

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
10.11.2020	02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.2180 OF 2013

K.N.Mutyala Rao

.. Petitioner

Vs

1.The Reviewing Authority ... Respondents

Export Inspection Council of India
Department of Commerce
Ministry of Commerce & Industry
Government of India, 3rd Floor
NDYMCA Cultural Centre Building
No.1, Jaisingh Road, New Delhi 110 001.

2.The Director (I & QC)

Export Inspection Council of India
Department of Commerce
Ministry of Commerce & Industry
Government of India, 3rd Floor
NDYMCA Cultural Centre Building
No.1, Jaisingh Road, New Delhi 110 001.

3.The Deputy Director

Export Inspection Agency-Chennai
Ministry of Commerce & Industry
6th Floor, CMDA Tower II
No.1, Gandhi Irwin Road, Egmore
Chennai 600 008.

4.Union of India

rep. By its Secretary
Ministry of Commerce & Industry
& Dept. of Commerce & Industry
3rd Floor, NDYMCA Cultural Centre Building
No.1, Jaisingh Road, New Delhi 110 001.

(R-4 impleade vide order dated
22.11.13 in MP.No.3/13)

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 3rd respondent in the 105 Council Meeting held on 11.1.13, quash the resolution passed in Agenda Item No.3.7 as communicated by e-mail dated 11.1.13 to the Deputy Director, who in turn has communicated it to the petitioner by letter dated 16.1.13 in Ref. EIA : CH : ESTT:PER:43:2012-13/176 and further direct the 1st respondent to conduct an enquiry on the petitioner's review petition dated 9.10.10 as directed by this Hon'ble Court in the order dated 10.3.10 in W.P. No.577/2009.

For Petitioner : Mr.K.Chandrasekaran

For Respondents : Mr.M.Arvind Kumar, SCGPC for R-4

ORDER

It is the case of the petitioner that while working as Office Assistant at Hyderabad, the alleged receipt of illegal gratification for discharging his official duties on 18.1.05 by the petitioner was video-graphed in a sting operation and telecasted as flash news in Eenadu TV on 20.01.2005, pursuant to which the acts of the petitioner, being unbecoming of a Government servant, explanation was sought for from the petitioner by the competent authority to which the petitioner submitted his explanation on 26.1.05. Not satisfied with the same, further explanation was sought for on 15.2.06 to which too, the petitioner submitted his explanation and being not satisfied, enquiry was initiated against the petitioner, which, on completion, led to the submission of enquiry report on 6.8.07 before the 2nd respondent. The 2nd respondent/Disciplinary Authority, after providing the copy of the enquiry report to the petitioner, called upon the petitioner for further explanation, which was submitted by the petitioner, however, the 2nd respondent/Disciplinary Authority, having found violation of principles of natural justice in the enquiry conducted on the basis of the illegalities pointed out by the petitioner, vide order dated 29.10.07, remanded the matter for fresh enquiry by the Joint Director and the Joint Director, after conducting the enquiry, which, according to the petitioner, bristles with legal and technical flaws and that the order of remission of enquiry passed by the disciplinary authority also being illegal, submitted his report dated 2.5.08 holding the charges proved and explanation was sought for from the petitioner and the petitioner, by letter dated 27.5.08, questioned the findings rendered by the Joint Director and also questioned the legality of the remission order. However, being not satisfied with the said explanation, the 2nd respondent/Disciplinary Authority imposed the major punishment of reduction in rank to the lower post, viz., Clerk Grade-I for a period of five years and further the petitioner to be considered for promotion only thereafter.

