

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5326 OF 2004**

|                        |                |
|------------------------|----------------|
| Union of India and ors | ...Petitioners |
| Versus                 |                |
| A. Rajendran           | ...Respondent  |

**WITH  
WRIT PETITION NO. 2949 OF 2006**

|                        |                |
|------------------------|----------------|
| A. Rajendran           | ...Petitioner  |
| Versus                 |                |
| Union of India and ors | ...Respondents |

Ms Neeta V. Masurkar, Mr. N.R. Prajapati, D.A. Dube a/w. Ms Nieyaati Masurkar for Union of India.

Mr. K. Babu Rajan for A. Rajendran

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

**DATE : 28.06.2018.**

**ORAL JUDGEMENT:**

- 1] Heard learned counsel for the parties.
- 2] Rule in Writ Petition No. 5326 of 2004 was issued on 28.07.2004 and also interim relief was granted therein.
- 3] Rule in Writ Petition No. 2949 of 2006. With the consent of and at the request of learned counsel for the

parties, Rule is made returnable forthwith.

4] The challenge in Writ Petition No. 2949 of 2006 is to the judgment and order dated 10.06.2003 made by the Central Administrative Tribunal, Mumbai to the extent the said impugned judgment and order declines to interfere with the findings recorded by the disciplinary authority and declines to order the reinstatement of the petitioner with full backwages and consequential reliefs. The challenge in Writ Petition No. 5326 of 2004 is also to the same judgment and order made by the Central Administrative Tribunal, but, to the extent the same holds that the penalty of compulsory retirement imposed upon Shri. A. Rajendran, the petitioner in Writ Petition No. 2949 of 2006 is disproportionate and requires the reconsideration of the same. In such circumstances, it is only appropriate that both these petitions are taken up for consideration together and disposed of by common judgment and order.

5] For sake of convenience, Mr. A. Rajendran will be referred to as the petitioner and Naval Authorities shall be referred to as the respondents.

6] Mr. K. Babu Rajan, learned counsel for the petitioner, submits that the chargesheet issued to the petitioner was vitiated by malice and *mala fides*. He submits that the petitioner was taking great interest in the functioning of the Naval housing colony and had even exposed certain failures on the part of the security staff. Mr. Rajan submits that the security staff, including in particular, Mr. S.K. Awasthi (Security in-charge) by way of retaliation, has foisted triumphed up charges against the petitioner. He submits that this contention, though raised, has not been seriously considered by either disciplinary authorities or the Central Administrative Tribunal. He submits that there is intrinsic material on record in support of the allegation of malice and ulterior motives. He submits that non-consideration of such material vitiates the entire disciplinary proceedings and the consequent penalty of compulsory retirement imposed upon the petitioner on the basis thereof.

7] Without prejudice, Mr. Rajan submits that the most serious allegation made against the petitioner were that of attempts of molestation against three teachers at Shishu Vikas School on 22.11.1995. Mr. Rajan submits that all these

three teachers, in the course of enquiry proceedings flatly denied that the petitioner had ever misbehaved with them leave alone, attempted to molest them. Mr. Rajan submits that these three teachers, explained circumstances, in which, they were tricked into giving statements that the petitioner had misbehaved with them. Mr. Rajan submits that all these materials have been ignored by the disciplinary authorities as well as the Central Administrative Tribunal and therefore, the impugned judgment and order warrants interference.

8] Mr. Rajan submits that the petitioner had admitted that on the previous evening, i.e., 21.11.1995, the petitioner had attended a party where alcohol was freely served and this fact was known to the security personnel, who were out to retaliate against the petitioner. Mr. Rajan submits that the petitioner had admitted that he had consumed alcohol on the previous day at a party, therefore, the medical evidence, may have indicated the presence of alcohol when the petitioner was apprehended on 22.11.1995. Mr. Rajan, however, submits that there is no evidence that the petitioner had consumed any alcohol on 22.11.1995 and

created any nuisance whilst on duty or prevented any other persons from discharging their duty. Mr. Rajan points out that even the enquiry officer had noted that the medical report suggest that the petitioner was beaten up. Mr. Rajan submits that this corroborates the petitioner's contention that he was actually beaten up by the security officials on 22.11.1995.

