

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 4835 of 1997****Reserved on : 08/05/2019****Delivered on : 22/11/2019**

Sunil Sharma, Son of Shri D. P. Joshi, aged about 32 years,
resident Kailabadhi, Near Sahu Sadan, Durg (M.P.)

---- Petitioner**Versus**

1. Registrar High Court Of M.P., Jabalpur.
2. District and Sessions Judge, Raipur.
3. Registrar General, High Court of Chhattisgarh, Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. H. C. Shukla, Advocate.
For Respondent/s	:	Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy**CAV Order**

1. The present writ petition has been filed seeking for quashment of Annexure (P-9) and Annexure (P-11) dated 23.09.1994 & 13.12.1996 respectively. Annexure (P-9) is the order whereby the services of the petitioner stood terminated without disqualification from future employment. Annexure (P-11) is the order by which the appeal preferred by the petitioner stood rejected.
2. The facts of the case is that the petitioner was appointed as Lower Division Clerk under the respondents. He was posted as a Deposition Writer in the Court of Second Civil Judge, Class-II at Mahasamund within under District Raipur. The petitioner was on 01.10.1992 placed under suspension for alleged misconduct. Thereafter charge-sheet was issued to the petitioner on 14.11.1992. In the charge-sheet there were in all 8 charges levelled against the petitioner. The petitioner on 23.11.1992

submitted his detailed reply to the charge-sheet denying all the allegations and charges. On finding the reply submitted by the petitioner to be not satisfactory the respondents vide order dated 25.11.1992 appointed an Additional Judge to the Court of District Judge (ADJ) as an enquiry officer and at the same time the Second Deputy Clerk of Court, Raipur was appointed as a presenting officer. The enquiry officer after conducting the enquiry submitted his report on 18.11.1993. On 01.09.1994, the disciplinary authority issued a show cause notice to the petitioner along with the copy of the enquiry report. Initially the enquiry officer had held that the charge No. 1, 2, 4, 5, 6,7 stood proved and charge No. 3 and charge No. 8 as not proved. However, the disciplinary authority disagreeing with the finding of the enquiry officer held that charge No. 3 and charge No. 8 also stands proved, had issued with the show cause notice. The petitioner again gave a detailed reply to the show cause notice explaining the entire facts and circumstances and evidence which have come on record. Thereafter, the disciplinary authority vide the impugned order Annexure P-9 dated 23.09.1994 passed an order of dismissal from service without disqualification from future government employment. The petitioner subsequently filed an appeal which too vide order dated Annexure P-11 dated 13.12.1996 stood rejected leading to the filing of the present writ petition.

3. The grounds which the petitioner has raised challenging the order passed by disciplinary authority as well as by the appellate authority is firstly the two orders are non speaking order in as

much as the two authorities who have passed the order under challenge having not given specific reasons for reaching to the said conclusion, particularly, the appellate authority who has simply rejected the appeal by holding it to be devoid of merits without any discussion whatsoever. The second ground which the petitioner has raised is that the petitioner had moved an application before the enquiry officer seeking permission to take the assistance of a lawyer but which was rejected by the enquiry officer. Thereby, the petitioner has been denied the right of fair defence and entire enquiry proceedings was an unequal combat. Further the contention of the petitioner was that the subsequently he moved an application for appointment of a co-worker which too was rejected by the enquiry officer. The contention of the petitioner further is that the none of the charges levelled against the petitioner was so serious an allegation which entailed a capital punishment of dismissal from service. The petitioner further contended that even if the evidences which have come on record is assessed it would clearly reveal that there was no cogent and concrete evidences produced before the enquiry officer to prove each of the charges and the evidences adduced before the Court were not supported with any supporting evidence to substantiate the allegations. It was further the contention of the petitioner that since the respondents do not have the records of the enquiry proceedings at all or the respondents deliberately not producing the records before Court during the course of hearing an adverse inference has to be drawn.

4. According to the petitioner non availability of the records is itself sufficient to draw an adverse inference against the respondents to reach to the conclusion that charge has not been established or the charges have not been proved. According to the petitioner the respondents were predetermined in pinning down the petitioner as would be evident from the fact that the enquiry officer and the presenting officer were appointed without proper appreciation of the reply to the charge sheet submitted by the petitioner. Thus, for all the reasons, the petitioner prayed for quashment of the impugned order and also prayed for reinstatement in service with consequential benefits.
5. Per contra, counsel appearing for the respondents opposing the petition submits that all the contentions put forth by the petitioner are all unsustainable. According to the respondents, it is a case where a full fledged enquiry conducted wherein the petitioner also has participated fully and the management has led evidence of a host of witnesses to establish the charges. Thus, the finding of the enquiry officer becomes a finding of fact based on evidence which has been adduced before the enquiry officer. The respondents also contended that the petitioner was also issued with a show cause notice along with the enquiry report before the punishment was imposed and was thus given a fair opportunity of hearing at that stage also. Further contention of the respondents was that the enquiry and the enquiry proceedings are neither bad in law nor was there any procedural irregularities or lapse or flaw on the part of the enquiry officer in conducting the enquiry. This according to the respondents reduces the scope of interference by this Court

under Article 226 so far as the enquiry and the enquiry proceedings are concerned. It was further the contention of the respondent that the plain reading of the charges against the petitioner is sufficient to know the gravity of the charges and seriousness of the same.

