

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
03.11.2020	11.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.31797 OF 2013

P.Chellaiah

.. Petitioner

- Vs -

1. The Managing Director
Tamil Nadu civil Supplies Corporation Ltd.
12, Thambusamy Road, Kilpauk
Chennai 600 010.
2. The General Manager (Administration)
Tamil Nadu civil Supplies Corporation Ltd.
12, Thambusamy Road, Kilpauk
Chennai 600 010.
3. The Regional Manager
Tamil Nadu civil Supplies Corporation Ltd.
Regional Office, Perambalur Region
Duraimangalam, Trichy Mani Road
Perambalur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to the order of dismissal made in Se. Mu.Anai No.AD6/82995/2010 dated 25.01.2011 passed by the 2nd respondent and the consequent order made in Se.Mu.A. No.AD2/26844/2011 dated 26.08.2013 issued by the 1st respondent and quash the same and further direct the respondents to reinstate the petitioner in service with continuity of service along with backwages and all other attendant benefits.

For Petitioner : Mr. A.Nagarathinam

For Respondent : Mr. L.P.Shanmugasundaram, Spl. GP

ORDER

It is the case of the petitioner that he entered the service of the respondents as Bill Clerk in the year 1975 and during the crucial period, was working as Junior

Assistant (Special Grade) under the 3rd respondent. It is the averment of the petitioner that while functioning thus, the petitioner was visited with a charge sheet on 8.4.09 by the 2nd respondent alleging demand of illegal gratification to the tune of Rs.3,000/- on 15.10.078 from one V.Vivekanandan, which also resulted in the lodging of a complaint before the Vigilance & Anti Corruption Wing, Trichy, resulting in the registration of Crime No.26 of 2008 pursuant to which a trap was laid and the petitioner was caught red-handed while receiving a sum of Rs.3,000/- from the said Vivekanandan.

2. Pursuant to the issuance of the charge memo, the petitioner submitting his explanation denying all the charges levelled against him and submitted that the amount of Rs.3,000/-, received by the petitioner from the said Vivekanandan was the return of the balance amount from the amount of Rs.5,000/- received by the said Vivekanandan from the petitioner as hand loan on 9.5.08 in the presence of three witnesses, of which a sum of Rs.2,000/- was returned in the presence of the above witnesses, who were loaders working under the respondents. It is further averred by the petitioner that the non-return of the Rs.3,000/- resulted in the petitioner vociferously demanding the said payment from the said Vivekanandan and the wreak vengeance, the said Vivekanandan lodged the complaint against the petitioner and a false case was foisted on the petitioner.

3. Not satisfied with the explanation offered by the petitioner, enquiry was initiated and as the petitioner was due to retire on 31.08.09, the petitioner was retained in service pending the disciplinary proceedings and was not permitted to retire. The criminal case in Crime No.26 of 2008 was registered u/s 7 of the Prevention of Corruption Act of which cognizance was taken in Special Case No.2/09 on the file of the Special Court (Anti Corruption), Perambalur and as a result of the same, the petitioner was placed under suspension.

4. The suspension of the petitioner and his continuance in service was periodically extended pending finalisation of the enquiry proceedings. Though the petitioner claimed for subsistence allowance, however, he was not paid the same and his request for the same was rejected citing amendment made to Chapter I Regulation 13 of the Tamil Nadu Civil Supplies Corporation Employees Service Regulation, 1989.

5. Further, the above, enquiry officer was appointed and enquiry was conducted without payment of any subsistence allowance to the petitioner, which, in turn, precluded him from effectively defending his case. Witnesses were examined in the enquiry and the petitioner was also given opportunity to cross

examine the witnesses. While 7 witnesses were examined by the department, 3 witnesses were examined by the petitioner. Conclusion of the enquiry resulted in the tabling of the enquiry report in which the enquiry officer held that all the three charges framed against the petitioner stood proved. The petitioner was provided with a copy of the enquiry report and further show cause notice was issued calling for explanation and after receipt of explanation, the disciplinary authority, viz., the 2nd respondent passed the order of dismissal of the petitioner from service vide order dated 25.1.2011. Aggrieved by the said order of dismissal, the petitioner preferred appeal before the 1st respondent, which was dismissed vide order dated 26.8.13 confirming the order of dismissal of the petitioner from service passed by the 2nd respondent. Aggrieved by the said orders, the present petitioner has been filed before this Court.