2. Against the said punishment imposed, the petitioner preferred appeal before the Chairman/appellate authority, who confirmed the order, vide his proceedings dated 2.12.08, which necessitated the petitioner in challenging the same before this Court in W.P. No.577/09. This Court, vide order dated 10.3.10, in view of the alternative remedy available to the petitioner to move the revisional authority, disposed of the petition by permitting the petitioner to raise all the contentions before the revisional authority, as the rules provide sweeping powers to the revisional authority to deal with the correctness, propriety and legality of the order passed by the 1st respondent. Pursuant to the order in W.P. No.577/09, the petitioner sought information about the details of the reviewing authority so as to enable him to file a review, to which the 3rd respondent, vide memo dated 20.9.10, informed the petitioner that the appeal having already been dealt with by the Chairman, the review u/r 26 is no longer available to the petitioner.

3. It is the further averment of the petitioner that the stand of the respondents in the earlier round of litigation was that the petitioner has the alternative remedy of review/revision in terms of Rule 26 and, therefore, it is not open to the respondents to foreclose the alternative remedy available u/r 26 stating that the appeal has already been dealt with by the Chairman. Against the said communication, the petitioner filed a review petition u/r 26 on 9.10.10 followed by reminders on 24.11.10 and 6.12.10. As no communication was forthcoming for the review filed by the petitioner, W.P. No.12168/12 was filed for a direction to the reviewing authority to conduct an enquiry on the review petition as per the directions of this Court in W.P. No.577/09, in which notice was ordered by this Court. However, to the shock and dismay of the petitioner, the impugned order was passed stating that the review filed by the petitioner was disposed by the Council in the 105th Meeting held on 27.6.11, rejecting the contention of the petitioner. Aggrieved by the said order, the present writ petition has been filed.

4. Learned counsel appearing for the petitioner, laying emphasis on the order passed by this Court in W.P. No.577/09, submitted that when this Court had categorically directed the reviewing authority to give full opportunity to the petitioner, including letting in fresh evidence in support of his case and afford opportunity of personal hearing and pass orders, the reviewing authority, without calling upon the petitioner to personally put forth his case and lead in evidence, has merely, on the basis of the materials placed before it, decided the case by affirming the order passed by the authorities below. The said act of the reviewing authority, not only goes against the orders passed by this Court, but in turn renders the said order unsustainable in the eye of law, as there is wholesome violation

of principles of natural justice and also utter disregard to the orders passed by this Court.

5. It is the further contention of the learned counsel appearing for the petitioner that the Chairman, being the appellate authority has passed the order in appeal and he being a member of the Council, cannot sit in review over the decision, which was rendered by him and such an exercise is impermissible. However, in the present case, the appellate authority has acted as the reviewing authority and no material whatsoever has been placed by the respondents to show that the Chairman was not a part of the decision making process in the Council. It is the further submission of the learned counsel for the petitioner that even in the earlier round of litigation, the question of bias was raised, in which this Court had answered that in the fitness of things, the Central Government, being the appropriate authority, would decide on substituting the Chairman, in the rank of Additional Secretary, with another person of the same rank. However, such an exercise has not been done and, therefore, the order passed in review is wholly unsustainable and deserves to be set aside.

6. It is the further contention of the learned counsel for the petitioner that the inclusion of agenda in the council meeting was not brought to the knowledge of the petitioner and he was not given an opportunity to participate in the council meeting to canvass his side of the case and, in fact, the petitioner was not even aware of the agenda in the council meeting before the receipt of the letter from the Deputy Director, dated 16.1.13, confirming the punishment imposed on the petitioner and the whole sequence of events create a doubt as to whether the council meeting was, if at all, convened, in which decision has been taken.

7. It is the further submission of the learned counsel for the petitioner that the decision in the review, though is said to have been taken on 27.6.11, however, after an inordinate delay of about a year and a half, the impugned order dated 16.1.13 has been passed, which delay has not been explained properly and, therefore, causes serious doubts as to the convening of the council meeting and the consequential resolution.

8. It is the further submission of the learned counsel for the petitioner that the order passed by the reviewing authority is not an order in the eye of law, as the same is a non-speaking order and merely traces the sequence of events, which has culminated in the passing of the order and, therefore, there being no independent application of mind on the part of the reviewing authority to the materials placed before it, the decision arrived at by the Council/reviewing authority is liable to be set aside.

