

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 13.09.2019

Orders Pronounced on : 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P.No.22415 of 2019

G.Shanmugam

.. Petitioner

Vs.

1. The Chief Metropolitan Magistrate,
Egmore, Allikulam Complex,
Chennai-600 003.

2. The Honourable Registrar General,
High Court of Madras,
Chennai-600 104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order in Con.No.02/2014-A, dated 13.12.2016 passed by the first respondent and the subsequent rejection of appeal order in R.O.C.No.96093/2017/C1, dated 13.03.2019 passed by the second respondent and quash the same and direct the first respondent to reinstate the petitioner in service with monetary benefits and other benefits.

For petitioner : Mr.P.Wesley Isce

For respondents : Mr.E.K.Kumaresan

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order in Con.No.02/2014-A, dated 03.12.2016 passed by the first respondent and the subsequent rejection of appeal order in R.O.C.No.96093/2017/C1, dated 13.03.2019 passed by the second respondent and quash the same and direct the first respondent to

reinstate the petitioner in service with monetary benefits and other benefits.

2. On compassionate grounds, the petitioner was appointed as Record Clerk at the Court of Additional Chief Metropolitan Magistrate (EO-II), Egmore, Chennai on 16.08.2001. That being so, vide proceedings dated 12.05.2014 in Con.No.2/2014-A, the Chief Metropolitan Magistrate, Egmore, Chennai framed charges against the petitioner, while he was then a Junior Assistant and subsequently Bill Clerk in Bill Section, on the allegation of misconduct of obtaining illegal gratification, irregularity in discharging his official duties with a dishonest motive and misuse of his official position for personal gain. The details of the said charges framed against him read as follows:

Charge No.1:

Tr.G.Shanmugam, Junior Assistant, now 'Bill Clerk' of III Metropolitan Magistrate's Court, George Town, Chennai-1, while functioning as R.R. Clerk in Additional Chief Metropolitan Magistrate (E.O.II) Court, Egmore, Chennai-8 has received Rs.10,000/- from the accused and handed over the original Fixed Deposit Receipts to the accused in connection with the case in R.R.No.2/2012 without the knowledge of the Court, which amount to his misconduct of obtaining illegal gratification (which is unbecoming of a Government servant in violation of TNGS Conduct Rules and Tamil Nadu Civil Services (D & A) Rules).

Charge No.2 :

Tr.G.Shanmugam, Junior Assistant, now 'Bill Clerk' of III Metropolitan Magistrate's Court, George Town, Chennai-1, while functioning as R.R. Clerk in Additional Chief Metropolitan Magistrate (E.O.II) Court, Egmore, Chennai-8 has handed over the original Fixed Deposit Receipts to the accused in R.R.No.2/2012 on the file of Additional Chief Metropolitan Magistrate (E.O.II) Court, Egmore, Chennai and got the signatures of the sureties in the Xerox copies of the same as if they had signed on 14.02.2012 even though there was no order passed by the Court for returning the said Fixed Deposit Receipts. The above said act of the said G.Shanmugam amounts to the irregularity in the discharge of his official duties with a dishonest motive, which is unbecoming of a Government Servant in violation of TNGS Conduct Rule and Tamil Nadu Civil Services (D & A) Rules).

Charge No.3:

Even though the Court has not passed any order for returning the Fixed Deposits in R.R.No.2/2012 on the file of Additional Chief Metropolitan Magistrate (E.O.II) Court, Egmore, Chennai, the said Shanmugam being a Junior Assistant and the custodian of the records relating to FIR during the above said period, has suo-motu handed over the said Fixed Deposit Receipts, to the accused by getting signatures (with the date as 14.02.2012) of the said sureties on the Xerox copies of the said Fixed Deposit Receipts, without the knowledge of the Court, for which, he has received Rs.10,000/- from the accused as illegal gain. This above act of the said Shanmugam amounts to the misuse of his official position for his personal gain which is unbecoming of a Government Servant in violation of TNGS Conduct Rule and Tamil Nadu Civil Services (D & A) Rules).