6. Learned counsel appearing for the petitioner, at the outset submitted that the conduct of the disciplinary proceedings was not fair and proper and no adequate opportunity was granted to the petitioner and, thereby, there is violation of principles of natural justice. It is the submission of the learned counsel for the petitioner that the non-payment of subsistence allowance during the period of suspension has caused great harm and detriment to the petitioner as he was not in a position to effectively defend his case. It is the further contention of the learned counsel for the petitioner that no independent deposition was recorded, but the statements recorded while examining the persons u/s 161 Cr.P.C. was utilised, which is per se impermissible and, therefore, the whole enquiry proceedings deserves to be quashed.

7. It is the further submission of the learned counsel for the petitioner that the examination of the witnesses by the enquiry officer is bad, as the witnesses ought to be examined by the presenting officer and this lacunae vitiates the enquiry proceedings. It is the further submission of the learned counsel for the petitioner that the findings recorded by the enquiry officer are perverse and bad in law as they are not based on the depositions available on record and the order of dismissal based on the said enquiry report deserves to be interfered with. Further, it is submitted that there is no independent application of mind on the part of the disciplinary and the appellate authority while inflicting the punishment and the same is in violation of principles of natural justice and, therefore, the writ petition deserves to be allowed.

8. Per contra, learned Special Government Pleader appearing for the respondents submit that the enquiry proceedings were conducted in a fair and proper manner and after necessary opportunity to the petitioner. The petitioner has not

questioned the fairness of the enquiry proceedings at any point of time before and the present contention of the petitioner pointing a finger at the enquiry proceedings is only an after thought. It is the further submission of the learned Special Government Pleader that the witnesses were examined in the enquiry, as would be evident from the report of the enquiry officer, as the verbatim statement of the witnesses have been extracted. It is the further submission of the learned Special Government Pleader that the official witnesses, viz., the Vigilance Officers, who formed the trap team were examined in the enquiry, who have spoken in detail about the trap proceedings and the trapping of the petitioner and also retrieving the bribe money from the draw of the petitioner and, therefore, it is not open to the petitioner to contend that the witnesses were not examined during the enquiry.

9. It is the further submission of the learned Special Government Pleader that the petitioner was placed under suspension in contemplation of disciplinary proceedings to be initiated against him on the registration of a case by the Vigilance and Anti-Corruption Department and it is not open to the petitioner to say that the act of the respondents in placing him under suspension just before his retirement is only to harass him and not otherwise.

10. It is the further submission of the learned Special Government Pleader that the disciplinary authority, on independent application of mind to the materials available on record, including the enquiry report, on the ground that the charges stood proved, which were grave in nature, has imposed the punishment of dismissal from service, which was appreciated by the appellate authority on independent application of mind to confirm the said order and unless the said punishment is disproportionate and shocking the conscience of the Court, the Court shall not interfere with the same, as has been the consistent stand of the Courts. Therefore, it is pleaded that the present petition is devoid of merits and deserves to be dismissed.

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

12. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

13. 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 act of the delinquent. Only when the punishment is disproportionate and shocking to 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)

14. From the above it is implicitly clear that unless the Court finds that the punishment imposed is grossly disproportionate and shocking the conscience of the Court, the Courts shall not normally interfere with the punishment imposed by the disciplinary authority by substituting the punishment. The gravity of the charges framed against the delinquent are required to form the basis for imposition of punishment. So

long as all the ingredients stood satisfied as to the imposition of punishment by the appointing authority, the Courts shall not step into the shoes of the appointing authority to re-appreciate the evidence, as the duty of the Court is only in the nature of judicial review and not as an appellate court.

15. Keeping the principles as enunciated by the Court time and again, this Court now proceeds to find out whether the submissions made by the petitioner spans out to the benefit of the petitioner.

16. A perusal of the materials available on record reveal that the enquiry was conducted in accordance with law. Though it is the vehement submission on behalf of the petitioner that there is total violation of principles of natural justice as the enquiry was not properly conducted, however, the materials reveal otherwise. The enquiry report categorically reveals that the witnesses were examined in the enquiry proceedings, which is evident from the questions put to the witnesses and the answers given by them. Equally it is the stand of the respondents that opportunity was given to the petitioner to cross examine the witnesses, which according to the petitioner was not correct as he was given reasonable opportunity to cross examine, however, it is a mere assertion on the part of the petitioner and no material to disprove the stand of the respondents is placed before the Court. Further, it is to be pointed out that the petitioner has not come before the proper forum at the earliest point of time with the above version as to violation of principles of natural justice in the conduct of the enquiry proceedings and has come before this Court only at the fag end, more so after the imposition of punishment of dismissal from service. Therefore, at this belated point of time, it would be a futile exercise to dwell deep into the said contention as the materials placed on record does not in any way support the stand of the petitioner.

