IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6927 OF 2004

N.C. Manglani ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. Anilkumar Joshi for the Petitioner.
Mr. Rui Rodrigues 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 30.04.2004 made by the Central Administrative Tribunal, Mumbai dismissing the petitioner's O.A. No. 403 of 2001 questioning the orders dated 18.12.1998 and 24.04.2000 removing the petitioner from the services on the ground of misconduct.

3] The petitioner, when serving as a Preventive Superintendent was served with charge-sheet dated 7.10.1994 levelling four charges against him. Since, ultimately, the enquiry officer has held that only Articles -I and II of this charge-sheet were proved against the petitioner, the same are incorporated hereafter for ready reference.

> *“ Art.-I*
>
> *That Shri N.C. Mangalani while functioning as preventive Supdt. During the period Feb March 93 failed to supervise the examination of goods under BDF No:415 dated 26/2/93 filed by P.Moosa which resulted in seizure of electronic goods valued Rs.18,51,000/- (LMV) which were found to be in total variance from the goods declared on the BDF by the Panvel unit of M & D Bombay.*
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> *Art.-II*
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> *Shri. N.C. Mangalani failed to supervise the examination of goods against BDF No.416 dated 26/2/93, 404 and 405 A both dated 23/2/93. this resulted in the seizure of electronic goods totally valued of Es.8,67,000/- CIF and 26,01,000/- LMV by the R & I Division of new Custom House, Bombay which were found to be totally different from the goods declared on the BDF.*”

4] The enquiry officer on the basis of oral as well as documentary evidence submitted enquiry report on 31.10.1997, in which, he has held that Art.I and II as aforesaid stand proved.

5] The disciplinary authority after afford of opportunity to the petitioner has imposed the penalty of removal from service by order dated 18.12.1998. The petitioner's appeal was dismissed by the appellate authority on 24.4.2000.

6] The petitioner thereupon instituted O.A. No. 403 of 2001 before the Central Administrative Tribunal, which has since been dismissed by the impugned judgment and order dated 30.4.2004, hence, the present petition.

7] Mr. Anilkumar Joshi, learned counsel for the petitioner, submits that in the present case, based upon the very same allegations in the charge-sheet, the petitioner was preventively detained under the COFEPOSA and further, by way of proceedings under the Customs Act a penalty of Rs.2,50,000/- was imposed upon the petitioner. Mr. Joshi submits that the detention was set aside by the Hon'ble Supreme Court on merits and the penalty imposed was also set aside by the CEGAT, again on merits. He submits that in the light of these two important developments, the findings recorded by the enquiry officer and the penalty imposed by the disciplinary authority cannot be sustained.

8] Mr. Joshi submits that in the present case, the enquiry officer has made use of the statements of third parties recorded behind the back of the petitioner under Section 108 of the Customs Act in order to hold that Articles I and II stand proved against the petitioner. Mr. Joshi submits that this is clearly impermissible and the findings of the enquiry officer stand vitiated for taking into consideration such extraneous and inadmissible material. Mr. Joshi submits that from non consideration of all such materials amounts to violation of principle of natural justice and fair play.

9] Mr. Joshi further submits that the witnesses whose statements have been recorded by the enquiry officer were not actually produced in the course of enquiry so as to enable the petitioner to cross-examine them. In particular, Mr. Joshi points out that the witness Shri. Sharma who had turned an approver was not permitted to be cross-examined and all this constitute a very serious violation of the principles of natural justice and fair play. Mr. Joshi submits that even otherwise, the findings recorded by the enquiry officer are perverse and in any case, since such findings have been recorded in breach of principles of natural justice and fair play, the Central Administrative Tribunal was duty bound to interfere with. For all these reasons, Mr. Joshi submits that this petition is liable to be allowed.

10] Mr. Rui Rodrigues, learned counsel for the respondent – UOI, submits that there is no case of violation of principles of natural justice made out. He submits that the evidence on record is more than sufficient to sustain findings of the enquiry officer. He submits that the Tribunals and Courts do not normally reassess or re-evaluate the material on record and as long as there is some evidence on record to sustain the findings recorded by the enquiry officer, there is no question of any interference. He submits that the scope of proceedings under COFEPOSA or the Customs Act is quite different from the scope of disciplinary proceedings. Mr. Rodrigues submits that the charges held as proved against the petitioner are very serious and there is no dis-proportionality in the penalty imposed. For all these reasons, Mr. Rodrigues submits that this petition may be dismissed.

11] The rival contentions now fall for our consideration.

12] The charges which have been held as proved against the petitioner relate to his failure to supervise the examination of goods under BDF No:415 dated 26.2.1993 filed by P.Moosa which resulted in seizure of electronic goods valued approximately at Rs.18,51,000/-, which goods, were further found in total variance from the goods declared on the BDF by the Panvel unit of M & D Bombay. The second charge is that the petitioner is failed to supervise the examination of goods against BDF No.: 416 dated 26.3.1993 and BDF No: 404 and 405 A both dated 23.2.1993, which resulted in seizure of electronic goods valued at Rs.8,67,000/- CIF and 26.01 Lakhs by the R & I Division of New Custom House, Bombay which were found to be totally in variance with the goods declared on the BDF.

13] The charges *per se*, are quite serious and if, there is evidence to sustain the findings of fact recorded by the enquiry officer, this is really not a case which warrants interference with the penalty imposed on the grounds of dis-proportionality.