3. Vide proceedings in Con.No.2/2014-A, dated 08.09.2014, an Enquiry Officer was appointed, who conducted enquiry. It is the grievance of the petitioner that notice for enquiry was served on the petitioner to his old address from where he had vacated his house and gone to a new house, and hence, the petitioner had not received the enquiry notice papers. It is further stated by the petitioner that the Enquiry Officer had not taken any steps to serve the notice to his new address, and therefore, the petitioner could not participate in the enquiry proceedings. The Enquiry Officer conducted the enquiry on the basis of the recorded statement of the accused Rangasamy, Sivakumar and Babu in R.R.No.2-12, before the Additional Chief Metropolitan Magistrate in (E.O.II), Egmore, Chennai. The petitioner denied the charges and only stated to the prosecution witness that he would arrange for an Advocate, which had been misunderstood by them and they wilfully deposed against the petitioner to escape from the clutches of law. It is the further stand of the petitioner that he is not in-charge of the entire records and he cannot singly handle the records or touch the Court records without the consent of his superiors. The entire incident was singled out and he was taken to task for no fault of his. The Enquiry Officer rendered a finding against the petitioner solely based on the evidence of the prosecution witness(es) and it is an ex-parte order, as the Enquiry Officer had not taken any steps to serve the enquiry notice to the petitioner's correct address.

4. Further, vide proceedings in ConNo.20/2012-A, dated 03.12.2016, the petitioner was ordered to be dismissed from

service with effect from 04.06.2014, i.e. before the appointment of Enquiry Officer in the preliminary enquiry stage itself. Furthermore, only by proceedings in Con.No.2/2014-A, dated 08.09.2014, the Enquiry Officer was appointed to conduct enquiry in respect of the charges framed against the petitioner by proceedings dated 12.05.2014, as quoted above.

5. It is the further case of the petitioner that in respect of his unauthorised absence, no proceedings whatsoever were initiated against him and had such proceedings been initiated, the petitioner would have placed the Medical Certificates and other documents and convinced the Enquiry Officer. It is further averred by the petitioner that he was dismissed from service with effect from 04.06.2014, which is even before the Enquiry Officer was appointed by proceedings dated 08.09.2014. Therefore, the petitioner filed W.P.No.22308 of 2017 before this Court challenging the order of dismissal from service. This Court, vide order dated 30.08.2017, permitted the petitioner to withdraw the Writ Petition, giving liberty to take recourse to appropriate statutory remedy in accordance with law. In pursuance of the same, the petitioner preferred an appeal before the second respondent-Registrar General of High Court, who had dismissed the appeal by the impugned order/proceedings dated 13.03.2019. Though such a specific ground of dismissal of service even before the appointment of the Enquiry Officer, was taken by the petitioner, the same was ignored by the second respondent while confirming the order of dismissal from service of the petitioner. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

6. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner adverted to the averments made in the affidavit filed in support of the Writ Petition and stated that the petitioner was not served with any enquiry notice and the Enquiry Officer, based on the recorded statements of the prosecution witnesses, had rendered his findings. The Enquiry Officer has stated the unauthorised absence of the petitioner was one of the findings, which was accepted by the disciplinary authority. It is also stated by the learned counsel for the petitioner that the statements of the witnesses Rangasamy, Govindarajulu, Sivakumar and Babu were obtained by force and solely based on their statements, the petitioner was found guilty of the charges framed against him. While the other staff, who were in-charge of the case bundle, had not been subjected to the departmental enquiry, the petitioner had alone been isolated and penalised. The ex-parte order of removal from service had been passed behind his back, and hence the learned counsel for the petitioner prayed that the order of removal from service ought to be set aside.

7. The learned counsel appearing for the respondents, by filing the counter affidavit of the first respondent, submitted that the petitioner was appointed as Record Clerk on compassionate grounds on 16.08.2001 and posted in Additional Chief Metropolitan Magistrate (E.O.II) Court, Egmore, Chennai. The departmental enquiry was initiated against the petitioner by proceedings in ConNo.02/2014-A, dated 12.05.2014 and formerly, the petitioner was R.R.Clerk in Additional Chief Metropolitan Magistrate (E.O.II) Court at Egmore, Chennai, after that, he had worked as Junior Assistant in Bill Section of Metropolitan Magistrate's Court at George Town, Chennai. The allegations in the charges framed against the petitioner are of misconduct of obtaining illegal gratification, irregularity in discharging his official duties with a dishonest motive and misuse of his official position for personal gain. It is further stated by the learned counsel appearing for the respondents that the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai passed a conditional order in bail petition in Crl.M.P.No.299 of 2012 in R.R.No.2/2012 on 06.02.2012 and two sureties were directed to be furnished and also there was a direction to deposit a sum of Rs.50,000/- each. On 09.02.2012, the Fixed Deposit Receipts for Rs.50,000/- each in Indian Bank at Thiruchitrambalam Branch, Vanoor Taluk, Villupuram District, were produced before the Additional Chief Metropolitan Magistrate (E.O.II) on 14.02.2012 at the time of furnishing sureties. The Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai reported that on 29.08.2013, the accused and the two sureties appeared before the Court and enquiry was conducted. They submitted that the petitioner had contacted them over the mobile phone and informed them that the Court had ordered release of the Fixed Deposit Receipt(s) and the petitioner also informed the accused to pay him Rs.10,000/- for release of the Original Fixed Deposit Receipt(s) from the Court.

