

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :16.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 27113 OF 2013

S.Balasubramany

..Petitioner

- Vs -

1. State Bank of India
Rep. By Chief General manager (Appellate Authority)
Local Head Office,
Circle Top House,
No.16, college Lane,
Chennai 600 006.

2. General Manager (Network I)
Appointing Authority,
State Bank of India,
Local Head Office,
Circle Top House,
No.16, college Lane,
Chennai 600 006.

..Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the concerned records from the 1st and 2nd respondents and quash the order of the 1st respondent dated 23.07.2012 and the order of the 2nd respondent dated 28.10.2011 and consequently direct the respondents to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits .

For Petitioner : Mr.Balan Haridas

For Respondents : M/S.K.Sankaran

WEB COPY
ORDER

This Writ petition was filed by the petitioner, to call for the records from the respondents and quash the order of the 1st respondent dated 23.07.2012 and the order of the 2nd respondent dated 28.10.2011 and consequently direct the respondents to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits .

2. The case of the petitioner is that the he joined the services of the respondent bank as an Assistant in the year 1982 and he during the tenure of his service, he received promotions and at the relevant point of time, he was working in Kangeyam Branch, Tirupur District as Deputy Manager (cash officiating). While so without assigning any reasons, his services were suspended on 17.09.2009 and he was issued with charge memo dated 20.09.2010 containing 7 charges. Of the seven charges, six charges related to the period, when the petitioner was working as an Award staff.

2.1. It is the averment of the petitioner that the respondent bank can take action in respect of those six charges only under the memorandum of settlement and disciplinary action procedure for workmen dated 1.08.2002, but the first six charges have been framed under the SBI Officers' Service Rules. Therefore the action initiated and the punishment imposed in respect of first six charges is totally without any jurisdiction and improper. Further it is submitted that the first six charges related to the transaction and loan availed by the petitioner and there had been no misrepresentation or any fraudulent transaction. The transactions are in the nature of some concession extended to an employee and even if there are any mistakes, there being no complaint from any quarters. It is the further case of the petitioner that in respect of the 7th charge, the Branch Manager and Accountant were equally responsible and no action had been initiated against them; on the other hand they were given promotion and allowed to retire on attaining the age of superannuation.

2.2. It is the claim of the petitioner that the charges were not proved either by documentary or oral evidence, but curiously, the enquiry officer held that the charges to be proved. Based on that the petitioner had been imposed with the major penalty of removal from service and further recovery of Rs.50,000/- has been ordered. As against the punishment of removal from service, the petitioner preferred an appeal before the first respondent which was also rejected in a most summary manner by confirming the punishment. The petitioner had put in an unblemished service of 30 years and the said aspect has not been taken into consideration. Aggrieved by the said punishment, imposed on him, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner while reiterating the grounds raised in the petition, further submitted that there had been no misrepresentation or fraudulent act committed by the petitioner. Any wrongful operation of bank accounts is a mistake on the part of the branch officials, which cannot be attributed to the petitioner. In none of the transactions, there is allegation of any misappropriation or

fraud. There is not even any loss to the bank. The transaction are in the nature of some concession extended to an employee by the Bank and there is no complaint raised from any quarters. It is the further submission of the learned counsel for the petitioner that charges 1 to 6 initiated under a different set of regulations, which is not applicable to the petitioner, vitiates the charges. It is the further submission of the learned counsel that no oral or documentary evidence has been placed before the enquiry officer to prove the charges, yet the enquiry officer has held the charges proved, which cannot be allowed to stand. It is the further submission of the learned counsel that the persons, who were equally responsible having not been proceeded with and action taken only against the petitioner and imposition of major penalty on the petitioner shows the discriminatory attitude of the respondents. The above fallacies in the enquiry and the consequent imposition of punishment deserves interference at the hands of this Court.

