.

5] Mr. Marne submits that the CAT, incorrectly accepted the case of the respondents that the penalty of removal is based almost entirely on the findings in respect of second charge sheet dated 21st July 1997 and that no material in relation to the first charge sheet dated 8th May 1996 has at all been considered. Mr. Marne points out that the CAT, in paragraph 4 of the impugned judgment and order, has made reference to the petitioner's response to the inquiry report in pursuance of charge sheet dated 8th May 1996 and on such basis, held that there is some sort of admission of guilt on the part of the petitioner. Mr. Marne submits that the CAT, has clearly erred in making reference to this response in the light of the submissions of the respondents themselves.

6] Mr. Marne further submits that the responses of the petitioner to the two enquiry reports have been incorrectly construed as admission of the charges. Mr. Marne points out that the petitioner has not in unqualified or unambiguous terms admitted any of the charges levelled against him in either charge sheets. He therefore submits that the findings on basis of which the penalty has been imposed upon the petitioner suffer from perversity and are a result of misconstruction of the response to the enquiry report. He submits that the CAT has misconstrued the responses to the enquiry reports and therefore, the impugned judgment and order warrants interference.

7] Mr. Marne finally submits that the penalty imposed upon the petitioner is grossly disproportionate. The respondents were not right in ignoring the enquiry report with regard to charge sheet dated 8th May 1996. From the report, it is quite clear that there were inherent defects in the system, which may have led to some excess payments to the Chargemen II. He points out that there is absolutely no evidence as regards any lack of integrity on the part of the petitioner. He points out that there is absolutely no evidence that the petitioner benefited from allowing in excess payments to the Chargemen. He points out that in any case the excess payments were recovered from the relevant employees and therefore, ultimately, no financial loss was caused to the department. Mr. Marne submits that all these circumstances are relevant in the determination of the quantum of penalty however, all these circumstances were completely ignored by the respondents. For all these reasons, Mr. Marne submits that the impugned judgment and order made by the CAT deserves to be set aside and the petitioner deserves to be granted the reliefs prayed for in the Original Application before the CAT.

8] Mrs. Helekar, the learned counsel for the respondents submits that enquiry report in respect of charge sheet dated 21st July 1997 was received prior to the enquiry report in respect of charge sheet dated 8th May 1996. Since, action was taken on the basis of enquiry report which was received first in point of time and decision was taken to remove the petitioner from service, there was no question of taking any further action in respect of charge sheet dated 8th May 1996. She submits that there is no qualitative difference between the responses furnished by the petitioner to the two enquiry reports. She submits that the charge sheets refer to misconducts committed by the petitioner on two different and distinct occasions and therefore, it cannot be said that the charges are identical.

9] Mrs. Helekar points out that the petitioner was responsible for preparation / verification of the pay bills. There is documentary evidence which establishes beyond doubt that excess payments were allowed to Chargemen II, resulting in losses to the Department. Merely because such losses may have been recovered at a later point of time, which position she says that she is quite unsure, is by no means the mitigating factor. She submits that the penalty is quite proportionate because excess payments were detected in the case of at least 8 Chargemen over two independent spells of time. She submits that in response to the enquiry reports, the petitioner, has virtually accepted the charges but tried to explain them. He accepted that he relied upon the pay bills prepared by persons under him blindly. Mrs. Helekar submits that this is hardly a defence but rather this constitutes admission of negligence. For all these reasons, Mrs. Helekar submits that this petition may be dismissed.

10] Rival contentions now fall for our determination.

11] Since, the action against th petitioner is based upon the charge sheet dated 21st July 1997, reference, is necessary to the charges levelled against the petitioner in the said charge sheet. The allegation against the petitioner is that when the petitioner was working as a lower division clerk at the Ordnance Factory at Ambernath in the Bill Group Section, the petitioner committed gross irregularity by virtually including undue and unauthorized amounts in the monthly pay bills in respect of Chargemen Grade II on various occasions in the months of July 1994, September 1994, October 1994 to December 1994 and January 1995. The charge sheet alleges that such conduct on the part of the petitioner indicates failure to maintain absolutely integrity and deviation to duty thereby violated Rule 3(i), (ii) and (iii) of CCC (Conduct) Rules 1964. Statement of imputation of misconduct furnished to the petitioner sets out in great details the manner in which such excess and unauthorized payments were reflected in the monthly pay bills of the 9 Chargemen Grade II.

12] Although, the CAT, in the impugned judgment and order, has quoted the petitioner's response to the enquiry report in pursuance of charge sheet dated 8th May 1996, in the context of enquiry report in pursuance of charge sheet dated 21st July 1997, nothing much turns upon this inadvertent confusion, because, upon perusal of the petitioner's responses to both the enquiry reports, it transpires that there is no substantial difference between the two. The crux of the defence in both the responses is virtually identical, not only in terms of its content but also the language employed by the petitioner. The response which the CAT has quoted with regard to enquiry report in pursuance of charge sheet dated 8th May 1996 is not in any manner significantly different from the petitioner's response to the enquiry report in pursuance of charge sheet dated 21st July 1997.