6. Taking into consideration the fact that petitioner is an employee of Court from whom a great amount of discipline and responsive behaviour is expected and the charges levelled against the petitioner speaks about his conduct. That proving of all the said charges or even few of them are sufficient enough to hold that the petitioner is not fit to remain in employment. So far as the non permission of engagement of lawyer or the co-worker is concerned, according to the counsel for the respondent the decisions taken by the enquiry officer or for that matter the disciplinary authority in this regard is purely in accordance with rules and regulations governing the service conditions of the petitioner/employee. Thus, it would not give rise to a situation of the entire enquiry getting vitiated for the same. Thus, the respondents prayed for the rejection of the writ petition.
7. Having heard the contentions put forth on either side and on perusal of record available with the writ petition, it would be necessary, at the first instance to consider the charges which were levelled against the petitioner. Vide charge sheet dated 14.11.1992 there were 8 charges which were levelled against the petitioner. The list of all the charges are as under:

Charge No.1

While you were posted as a document writer in the Court of 2nd Civil Judge Class-II, Mahasamund and on 11.12.1991 the Presiding Officer was on leave, you were called upon by 1st Civil Judge Class-II Shri N.S. Usendi for discharging some official work in his Court and you disobeying the command of Shri Usendi left the Court stating that you were proceeding on leave. But till 1 O'clock of 11.12.1991 your application for leave did not reach the office. Thus, you have willfully disobeyed the command of a Judicial Officer and have shown disrespect, lack of responsibility and also dereliction of duty which amounts to a misconduct under Rule 3 of Madhya Pradesh Civil Services (Conduct) Rules 1965 (hereinunder referred as "the Rules of 1965").

Charge No.2

Presiding Officer, Najarat (Junior) Shri R.C.S. Samant, Civil Judge Class-I, Mahasamund, on 20.12.1991 at the request of Shri N. S. Usendi, 1st Civil Judge, Class-II, Mahasamund, sent you by an order in writing for recording evidence in his Court as Shri S.V. Verma, 2nd Civil Judge, Class-II, Mahasamund was on leave. The said written order was handed over to you on 20.12.1991 at 1.05 hours by Shri Basant Kumar, Process Server. But after reading the written order you crushed it with your hand and threw it on floor and told the Process Server to tell Mr. Usendi that you would not go. That immediately at 1.04 hour, on the false ground of being unwell, without proper sanction, you remained absent from duty. In this way also you have disobeyed the order of Judicial Officer and have shown lack of responsibility and dereliction of duty which

amounts to violation of Rule-3 & 7 of the Madhya Pradesh Civil Services (Conduct) Rules, 1965.

Charge No.3

Shri A. P. Shrivastava, Additional Judge to District Judge and Presiding Officer Najarat (Senior) Mahasamund sought explanation for remaining out of headquarter from 4 O'clock in the evening of 25.12.1991 without any permission of which the reply was to be given by 30.12.1991 but you till date have not given the reply. Thus, you have disobeyed the duties of a Judicial Officer as well as that of the Administrative Officer and the said act amounts to violation of Rule 3 of the Rules of 1965.

Charge No.4

That on 01.04.1992, you had entrusted the work of copying to one Shri Jitendra Soni, a typist in the Bar, whereas the government work in different sections cannot be got done from outside persons. In this way you have done an act which is unbecoming of a government servant which amounts to misconduct under Rule 3 of the Rules of 1965.

Charge No.5

That on 22.05.1992, you were handed over the Dak Book No.319 from the Court of Additional Sessions Judge, Mahasamund for releasing the copies free of charge on the copying application Nos. 528/92, 529/92 & 530/92. You had initially put your signature on the said Dak Book and after receiving copying application No.528, 529 & 530 and the concerned copies, you tampered the signature by crossing the same and returned the Dak Book to the concerned Court. This act of yours again is one which is unbecoming of

government employees. Thus, the same is violative of Rule-3 of the Rules of 1965.