9] For all the aforesaid reasons, Mr. Rajan submits that this is a case of “*no evidence*” and therefore, the findings recorded by the enquiry officer and endorsed by the Central Administrative Tribunal are clearly vitiated by perversity. He submits that these are findings which no reasonable or prudent person could have ever urged on the basis of material on record. He therefore, submits that the Central Administrative Tribunal should have reevaluated the material on record at least for the limited purpose of determining whether there was any evidence to connect the petitioner with the charges leveled against him and since, the Central Administrative Tribunal, has failed to do so there is failure to exercise jurisdiction.

10] Mr. Rajan, without prejudice, to the aforesaid contentions submits that the Central Administrative Tribunal, in any case, was quite right in holding that the penalty of compulsory retirement imposed upon the petitioner was indicate shockingly disproportionate and directing the respondents to reconsider the issue of penalty.

11] Ms Masurkar, learned counsel for the respondents, submits that the enquiry officer, disciplinary authority, appellate authority and the Central Administrative Tribunal have concurrently held that the charges levelled against the petitioner are borne out by the evidence on record. She submits that this is not a case of no evidence or perversity and therefore, the Central Administrative Tribunal was quite justified in not interfering with the findings of the facts recorded by the enquiry officer and the disciplinary authorities. She submits that the charges of drunkenness and causing nuisance, which have been held as proved against the petitioner are extremely serious charges. The Central Administrative Tribunal was therefore, not justified in interfering with the penalty imposed by merely observing that the penalty is disproportionate. She relies upon the

ruling of the Hon'ble Supreme Court in ***Chairman and Managing Director, United Commercial Bank and ors vs. P.C. Kakkar - (2003) 4 SCC 364***, to submit that unless punishment imposed by the disciplinary authority shocks the conscience of the court / tribunal, there is no scope for interference. Ms Masurkar, therefore, submits that Writ Petition No. 2949 of 2006 may be dismissed and Writ Petition No. 5326 of 2004 may be allowed.

12] The rival contentions now fall for our determination.

13] The petitioner, whilst working as Crane Operator at Naval dockyard in Mumbai was served with charge-sheet dated 6.1.1996, in relation to certain incidents alleged to have taken place on 22.11.1995. The charge-sheet comprises five articles of charge, which read as follows:

*"ARTICLE - I: Shri A. Rajendran, T.No.55504, C.No.98 committed gross misconduct in that at about 1410 hrs on 22 Nov.95 he consumed liquor and created nuisance in NCHC Pawai, thereby violated Rule 22 (a) (b)(c) (d) and Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964 and acted in a manner which is unbecoming of a Government servant and therefore, has violated Rule 3 (i) (iii) of CCS (Conduct) Rules 1964.*

*ARTICLE - II: Shri A. Rajendran, T.No.55504, C.No.98 committed a gross misconduct in that on 22*

*Nov. 95 at about 1430 hrs under the influence of alcohol he unauthorisedly entered the class room of Shishu Vikas School, NCHC Pawai and tried to outrage the modesty of Smt. J.L. Chowdhary, School Teacher and acted in a manner which is unbecoming of a Government servant and therefore, has violated Rule 3 (i) (iii) of CCS (Conduct) Rules 1964.*

*ARTCILE - III: Shri A. Rajendran, T.No.55504, C.No.98 committed a gross misconduct in that on 22 Nov. 95 at about 1430 hrs he entered the Security Office at the main gate of NCHC Pawai and abused the Secruity Supervisor, Shri VR Kadam of M/s. Santosh Security Services and tore a Calender to bits and pieces under the influence of alcohol and thereby acted in a manner which is unbecoming of a Government servant and therefore has violated Rule 3 (i) (iii) of CCS (Conduct) Rules 1964.*

*ARTCILE - IV: Shri A. Rajendran, T.No.55504, C.No.98 committed gross misconduct in that on 22 Nov. 95, he in fully drunken state followed Smt. PD Kadam from Shishu Vihar School to Sher Building abusing her husband in bad and filthy language and thereby acted in a manner which is unbecoming of a Government servant and therefore has violated Rule 3 (i) (iii) of CCS (Conduct) Rules 1964.*

