

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.11774 of 2014

M.Suresh

... Petitioner

vs.

1. The Union of India,
rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
3. The Inspector General,
Central Industrial Security Force,
Hyderabad.
4. The Deputy Inspector General,
Central Industrial Security Force,
Recruitment Training Centre,
Arakkonam, Suraksha Campus Post,
Vellore District.
5. The Senior Commandant,
Central Industrial Security Force,
Recruitment Training Centre,
Arakkonam, Suraksha Campus Post,
Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 3rd Respondent dated 10.02.2014 in his order No.11014/T.S./Disc.Rev-Suresh/359/2014/769, confirming the order of the 4th Respondent dated 28.10.2013 in his order No.V-15014/CISF/RTC (A) Disc/Maj/S/2013/4634 confirming the order of the 5th Respondent dated 13.09.2013 in his final order No.V-15014/CISF/RTC (A) Disc/Maj/S/2013/4025 and quash the same and to direct the Respondents to pay all benefits.

For Petitioner :Mr.R.Thiyagarajan

For Respondents 1 to 3:Mr.J.Madhana Gopal Rao,
Sr.Central Govt. Standing Counsel

For Respondents 4 & 5 :Mrs.R.Mageswari

ORDER

Petitioner has come up with this Writ Petition seeking to quash the order dated 10.02.2014 passed by the 3rd Respondent, confirming the order dated 28.10.2013 passed by the 4th Respondent, confirming the order dated 13.09.2013 passed by the 5th Respondent and for a direction to the Respondents to pay him all benefits.

2. According to the Petitioner, he joined as a Constable in Central Industrial Security Force (CISF) on 03.09.2006. He was transferred from MBR (KBR) CISF Unit, Jharkhand to NDRF Battalion, Arakkonam under the 5th Respondent in the year 2012. He was issued Memorandum under Rule 36 of the CISF Rules by the 5th Respondent on 28.12.2012 with the following Article of Charge:

"CISF No.066008247 Constable/GD Suresh (u/s) of CISF, RTC, Arakkonam was detailed to perform the duties of Dry Canteen Salesman from 03.11.2012 to 02.12.2012. On 06.11.2012, 13.11.2012 and 21.11.2012, he sold 01 pair of Anklet Khaki to Chest No.307 ASI/Exe (UT) Niraj Kumar, Chest No.317 ASI/Exe (UT) R.K. Rana and Chest No.314 ASI/Exe (UT) P.K.Upadhya respectively. Further on 26.11.2012, he sold 01 pair of Boot Ankle (Black) to Chest No.255 HC/Clk. (UT) Nitin Singh and Chest No.254 HC/Clk. (UT) Ravi Kumar by collecting more amount than its fixed rate. Further, he has not issued any cash receipt for the items sold to the trainees. Thus the act committed by CISF No.066008247 Constable/GD Suresh amounts to gross indiscipline and misconduct which is unbecoming of a member of a disciplined Force. Hence, the charge.

3. Denying the article of Charge framed against him, the Petitioner submitted a detailed written Statement of defence on 15.10.2013. Enquiry Officer was appointed, who, after enquiry, submitted his Report based on the materials available on record. After calling for explanation from the petitioner, on the basis of findings of the Enquiry Officer, the 5th Respondent imposed the punishment of compulsory retirement on

the petitioner, vide order dated 13.09.2013. Aggrieved by the same, the Petitioner filed an Appeal before the 4th Respondent on 20.09.2013 and the same was rejected on 28.10.2013. Challenging the order of rejection, the Petitioner filed a Revision before the 3rd Respondent on 10.02.2014, which was also rejected, the petitioner has come up with the present Writ Petition.