9. It is the further submission of the learned counsel for the petitioner that the sole witness, viz., the videographer, who is said to have videographed the occurrence, has not been examined and the alleged CD containing the delinquency of the petitioner has not been proved in a manner known to law and placing reliance on a CD without it being identified in accordance with law, the reliance placed on the said CD to find the petitioner guilty of the said misconduct is wholly misconceived. Further, the said CD is not the original which was shot by the videographer and the CD, being a copied version, is impermissible in evidence and cannot be taken as secondary evidence without it being identified in a manner known to law. The above fallacies in the disciplinary proceedings, which has culminated in the order of punishment being passed and approved by the appellate and reviewing authority deserves to be interfered with by this Court.

10. Per contra, learned counsel appearing for the respondents, submitted that the council has independently applied its mind to the materials placed before it and has arrived at a categorical finding that the act of the petitioner is very much unbecoming of a government servant and had proceeded to affirm the orders passed by the authorities below. It is the further submission of the learned counsel for the respondents that the petitioner having already been granted an opportunity of personal hearing during the appeal, further personal hearing was not given to the petitioner at the time of review. Further, the reviewing authority, on the materials placed before it, had come to the categoric conclusion that no opportunity need to be granted to the petitioner, as the opportunity of personal hearing to a delinquent would not arise at each and every stage of the disciplinary proceeding and that the Regulations also does not envisage grant of personal hearing at the time of review. Only if the reviewing authority is of the view that the petitioner should be heard on the basis of the materials, the reviewing authority may afford opportunity to the petitioner and not otherwise.

11. The petitioner, on mere technicalities, is trying to evade the punishment without placing any materials to substantiate his case, which would be evident from the fact that even during the hearing of the appeal, the very same grounds were raised by the petitioner and he was provided with an opportunity of personal hearing during which time as well, merely technical pleas alone were raised without placing any substantive material. It is the further submission of the learned counsel for the petitioner that in such a backdrop, non-providing of an opportunity of personal hearing to the petitioner by the reviewing authority cannot be found fault with. Further, it is the submission of the learned counsel for the respondents that the review petition does not disclose the materials that the petitioner indents to place before the reviewing authority, which has a bearing on the case of the

petitioner and in the absence of any such details in the review petition, providing of an opportunity to the petitioner would only be an empty formality for the purpose of prolonging and scuttling the proceedings to attain finality.

12. It is the further submission of the learned counsel for the respondents that the CD, on which reliance has been placed by the department, clearly showcases the petitioner receiving the amount, and the basis for such receipt has not been satisfactorily explained by the petitioner. It is further submitted that the nature and standard of proof that is required in a disciplinary proceedings are not in the same league as is required in a criminal trial, as in a criminal trial, the prosecution has to prove the case beyond reasonable doubt, whereas in the case of departmental proceedings, it is more on the question of preponderance of probabilities on the basis of the materials on which the whole allegation is carved out. In the case on hand, the CD having categorically depicted the petitioner receiving monetary consideration in the office, which has not been explained satisfactorily, the enquiry officer drawing a presumption from the said material to hold the petitioner guilty of the said misconduct cannot be found fault with. Further, it is not necessary for the respondents to examine the person, who videographed the said occurrence, as the videograph is by itself a best piece of evidence, insofar as departmental proceedings are concerned and the petitioner having not raised a plea that the CD has been doctored, the act of the petitioner in harping that no reliance should be placed on the said evidence clearly reveals his faint attempt to stand only on technicalities to wriggle out of his predicament.

13. It is the further submission of the learned counsel for the respondents that it has been the consistent view of the Courts that unless the punishment is disproportionate to the delinquency and shocking the conscience of the Court, the Courts shall not normally interfere with the same and the Courts shall not substitute its views with that of the views of the authorities. The delinquency of the petitioner, being corruption, the punishment awarded by the authorities cannot be said to be disproportionate or shocking the conscience of the Court and the gravity of the offence does not call for interference at the hands of this Court.

