

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

WRIT PETITION NO. 3701 OF 2005

Ramesh Nathu Chavan	
Since deceased through legal heirs	
Smt. Shaila Ramesh Chavan & Ors.	..Petitioners
Versus	
The Union of India & Ors.	...Respondents

Mr. Ramesh Ramamurthy for Petitioners.
Mr. Suresh Kumar for Respondents – UOI.

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

Date of Reserving the Judgment : 21 June 2018
Date of Pronouncing the Judgment : 03 July 2018

JUDGMENT :

- 1] Heard the learned counsel for both the parties.
- 2] During the pendency of the petition, the original petitioner has expired and his legal representatives were brought on record.
- 3] The petitioners are challenging the judgment and

order dated 18th November, 2004 passed by CAT in OA no. 168/03 upholding dismissal of the original petitioner and the judgment and order dated 18th January 2005 dismissed in review application no.100/04 made therein.

4] The original petitioner was working as senior booking clerk at CST Mumbai and was issued memorandum of charge sheet on VII articles of charges, which read as follows :

“Article I : He sold a second class ordinary single journey fake ticket no. 71550 Ex. BB-ABH/ABY unauthorisedly from Window No. 16 though SPT machine at W/No.16 does not have unit of ABH/ABY.

Article II : He was in possession of 62 more false SPTM machine tickets and 60 card tickets of different destinations which were later on found missing from the ticket stock room of BBVT.

Article III : During the course of vigilance check he left from duty unauthorisedly leaving behind Railway cash, tickets counter and his personal effects and remained absconded from duty.

Article IV : The Railway cash on his window was Rs.912.50 as against D.T.C. accountal for Rs.858.50 ps. As such Rs.54/- were found as an excess amount with Railway cash on his window.

Article V : He failed to declare his private cash in private cash register on 2.4.94 which is required as per provisions laid down wide Railway Board's letter No. TC-II/2870/88 dated 15.3.1992 reproduced in C.Rly. monthly gazette No. 2/92 and

4/93.

Article VI : He failed to sign the muster (attendance Register) before commencing his duty.

Article VII : He refused to give statement and extend co-operation to the V.T. during the course of post-decoy check investigation."

5] The original petitioner, in his defence in fact admitted Articles III, V and VI and therefore, there was no necessity for holding any enquiry into the said charges. However, since the original petitioner, had denied the balance charges, enquiry was ordered and held into the said charges.

6] The enquiry officer, in his report dated 28th April 1995, held Charges I, II and IV as proved but held that charge VII was not proved. Upon consideration of the original petitioner's explanation, the disciplinary authority, by order dated 10th August 1995 dismissed the original petitioner from service.

7] The appeal against such dismissal was also dismissed by the appellate authority. The original petitioner then instituted Original Application No. 695 of 1997 to question

his dismissal order as well as the appeal dismissal order.

8] During the pendency of Original Application No. 695 of 1997, the original petitioner, was acquitted by the Metropolitan Magistrate vide order dated 17th August 2001 in the prosecution launched against him under sections 467, 468, 420 read with 34 of IPC. The original petitioner, therefore amended Original Application No. 695 of 1997 to bring on record this fact and to contend that since prosecution was on basis of virtually the same charges as were leveled against him in the disciplinary proceedings, the original petitioner's acquittal from the criminal prosecution, must result in setting aside of the order of dismissal as well. The original petitioner, relied upon the ruling of the Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd (1999) 3 SCC 679.**

9] The CAT, did not itself go into the issues as to whether the principle in *Capt. M. Paul Anthony* (supra) was at all applicable to the case of the original petitioner. Instead, the CAT directed the original petitioner to make a self contained

representation, to the Additional Divisional Rail Manager (revisional authority) and further directed such authority to consider and dispose of such representation in accordance with law.

10] The revisional authority, in compliance with the orders of the CAT in OA No. 695 of 1997 did consider the representation made by the original petitioner but rejected the same by passing a reasoned order. Thereupon, the original petitioner, instituted OA No. 168 of 2003, which has since been dismissed by the CAT vide impugned judgment and order dated 18th November 2004. The original petitioner then filed review petition no. 100 of 2004 which also came to be dismissed by order dated 18th January 2005. Hence, the present petition.