4. Learned counsel for the Petitioner submitted that, when the Petitioner took over charge of the Canteen, rate of each items was displayed in the rate Board outside the Canteen and the same was also displayed inside the Canteen, which could be verified from the Statements of P.Ws.2 and 3. In such circumstances, it was not possible to collect excess rate for the items being sold. It is his contention that, when the trainees have deposed that, they have discussed the issue of excess rate with their room mates, none of their room mates were called for the enquiry. He pointed out that, the billing machine of the canteen was out of order and that, only hand written Bills were prepared and handed over to the trainees. However, during the enquiry, the trainees were not able to produce any hand written bill issued by the petitioner. There being no substantive material to implicate the petitioner, the finding recorded by the enquiry officer is unsustainable and the punishment consequent upon the said finding is also impermissible and, therefore, prays for allowing the present writ petition.

5. On the above contentions, this Court heard the learned counsel appearing for the respondents, who submitted that the materials available on record were analysed independently by the concerned authorities to come to the finding based on which punishment has been awarded. It is the further submission of the learned counsel for the respondents that the standard of proof required in a departmental proceedings is not like the proof that is required in a criminal trial. The appreciation of evidence is on the basis of preponderance of probabilities and not subject to strict enforcement of the provisions of the Evidence Act. Further, the learned counsel also laid emphasis on the ratio laid down by the Hon'ble Supreme Court with regard to the scope of judicial review in departmental proceedings and, therefore, prayed that this Court may not interfere with the order impugned herein.

6. 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, advertng 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 :-

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)

7. From the ratio laid down above, it is explicitly 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.

8. A perusal of the report of the enquiry officer reveals that a finding has been recorded that the petitioner had collected excess rate from three trainees viz. P.Ws. 4, 5 and 6, who, in their Statements, have clearly deposed that, the petitioner had charged excess rates towards purchase of Khaki

anklets on 06.11.2012, 13.11.2012 and 21.11.2012, respectively. The sales list for 06.11.2012 and 13.11.2012 produced by P.W.2 are indicative of the said fact. Though it is the contention of the petitioner that the billing machine was not in operation and manual billing was given and in the absence of any bill, produced by the above witnesses to prove the case against the petitioner, the case against the petitioner cannot stand the test of legal scrutiny does not merit acceptance for the simple reason that it is not required of the persons, who purchased the items to keep the manual bill preserved, as they would not be aware of any disciplinary proceedings that would be initiated by the respondents against the petitioner. But it is common knowledge that insofar as manual billing is concerned, always a duplicate copy is maintained by the biller for the goods sold, so as to have a cross check on the sales on the close of hours of business. Had the petitioner given manual bills, definitely there ought to be duplicate copy of the bills given, which the petitioner could have summoned to substantiate his case. Merely pleading that billing machine was not working and manual bills was given and the said bills have not been produced by the department to substantiate the charge against the petitioner is nothing but a feeble attempt on the part of the petitioner to clutch to the last bit of straw to vindicate himself from the charges.

9. On a holistic consideration of the materials available on record, this Court is of the considered opinion that the findings recorded in the enquiry are just and reasonable and this Court, under the guise of judicial review, cannot conduct a roving expedition as if the matter is in appeal before this Court. The petitioner having not produced any material to substantiate his case, the finding recorded by the enquiry officer, as accepted by the authorities below to fasten the guilt on the petitioner does not require any interference.

10. Insofar as the punishment awarded to the petitioner is concerned for the delinquency, 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 the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In Prem Nath Bali - Vs - High Court of Delhi reported in (2015 (16) SCC 415), the Hon'ble Supreme Court has 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)

11. In the case on hand, a careful perusal of the entire records right relating to the enquiry as also the order passed by the disciplinary authority, as confirmed by the appellate and revisional authorities, it clearly transpires that the disciplinary authority has applied his mind to the enquiry report and all the other materials while imposing the punishment of compulsory retirement and on appeal and revision, the appellate and the revisional authorities have appreciated the materials independently and concurred with the view of the disciplinary authority. On an overall consideration of the materials, 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 the punishment imposed on the petitioner is 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.

12. In fine, the Writ Petition stands dismissed, as devoid of merits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(vsi2/aeb)

To:

1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
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+1 cc to Mr.J.Madanagopal Rao, Advocate SR No.38487

VSN II(CO)
NS(30/12/2020)

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