14. This Court bestowed its undivided attention to the contentions advanced by the learned counsel on either side and also perused the materials available on record.

15. The Hon'ble Supreme Court, in **B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749)**, while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the

Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

16. The above view has been reiterated by the Hon'ble Supreme Court in **Principal Secy. Govt. of A.P. v. M. Adinarayana, (2004 (12) SCC 579)**, wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

17. In a recent decision in **Director General of Police, RPF & Ors. - Vs - Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)**, the Hon'ble Supreme Court, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's* case (*supra*), held as under :-

"12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.

In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :

"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a

finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first

principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the 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 which are 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.

In paragraph 13 of the judgment, the Court held that :

"13. Under Articles 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 the 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."
(Emphasis Supplied)

18. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

19. In the present case, the whole gamut of the contention of the petitioner is that the exercise of power by the disciplinary authority is illegal, as the order of remission passed by the Disciplinary Authority does not have the legal approval as the authority is not vested with the power of remission. Equally, there is allegation of violation of principles of natural justice and further the petitioner has not been given opportunity to avail the services of a Defence Assistant and also scrutinize the documents relied on by the enquiry officer.

20. The main plank of the attack on the impugned order by the petitioner is that the order passed by this Court in the earlier round of litigation in W.P. No.577/09, relegating the petitioner back to the reviewing authority to exhaust the alternative remedy by giving opportunity of personal hearing to the petitioner and to table any fresh evidence before the reviewing authority in support of his defence, having not been adhered to, but unilaterally, the Council has taken the decision to confirm the punishment imposed on the petitioner, thereby, the order of this Court has not been followed in letter and spirit but has been flouted to the detriment of the petitioner.

21. A perusal of the order passed in W.P. No.577/09 reveals that the entire exercise of disciplinary proceedings have been carried out based on the Regulations of the Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978. Regulation 26 therein, provides for review against the orders of the disciplinary/appellate authority to the Council and the Council is clothed with the powers, which finds place in the order and the same is extracted hereunder for reference :-

"Notwithstanding anything contained in these Rules, the Council may exercise its review jurisdiction either suo motu or otherwise as against the order, which is made or is

appealable under the Rules and a) to confirm, modify or set aside the order;

b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

c) remit the case to the authority which made the order or to any other authority directing such further action on inquiry as it considers proper in the circumstances of the case; or

d) pass such other orders as it deems fit."

22. The said Regulation, which was the basis on which the plea of alternative remedy was entertained, is manifestly clear that the Council is vested with powers to to confirm, modify or set aside the order, impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order and to remit the case to the authority which made the order or to any other authority directing such further action on inquiry as it considers proper in the circumstances of the case. It is to be pointed out that nowhere in the said Regulation, it has been explicitly stated that the Council is to provide an opportunity of personal hearing or to receive any fresh evidence from the delinquent while considering the review petition. It is only where the Council feels that interest of justice, on the face of the records, warrants a personal hearing to the delinquent to put forth his case and to table any evidence, such an opportunity may be given, which flows from clause (d) of the said regulation. Opportunity of personal hearing before the reviewing authority, viz., the Council, is not automatic, but only on the basis of the appreciation of materials and subject to the decision of the Council.

23. However, the petitioner lays his claim only based on the directions issued by this Court in W.P. No.577/09 for grant of opportunity of personal hearing and to table evidence before the Council. It is to be pointed out that the basis on which this Court, in the earlier round of litigation, has relegated the petitioner back to the reviewing authority, is on the basis of Regulation 26. When the said Regulation 26 is unambiguously clear and demarcates the power vested in the reviewing authority, the direction of this Court to grant an opportunity of personal hearing to the petitioner and to table evidence could only be inferred to mean that on the satisfaction of the reviewing authority that the materials placed before it would necessitate a personal hearing to the delinquent and also to allow him to table evidence before the Council, the Council, in exercise of its powers under clause (d) of Regulation 26, could resort to the said step. It is not automatic that on relegating the petitioner back to the reviewing authority to exhaust his