*ARTCILE - V: Shri A. Rajendran, T.No.55504, C.No.98 committed a gross misconduct in that on 22 Nov. 95 at about 1445 hrs, he in a fully drunken state threatened to murder Shri SK Awasthi and also abused him and thereby acted in a manner which is unbecoming of a Government servant and therefore, has violated Rule 3 (i) (iii) of CCS (Conduct) Rules 1964."*

14] Since the petitioner denied the charges leveled against him, an enquiry officer was appointed to enquiry into the charges leveled against the petitioner. Along with

the charge-sheet, the petitioner had been furnished list of documents as well as list of witnesses on the basis of which the charges were proposed to be established against the petitioner. The documents *inter alia*, including statements of Smt. J.L. Chowdhary, Smt. Shyama Sharma, School Teacher at Shishu Vikas Nruseri School and Smt. Sadhana Kadam, a resident of Naval Housing Colony. In the course of enquiry, these three ladies were examined as witnesses, in addition to Shri. S.K. Awasthi, Security Incharge, Shri J V Dixit, Security Superintendent and some other witnesses. There is no dispute that ample opportunity of cross-examination was afforded to the petitioner in the course of enquiry proceedings.

15] The enquiry officer, based upon the material on record, made an enquiry report holding of the articles of charge except Article III as proved against the petitioner. The petitioner was exonerated of Article -III of the charge-sheet. The petitioner was granted and availed opportunity of representing against the enquiry report. Upon due consideration of the petitioner's representation, the disciplinary authority, by a detailed order dated 4.4.1997

imposed upon the petitioner penalty of compulsory retirement from service.

16] The petitioner instituted an appeal before the appellate authority, Vice Admiral, Flag Officer Commanding-in-Charge. The appellate authority, again, by a detailed order dated 18.03.1998 dismissed the petitioner's appeal.

17] The petitioner then instituted a revision before the Vice Admiral, Chief of Personnel, which revision came to be dismissed by the revisional authority vide order dated 2.3.2000.

18] The petitioner, thereafter, instituted O.A. No. 636 of 2000 before the Central Administrative Tribunal questioning the orders made by the disciplinary authority, appellate authority and the revisional authority. By the impugned judgment and order, the Central Administrative Tribunal has partly allowed the O.A. The Central Administrative Tribunal has held that there is no ground to fault the findings recorded by the enquiry officer and accepted by the disciplinary authority. However, the Central Administrative

Tribunal has held that the penalty of compulsory retirement is shocking and disproportionate. On this ground, the Central Administrative Tribunal has remanded the matter to the disciplinary authority to reconsider the imposition of a proportionate penalty.

19] The operative portion of the impugned judgment and order in paragraph 6 reads as follows:

*"6. However, whereas we do not find any fault with the findings in the disciplinary against the applicant, we are indeed shocked by the quantum of punishment imposed on the applicant which, in our view, is not commensurate with gravity of offence. In this view of the mater, whereas we are not interfering with the aforesaid charges having been proved against the applicant in the disciplinary enquiry, we quash and set aside the orders passed by the appellate and reviewing authority and remand the case to the appellate authority to reconsider the aspect of proportionality of punishment and pass fresh order which should be commensurate with the gravity of offence imposed a punishment which should be less severe than the punishment of compulsory retirement. The appellate authority should pass fresh orders taking into consideration the observations made above as also after affording an opportunity of hearing to the applicant within a period of two months from the date of receipt of a copy of this order. No costs."*

20] Since, it was the case of Mr. Rajan that the Central Administrative Tribunal has not even looked into the evidence on record even in the limited purpose of satisfying

itself as to whether the findings recorded by the enquiry officer are vitiated by perversity or not, we have perused and considered the evidence on record before the enquiry officer.

21] From the same, it is true that the three lady witnesses, have stated that they did sign the statements which alleged misbehaviour and molestation by the petitioner whilst in a drunken state on 22.11.1995, however, they stated that such statements were signed by them without knowledge of their contents. These ladies also admitted a few days later that they gave handwritten letters to the petitioner stating that there was no misbehaviour on his part on 22.11.1995. Mr. Rajan, relies very strongly, upon these retractions by these witnesses before the enquiry officer.

