

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

WRIT PETITION NO. 6324 OF 2004

Suhas N. Joshi ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. Shantanu Chandratre i/b M/s. Khandeparkar & Associates for the Petitioner.

Mrs. Neeta V. Masurkar a/w. Mr. N.D. Sharma & N.R. Prajapati, Ms Nieyaati Masurkar for the Respondent / UOI.

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

DATE : 28.06.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 28.01.2004 made by the Central Administrative Tribunal, Mumbai dismissing the petitioner's O.A. No. 452 of 2003 instituted by the petitioner to questioning the orders dated 27.12.2002, by which, the petitioner came to be removed from the service and the order dated 26.05.2003, by which, his appeal against dismissal the order came to be rejected.

3] The petitioner, who was Upper Division Clerk functioning in verification section of department of Bureau of Sailors Camp of Indian Navy was served with a charge-sheet dated 12.06.2002, in which, it was alleged that on 26.4.2002 at about 11.00 a.m., the petitioner abused his official position by demanding and accepting illegal gratification of Rs.1500/- from S. Chattopadhyay, SPO, U.K. Santhara, POELP, both sailors at INS Angre in the matter of getting their leave and leave encashment records regularised. The charge-sheet alleges that such act on the part of the petitioner, if proved, would amount to violation of Rule 3 (1)(i) and (iii) of the CCS (Conduct) Rules 1964. The Rules require the Government servant at all times to maintain absolute integrity and to do knowing which is unbecoming of a Government servant.

4] Along with the charge-sheet, the petitioner was furnished a list of documents, by which, the articles of charge framed against him were proposed to be sustained, which reads as follows:

- “i) Written statement dated 26 Apr, 2002 from Shri. S.N. Joshi, UD clerk.*
- ii) Written Statement dated 26 Apr, 2002 from S.*

- Chattopadhyay, SPO, 167550-Y.*
- iii) Written Statement dated 26 Apr, 2002 from UK Santra, POELP, No. 167738-Z.*
 - iv) Letter 266 dated 24 Apr.2002 INS Angre addressed to CABS.*
 - v) SMS REL 1254 dated 26 Apr. 2002 from oi/C, Release Centre."*

5] Out of the aforesaid, vide written statement dated 26.4.2002 the petitioner has stated that he had demanded and accepted the amount of Rs.500/- each from two sailors Chattopadhyay and Santra for completing their leave encashment work. This was the statement, which was given by the petitioner to CDR KK Parashar. Significantly, the petitioner has not chosen to annex this statement to the memo of petition, though, it is the case of the petitioner that such statement was given by him under pressure and coercion.

6] In response to the charge-sheet dated 12.06.2002, all that the petitioner stated that the charges framed against him are fabricated, vague and meaningless. He also stated that the charges are cooked up story and created and designed by CDR KK Parashar, who had played a dirty game, with a illegal intention to defame him to the maximum extent. He has stated that such act of CDR

Parashar is highly objectionable and unpardonable and further, such officer will have to face civil and criminal proceedings. Finally, the petitioner stated that this suggest an advise to order departmental enquiry so that the petitioner is in a position to defend the charge, to prove his innocence and victimisation and further further make out a case of initiation of disciplinary action against the officer, i.e., CDR Parashar and two Sailors referred to in the charge-sheet.

7] In the aforesaid response dated 14.6.2002 to the charge-sheet dated 12.06.2002, although, the petitioner has virtually berated his superior officer Parashar, significantly, the petitioner has nowhere even whispered that the written statement dated 26.4.2002, which he gave before the CDR Parashar in the presence of the two Sailors Chattopadhyay and Santra, was a statement given by him under pressure or coercion.

8] In the enquiry proceedings, the two Sailors Chatopadhyay and Santra were examined and they deposed consistent with the written statements they had given on

the date of the incident, i.e., 26.4.2002. The petitioner was offered and availed the opportunity of cross-examination. The enquiry officer, on the basis of oral as well as documentary evidence, submitted an enquiry report dated 18.10.2002 holding the charge as proved against the petitioner.

9] The petitioner was offered and availed the opportunity of representing against the enquiry report dated 18.10.2002. In his representation dated 25.10.2002, the petitioner, for the first time contended that his written statement dated 26.4.2002 was recorded under pressure and coercion. The petitioner attacked the findings of the enquiry officer and again did not spare CDR Parashar by stating as follows:

"8. Ultimately, it is contended that the said Inquiry Report prima facie reveals that greater efforts and precautions have been taken by the Inquiry Officer to mask up the unlawful, illegal, unwarranted, unsustainable, unjust and highly objectionable acts and to safeguard the official image and status of the Cdr. KK Parasher. At the same time, victimised me, which is nonest in the eyes of law."

10] The disciplinary authority upon taking into consideration the enquiry report as well as the petitioner's

objections to the same, by order dated 27.12.2002, imposed the penalty of removal from service upon the petitioner.

11] The petitioner appealed against his dismissal and the appellate authority, by very detailed order dated 26.5.2003 has dismissed the appeal. The petitioner then instituted O.A. No. 452 of 2003 before the Central Administrative Tribunal, which has since dismissed the same vide impugned judgment and order dated 28.01.2004, hence the present petition.