8. It is further stated by the learned counsel appearing for the respondents that as per the statement of the accused, the petitioner/delinquent had received Rs.10,000/- from the accused and got signature from the sureties on the photocopy of the Fixed Deposit Receipt(s), as if they signed on 14.02.2012 and handed over the original Fixed Deposit Receipt(s) to the accused without the knowledge of the Court, and as the Court had not passed any order for return of the Fixed Deposit Receipt(s), the writ petitioner acted suo-motu and played an illegal game for his personal benefit. Further, on 20.11.2014, the report was submitted by the Enquiry Officer before the Chief Metropolitan Magistrate, Egmore. On 30.08.2013, the Additional Chief Metropolitan Magistrate (E.O.II), Egmore addressed a letter to the Principal Judge, City Civil Court in Dis.No.164-13 inviting

instructions to take action against the petitioner for taking bribe to return the original Fixed Deposit Receipt(s) to the accused and the sureties, without the Court's knowledge. The first respondent called for explanation from the petitioner on 03.10.2013 within 7 days in Dis.No.7000/13A and the same was duly served by III Metropolitan Magistrate, George Town, Chennai to the writ petitioner; on 17.10.2013, the petitioner requested 15 days' time to submit his explanation, and on 23.10.2013, the first respondent granted 15 days' time to the writ petitioner to submit his explanation, though the time was granted, he had not submitted his explanation. The learned counsel appearing for the respondents also stated that, after expiry of the time granted, subsequently, the petitioner submitted his explanation in his undated letter, which had been forwarded to the Principal Judge by the Chief Metropolitan Magistrate on 26.11.2013 in Dis.No.7000/13 and subsequently, the explanation had been returned to the office of the first respondent on 02.12.2013 by the Registrar, City Civil Court, Chennai in Dis.No.13784/13 for taking further action.

9. It is further contended by the learned counsel appearing for the respondents that the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, sent a letter in Dis.No.16/2014, dated 09.01.2014 along with the statements recorded from the witness(es) and subsequently on 12.05.2014, charges had been framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the first respondent's office in Con.No.2/2014-A and the petitioner was directed to submit his explanation within 21 days on receipt of the Official Memorandum and written statement for his defence. He was also asked to state as to whether he desires oral enquiry or to be heard in person or both. It was further observed in the charge memo that if the written statement of defence is not received within the stipulated time, it will be presumed that he has nothing to offer in his defence and further action will be pursued. The Charge Memo had been sent on 14.05.2014 through III Metropolitan Magistrate, George Town, Chennai, to be served on the petitioner who worked as Junior Assistant in Metropolitan Magistrate Court's Unit, George Town, Chennai, which was served on petitioner on 21.05.2014 through III Metropolitan Magistrate, George Town, Chennai. The same was submitted to Chief Metropolitan Magistrate, Egmore, Chennai on 23.07.2014, subsequent to which, petitioner had not given his explanation. Hence, first respondent's office had issued Official Memorandum to petitioner on 07.08.2014 giving an opportunity to submit his statement of defence within one week, but the same had not been submitted by petitioner for charges framed under Rule 17(b) of the said Rules.

10. It is the further bone of contention of the learned counsel appearing for the respondents that the Enquiry Officer, on receipt of the proceedings from first respondent in Con.No.2/2014-A, dated 16.09.2014, directed the Presiding Officer to issue notice to petitioner through one Mr.Karuppusamy, Office Assistant of first respondent, sent as Special Messenger, to serve the copy of the notice on petitioner, returnable by 07.10.2014. The said notice was returned by the Special Messenger as "Left" from the address. Subsequently, on 07.10.2014, the Enquiry Officer issued notice to petitioner by Registered Post Acknowledgement Due (RPAD) returnable by 17.10.2014, which also returned as "addressee not residing in the said address". Further, petitioner had not appeared for enquiry, even though he had full knowledge of charges framed against him under Rule 17(b) of the said Rules. The Enquiry Officer issued summons to the witness(es) for the enquiry and the witness(es) appeared on 18.11.2014 and their statement was recorded against the petitioner. The Enquiry Officer had concluded with available materials and based on the above charges framed against him, the same were stated to have been proved against him.