17. Coming to the factual matrix of the case, the enquiry was the off shoot of the criminal case registered against the petitioner under the Prevention of Corruption Act. It is trite that disciplinary proceedings and criminal case can go simultaneously and the requirement of proof and its weightage thereof are totally different. The case of the department, even at the initial point of time is that the petitioner had received illegal gratification from one of the co-employee of the respondents for favouring him in transfer. However, it is the counter of the petitioner that the said amount was not illegal gratification, but only the receipt of the balance portion of the hand loan given to the said co-employee. To substantiate the above stand, the petitioner, in defence, examined three persons, who were loaders in the respondent

Department. The enquiry officer has put pointed questions to them to elicit as to when the said hand loan was given by the petitioner, for which there is no clear answer from any of the three witnesses.

19. However, one of the crucial aspect which draws the attention of this Court is the fact that the petitioner, even in his affidavit has averred that the hand loan of Rs.5,000/- was given to the said Vivekanandan in the presence of three witnesses, however, curiously, even when the amount of Rs.2,000/- was paid back by the said Vivekanandan, the said three witnesses were present. This Court is at a loss to understand as to how the said three witnesses were present on both the occasions. However, when the petitioner vociferously demanded the balance amount of Rs.3,000/-, as alleged by him, however, no witness was present to vouch for the said scene. Further, it is also to be noted that the enquiry officer has returned a finding that though the said Vivekanandan was all along in the said place and the petitioner had been a newly transferred person to the place and had been there only for a year or two, yet, the said Vivekanandan had obtained hand loan from the petitioner, which is far from believable. Be that as it may, it is to be pointed out that the petitioner has not placed any material whatsoever to prove the fact that he had given the amount of Rs.5,000/- as hand loan to the said Vivekanandan except for the above three witnesses, who have been disbelieved by the enquiry officer for the reasons aforesaid.

19. It is to be further borne out by the record, which also finds place in the report of the enquiry officer, that the amount of Rs.3,000/- was recovered from the draw of the petitioner for which the petitioner has merely stated that the said amount was placed in his draw by the said Vivekanandan at the dictates of the officials of the Vigilance & Anti Corruption Department. The said stand of the petitioner, as revealed from the affidavit filed by the petitioner in support of the petitioner, only bemuses this Court as this Court is unable to comprehend as to how such an act could have been performed in an office, where many persons are employed. If the stand as taken by the petitioner is to be accepted, the said act of the Vigilance & Anti-Corruption Officials would definitely have made the petitioner to object to such an act, which would definitely have attracted the attention of the other co-employees, on whom the petitioner could very well have placed reliance to establish his case. However, no witnesses, except for the three persons, who are alleged to have witnessed the payment of amount to Vivekanandan and receipt of a portion of the amount from the said Vivekanandan were examined by the petitioner. The occurrence had occurred in daylight in the office of the petitioner and it is not the case of the petitioner that no

other person was available in the office when the trap proceedings were conducted by the Anti-Corruption Department. Further, the trap officials were examined before the enquiry proceedings and they have also given the details of the proceedings in and by which the petitioner stood trapped while receiving illegal gratification. However, the petitioner, for reasons best known, has not shown any inclination to cross examine the said official witnesses.

20. It is further evident from the materials available in the typed set that the enquiry officer has conducted in-depth enquiry and has given a detailed report as to the basis on which he has arrived at the finding that the charges framed against the petitioner stood proved. This Court has also analyzed the report of the enquiry officer, as a matter of precaution, and finds that the enquiry officer, adverting to the evidence of the witnesses has given a categorical finding, based on materials, that the charges framed against the petitioner stood proved. Merely submitting that the enquiry was not conducted in a fair and proper manner, would not suffice to hold the enquiry bad, more especially when the report of the enquiry officer reveals that the after full-fledged enquiry, the report has been drawn, which has taken into consideration all the materials on the basis of which the finding has been rendered.

21. Insofar as the contention of the petitioner that no subsistence allowance has been paid to him during the period of suspension, that cannot be a ground to hold the enquiry bad in law. Further, the respondents have taken umbrage under the relevant provisions of the Tamil Nadu Civil Supplies Corporation Employees Service Regulation to negate the claim for subsistence allowance by the petitioner. If at all the petitioner has any grievance with regard to non-payment of subsistence allowance, the course open to the petitioner is to challenge the amendment made to the said Regulation denying subsistence allowance during the period of his suspension and he cannot make out a case that non-payment of subsistence allowance has rendered the whole enquiry a flawed one.