11] Mr. Ramamurthy, the learned counsel for the petitioners submits that the criminal prosecution launched against the original petitioner was in respect of Articles I and II of the charge sheet issued to the original petitioner in the disciplinary proceedings. He submits that since the Magistrate awarded a clean acquittal to the original

petitioner in respect of the two charges, the contrary findings recorded by the enquiry officer in the disciplinary proceedings cannot be permitted to stand in the light of the law laid down by the Hon'ble Supreme Court in *Capt. M. Paul Anthony* (supra). He submits that the CAT, on the first occasion, had remanded the matter to the revisional authority for consideration of this very aspect. However, since this very aspect was ignored by the revisional authority, this is a fit case to interfere with the order of dismissal imposed upon the original petitioner.

12] Mr. Ramamurthy submits that most of the articles of charge were based upon the statements of two decoy passengers, who were in fact, RPF constables S. S. Choubey and Ashok Singh. Mr. Ramamurthy submits that though these two RPF constables were named in the list of witnesses furnished to the original petitioner, ultimately, in the course of enquiry, these two crucial witnesses were never examined. He submits that non examination of such crucial witnesses not only vitiates the findings recorded by the enquiry officer, but further amounts to denial of principles of natural justice and fair play, since, the original

petitioner, was deprived of opportunity to confront such witnesses by way of cross-examination. Mr. Ramamurthy submits that enquiry proceedings which are conducted in breach of principles of natural justice cannot be permitted to prevail. He further submits that the findings recorded in the absence of deposition of such crucial witnesses are findings based upon '*no evidence*' and therefore, such findings warrant interference on the ground of perversity.

13] Finally, Mr. Ramamurthy submits that the penalty of dismissal imposed upon the petitioner is shockingly disproportionate. He submits that the issue of penalty has to be examined from the context that the original petitioner stands acquitted in the criminal prosecution which was based on almost the same facts as have been set out in Articles I and II of the charge sheet. He submits that the articles of charge which were admitted by the original petitioner, are quite trivial. He submits that the original petitioner has already expired and if the penalty of dismissal is now reduced, his family members who in any case were not at all responsible for what happened, will at least avail some family pension or other retiral benefits. For

all these reasons, Mr. Ramamurthy submits without prejudice to his earlier contentions that at least quantum of penalty may be interfered with.

14] Mr. Suresh Kumar, the learned counsel for the respondents submits that the subject matter of the criminal prosecution and the charge sheets cannot be said to be identical, even though, there may have been some overlap. Further, he points out that there is no provision in the rules which permits review of order made in the disciplinary proceedings based upon acquittal in the criminal trial. On these grounds, Mr. Suresh Kumar submits that the ruling in *Capt. M. Paul Anthony* (supra) is inapplicable to the facts and circumstances of the present case.

15] Mr. Suresh Kumar submits that the petitioner in the present case, had admitted at least 3 articles of charge. However, in respect of the remaining charges, which are held as proved by the enquiry officer, there is ample evidence on record. He points out that even the so-called denials by the petitioner are quite evasive and in fact do not

constitute denials at all. He points out the defences raised by the petitioner were unworthy of acceptance and have been rightly rejected by the disciplinary authorities. He submits that the scope of interference with findings of facts recorded by the enquiry officer or disciplinary authorities is quite limited and since, the CAT, in the present case, has dealt with all the contentions raised by the petitioner appropriately and in accordance with law, there is no case made out to interfere with the impugned judgment and order.

16] Rival contentions now fall for our determination.

17] In this case, the petitioner, had in fact admitted the articles III, V and VI of the charge sheet. In so far Articles I and II of the charge sheet are concerned, it is possible to say that these charges also formed the subject matter of the prosecution of the petitioner under sections 467, 468, 420 read with 34 of IPC. However, merely because the petitioner may have been acquitted in the criminal prosecution, it cannot be said that the petitioner deserves exoneration in the departmental proceedings. It is settled

principle that the yardstick for establishment of the guilt in criminal proceedings is '*proof beyond reasonable doubt*'. In contrast, the standard of proof to be applied in disciplinary proceedings is '*preponderance of probabilities*'. The object of the two proceedings is also different. In ***Ajit Kumar Nag vs. Indian Oil Corp. Ltd., (2005) 7 SCC 764***, the Hon'ble Supreme Court has held that acquittal in criminal proceedings is no bar to an employer exercising disciplinary jurisdiction in accordance with rules and regulations as may have been prescribed.