alternative remedy, the petitioner gets another chance to reagitate his rights afresh, but only to the limited extent of protecting his rights as conferred by law. However, granting the petitioner unfettered right by granting an opportunity of personal hearing at each and every stage of the proceeding, would be beyond the realm of the Regulation and providing such an opportunity beyond what the the petitioner is legally eligible, would be nothing but travesty of justice and against the very basic foundation of service jurisprudence and against the very many legal precedents on the subject enunciated by this Court as well as the Apex Court. Therefore, a harmonious interpretation of the directions issued by this Court would only lead to the above inference and the stand of the petitioner to the contra that the order passed by this Court in W.P. No.577/09 has been violated cannot stand the test of legal scrutiny.

24. Further, it is to be pointed out that though such a stand has been taken by the petitioner that there is violation of the order passed by this Court, yet, the petitioner has not taken any steps to file a petition for contempt before this Court, but has once again come before this Court seeking to quash the impugned order on grounds raised in the present writ petition. It is not open to the petitioner to blow hot and cold, on the one hand accepting the verdict of the reviewing authority and filing writ petition against the said order and on the other hand, submitting that the order of the reviewing authority is not in accordance with the earlier directions issued by this Court. Therefore, the above contention of the petitioner that the order passed by this Court has not been complied with deserves to be negatived.

25. On the contention of the petitioner alleging bias against the Chairman, who is also a member of the Council for participating in the decision making process in the review petition filed by the petitioner, it is to be pointed out that no material has been placed by the petitioner to show that the Chairman participated in the meeting of the Council or that he was a party to the decision taken by the Council. It is the mere apprehension of the petitioner that the Chairman has been a party to the decision taken by the Council. Even for the sake of argument, though not in agreement, let it be construed that the Chairman, who was the appellate authority, who passed the order confirming the punishment against the petitioner, was a member of the Council and he had partaken in the meeting of the Council and had deliberated on the agenda relating to the petitioner, it is to be pointed out that the Council is a body of persons, who are vested with equal powers and who take a consensual view on the basis of the materials available before them. It is not an individual decision taken by a single person and the others merely approve the same. The decision has been taken in the Council meeting, following due deliberations and also by following the due procedure of law. Unless the petitioner is able to show mala fides in the whole Council

meeting, which has resulted in grave prejudice to him, it cannot be gainsaid that the mere participation of the Chairman, as a member of the Council, in the meeting, has jeopardized the cause of the petitioner. A body of persons taking a decision in the meeting is a collective decision and based on the majority in the meeting, the decision is arrived at. It is not the case of the petitioner that all the members of the Council were prejudiced against the petitioner. Even that was not the case of the petitioner in the earlier round of litigation. Therefore, merely because one of the member, viz., the Chairman, who was the appellate authority, had also partaken in the meeting, would not make the decision taken in the meeting of the Council a sham for it to be struck down by this Court.

26. The petitioner, if really aggrieved by the act of the Council, could have filed appropriate petition under the Right to Information Act and called upon the respondents to provide the details based on which the decision has been taken. Though the petitioner has been methodical in pricking holes in the case of the respondents against him, has not washed his own linen, by obtaining the relevant materials under the Right to Information Act, which would have aided in his cause in addressing this Court on the above issue. Merely, on air, it is not open to the petitioner to claim that the decision taken against him in the Council meeting is only due to the presence of the Chairman, viz., the appellate authority, in the council, which is not borne out by record.

27. Further, the contention that the self-same authority, viz., the Chairman, who acted as the appellate authority cannot sit over his own decision, by participating in the decision making process while deliberating the review petition cannot be countenanced, as no materials supporting the said stand has been placed before the Court by the petitioner. As already pointed out above, the Council is a body of persons, who take a collective decision and merely the appellate authority being a member of the Council would not be sufficient to hold that the authority, who had passed the appellate order has reviewed his very own order, which is impermissible. Therefore, this contention placed on behalf of the petitioner also deserves rejection, more so in the absence of credible material substantiating the said allegations.