22. One of the ancillary contentions advanced on behalf of the petitioner is that the statements of the petitioner obtained u/s 161 Cr.P.C. were utilised during the chief examination of the witnesses, which renders the whole enquiry a frustrated one and deserves to be set aside. Though such a contention is raised, it is to be pointed out that it is well settled proposition that the nature of proof and the quality of proof as also the conduct of the enquiry is different from that of a trial. While in criminal trial, the proof required to be adduced should be in strict adherence to the provisions mandated by the Criminal Procedure Code, while in the case of

disciplinary proceedings, it is not so. The standard and quality of proof as also the conduct of the disciplinary proceedings is within the realm of the enquiry officer and unless there is infraction of principles of natural justice or non-affording of opportunity, Courts shall not normally interfere with the said enquiry, sitting in judicial review. In the case on hand, the enquiry has been conducted in a fair and proper manner and the petitioner has been afforded adequate opportunity not only to cross-examine, but also put forth his case and the failure of the petitioner to substantiate his case, the petitioner cannot be allowed to prick holes in the disciplinary proceedings to frustrate the whole proceedings conducted by the enquiry officer. This Court does not find any infirmity either in the disciplinary proceedings or in the report of the enquiry officer while drawing the enquiry report in the appreciation of the materials placed before him.

23. Further, at the time of hearing, it is fairly informed to this Court by the learned counsel for the petitioner that the criminal prosecution launched against the petitioner in Special Case No.2/2009 has ended in the conviction of the petitioner. However, it is submitted that the conviction in the said criminal trial would in no way have a bearing on the disciplinary proceedings against the petitioner.

24. In the above context, recently, the Hon'ble Supreme Court, in the case of State of Rajasthan - Vs - Heem Singh (Civil Appeal No.3340 of 2020), while reiterating the scope of review and in a case relating to acquittal of the accused in a criminal case vis-a-vis the disciplinary proceedings against the delinquent, held as under :-

"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."

(Emphasis Supplied)

25. The Hon'ble Supreme Court further in the above decision went on to hold that the verdict of the criminal trial does not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of

evidence which governed the criminal trial. True, even on the more relaxed standard which governs a disciplinary enquiry, evidence of the involvement of the delinquent should stand proved, though it is not necessary that the proof should be beyond reasonable doubt. But, as already held above, the proof tabled by the respondents clearly point a finger on the delinquent/petitioner and the conviction in the criminal trial has vindicated the stand of the respondents.

26. As already stated above, the requirement of proof and adherence to the procedural aspect and following of the provisions are to be strictly followed during trial and the same are not applicable to the disciplinary proceedings. This has been time and again reiterated by this Court as also the Hon'ble Apex Court in a catena of decisions. In the case on hand, though this Court has categorically held that the disciplinary proceedings were conducted in accordance with law and that there is no procedural infraction, however, the conviction of the petitioner in the criminal trial further strengthens the foundation on the basis of which the findings in the enquiry have been tendered culminating in the imposition of punishment on the petitioner. The standard of proof in the criminal trial being of a higher degree and the petitioner having been convicted in the criminal trial, the analysis made by the enquiry officer as to the proof tabled in the enquiry proceedings stood vindicated by the decision arrived at in the criminal trial. The conviction rendered by the criminal court has given a clean chit to the evidence tendered before the disciplinary enquiry and casting blemish on the said evidence would not stand the test of judicial scrutiny. Therefore, in the overall circumstances, as pointed out above, this Court is of the considered view that the enquiry has been conducted in a fair and proper manner resulting in the report, which has been rightly accepted by the disciplinary authority in imposing the punishment, which has been rightly, on independent application of mind, confirmed by the appellate authority.

27. In the present case, the question of the punishment being disproportionate or shocking the conscience of this Court does not arise for the simple reason that the conviction of the petitioner automatically results in the imposition of the punishment imposed by the disciplinary authority, as the punishment of dismissal would flow as a consequence of the conviction imposed on the petitioner. Even otherwise, the gravity of the offence committed by the petitioner, which stood proved in the disciplinary enquiry, definitely warrants the imposition of punishment of dismissal from service, which in no way could be termed to be disproportionate or shocking the conscience of the Court.

28. For the reasons aforesaid, this Court does not find any merits in the writ petition and, accordingly, the same is dismissed confirming the impugned order of dismissal of the petitioner from service. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Managing Director
Tamil Nadu civil Supplies Corporation Ltd.
12, Thambusamy Road, Kilpauk, Chennai 600 010.
2. The General Manager (Administration)
Tamil Nadu civil Supplies Corporation Ltd.
12, Thambusamy Road, Kilpauk, Chennai 600 010.
3. The Regional Manager
Tamil Nadu civil Supplies Corporation Ltd.
Regional Office, Perambalur Region
Duraimangalam, Trichy Mani Road
Perambalur District.

+1 cc to The Government Pleader, Sr.No. 36924

W.P. NO. 31797 OF 2013

VSNII (CO)
RMP (14/12/2020)

सत्यमेव जयते

WEB COPY