4. Per contra, learned Standing counsel appearing for the respondents, referring to the counter affidavit submitted that the petitioner, utilising his higher capability, with mala fide intent, has put through the transactions. It is further submitted that the enquiry was conducted in a proper manner after collecting the relevant materials and the petitioner was also provided with opportunity to defend himself. The disciplinary authority, on the basis of the findings rendered by the enquiry officer, has imposed the punishment of "Removal from service" vide order dated 28.10.2011 on independent application of mind. The gravity of the charges is shocking and, therefore, the imposition of punishment cannot be said to be disproportionate. The Courts shall not sit in appeal over the disciplinary proceedings, but has to only see whether it has been conducted in a manner in accordance with law and in consonance with principles of natural justice. Further, it is the submission of the learned Special Government Pleader that unless the punishment imposed is shocking and disproportionate, the Courts shall not interfere with the said punishment. Accordingly, he prays for dismissal of the petition.

5. This Court heard the rival submissions made by learned counsel on either side and also perused the materials available on records.

6. 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)

7. 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."

8. 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)

9. 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.

10. A perusal of the charge memo reveals that explicit charges have been framed as to the acts done by the petitioner, which shows his dereliction to duty in the collection of amounts, granting loan to himself, which are impermissible. Further, it is borne out by record that without closing the previous loan and suppressing the details, the petitioner has availed another loan from some other branch of the same bank and further, he had availed loan on the same LIC policy, on which he had earlier availed loan. The acts have been committed by the petitioner with full knowledge and with an intention to cause loss to the bank, which is borne out by record. The charges levelled against the petitioner are grave and merely because co-employees were not proceeded with cannot be a ground to absolve the petitioner from the delinquency. The petitioner, being a member of the banking sector, which deals with public money, integrity of the highest standards and probity in public life is expected of every staff and officer working in the banking sector. Being an employee of the respondent bank, it was incumbent on the part of the petitioner to have adhered to the SBI rules and regulations with regard to sanction the loans and submitting the reports to the RBI.

11. It is to be stressed that the Court in its power of judicial review does not act as appellate authority to re-appreciate 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 re-appreciate 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. 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 and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

12. 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.

13. 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.

14. 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.

15. 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)

16. Be that as it may. It is fairly submitted by the learned counsel for the respondent that there has been no monetary loss to the bank inasmuch as the petitioner has attained the age of superannuation much earlier and only on that count, the petitioner was removed from service, but the petitioner is eligible for claiming his retirement benefits in accordance with law. In such a scenario, this Court is of the view that without entering into the realm of punishment imposed on the petitioner as to its dis-proportionality or otherwise,

since there is no loss caused to the bank, which has been accepted by the respondent, the petitioner is entitled to be compensated and is also eligible to claim his retiral benefits. It is fairly conceded by either side that the retiral benefits of the petitioner works out to around Rs.10,00,000/-. Therefore, fixing the retiral benefits of the petitioner at Rs.10,00,000/- (Rupees Ten Lakhs only), it is submitted by the respondents that as on 08.11.2013, when the petitioner was relieved from service, the petitioner was paid a sum of Rs. 6,59,239/- and, therefore, the petitioner would be entitled to the balance amount from the amount of Rs.10,00,000/- towards the retiral benefits. Accordingly, the respondents are directed to deduct the sum of Rs.6,59,239/- (Rupees Six Lakhs Fifty Nine Thousand Two Hundred and thirty Nine only) already paid to the petitioner from the amount of Rs.10,00,000/- (Rupees Ten Lakhs only) and pay the balance to the petitioner with interest at 6% per annum within a period of six weeks from the date of receipt of copy of this order.

17. With the above direction, this writ petition is disposed of. However there shall be no order as to costs.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

jrs

To

1. State Bank of India
Rep. By Chief General manager (Appellate Authority)
Local Head Office,
circle Top House,
No.16, college Lane, सत्यमेव जयते
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2. General Manager (Network I)
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W.P. NO.27113 OF 2013

GMR (CO)
KKV/10/03/2021