28. The other contention, that is canvassed before this Court is the violation of principles of natural justice, as the conduct of the enquiry proceedings, without allowing the plea of the petitioner to engage Defence Assistant as also to browse certain documents, which were marked in the enquiry, defeats the legitimate rights of the petitioner and, therefore, deserves interference.

29. A perusal of the enquiry report, as also the order passed by the disciplinary authority, as confirmed by the

appellate and reviewing authorities reveal that the petitioner has all along been raising technical objections relating to conduct of the enquiry and also insisting that he has not been allowed to peruse the documents that have been marked during the enquiry proceedings to substantiate the charges. Further, the petitioner has also sought the assistance of a Defence Assistant, but inspite of very many opportunities granted to him during the enquiry, he has not taken any steps to seek the services of the Defence Assistant of his choice. The above are clearly evident from the findings rendered by the authorities below. A perusal of the orders passed by the authorities below reveal that the documents, which were marked during enquiry, were provided along with the charge memo as annexures and, siince no new document from the one already provided to the petitioner has been marked during enquiry, the plea of the petitioner for scrutinizing the documents was also rejected.

30. A holistic consideration of all the technical pleas raised by the petitioner during the various stages of the proceedings, ultimately culminating in the order of confirmation of the order by the Council, as also before this Court reveals that the authorities below, on an independent application of mind to the materials placed before them, have arrived at a finding that the delinquency alleged against the petitioner stood proved and that the petitioner has not placed any materials to the contra to substantiate his case and in the absence of the same, the punishment was imposed on the petitioner.

31. At the risk of repetition, it is to be stressed that the Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition. An error of law which

is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

32. In the case on hand, the enquiry officer, having analyzed the evidence placed before him, has given a finding as to the guilt of the petitioner, which has been accepted by the disciplinary authority on independent application of mind and confirmed by the appellate and reviewing authorities on the basis of the materials available before them. Once the said authorities have concurred with the view on the basis of the materials, this Court, sitting under Article 226 of the Constitution of India, shall desist from interfering with such a decision, unless it is shown to be so very perverse and is not on the basis of materials available on record. In the case on hand, as aforesaid, independent application of mind in exhibited in all the orders passed by the concerned authorities and all the orders are speaking orders, which dovetail all the details based on which the said conclusion have been arrived at. Therefore, the technical pleas raised by the petitioner cannot be gone into by this Court under Article 226 of the Constitution.

33. On top of the above contentions, it is the pivotal contention of the petitioner that the person, who videographed the alleged receipt of illegal gratification by the petitioner having not been examined, the veracity of the CD, which has been marked in evidence, is prone to serious doubt and there being no connecting link in the evidence, the whole gamut of the respondents case pales into insignificance.

34. As already stated supra, the standard of proof required in a disciplinary proceeding is different from the standard of proof required in a criminal trial. While the proof required in a criminal trial should be such a nature that it substantiates not only the hypotheses projected by the prosecution, but it should be the only hypotheses that it in consensus with the evidence available on record, whereas in the case of departmental proceedings, the whole of the prosecution web lingers on preponderance of probabilities and it is only necessary for the prosecution to establish a probable theory that implicates the delinquent in the commission of the offence and proof beyond reasonable doubt is not required in the departmental proceedings. Once a probable theory is projected by the prosecution, it is for the delinquent to not only punch holes in the prosecution theory, but also to place materials, which points to his innocence, thereby disproving the theory projected by the prosecution, and in the absence of such an evidence, the appreciation of the evidence by the enquiry

officer would stand on the probable theory projected by the prosecution.

35. In the case on hand, true it is that initially, the person, who videographed the sequence relating to receipt of illegal gratification by the petitioner was cited as a witness, however, later in point of time, before the enquiry, while the statement of the said videographer was marked, the videographer was not examined. It is the stand of the petitioner that the non-examination of the videographer during the time of enquiry has robbed him of an opportunity to cross examine him, which affects his case and, therefore, the CD recorded by the said person, having not been authenticated, cannot be relied on to fasten the liability on the petitioner.