Charge No.6

That in the preliminary enquiry in respect of tampering of the signature by crossing the same in the Dak Book No.319 of the Court of Additional Sessions Judge, Mahasamund, you had misplaced the Dak Book from the Court of the Enquiry Officer. When the Enquiry Officer made certain oral enquiry in respect of your taking away the Dak Book from the Dais of the Enquiry Officer, you specifically denied of taking the same away. Thereafter, the Officer-in-charge, Copying Section, Mahasamund got the Almirah which was in your possession inspected and during the course of inspection, the Dak Book was recovered from the said Almirah. Thus, you had without any permission from the Court of the Additional Sessions Judge, Mahasamund removed the Dak Book bearing No.319 with an intention of hiding the evidence and kept it in the Almirah under your possession. Thus, this act of your is again violative of Rule-3 of the Rules of 1965.

Charge No.7

That on 29.05.1992 at around 10.15 a.m. you had misbehaved kicking the door of Najarat Section, Mahasamund without any reason.

Charge No.8

That you had told Shri U. D. Lohani, Advocate Mahasamund that only on payment of Rs.10 per page he would give the copies to Shri Lohani. In the way, he tried to earn extra from the two copying applications and only receiving extra money you had released the

copy to Shri Lohani and on other copying applications, on account of not getting extra money, you did not release the same.

8. Pursuant to the issuance of the charge-sheet and the reply being submitted by the delinquent employee, the respondents decided to hold a departmental enquiry. The management has examined as much as 19 witnesses. The delinquent employee also examined witnesses on his behalf and thereafter the inquiry report was submitted and based on the inquiry report the Disciplinary Authority inflicted the petitioner with the punishment of termination from service dated 23.09.1994. The order of the Disciplinary Authority dated 23.09.1994 was also subjected to challenge in a departmental appeal, which too stood rejected vide order dated 13.12.1996. Admittedly the petitioner was subjected to a disciplinary proceeding wherein a detailed departmental enquiry was conducted. The Disciplinary Authority on the basis of the findings of the Inquiry officer, imposed the order of punishment, which was also affirmed in an appeal. It is this two orders, which are under challenge in the present writ petition.
9. Now one should not forget the fact that the High Court while hearing a petition under Article 226 of the Constitution of India does not exercise the powers of an Appellate Authority or for that matter exercises a power of an Appellate Court.
10. The power to interfere with an order of punishment having passed after a detailed departmental enquiry is concerned, is limited only to the extent of the order of punishment being shockingly disproportionate or there is a gross violation of the principles of natural justice or there is a clear non-compliance of the Rules or

procedure governing the disciplinary action. At the same time, the delinquent employee has also to convincingly substantiate the fact that because of the non-compliance of the Rule procedure or the principal of natural justice substantial prejudice has been caused resulting in miscarriage of justice. It is a settled position of law that the High Court in a petition under Article 226 of the Constitution of India would not threadbare re-appreciate the entire evidence produced before the Inquiry officer, nor would it by itself conduct a roving inquiry to reach to a fresh conclusions as to whether the charges have been proved or not. It is only the decision making process, which can be subjected to judicial review and not the decision itself.

11. In the case of **“Chairman and Managing Director, United Commercial Bank and others Vs. P.C. Kakkar” 2003(4) SCC 364**, the Hon'ble Supreme Court, so far as the scope of interference in a disciplinary proceedings is concerned, in paragraphs No. 11 & 12 held as under:

“11. it is settled that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury'S case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.”

12. Therefore unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference.”

12. Likewise, in the case of **“Government of India v. George Philip” 2006(13) SCC 1**, the Hon'ble Supreme Court relying upon all the

precedents on the said principles in paragraph No. 11 held as under:

“11. the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial noncompliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge. The scope of judicial review in matters relating to disciplinary action against employees has been settled by a catena of decisions of this Court.”

13. In the case of **“Union of India & Ors. v. Bishamber Das Dogra” 2009(13) SCC 102**, the Hon'ble Supreme Court held in paragraph No.10 as under:

“10. Principles of natural justice cannot be put into a strait-jacket formula and its observance would depend upon the fact situation of each case. Therefore, the application of the principles of natural justice has to be understood with reference to the relevant facts and circumstances of a particular case.”

14. Again in the same judgment, the Hon'ble Supreme Court further went on to hold that it is settled legal position that an order is required to be examined on the touchstone of the doctrine of prejudice. It would not *ipso facto* vitiate the disciplinary proceedings on not making available the inquiry report to the delinquent employee and it would depend upon the facts and circumstances of each case and the delinquent employee has to establish the real prejudice caused to him.
15. So far as whether the order passed by the Disciplinary Authority is rational or reasonable, the Hon'ble Supreme Court in the case of **“Om Kumar and Ors. v. Union of India” 2001(2) SCC 386** held that where an administrative action is challenged on the ground of it being arbitrary, the question would be whether the administrative

order is rational or reasonable. Under such circumstances, it is the test under the Wednesbury principle that has to be applied. The Courts under such circumstances would be confined only to a secondary role and the Courts only have to see whether the administrators have done well in their primary role, whether there has been any illegality or has omitted relevant factors from consideration or on the other hand have taken irrelevant factors into consideration, which no reasonable person could have taken. That, only if the said factors are not satisfied can, the action be treated as arbitrary.