18] In ***Deputy Inspector General of Police & Anr vs. S. Samutiram, (2013) 1 SCC 598***, the Hon'ble Supreme Court has held that if there is no provision in the service rules for reinstatement of a dismissed employee upon his acquittal in criminal prosecution, then, such employee, cannot, as a matter of right, claim for reinstatement. In this case, the Hon'ble Supreme Court held that the impact of acquittal in criminal prosecution upon the disciplinary proceedings will depend upon the service rules as applicable. In the present case, the petitioner has not been able to point out any service rule on the basis of which the

penalty imposed upon him requires a review on account of his acquittal from criminal prosecution. Further, as noted earlier, this is not a case where the criminal prosecution and the articles of charge proceed on identical facts. Though, they may be overlap in so far as articles I and II of the charge sheet and the criminal prosecution was concerned, admittedly, the charge sheet includes other charges, some of which, were admitted by the petitioner and others stand proved on the basis of the evidence on record before the enquiry officer. In such circumstances, it is not possible to grant the petitioner the benefit of principle in *Capt. M. Paul Anthony* (supra).

19] It is necessary to refer to yet another decision of the Hon'ble Supreme Court in the case of ***Divisional Controller of Karnataka SRTC vs. M G Vittal Rao (2012) 1 SCC 442***, which has the effect of restricting the ruling in *Capt. M. Paul Anthony* (supra) to the peculiar facts involved in the said matter. In *M G Vittal Rao* (supra), this is what the Hon'ble Supreme Court has observed :

“Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an

*employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. **The judgment of this Court in Capt. M. Paul Anthony (supra) does not lay down the law of universal application.** Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry."*

(Emphasis supplied)

20] The contention of Mr. Ramamurthy as regards 'no evidence' or perversity arising out of non examination of decoy passengers has to be appreciated keeping in mind the limited scope of jurisdiction vested in both the CAT as well as this Court when it comes to the judicial review of findings in disciplinary proceedings.

21] In ***Union of India & Ors. vs. P. Gunasekaran AIR 2015 SC 545***, the Hon'ble Supreme Court, in the context of exercise of powers under Articles 226 and 227 by the High Court in relation to disciplinary proceedings has held that the High Court is not and cannot act as a second court of first appeal. The Hon'ble Court has spelt out the restrictive parameters of jurisdiction to be exercised by a High Court in relation to disciplinary proceedings. It is held that the

High Court cannot go into reliability and adequacy of evidence. Similarly, the High Court cannot re-appreciate the evidence before the enquiry officer in order to reach to a different finding. Interference is permitted only where the findings of fact is perverse. The test laid down by the Hon'ble Supreme Court, which will apply also to Central Administrative Tribunal exercising the powers of judicial review are as follows :

“(I) The High Court can only see whether:

- a). the enquiry is held by a competent authority;*
- b). the enquiry is held according to the procedure prescribed in that behalf;*
- c). there is violation of the principles of natural justice in conducting the proceedings;*
- d). the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e). the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f). 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;*
- g). the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h). the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

i). the finding of fact is based on no evidence.

II) Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

22] It is true that the two decoy passengers may have not been examined even though their names were stated in the list of witnesses. However, there is other material on record, which is quite sufficient to sustain the articles of charge. Further, in relation to the articles of charge, reference is necessary to the petitioner's defence brief dated 6th April 1995 from which, it is quite clear that even the denials of the petitioner are quite evasive. Such denials, can hardly be regarded as proper denials.

23] As noted earlier, article I of the charge had alleged that the petitioner who was admittedly a senior booking clerk at CST Mumbai sold a second class ordinary single journey *fake ticket* while working at counter no. 16. In the imputation in support of this article, it was stated that a 100 rupee note, the particulars of which were stated, was found in the cash drawer, which the petitioner, was unable to explain. In response, all that the petitioner stated was that he does not remember what happened and if at all, the 100 rupee note was found in the cash box, this could have happened through other transactions as well. There is neither any specific denial nor, any credible explanation as regards, this excess amount. This is important because in terms of the service conditions of the booking clerks they are required to declare the money / notes in their possession before, they discharge duties at counters for sale of tickets. The petitioner, has in fact, pleaded guilty of the charge of failing to sign the muster roll and declaring his private cash.

24] Article II of the charge sheet states that the petitioner

was found in possession of 62 more SPTM tickets and 60 card tickets of different destinations which were later on found to be missing the ticket stock room. In response to this, the petitioner, in his defence brief note dated 6th April 1995 admits that 62 SPTM tickets and 60 card tickets *were no doubt confiscated from my pant pocket as detailed in the charge memorandum*. However, he proceeds to state that reference may be made to his letter dated 6th April 1994 in which he had stated that '*these tickets were forcibly given to me by Shri Palande, Mechanic, and Shri Radha Yellan respectively*' and that the petitioner was threatened with dire consequences had he refused to accept the same and further sell the same for their gain.