12] Mr. Shankar Chandratre, learned counsel for the petitioner, submits that in the present case, the enquiry officer and the disciplinary authority erred in acting upon the petitioner's written statement 26.4.2002, when in fact, such statement, was a result of pressure and coercion exerted upon the petitioner. He submits that this contention based upon pressure and coercion was raised by the petitioner before the disciplinary authority, appellate authority and Central Administrative Tribunal, but has not at all been considered by the three authorities.

13] Mr. Chandratre submits that this is the case of “*no evidence*” and therefore, the finding of the enquiry officer suffers from the perversity. He submits that the statement dated 26.04.2002, which the petitioner was forced to give, speaks about demand and receipt of Rs.500/- from each of the Sailor. However, the charge-sheet alleges demand and receipt of Rs.1500/- . Mr. Chandratre submits that this is a serious discrepancy. Since then the demand would come to only Rs.1000/- and not Rs.1500/-.

14] Mr. Chandratre then, submits that the alleged bribe amount was never attached and kept in a sealed envelope by way of evidence. He submits that no panchanama was drawn of the incident of the seizure. He submits that the two Sailors, who were complainants, were interested witnesses and on the basis of their testimony, the finding of guilt could not have been returned by the enquiry officer. He submits that in the absence of independent eye-witnesses, the enquiry officer was not justified in holding the charge as proved. For all these reasons, Mr. Chandratre submits that the impugned orders are liable to be set aside and the

petitioner be reinstated with all consequential benefits.

15] Ms Neeta Masurkar, learned counsel for the respondents, submits that in the present case, there is no charge of violation of principles of natural justice and the evidence on record, is more than sufficient to sustain the findings recorded by the enquiry officer. She submits that in such matters, the judicial review does not extend to reassessment or re-appreciation of the evidence on record. She submits that the charge as proved, is quite serious and therefore, the penalty imposed is entirely proportionate. For all these reasons, Ms Masurkar submits that this petition is liable to be dismissed.

16] As noted earlier, there is no dispute that the petitioner did give a statement on 26.4.2002 that he had demanded and accepted the bribe of Rs.500/- from each of the Sailors in order to sort out the issues relating to their leave/leave encashment. Based upon such statements as also the statements of the two Sailors and other documents referred to in the charge-sheet itself, the charge-sheet was issued to the petitioner 12.06.2002. The petitioner, as noted earlier,

responded to this charge-sheet on 14.06.2002, in which, he denied the charges levelled against him, but significantly, did not even whisper that the written statement dated 26.4.2002, which was in fact the first document referred to in the charge-sheet was submitted by him under pressure or coercion.

17] In the course of enquiry also, there is nothing to indicate that the petitioner had alleged pressure or coercion. However, assuming that the pressure or coercion was alleged by the petitioner in the course of enquiry, there is at least no evidence brought on record by the petitioner in support of such position. Therefore, there is nothing wrong in the enquiry officer placing reliance upon the petitioner's own written statement dated 26.04.2002.

18] The findings of the enquiry officer are not based only on the petitioner's admissions in his written statement dated 26.4.2002. The enquiry officer has relied upon the written statements of two Sailors S. Chattopadhyay and UK Santra who had clearly stated about the demand and the payment of the bribes to the petitioner. The two Sailors

actually deposed in the enquiry proceedings and their testimony was not shaken in the cross-examination. Two sailors have deposed to the effect that the bribe amount demanded was Rs.1500/- since it concerned leave issues of three sailors. This is hardly any discrepancy between the petitioner's statement and the charge levelled against him. This is undoubtedly, sufficient evidence to sustain the findings of the enquiry officer.

19] The petitioner's contention that the two Sailors were interested witnesses, is quite misconceived. The petitioner, has not alleged any malice or mala fides against the two Sailors. The material on record suggests that the two Sailors had just been released from the batch of Sailors of May 2002 from INS Angre and were naturally keen to sort out the issue of leave and leave encashment. Since, the petitioner was in charge of the section, they approached the petitioner, who demanded for the bribes to sort out the issues relating to their leave and leave encashment. They are natural witnesses and the insistence of the petitioner that there should have been some independent eye-witnesses, is, an insistence, which deserves no acceptance,

particularly, in departmental proceedings.

20] The insistence of the petitioner that the bribe amount ought to have been attached or that the panchanama ought to have been prepared, appears to stem from the misconception that the petitioner was facing a criminal prosecution and not a departmental proceedings. This is neither a case of '*no evidence*' nor can the findings of the enquiry officer be said to be perverse. The Central Administrative Tribunal in the present case, has correctly appreciated the scope and import of its own jurisdiction in matters of interference with disciplinary proceedings. There is no dis-proportionality insofar as the penalty imposed upon the petitioner is concerned.

21] 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.

22] 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.

23] 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.

24] 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.

25] Applying the principles in *P. Gunasekaran (supra)*, there is really no case made out to interfere with the impugned judgment and order.

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

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)