36. It is to be pointed out at this juncture that the review submitted by the petitioner reveals that the petitioner has taken a stand that the CD is a doctored one and is not the original. However, it is not known as to the basis on which the said stand has been taken by the petitioner. Be that as it may. A careful perusal of the entire review petition filed by the petitioner reveals that nowhere there is a whisper that the person in the CD, which has been marked in the enquiry, is not the petitioner. However, the attack of the petitioner is only on the validity of the CD to be received in evidence and marked. The contents of the CD are not put in question. Further, nowhere, it is the plea of the petitioner that the CD be sent for forensic analysis to disprove its authenticity and its doctored nature. Merely submitting that the CD cannot be received in evidence, the petitioner cannot foreclose the case of the respondents that such an incident had not taken place. The non-examination of the person, who was initially shown as a witness, but later dropped, who videographed the incident, will in no way hamper the case of the respondents for the simple reason that even eschewing the statement of the said witnesses, the CD, which is placed on record before the enquiry, the authenticity of which has not been put to test by the delinquent, stares writ large on the face of the petitioner, as the said CD exhibits the face of the delinquent, which has not been disputed by the petitioner as not him. Questioning the authenticity of the CD without questioning the doctored nature of the CD insofar as depicting the petitioner is concerned would in no way further the case of the petitioner. The non-examination of the videographer would in no way enure to the benefit of the petitioner, as the person in the CD, being the petitioner, not having been established to be doctored, the necessity of the videographer to be examined in a departmental proceeding would not arise, as it is not a criminal trial to be conducted within the four corners of the criminal jurisprudence.

37. Further, it is to be pointed out that in one part the petitioner while desists to accept the statement of the witness, who videographed the incident, on the other part, relies on his

statement to vindicate himself from the case. The petitioner has to raise or fall on his submission and it is not open to the petitioner to advert to the certain portions of the statement, which are beneficial to him, while attacking the statement, which is against him and the same is impermissible. Further, the contention of the petitioner that the CD cannot be received as evidence and marked cannot be accepted for the simple reason that the disciplinary proceedings are not conducted on the touchstone of the Indian Evidence Act and only the evidentiary value of the materials has to be analysed and not the legal value of the evidence that is placed before the enquiry officer. Such being the case, the receipt of the CD as evidence and having it marked cannot be axed for the benefit of the petitioner.

38. The judicial arm can extend only to the limited extent of adjudicating the correctness of the order passed by the authorities, which is not in violation of principles of natural justice and which has been passed on the basis of tenable evidence, though not within the realm of the Evidence Act. The judicial review cannot extend beyond the demarcated scope, as adumbrated by the Hon'ble Apex Court time and again and there being no infirmity in the conduct of the proceedings as well as the appreciation of evidence, more so in a departmental proceedings, the orders passed by the authorities below does not suffer the vice of principles of natural justice or procedural violation and the orders passed by the disciplinary authority as confirmed by the appellate authority and in turn affirmed by the reviewing authority cannot be said to be a prejudiced order or an order passed without application of mind, which requires interference at the hands of this Court.

39. Insofar as the punishment imposed on the petitioner is concerned as to its just and reasonableness, this Court would like to advert to the ratio laid down by the Courts under Article 226 of the Constitution with regard to the punishment imposed.

40. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the delinquency. Only when the punishment is disproportionate and shocking the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should

be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

41. In the case on hand, a careful perusal of the entire records right from the conduct of the enquiry, the order of remission, the re-conduct of the enquiry culminating in the imposition of punishment, the rejection of the appeal by the appellate authority leading to the filing of the writ petition and the subsequent order passed in the review confirming the punishment, reveal that there has been proper and independent application of mind on the part of the concerned authorities, who dealt with the case of the petitioner. It is further to be pointed out that the offence committed by the petitioner is of such a nature, that it is plaguing the entire country and the same requires to be curtailed with iron hands, lest the country will fall into the anarchic trap and, therefore, the persons, who indulge in such disgraceful acts should be shown no mercy. In the case on hand, the gravity of the offence committed by the petitioner though is so very grave, however, the disciplinary authority has only imposed a punishment of reduction in rank to the lower post for a period of five years. The gravity of the offence, in the present day scenario, does not call for any iota of sympathy at the hands of the courts. As already stated, this Court, sitting in judicial review, is not required to go through the entire materials as if the matter is in appeal before this

Court, but only to arrive at a subjective finding as to whether the enquiry has been conducted in a fair and proper manner and whereupon, the disciplinary authority has independently applied his mind while imposing the punishment. This Court is in consensus with the order passed by the disciplinary authority as confirmed by the appellate authority and affirmed by the reviewing authority and is of the view that the same does not warrant any interference at the hands of this Court. The punishment imposed on the petitioner is also just and reasonable considering the nature of delinquency, no sympathy can flow from this Court for such an act. Therefore, the punishment imposed on the petitioner is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

42. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs.

-Sd/-

Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

GLN

To

1.The Reviewing Authority
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3.The Deputy Director
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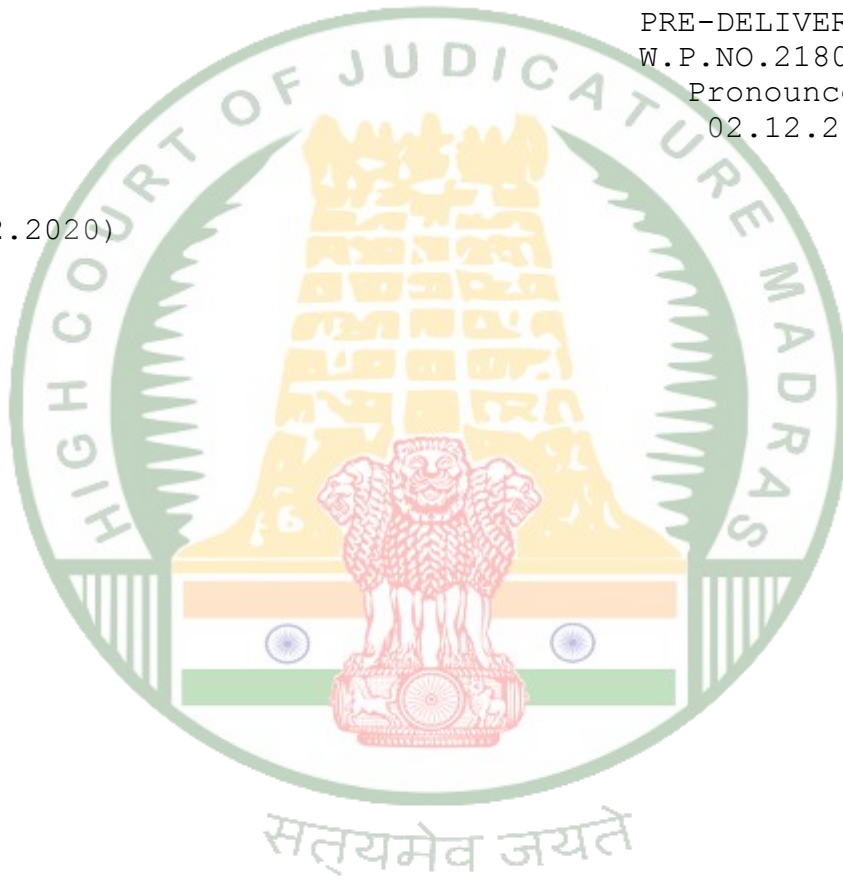
4.The Secretary to Government
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PRE-DELIVERY ORDER IN
W.P.NO.2180 OF 2013
Pronounced on
02.12.2020

NMI (CO)
UMY (17.12.2020)



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