

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

WRIT PETITION NO. 1072 OF 2011

Sadashiv D. Nikam ...Petitioner
Versus
State of Maharashtra and anr. ...Respondents

Mr. M.S. Topkar and Mr. Sunil Dighe for the Petitioner.
Mr. O.M. Kulkarni, AAGP for the Respondents/State

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

DATE : 20th MARCH 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The main challenge in this petition is to the judgment and order dated 6th October 2004 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 292 of 2003 instituted by the petitioner. In O.A. No. 292 of 2003, the petitioner had questioned the penalty of permanent withholding of his pension by the respondents-

disciplinary authority.

4] The penalty of permanent withholding of pension came to be imposed upon the petitioner on the ground that he submitted inflated medical bills and claimed reimbursement of amount of Rs.20,048/- on the basis thereof in connection with the medical treatment of his wife. There were allegation of negligence, threatening of superiors and insubordination as well. The enquiry could not be completed until the petitioner attained the age of superannuation. The enquiry was continued thereafter and on basis of the report, penalty of permanent withholding of pension was imposed upon the petitioner.

5] There is no dispute that the petitioner prior to attaining the age of superannuation has put in service of 36 years. As a result of penalty, the petitioner, is not drawing any pension or retiral benefits. Secondly, this is not a case where, on the basis of inflated medical bills, the petitioner was actually paid the amounts which he had claimed. The charge against the petitioner was only of submission of inflated medical bills and not of drawing any

additional amounts towards reimbursement against the same.

6] Mr. Topkar, learned counsel for the petitioner submits that the findings recorded by the Enquiry Officer are quite perverse. He submits that the evidence of Dr. Kulkarni has not at all been considered by the Enquiry Officer in its proper perspective. He submits that Dr. Kulkarni admitted issuing medical certificates and bills, however, Dr. Kulkarni curiously deposed that the excess bills were issued on account of some pressure exerted by the petitioner. Mr. Topkar submits that it is inconceivable that the petitioner, who was merely a noting assistant, could have exercised any pressure upon an independent Doctor. For these reasons, Mr. Topkar submits that penalty imposed upon the petitioner warrants interference.

7] In the alternate and without prejudice, Mr. Topkar submits that the penalty imposed upon the petitioner is grossly disproportionate to the charge alleged or even proved. Mr. Topkar submits that admittedly, the petitioner, was not paid any amounts towards the medical

reimbursement. On the charge that the petitioner made some excess claim, penalty of depriving the petitioner of pensionary/retiral benefits altogether is shockingly disproportionate. Mr. Topkar submits that the petitioner has put in service of 36 years until his superannuation. Mr. Topkar submits that except this charge, the petitioner's service has been blemish-less. Mr. Topkar submits that admittedly, this is not some case where any pecuniary loss has occasioned to the State. Taking into consideration all these factors, Mr. Topkar submits, the penalty imposed, warrants interference.

8] Mr. Kulkarni, learned AAGP for the respondents, submits that the penalty was imposed after due compliance with principles of natural justice and fair play. He submits that there is ample evidence on record to sustain the finding of guilt recorded by the Enquiry Officer. He submits that the scope of judicial review in matters of findings recorded by the disciplinary authority is extremely limited and no case has been made out by the petitioner so as to warrant interference.

9] Mr. Kulkarni submits that the penalty imposed is proportionate. He submits that in this case, the petitioner projected, as if his wife had to be administered emergency medical treatment on such basis, produced false and fabricated medical bills in support of his claim for reimbursement of Rs.20,048/-. Mr. Kulkarni submits that Dr.Kulkarni who was examined and in the course of enquiry has in fact conceded that the figures referred to in the medical bill issued by him were not correct and were issued by him at the instance of the petitioner. Taking into consideration of all these circumstances, Mr. Kulkarni submits that even the penalty imposed is proportionate and therefore warrants no interference.

10] The rival contentions now fall for our determination.

11] Mr. Kulkarni is quite right in his submission that the powers of judicial review vested in a tribunal or for that matter, this court, in matters of findings recorded by the Enquiry Officer are quite limited. The tribunal/court does not act as an appellate authority in such matters and interference is justified only when it is established that the

findings are perverse, in the sense that they are backed by no evidence on record or they are totally contrary to the weight of the evidence on record. In exercise of such jurisdiction, normally it is not for tribunal or for that matter this court, to reassess or re-appreciate the material on record, as if, it were exercising any appellate jurisdiction. (See: ***Union of India and ors. vs. P. Gunasekaran - AIR 2015 Supreme Court 545***).

12] However, in *P. Gunasekaran (supra)*, the Hon'ble Supreme Court has held that under Article 226/227 of the Constitution of India can go into the issue of proportionality of punishment, where such punishment, shocks its conscience.

