

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

WRIT PETITION NO. 7629 OF 2005

Suresh Somnath Songaonkar	...Petitioner
Versus	
Union of India & Ors.	...Respondents

Ms Gauri Godse for Petitioner.
Mr. T. J. Pandian for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 05 JULY 2018**

ORAL JUDGMENT :

1] Ms Gauri Godse, the learned counsel, who used to appear for the petitioner, submits that since she has been appointed as a standing counsel for the Central Government, the terms of her appointment, disable her from appearing in the present petition, on behalf of the petitioner. She places on record a compilation containing the notice / intimations which she has addressed to the petitioner, along with evidences of attempt at service in order to inform the petitioner of her inability to appear in the matter and calling upon the petitioner to make alternate arrangements, she requests that such compilation be taken on record and she be discharged from appearing in

this matter. Accordingly, we take on record such compilation, which is marked as 'X' for the purposes of identification.

2] Taking into consideration the aforesaid, we discharge Ms Godse from appearance.

3] With the assistance of Mr. T. J. Pandian, , we ourselves perused the memo of writ petition, the record as well as the impugned judgment and order dated 17th November 2004 by which the Original Application No. 565 of 2003 instituted by the petitioner came to be dismissed. The petitioner by instituting OA No. 565 of 2003 had basically challenged the penalty of removal from service imposed upon him in pursuance of disciplinary proceedings initiated against him. The charge on the petitioner was that while he was working as Assistant Chief Ticket Inspector, he has issued Excess Fare Ticket (EFT) on bogus tickets during the month of January 2000. Since, the petitioner, denied the charge, an enquiry was held in the matter. The enquiry officer held the charge as proved and the disciplinary authority, after considering the petitioner's representation, as against the

penalty of removal from service upon the petitioner.

4] The petitioner, preferred departmental appeal, which was however dismissed. The petitioner thereafter preferred a revision and the revisional authority by order dated 18th July 2002 confirmed the penalty order but sanctioned 50% of compassionate allowance i.e. pension and gratuity, both admissible under Rule 65 of RS (Pension) Rules 1993 to the petitioner.

5] The main grievance of the petitioner was that certain documents were not furnished to the petitioner in the course of the departmental proceedings held against him. The petitioner has also contended that he was not examined by the enquiry officer even though, the rules require incriminating material to be put to the delinquent officer. The petitioner had pointed out that his representation against the report of the inquiry officer was also not properly considered by the disciplinary authority before making order dated 12th April 2001 removing him from service. The petitioner had also raised a plea that the enquiry officer, being a junior officer was not competent to

be appointed as such. The petitioner also contended that the documents which were produced during the course of the enquiry were not proved because the authors of such documents were never examined. Finally, the petitioner has contended that the penalty imposed upon the petitioner is disproportionate to the offences alleged.

6] The CAT, has considered all these contentions in some detail but found no favour with such contentions. The reasoning of the CAT is contained in paragraphs 10, 11, 12, 13, 14 and 15 of the impugned judgment and order. From the perusal of the same, we are satisfied that the CAT, has applied the correct principles and the contentions of the petitioner have been correctly answered.

7] The settled position that direct rules of Evidence Act do not apply to the departmental proceedings. The standard of proof to be applied is also that of preponderance of probabilities. Sufficient opportunity was afforded to the petitioner in the course of the enquiry and there is really no case made out to allege breach of natural justice or breach of any service rules, which incorporate the principles of

reasonable opportunity. To say that some document was not given, without making out a case that such document was vital material and the non furnish has occasioned serious prejudice, is not sufficient to interfere with enquiry proceedings. This is not a case of '*no evidence*' or perversity so as to warrant interference with the findings of the enquiry officer.

8] 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 ere 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.

9] 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.

10] 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 back-wages.

11] 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.

12] Applying the aforesaid principles, to the facts of the present case, no good ground is made out to interfere with the impugned judgment and order.

13] On the issue of proportionality, we cannot say that the penalty imposed is shockingly disproportionate. In the first place, the penalty of removal as opposed to the penalty of dismissal was imposed upon the petitioner. Secondly, the revisional authority, by sanctioning 50% of the compassionate allowance i.e. pension and gratuity has further mitigated the penalty imposed upon the petitioner.

14] For the aforesaid reasons, we see no good reason to interfere with the impugned judgment and order. This petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)