14] It is true that on basis of some of the charges, which find mention in the charge-sheet served to the petitioner, the petitioner, was preventively detained by invoking the provisions of COFEPOSA. The record also bears out that the petitioner's petition challenging the detention order was in fact dismissed by this court. However, the Hon'ble Supreme Court reversed this court and quashed the detention order vide judgment and order dated 2.8.1994.

15] Mr. Joshi's contention that the Hon'ble Supreme Court has exonerated the petitioner on merits, can however, not be accepted. In the first place, a matter involving preventive detention is essentially based on subjective satisfaction and it cannot be said that this court or for that matter the Hon'ble Supreme Court was dealing with the charges levelled against the petitioner on merits. Secondly, from the perusal of the judgment and order dated 2.8.1994, it is clear that the main ground for quashing the detention order was that the sponsoring authority had failed to place before the detaining authority the suspension order, which had already been issued to the petitioner. The Hon'ble Supreme Court has observed that non placement of this relevant and vital document before the detaining authority vitiated the subjective satisfaction of the detention authority. Therefore, it is not possible to accept Mr. Joshi's contention that the judgment and order dated 2.8.1994 constitutes exoneration of the petitioner on merits by the Hon'ble Supreme Court.

16] Similarly, the scope of the proceedings under the Customs Act, under which, a penalty of Rs.2,50,000/- was imposed upon the petitioner and the scope of disciplinary proceedings is entire different. The objects of the two proceedings are also entirely different. Therefore, merely because the CEGAT may have set aside the civil penalty imposed upon the petitioner, mostly, on technical grounds that by itself, is not a reason for review of the penalty imposed upon the petitioner under the service rules applicable to him.

17] In ***Deputy Inspector General of Police and anr vs. S. Samuthiram - (2013) 1 SCC 598,*** the Hon'ble Supreme Court has held that mere acquittal of an employee by a criminal court has no direct impact on the disciplinary proceedings initiated by the department. The Hon'ble Supreme Court has held that in absence of any provisions in service rules for reinstatement, if an employee is even acquitted by a criminal court, no right is conferred upon the employee to claim any benefit including reinstatement. The reason is that the standard of proof is required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceedings is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. Strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. There may be cases where the service rules provide that in respect of domestic enquiry, if the criminal court acquits the accused honourably, he will be reinstated. In other word, the issue whether an employee has to be reinstated or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. As noted earlier, in the present case, no such provisions have been brought to our notice by the learned counsel for the petitioner.

18] The record indicates that R.S. singh, who was the Commissioner at Nhava Sheva and other officials of the department is examined in the course of enquiry. The petitioner has availed the opportunity to cross-examine these witnesses. These witnesses have deposed at least to Article I and II, which are held as proved against the petitioner. There is material on record that the petitioner had submitted a report in his own handwriting, though, such reports are normally prepared by preventive officers. The report, incriminates the petitioner in the context of Articles I and II of the charge. When the petitioner was confronted with this report, all that he stated was that he wrote such report at the request of the preventive officer Shri. Shrishnan as he was new and wanted to have proper specification of the report. Another preventive officer, who was examined, stated that BDF:415 – 416 examination report was prepared by the petitioner, who was his superior officer and therefore, the preventive officer carried out such orders without actual examination of the luggage. In the light of such oral as well as documentary evidence, it is too much to say that this is the case of '*no evidence*' or that the findings recorded by the enquiry officer are vitiated by perversity.

19] In this case, it is not as if the petitioner alone has been penalised. Penalties have been imposed upon all the officers involved, though, the quantum of penalties may vary depending upon the role played by each of the officers in the incidents, which gave rise to the misconduct. The Central Administrative Tribunal, in the impugned judgment and order, has also dealt with the issue of variable penalties and there is really no illegality pointed out on this score.

20] Before the Central Administrative Tribunal, the petitioner had also urged that non-supply of recommendation of CVC constitutes violation of principles of natural justice. The said contention has been correctly rejected by the Central Administrative Tribunal relying upon the ruling of the Hon'ble Supreme Court in ***Sunil Kumar Banerjee vs. State of West Bengal and ors. - AIR 1980 SC 1170.*** The Central Administrative Tribunal has also quite rightly rejected the petitioner's contention as regards the alleged non-compliance with certain procedural requirement like examination of delinquent officer, particularly as the petitioner in the present case, has not been able to establish any prejudice whatsoever.

21] This is also not a case where the findings can be said to be based upon the statements recorded in the case of Section 108 of the Customs Act proceedings. The findings are based upon the depositions of the witnesses who were examined in the course of enquiry and in respect of whom opportunity of cross-examination was duly offered to the petitioner. There is no case of violation of principles of natural justice and fair play made out by the petitioner. Besides, it is well settled that there is nothing like mere technical breach of the principles of natural justice. It is necessary for the petitioner, who alleges breach of natural justice to plead and establish consequent prejudice. For all these reasons, it is not possible to accept the petitioner's contention based upon any failure of the natural justice.

22] 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; whether there is violation of the principles of natural justice; the consideration 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 has influenced the finding or whether the finding of fact is based on no evidence.

23] 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 and 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.

24] 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. The second charge was that the respondent being a ministerial Officer impersonated himself as a Central Excise Executive Officer and unauthorisedly conducted passenger checks in a public transport bus stand. The third charge relates to threatening of a passenger by abusing his position. The charge-sheet in the departmental proceedings stated that all these acts, if proved, amount to failure to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Government servant.

25] In the enquiry proceedings, Article I 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.

26] 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.

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

28] 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)**