13] In ***Bhagat Ram vs. State of Himachal Pradesh - (1983) 2 SCC 442***, the Hon'ble Supreme Court has held that penalty imposed, must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India. In this case, the delinquent officer was negligent in discharge of his duty of

checking hammer marks on trees. For this negligence, the delinquent officer was removed from service. The Hon'ble Supreme Court found that such penalty was grossly disproportionate and directed reinstatement of the delinquent officer.

14] In ***Chairman-cum-Managing Director, Coal India Limited and anr. vs. Mukul Kumar Choudhuri and ors. - (2009) 15 SCC 620***, the Hon'ble Supreme Court has held that in dealing with the quantum of punishment, one of the test to be applied would be whether any reasonable employer could have imposed such punishment in like circumstances. The Hon'ble Supreme Court has held that obviously a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposition of penalty. In this case, the Hon'ble Supreme Court has held that the doctrine of proportionality is a well recognised concept of judicial review in Indian jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of

misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

15] In *Mukul Kumar Choudhuri (supra)*, the delinquent officer was charged with unauthorised absence from duty for six months. The officer fairly admitted his guilt and explained the reasons for his absence. In such circumstances, the Hon'ble Supreme Court opined that punishment of removal imposed upon delinquent official was not only unduly harsh, but grossly in excess of the allegation.

16] In the present case, the record indicates that though the petitioner had raised a claim for reimbursement of Rs.20,048/- towards the medical expenses allegedly incurred by him for the medical treatment of his wife, in fact, no such amount or for that matter any amount was paid to the petitioner. Therefore, this is really not a case

where any pecuniary loss has been caused to the State. Besides, we find that Dr. Kulkarni, admitted to having treated the petitioner's wife and issued the bills in question. However, Dr. Kulkarni, explained that the bills were excessive and were issued on account of some pressure exerted by the petitioner. There is some delinquency on the part of the petitioner. However, the penalty of withholding of pensionary benefits for life, after, the petitioner has discharged blemish-less service of 36 years does appear to us to be grossly disproportionate to the charge, which has been made out against the petitioner.

17] The disciplinary authority does not appear to have taken into consideration the fact that no amount was ultimately paid to the petitioner and there was no pecuniary loss to the State. The disciplinary authority also has given no credence to the circumstance that the petitioner had put in blemish-less service of 36 years. The penalty of withholding retiral benefits in their entirety and however, imposed upon the petitioner in the very evening of his life is shockingly disproportionate to the charge

alleged and proved.

18] As regards the allegation of threatening the superiors or pressurising the Doctor, we find that there is no much evidence on this aspect. In any case, the main charge against the petitioner was not with regard to these matters, but the main charge, was in relation to submission of inflated bill. There is also some material on record which suggest that the petitioner had certain difference with his immediate superior (Principal), possibly on account of some inappropriate though not abusive language employed by the petitioner. It is possible that this aspect has played a role in the severe penalty imposed upon the petitioner. However, all this is really not sufficient to brush aside the petitioner's blemish-less service of almost 36 years and to deprive the petitioner of his entire terminal benefits. The MAT has really not gone into the issue of proportionality of the penalty and therefore, despite being conscious of the limits of judicial review, we are of the opinion that the penalty imposed upon the petitioner warrants a revisit.

19] There are certain decisions where the courts have themselves imposed a lesser penalty after recording the conclusion that the penalty imposed by the disciplinary authority was disproportionate, however, the normal trend in terms of decided cases is that such a matter, must ordinarily be left to the disciplinary authority.

20] In ***Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and anr. vs. Rajendra Singh - (2013) 12 SCC 372***, the Hon'ble Supreme Court has held that judicial review in the matters of quantum of punishment is also quite limited. The court would interfere only when the penalty imposed appears to be so disproportionate to the nature of misconduct that it shocks the conscience of the court. Even in such a case, when the punishment is set aside as shockingly disproportionate, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

21] As noted earlier, we are satisfied that penalty of withholding pension and all the terminal benefits permanently, after, the petitioner has put in blemish-less service of 36 years is shockingly disproportionate to the charge alleged or even established against the petitioner. Following the dictum in *Rajendra Singh (supra)*, we are therefore remit the matter to the disciplinary authority, so as to impose some appropriate and proportionate penalty upon the petitioner. Accordingly, we direct the respondents – disciplinary authority to take a decision on the issue of penalty to be imposed upon the petitioner as expeditiously as possible and in any case, within a period of 12 weeks from today. In case, the petitioner desires to place a written submission on the issue of quantum of penalty, he is at liberty to do so within a period of four weeks from today.

22] Rule is made partly absolute to the aforesaid extent. The disciplinary authority is directed to revisit the quantum of penalty and to take decision within 12 weeks from today on the aspect of appropriate penalty to be imposed upon the petitioner. Such decision to be taken within a period of 12 weeks from today and communicated to the petitioner

within a period of two weeks. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)