25] Such response is sufficient to hold charge as proved against the petitioner. The explanation, is also, too fantastic to merit in acceptance and the same has been quite correctly disbelieved by the enquiry officer and the disciplinary authorities. The two persons who were alleged to have forcibly given the petitioner the fake tickets, which, the petitioner was forced to sell from the ticket counter, are not some superior officers who were in a position to

pressurize the petitioner. In any case, if this was really the position, then, the devotion to duty requires the petitioner to immediately report this serious matter to the vigilance, so that, action could have been taken against such persons. Instead, the petitioner, was busy selling said fake tickets and upon such fake tickets having been discovered on his person, has chosen to raise such defences which merit no consideration at all.

26] As regards Article III of the charge sheet, the petitioner has accepted this charge and in his defence brief apologized stating that he was depressed / upset, confused or under great mental pressure. He has requested that a lenient view be taken in the matter. Article III of of the charge sheet is not some minor charge as is sought to be made out by the petitioner. This charge states that during the vigilance check, the petitioner left counter unauthorisedly thereby abandoned railway cash and his personal effects. The charge states that the petitioner absconded from duty.

27] As regards Article IV of the charge sheet, the

petitioner states that the fake ticket was of Rs.9/- only and the excess amount of Rs.54/- and therefore, this indicates that the excess amount was his personal cash. The petitioner states that because he reached slightly late he forgot to make the cash declaration which is necessary under the service rules. Again, such a defence, is hardly deserving of acceptance. Mr. Suresh Kumar rightly points out that it is quite difficult to check such malpractices and once, an employee is caught red handed, defences like lapse of memory etc. cannot be easily accepted.

28] As regards Article V of the charge sheet, the petitioner states that he failed to declare his private cash in the register which is required in terms of his service conditions. The petitioner, admits his failure to so declare the cash but has given a vague reply that he had brought some cash from home and again because he was late, he forget to declare such cash.

29] As regards Article VI of the charge sheet, the petitioner, again has admitted the charge but given an excuse that he arrived late on account of the late arrival of

the train and therefore, in a hurry, he failed to sign the muster roll attendance before commencing duties.

30] In the light of all this material, it cannot be said that the findings recorded are perverse or that the non examination of the decoy passengers amounts to violation of principles of natural justice or fair play. In this matter, more than ample opportunity has been afforded to the petitioner and the findings recorded in the disciplinary proceedings are also sufficiently borne out from the material on record.

31] The original petitioner's contention that punishment of dismissal is harsh and disproportionate is also not acceptable. The original petitioner sold a second class ordinary ticket even though the specific window on which he was working didn't have the facility for printing the same. He was caught red-handed with 62 fake SPTM tickets and 60 printed card ticket which shows his propensity to defraud the passengers of railways as well as the railways. These grave charges coupled with his prevaricate replies requires that no leniency can be shown in the punishment

to be imposed on him.

32] Moreover, the scope of this Court's interference under Articles 226 / 227 in the punishments imposed by the disciplinary authority is quite restricted. The court can only interfere if the punishment is shockingly disproportionate to the conscience of the court. The court cannot substitute its own judgment as regards imposition of penalty in place of the penalty imposed by the disciplinary authority. The court cannot act as an appellate authority.

33] The Supreme Court in ***Charanjit Lamba vs Commanding Officer, Army Southern Command and Others,(2010) 11 SCC 314*** the court reiterated that in judicial review of order of punishment, the writ court would not assume the role of an appellate authority. It would not impose lesser punishment than that imposed by the disciplinary authority, merely because it seems to be reasonable to the court . Rather the court would interfere only in those punishments which are so disproportionate to the charge that no reasonable person could have impose the same.

34] In ***Noharlal Verma v District Co-Operative Central Bank Limited, Jagdalpur, (2008) 14 SCC 445***, the court held it would not substitute its own subjective judgment as regards the imposition of punishment in place of disciplinary authority's judgment. It would do so only when it comes to the conclusion that it shocks the conscience of the court or it is such punishment which would not be imposed by a reasonable man in the like circumstances.

35] Considering the gravity and seriousness of charges as well as the conduct of the petitioner in his defence, we do not deem this to be a fit case for interference in the order of punishment of dismissal.

36] For the aforesaid reasons, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)