22] The three lady witnesses have categorically admitted that signing the statements, in which, they had described the petitioner's behaviour in drunken state on 22.11.1995. In the enquiry, Smt. Chowdhary, who is a teacher in the school, however, stated that *"the contents therein were not explained to me by Shri. S.K. Awasthi, Security-in-Charge of*

*the Colony before getting my signature thereon.*" Now, it is not even the petitioner's case that Smt. Chowdhary was some illiterate witness who had only put her thumb impression to the statement. In these circumstances, the statement of this witness that the contents of her own statement or at least the contents of the statement to which she had put her signature, were not "*explained to her*". Smt. Chowdhary in her deposition also admitted that the petitioner on 24.11.1995 brought to her some statement in Marathi and again, she put her signature to such statement as well. In the course of enquiry, Smt. Chowdhary, however, stated that since the contents of such statement were in Marathi, she does not know anything about the same. Smt. Chowdhary has nowhere stated that she was unfamiliar with English language. Admittedly, Smt. Chowdhary was a teacher and therefore, was not some illiterate witness.

23] The position with regard to statements made by Smt. Shyama Sharma and Sadhana Kadam is also similar. Both these witnesses specifically admit that they signed the statements, in which, they described the drunken state of

the petitioner and his consequent acts of misbehaviour. However, in the enquiry, these witnesses have stated that they did not know what they signed or that they signed because they were assured that no action will be taken against the petitioner.

24] The enquiry officer relying not only on the evidence of these three witnesses, but also the evidence of security officers and other witnesses has opined that all the articles of charge except Article III stand proved. Insofar as the issue of drunkenness on 22.11.1995 is concerned, in our opinion, there is overwhelming evidence on record.

25] There is evidence that the petitioner was apprehended and taken to the police station. There is evidence that the petitioner was referred to the hospital for medical opinion and the medical reports confirmed presence of alcohol in his system. The defence that the petitioner had alcohol on the previous evening, where the alcohol is being freely served, hardly evokes any confidence. The findings as regards the petitioner reporting for duty in a drunken state is, therefore, backed by ample evidence.

26] There is also ample evidence as regards the petitioner's conduct with the security personnel. This is because Shri. S.K. Awasthi and Shri J.V. Dixit have deposed in the enquiry and further, despite cross-examination, their testimony has not suffered any serious dent.

27] The petitioner's contention as regards malice or ulterior motives, has not at all been established. The allegations of *mala fides* are easier to make than to make out. Since, there is evidence on record as regards the petitioner's drunkenness, all the authorities cannot be said to be unjustified in believing that the petitioner did misbehave under the influence of alcohol on 22.11.1995. Even if, some benefit is to be given to the petitioner in the matter of allegation of molestation or misbehaviour with the the three lady teachers, the charge as regards reporting for duty in a drunken state and causing a nuisance at the place of work, is, quite a serious charge, which cannot be simply downplayed. The lady witnesses, in terms, admit having signed the statements, in which, they had described the acts of misbehaviour on the part of the petitioner. Neither of the lady witnesses were uneducated nor illiterate and

therefore, an explanation that they signed without knowing the contents of their own statements cannot be lightly accepted. In any case, in such matters, it is not for the Central Administrative Tribunal or for that matter this court, to reappraise or reevaluate the material on record, as if, the Central Administrative Tribunal or this court were exercising any appellate jurisdiction in the matter. Suffice to state that even upon consideration of the material on record in its entirety, it cannot be said that the findings recorded by the enquiry officer and endorsed by the disciplinary authority, appellate authority, revisional authority and the Central Administrative Tribunal suffer from any perversity so as to warrant interference.

28] 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

reappreciation 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 law 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.

29] 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.