11. Further, the first respondent was inclined to agree with the above finding of the Enquiry Officer in respect of the charges having been proved against the petitioner. The first respondent issued notice to the petitioner through Police Service and also a Special Messenger for his explanation. In April 2016, the petitioner had submitted his further explanation, in which he had stated that he worked as Junior Assistant in George Town Court till 18.06.2014 and was unable to attend office for the past two years without any intimation and he also stated that he was under mental depression and now he is under normal condition and due to mental depression, he could not present himself before the Enquiry Officer for the charges framed against him and also he could not inform about the change of address. Ultimately, on 03.12.2016, final order was passed by the first respondent in the proceedings in Con.No.2/2014-A holding that on a perusal of the entire file, it was observed that the petitioner is not fit to be retained in service and the wrong committed by him is crime in nature, i.e. misconduct, irregularity in discharging his official duties with a dishonest motive and misuse of his official position for his personal gain. The first respondent was of the considered opinion that if he is retained in service, it will obstruct the decorum and discipline in the Court procedures and the petitioner has created a mockery in the Judicial Department and since he has only 13 years of service, he is not eligible for compulsory retirement under Rules 33 and 42 of the Tamil Nadu Pension Rules

and hence, the first respondent was inclined to award punishment of dismissal of service to the petitioner under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner was directed to have been relieved from service with effect from 04.06.2014, i.e. from the date on which he was unauthorisedly absent from service.

12. The learned counsel appearing for the respondents had stated that the writ petitioner filed W.P.No.22308 of 2017 before this Court and by order dated 30.08.2017, the said Writ Petition was dismissed as withdrawn, with liberty to the petitioner to take recourse to an appropriate statutory remedy in accordance with law, pursuant to which, on 16.11.2017, an appeal was preferred by him before the second respondent, as against the order of first respondent, dated 03.12.2016. Thereafter, the second respondent dismissed the appeal by the impugned order dated 13.03.2019 holding that the records and the statement of the accused proved his guilt and that the charges are grave in nature against him and that the punishment of dismissal from service is proportionate to the gravity of the offence. Thus, the learned counsel appearing for the respondents prayed for dismissal of the present Writ Petition.

13. Heard both sides and perused the materials available on record.

14. The only submission made by the learned counsel for the petitioner is that without proper notice, the enquiry proceedings were conducted. Secondly, the unauthorised absence was cited as one of the reasons for his dismissal, for which no charge was framed.

15. From the materials available on record, we find that the petitioner is fully aware of the enquiry proceedings and that the enquiry notice was also issued to him. In fact, earlier, in the discreet/preliminary enquiry before framing charges, he has also originally sought for time to submit his explanation and requested time, which was also granted, pursuant to which, he had not submitted his explanation immediately, though thereafter, he had submitted his undated explanation, as discussed supra. Subsequently, the first respondent issued an Office Memorandum on 07.08.2014 to the petitioner, giving him an opportunity to submit his statement of defence within one week, which had not been submitted by him in respect of the charges framed under Rule 17(b) of the said Rules. Even thereafter, Special Messenger was directed to serve the notice on him, but it returned as "left" from the address and thereafter, the Enquiry Officer issued notice to him by RPAD on 07.10.2014, returnable by 17.10.2014, which had also returned as "addressee not residing in the said address". Earlier, at the time of

framing charges themselves, he was granted 21 days, and it was made clear that if the written statement of his defence is not received within the stipulated time, it will be presumed that he has nothing to offer as his defence and further action will be pursued and the same had been sent on 14.05.2014 itself through III Metropolitan Magistrate, George Town, Chennai. Thus, it is clear that earlier, the petitioner did not submit his statement of defence, though it is stated that he submitted his undated letter by way of explanation, which was forwarded to the Principal Judge by the Chief Metropolitan Magistrate on 26.11.2013 itself, which was subsequently returned to the first respondent's office on 02.12.2013 by the Registrar of the City Civil Court, for taking further action against the petitioner.

16. Therefore, from the above facts, it is clear that purposely, the petitioner had abstained himself from participating in the enquiry proceedings. After the order of dismissal is passed, now, he is coming with false plea that no notice was served on him. Hence, we are of the opinion that the respondents have taken all efforts to serve notice on him as discussed supra and they have duly followed the principles of natural justice and only after following the due procedures, the impugned orders were passed against him, with which, we do not find any ground to interfere.

17. Though it is yet another submission of the learned counsel for the petitioner that the petitioner's unauthorised absence is cited as one of the reason, but to that effect, no charge is framed, it is crystal clear that the petitioner had not attended office for nearly 4-1/2 years and since he was unfit, he was dismissed even on the ground of unauthorised absence, apart from the charges framed against him, having been held to be proved. Thus, absolutely, we do not find any merit in the Writ Petition and also on the submissions made by the learned counsel for the petitioner.