13] The petitioner in response to the enquiry report dated 28th September 1998 has submitted the following :

> *" Sir, how it has happened, I am not aware of it. If I could get any clue or knowing anything, I*

> *would have brought it to the knowledge of the court of enquiry during the proceedings to protect my self and to nullify the charges. But Sir, it is crystal clear and naked truth that I am also in dark yet and could not come to any conclusion how it has happened.*
>
> *The only and factual position known to me is that if I might have checked the bill before forwarding to the AO thoroughly, I could have noticed it and it might have been corrected there itself. This is the only failure on my part, the one and the only reason known to me because of which the bill with the undue amounts submitted to AO through me.*
>
> *This is only because, I blindly relied upon the check list and the corrections made by me before print out of final bill and in good faith, I assumed as it may be the same and hence, much care and attention has not been paid to check perfectly and fully by me."*

14] The aforesaid passage is not significantly different from the passage referred to in paragraph 4 of the impugned judgment and order. Therefore, the petitioner cannot draw any significant mileage from the apparent and inadvertent confusion in the matter of quotation in paragraph 4 of the impugned judgment and order.

15] The enquiry officer, on the basis of material before him, has held the charges as proved against the petitioner. There was documentary evidence before the enquiry officer, on the basis of which the charges have been held to be proved. Therefore, this cannot be said to be a case of any perversity in the record of findings of the fact. From the response of the petitioner to the enquiry report, it cannot be said that the petitioner has with any seriousness, questioned the findings of fact recorded by the enquiry officer. The fact that there is no direct evidence that the petitioner may have gained from the excess payments made to the Chargemen or that such amounts may have been subsequently recovered from the Chargemen upon detection of the mistake, are not any mitigating factors. Admittedly, it was the responsibility of the petitioner to prepare or to verify the pay bills so that no excess payment is made to the Chargemen. The records indicate that excess payments were included in the pay bills, which were supposed to be checked and verified by the petitioner. There is clearly failure on the part of the petitioner to discharge his duties. The inference as regards lack of integrity cannot be said to be an inference which is perverse or not supported by the material on record.

16] The disciplinary authority as also the departmental and appellate authorities have examined the case of the petitioner but found no cogent reason to disturb the findings of fact recorded by the enquiry officer. The same is the position with the CAT which has also found no good ground to interfere with the findings of fact recorded by the enquiry officer.

17] In the present case, since, the enquiry report in pursuance of charge sheet dated 21st July 1997 was received prior in point of time and action was taken on the basis of said enquiry report, there was no further occasion for taking action on the basis of the enquiry report in pursuance of charge sheet dated 8th May 1996. In any case, we have perused the enquiry report in pursuance of charge dated 8th May 1996. The said enquiry report also holds the charges as proved against the petitioner. No doubt, there are some observations in the said enquiry report on the aspect of motive or absence in evidence that the petitioner has benefited from the excess payments. However, those observations, may not apply to the second charge sheet upon which the penalty is based. In any case, the record indicates that on two separate occasions, the petitioner, has failed to prepare and verify the pay bills appropriately thereby resulting in excess payment to the Chargemen.

18] Taking into consideration the restricted parameters of judicial review in matters of findings recorded by the disciplinary authorities, we are unable to detect any jurisdictional error in the impugned judgment and order.

19] The scope of judicial review with the findings recorded by the disciplinary authority is quite limited. In ***Union of India & Ors. vs. P. Gunasekaran – AIR 2015 SC 545***, the Hon'ble Supreme Court has made it clear that in disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. Therefore, in the exercise of writ powers under Article 226/227 of the Constitution of India, the High Court shall not venture into re-appreciation of the evidence. The High Court can only see whether the enquiry is held by a competent authority; in accordance with procedure prescribed in that behalf; issues of whether there is violation of the principles of natural justice; the considerations of extraneous evidence; influenced by irrelevant or extraneous considerations or whether the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion. The High Court can also examine whether the disciplinary authority had erroneously failed to admit the admissible and material evidence admitted inadmissible evidence which is influenced the finding or whether the finding of fact is based on no evidence.

20] The Hon'ble Supreme Court, in *P. Gunasekaran (supra),* after positively stating what the High Court, in the exercise of its powers under Article 226/227 of the Constitution of India can do in a matter dealing with disciplinary proceedings, has further, in clear and unambiguous terms set out, what the High Court, in exercise of powers under Article 226/227 of the Constitution of India cannot do while exercising powers of judicial review in disciplinary proceedings. It is held that the High Court shall not re-appreciate the evidence, interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law, go into the adequacy of the evidence; go into the reliability of the evidence, interfere, if there be some legal evidence on which findings can be based; correct the error of fact however grave it may appear to be; go into the proportionality of punishment unless it shocks its conscience.

21] The Hon'ble Supreme Court, whilst setting aside the order of the High Court and restoring the order of Central Administrative Tribunal held that it was not open to the High Court in the exercise of its jurisdiction under Article 226/227 of the Constitution of India to go into proportionality of the punishment as long as the punishment does not shock the conscience of the court. The disciplinary authority has already recorded a conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "*moral uprightness; honesty".* It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values. The Hon'ble Supreme Court noted that the conduct of the respondent Dy. Office Superintendent in a department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment.

22] Applying the aforesaid principles, in the present case, there is really no case made out to interfere with the impugned judgment and order.

23] For all the aforesaid reasons, the petition is dismissed. Rule is discharged. No order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

CHANDKA