

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.5776 of 2013

and

MP No.1 of 2013

A.Bazeerdeen

... Petitioner

Vs

1. The Tamilnadu Maritime Board,
Appellate Authority,
112, Sir Thyagaraya Road,
T.Nagar, Chennai - 17.

2. The Deputy Chairman cum Chief
Executive Officer,
Tamilnadu Maritime Board,
112, Sir Thyagaraya Road,
T.Nagar, Chennai - 17.

3. The Secretary to Government,
Highways and Minor Ports (HF-2) Department,
Secretariat, Chennai - 9.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent made in his Proc. No.2696/Pa.Ni.2/2001, dated 09.05.2003 which has been confirmed by the 1st respondent Board vide Proceeding No.2696.Pa.Ni.2/2001, dated 15.09.2003 in appeal and this order of the Board has been confirmed by the third respondent in Government Revision vide G.O. (Ms.) No.17 Highways and Minor Ports (HF-2) Department dated 01.02.2012 and quash the same and consequently direct the respondents to reinstate the petitioner in service as Pilot Grade - I, Pamban Court with all backwages and service benefits etc.

For Petitioner : Mr.C.P. Hemkumar
for M/s.Ganesh & Ganesh

For Respondents : Mr.A.N.Thambidurai,
Spl. Govt. Pleader

ORDER

Petitioner has come up with this Writ Petition seeking to quash the impugned order passed by the disciplinary authority, as confirmed by the appellate and the revisional authorities and for a consequential direction to reinstate the petitioner in service with all backwages and service benefits.

2. It is the case of the petitioner that he entered into service as Pilot Grade in December 1982 at Pamban Port and subsequently promoted as Pilot Grade - I w.e.f. 24.02.1986. Whiles, alleging charges relating to illegal gratification against the petitioner, the petitioner was suspended from service on 28.05.2001. Further to the initiation of departmental action, explanation was called for from the petitioner, for which the petitioner submitted his explanation and being not satisfied with the explanation offered, enquiry was proceeded with and after enquiry, the enquiry officer submitted his report holding the charge proved against the petitioner. It is the further averment of the petitioner that on the basis of the enquiry report, the 2nd respondent / disciplinary authority inflicted the punishment of dismissal from service vide impugned order dated 09.05.2003. Challenging the said order of dismissal, the petitioner preferred appeal to the 1st respondent, which was dismissed confirming the punishment imposed on the petitioner vide order dated 15.09.2003 and the further review before the 3rd respondent also ended in rejection, vide order dated 01.02.2012, which has led to the filing of the present petition.

3. Learned counsel appearing for the petitioner placed his arguments based on the grounds raised by the petitioner in the affidavit filed in support of the petition, and vehemently contended that the enquiry was not conducted in proper perspective. It is the further submission of the learned counsel for the petitioner that the punishment inflicted on the petitioner is disproportionate to the delinquency and the enquiry officer without following the principles of natural justice and without affording opportunity to the petitioner to examine the witnesses held the charges proved. Further, the disciplinary authority failed to consider the unblemished service of 20 years put in by the petitioner. The charges levelled against the petitioner is that he acted as an agent by involving himself in settlement of hire charges in respect of vessels (Tug RESCO - I and the barge M.V. UMALIA - V) which arrived at Pamban Port for crossing Pamban channel. He submits that the pilotage fee has been collected on 12.05.2001 at Port office, Pamban, however, it is the case of the respondents that the petitioner received a sum of Rs.15,000/- by way of Demand Draft for his personal gain and the said Demand Draft has not been marked as exhibit at the time of enquiry. Further, he

submits that the appellate as well as reviewing authority, without applying their mind individually have confirmed the order of the disciplinary authority, which calls for interference.

4. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents drew the attention of this Court to the counter affidavit and submitted that petitioner has committed acts, which are illegal for which enquiry was conducted in a fair and proper manner and the disciplinary authority, on independent application of mind to the materials available on record and after examining the materials, has imposed the punishment of dismissal of service . Particular reference was drawn to paragraph 10 of the counter affidavit, wherein it is averred that the petitioner received Rs.15,000/- from the craft owner. Further, the appeal and the revision were also dismissed by the concerned authority, on proper appreciation of materials and by way of a reasoned order by applying their mind independently and, there being no grievance expressed by the petitioner with regard to application of mind by the authorities while passing the order, this Court, sitting under Article 226 may not interfere with the order passed by the authorities. It is the further submission of the learned Special Government Pleader that this Court, sitting in judicial review shall not re-appreciate the evidence placed before the authorities, as the scope of judicial review before this Court is very limited and unless there is violation of principles of natural justice in the conduct of the enquiry and the punishment inflicted is disproportionate and shocking the conscience of the court, the court shall not interfere with the same.