30] In *P.Gunasekaran (supra)*, the respondent whilst working as a Dy.Office Superintendent, Central Excise was arrested for cheating and extortion of money. The separate departmental proceedings were also initiated against him on charges of signing attendance register in token of his presence, but then leaving office without permission and returning only on the next day. In the enquiry proceedings, this charge was held to be proved and on that basis penalty of compulsory retirement was imposed upon the respondent. The Administrative Tribunal endorsed penalty as proportionate. However, the High Court, by re -

appreciating the material before the disciplinary authority interfered with the penalty imposed and directed reinstatement with all backwages.

31] 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.

32] The Central Administrative Tribunal consistent with the principles set out in *P. Gunasekaran (supra)* has quite correctly, held that there was no case made out to interfere with the findings recorded by the disciplinary authority. However, with respect, we are unable to agree with the Central Administrative Tribunal that in the facts and circumstances of the present case the penalty of compulsory retirement imposed upon the petitioner was shockingly disproportionate.

33] In this case, we are concerned with the issue of discipline in a Naval Dockyard. There is ample evidence on record that the petitioner in a drunken state caused nuisance at the work place on 22.11.1995. The acts of nuisance involved, to say the least, hurling of abuses and threats at the security officials. From the findings recorded by the disciplinary authority, the acts of nuisance also involves misbehaviour with the ladies. The petitioner had to be handed over to the police authorities. There is evidence on record that on account of such acts on the part of the petitioner there was difficulties in operating the school on the next two days.

34] The issue of proportionality has been examined in great details by the disciplinary authority was a Rear Admiral in the Indian Navy, appellate authority who was Vice Admiral, Flag Officer Commanding-in-Charge and the revisional authority, Vice Admiral, Chief of Personnel. The Central Administrative Tribunal, without assigning any special reasons, therefore, could not have concluded that the penalty imposed upon the petitioner in these

circumstances, was shockingly disproportionate and therefore, was required to be scaled down.

35] The Hon'ble Supreme Court in ***Jai Bhagvan vs. Commissioner of Police (2013) 11 SCC 187*** held that the appropriate quantum of punishment to be awarded to the delinquent employee vests in the discretion of the disciplinary authority. The exercise of such discretion is generally respected by the Service tribunals and the High courts except where the same is grossly disproportionate to the magnitude of the misconduct or the court considers it to be arbitrary and unreasonable. The Court can also interfere when it shocks the conscience of the court.

36] In ***Union of India vs. Dwarka Prasad Tewari (2006) 10 SCC 388***, the Hon'ble Supreme Court has held that the court should not interfere in the quantum of punishment routinely. The court should not meddle with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking tot he conscience of the court in the sense that it was in defiance with the logic or moral standards. The ambit of judicial review is limited to

deficiency and decision making process and not the decision itself.

37] In *P.C. Kakkar (supra)*, the Hon'ble Supreme Court has held that even when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to the conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “*inscrutable face of the sphinx*” , it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system.

38] In the present case, as noted in paragraph 6 of the impugned judgment and order of the Central Administrative Tribunal, apart from saying that “*we are indeed shocked by the quantum of punishment imposed on the applicant which, in our view, is not commensurate with gravity of offence*”, the Central Administrative Tribunal has not given

any reasons whatsoever as to why it has reached to such conclusion. This is therefore, in direct breach of the predicates prescribed by the Hon'ble Supreme Court in *P.C. Kakkar (supra)*. The portion of the impugned judgment and order to the extent the Central Administrative Tribunal has interfered with the penalty imposed upon the petitioner is therefore, in excess of jurisdiction and warrants interference.

39] For all the aforesaid reasons, we dismiss Writ Petition No. 2949 of 2006 and allow Writ Petition No. 5326 of 2004. This means that the operative portion of the impugned judgment and order dated 10.06.2003 to the extent it directs the respondents to reconsider the issue of penalty imposed upon the petitioner is hereby set aside. The penalty of compulsory retirement imposed upon the petitioner is hereby maintained.

40] Accordingly, Rule is discharged in Writ Petition No. 2949 of 2006 and made absolute in Writ Petition No. 5326 of 2004 to the extent indicated above. There shall be no order as to costs.

**(M.S. SONAK, J.)**

D.S.Sherla

**(ACTING CHIEF JUSTICE)**

Dinesh  
Sadanand  
Sherla

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