18. Moreover, the learned counsel appearing for the respondents submitted that this Court, at this stage, under Article 226 of the Constitution of India, cannot appreciate the evidence already recorded in the departmental enquiry. The enquiry had been conducted in accordance with law by observing the principles of natural justice. This is clear from the following judgments of the Apex Court:

- (i) 1999 (8) SCC 90 (R.S.Saini Vs. State of Punjab);
 - (ii) 2004 AIR SCW 6657 (Union of India VS. P.Gunasekaran)
- and
- (iii) 1977 (2) SCC 491 (State of Haryana Vs. Rattan Singh).

The relevant portion of the above said judgments of the Apex Court are as follows:

(i) 1999 (8) SCC 90 :

"16. Before advertng to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.

18. The other two complaints made before us that there has been flagrant violation of the principles of natural justice and the impugned order in question was the end product of malice entertained by Respondent 4 against the appellant were also, in our opinion,

rightly rejected by the High Court. It is found from the record that the two detailed show-cause notices enumerating the various charges giving necessary particulars were issued to the appellant and the appellant had filed a detailed written reply with reference to each one of the charges. The record also bears out that the appellant has been heard through his counsel and the complaint made that he was not given sufficient adjournments for further hearing, in our opinion, would not constitute a breach of the principles of natural justice. As has been noticed by the High Court, the allegation of mala fides having been answered by Respondent 4 by way of an affidavit denying the same and the High Court having chosen to accept the affidavit of Respondent 4, and rightly so in our opinion, we do not find any material to differ from the said finding.

19. We have noted earlier that the scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for. We too have considered the complaint within that limited scope in order to find out the correctness of the allegation that the impugned order of the disciplinary authority suffered from the vice of perversity, non-application of mind and tainted by malice and having come to the conclusion that the report of the inquiring authority cannot be faulted with on any of the grounds stated above, we are unable to agree with the appellant. For the reasons stated above, this appeal fails and is hereby dismissed. No costs."

(ii) 2004 AIR SCW 6657:

"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act

as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. 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;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to

go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the 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 16 Page 17 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."

(iii) 1977 (2) SCC 491:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before

a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal.

6. No actual punishment in the sense of dismissal or removal was inflicted and counsel for the State read out the order finally passed. The order merely states that the services were terminated and the State's counsel agrees that there was no dismissal or removal or punitive punishment as seen from the order. All that we

guess is, taking the words used in the order, the authorities probably had regard to the overall circumstances including the long years of service (10 years) and the comparatively young age of the delinquent at the time of termination of service (26) and relented in the matter of final termination by simply telling him off from service without inflicting any of the punishments. This lies within the power of the employer and it is not for us to say that the State should have punished him in a particular manner. Therefore, while confirming the order passed by the State and setting aside the decree of the courts below we hold that the consequences of a simple termination must follow. We, therefore, direct, while allowing the appeal, that the State shall pay the respondent all that is due to him under the industrial law as an employee when his services are terminated without penal consequences – apart from the salary for the period he has worked after the recent reinstatement. Counsel for the appellants has agreed that this direction will be carried out as the State is bound to. With these observations, we allow the appeal but the parties will bear their costs throughout."

19. It is evident from the above decisions of the Honourable Supreme Court that this Court has only limited power to interfere with the decision taken by the respondents in a departmental enquiry and to substitute its own conclusion. In such cases, judicial review is only meant to ensure that the delinquent receives fair treatment in the departmental enquiry conducted against him and that the conclusion which the authority reached is based on semblance of evidence. In the present case, as mentioned above, there are evidences made available against the petitioner, based on which, the respondents have come to a conclusion to impose the punishment of dismissal from service. While so, we cannot interfere with such a conclusion arrived at by the respondents, inasmuch as the scope of judicial review in the departmental proceedings is very limited, as seen from the above judgments of the Apex Court.

20. Hence, for the reasons stated above and in view of the law laid down in the above judgments of the Supreme Court, which are squarely applicable to the case on hand, we find no merit in the present Writ Petition, which is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Chief Metropolitan Magistrate,
Egmore, Allikulam Complex,
Chennai-600 003.
2. The Honourable Registrar General,
High Court of Madras,
Chennai-600 104.

+1cc to Mr.P.Wesley Isace, Advocate Sr.80962

W.P.No.22415 of 2019

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srg 25/10/2019

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