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

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 reappreciate 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 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/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, adverting 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 materials available on record reveal that the enquiry led to the submission of an affirmative report against the petitioner holding the charges proved. The witnesses, who were examined in the proceedings, have spoken about the delinquency of the petitioner. Further, the

petitioner has not attributed any mala fides in the conduct of the disciplinary proceedings at any stage. However, the ground of attack of the petitioner is that a sum of Rs.15,000/- received by him by way of demand draft is to settle the balance fees due for the Pamban Port, whereas the said Demand Draft has not been shown as an exhibit and in the absence of the said draft being marked as an exhibit, non-marking of the said document vitiates the enquiry. Though such a contention is advanced by the petitioner, it is to be pointed out that the said outcry of the petitioner is only to save his skin by clutching the last straw in an attempt to vindicate himself from the charges. Nowhere before the enquiry officer the petitioner has raised the issue of non-marking of the said demand draft. No documentary evidence has also been placed before this Court to substantiate the contention of the petitioner that such a request was made to the enquiry officer. In the absence of any material to substantiate his plea, the contention advanced by the petitioner, at this stage before this Court can only be inferred to be a lame attempt on the part of the petitioner to wriggle out of the crucifixation. In this regard, a perusal of the report of the enquiry reveals that the enquiry officer, on proper appreciation of the materials, has held that the charges proved. The petitioner has not attributed any mala fide intent against the enquiry officer or in the drawal of the enquiry report.

11. It is also not the allegation of the petitioner that there has been no independent application of mind on the part of the disciplinary, appellate and revisional authorities. The petitioner merely contends violation of principles of natural justice, without pin-pointing as to the violation in that regard. Though it is the stand of the petitioner that he has not been given opportunity to examine witnesses, however, the petitioner has not pointed out the witness who has not been permitted to be examined. The petitioner has partaken in the enquiry throughout and the enquiry report reveals that the petitioner has been given opportunity at all times in the course of the enquiry. That being the case, merely stating that he has not been provided with opportunity to examine witnesses, that too at at this stage before this Court, cannot be accepted. Further, the stand of the petitioner has been negated by the appellate and the revisional authorities, by scrutinizing the documents and arriving at a conclusion in tandem with the conclusion reached by the disciplinary authority. Therefore, the stand of the petitioner that he was deprived of opportunity to examine witnesses does not find acceptance with this Court.

12. Further, it is not to be lost sight of that the petitioner, being a member of the disciplined force, highest standards of probity and integrity is expected of persons

working in the said force. However, the whole episode resulting in the initiation of the disciplinary proceedings and the subsequent finding as to the delinquency of the petitioner cannot be brushed side. In fact, corruption is one of the the major forms of unethical practice that is plaguing the entire country and, more especially, the pivotal organisations of the Governmental machinery. Unless corruption is weeded out from the system, the whole system will crumble and there will be utter lawlessness and chaos in the society. In fact, such forms of allegations ought to be curbed with iron hands. Further, it is to be pointed out that the standard of proof required in a disciplinary proceedings is not in the same league as that of the evidence required in a criminal trial and the enquiry officer as also the other authorities are to appreciate the evidence on the touchstone of preponderance of probabilities and not on the basis of the provisions of the statute. In such a backdrop, the analysis of the materials by the disciplinary authority and his decision to impose punishment on the petitioner, being on the basis of preponderance of probabilities, does not call for any interference.

13. 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.

14. 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)

15. In the case on hand, a careful perusal of the entire records reveal that pursuant to the submission of the report of the enquiry culminating in the imposition of punishment and confirmation of the said order of the disciplinary authority by the appellate and revisional authorities, 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 allegation raised against the petitioner viz., acted as an agent and demanded Rs.15,000/- from private parties for assisting the crafts passing through Pamban Channel by misusing his official position for personal gain, cannot be lightly brushed aside. Though the allegation of receipt of an amount of Rs.15,000/- has been found substantiated by the Department, however, the stand of the petitioner that the demand draft was received by him only to be encashed and deposited with the Department is nothing but an attempt on the part of the petitioner to give an interpretation to the act of the petitioner to come out of the predicament. The said act of receipt of illegal gratification by the petitioner has led to the award of punishment of termination of the petitioner by the disciplinary authority. The disciplinary authority has properly appreciated the materials placed before him and has imposed the punishment above, which has been confirmed by the appellate and revisional authorities by independently applying their mind. 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 and revisional authorities and is of the view that the same does not warrant any interference at the hands of this Court as the work entrusted to the petitioner requires some sort of legitimacy and integrity. The punishment imposed on the petitioner is also just and reasonable considering the nature of delinquency and 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.

16. 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. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Tamilnadu Maritime Board,
Appellate Authority,
112, Sir Thyagaraya Road,
T.Nagar, Chennai - 17.

2. The Deputy Chairman cum Chief
Executive Officer,
Tamilnadu Maritime Board,
112, Sir Thyagaraya Road,
T.Nagar, Chennai - 17.

3. The Secretary to Government,
Highways and Minor Ports (HF-2) Department,
Secretariat, Chennai - 9.

+1cc to Mr.Ganesh & Ganesh, Advocate, S.R.No. 40481
+1cc to the Government Pleader, S.R.No. 40702

W.P.No.5776 of 2013

UM(CO)
GN(11/02/2021)