16. Recently, the Hon'ble Supreme Court in the case of **“State of Tamil Nadu and Another v. M. Mangayarkarasi, 2018 SCC Online S.C. 2648** in paragraph No.16 has held that:

“The imposition of a penalty in a disciplinary proceeding lies in the sole domain of the employer. Unless the penalty is found to be shocking disproportionate to the charges which are proved, the element of discretion which is attributed to the employer cannot be interfered with.”

17. In the case of **“Kuldeep Singh v. Commissioner of Police & Others”**, the Hon'ble Supreme Court dealing under a similar circumstances and dealing with the same principle, so far as the scope of interference in a disciplinary proceeding is concerned in paragraphs No. 9 & 10 held as under:

“9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of “guilt” is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, but if there is some evidence on record, which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with.”

18. Now, if we look into the arguments that have been advanced by the petitioner, it would reveal that the petitioner wanted this Court to venture into an area which is otherwise restricted by the settled position of law, some of which has been dealt with in the preceding paragraphs. The petitioner wanted this Court to re-appreciate the entire evidence, which have come on record and thereafter reach to a conclusion that the finding arrived at by the Disciplinary Authority is bad, which again is not permissible in the light of the judgments referred to in the preceding paragraphs and the law which by now well settled, where there is an very limited scope of interference available for the High Court exercising the writ jurisdiction under Article 226 of the Constitution of India is confined to the decision making process and not the decision itself.
19. If we look into the proceedings, particularly the Enquiry Report it clearly reflects that the petitioner in fact was given a fair and reasonable opportunity of hearing as also a reasonable opportunity to lead evidence. The petitioner also having availed the opportunity provided to him had examined the witnesses on behalf of the respondents, so also the petitioner had adduced his own evidences and which is sufficient to draw an inference that the petitioner has in fact been given the opportunity of defence.
20. Along with the writ petition as well as in the reply filed by the respondents there are documents including enquiry report which gives a broad overall view of manner in which the departmental enquiry was conducted. Further, if we read the enquiry report, it would further reveal that enquiry officer has minutely given the details of entire enquiry proceedings and have also discussed at

length the version of each of the witnesses examined before enquiry officer.

21. Since the enquiry officer's report elaborately deals with the evidence that has come before the enquiry officer even if the original records are not produced by the respondents at the time of argument by itself would not be sufficient to declare the enquiry vitiated or doubt the report of the enquiry officer.
22. It is well settled proposition of law that the nature of evidence required to be adduced before the enquiry officer and the standard of proof required to be appreciated by the disciplinary authority is applying the doctrine of "Preponderance of Probability". The disciplinary authority or for that matter the enquiry officer need not have the evidence to the level of charges to be proved beyond reasonable doubt as is required in a criminal case. The nature of evidence brought before the enquiry officer is good enough to assess the conduct of the petitioner employee. It reflects the attitude and behaviour of the petitioner both in the office as also in his response to the orders/commands made by the superiors in the department.
23. Another aspect, which cannot be lost sight of is the fact that many of the witnesses examined during the course of the departmental enquiry were judicial officers and whose statements before the Inquiry officer cannot be taken lightly. There has to be some extra weightage to be given to a statement of a judicial officer adduced during the course of inquiry. It is also to be taken note of that there is no substantial material produced during the course of hearing that the judicial officer, who have appeared as witnesses in the

disciplinary proceedings had a bias against the petitioner or they had appeared with a prejudiced mind.

24. Merely because the petitioner at a particular time was refused the engagement of a lawyer or a defense assistant by itself would not vitiate the disciplinary proceedings, particularly taking note of the fact that the petitioner in fact thereafter had fully participated in the departmental enquiry. Again so far as many of the charges not being proved against the petitioner again may not be a strong case for interference with the order of termination from service for the reason that there are still certain charges which stand fully proved before the Inquiry officer and which cannot be taken to be a mild charge or trivial or a charge which does not call for issuance of the order of termination. Even if out of many only one charge stands proved and if the Disciplinary Authority finds the said charge to be serious enough to hold that the petitioner is not fit to remain in employment. the action if taken by the Disciplinary Authority cannot be said to be either arbitrary or disproportionate or bad in law.
25. Taking all these facts and circumstances of the case and also considering the nature of the allegations leveled against the petitioner and the findings given by the Inquiry officer, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order. The writ petition thus deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
Judge**