

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :03.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.22631 of 2014

M.M.Baig

...Petitioner

- Vs -

1. The Union of India.
Rep. By its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Inspector General,
Central Industrial Security force,
Southern Sector,
Head Quarters,
Near War Memorial,
Chennai 600 009.
3. The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bhawan,
Besant Nagar, Chennai 600 090.
4. The Group Commandant,
Central Industrial Security Force,
South Zone, Head Quarters,
Rajaji Bhawan,
Besant Nagar, Chennai 600 090.
5. The Deputy Commandant,
Central Industrial Security Force Unit,
VTPP Vallur,
Chennai 600 103.

..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 relating to the order passed by the 2nd respondent dated 06.06.2014 in his order No. V-15014/L&R/SS/App/MMB/2014/23 confirming the order passed by the 3rd respondent in his order No.15015(1)/01/SMR/MMB/L&R(SZ)/14-1405 dated 21.02.2014 enhancing the punishment ordered by the 4th respondent in his final order No.V-15014/GHC/AD.VI/VTPP(V)/Maj

(MMMB)/2013-4318 dated 17/18.09.2013 and quash the same and to direct the respondents to pay all monetary benefits.

For Petitioner : M/S.A.S.Mujibur Rahman
For Respondents : Dr.G.Babu CGSC

ORDER

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India with a prayer to call for the entire records relating to the order passed by the 2nd respondent dated 06.06.2014 in his order No. V-15014/L&R/SS/App/MMB/2014/23 confirming the order passed by the 3rd respondent in his order No.15015(1)/01/SMR/MMB/L&R(SZ)/14-1405 dated 21.02.2014 enhancing the punishment ordered by the 4th respondent in his final order No.V-15014/GHC/AD.VI/VTPP(V)/Maj (MMMB)/2013-4318 dated 17/18.09.2013 and quash the same and to direct the respondents to pay all monetary benefits.

2. It appears that the petitioner, while in service, was charged for a serious act of misconduct involving drunkenness and misbehaviour with the public. It is the case of the petitioner that while undergoing Rotational Training at CPCL, Manali with effect from 1.4.2013 to 13.4.2013, he was found absent from the Unit Lines of CISF Unit CPCL, Manali at about 22.30 hours, on 3.4.2013 when special roll call was conducted and as the above act, according to the respondents, on part of the petitioner amounts to gross misconduct and indiscipline. The petitioner was called upon to submit his explanation and being not satisfied with the explanation offered, enquiry was conducted.

2.1.It is the further case of the petitioner that he also submitted that it is the case of the respondents, as evident from the findings that P.W.8 received a telephonic message from the Inspector SK.Rajkumar at RK Nagar police station that HC/GD M.M.Baig created a public nuisance at Nethaji Nagar under the influence of liquor and that he has been brought to the police station. The petitioner denied all allegations, and stated that he had not used liquor and did not commit any nuisance when the enquiry was started. It is the further stand of the petitioner that he was taken to the police station on a doubtful case and no complaint was given by any person and later he was left out without any action. It is the grievance of the petitioner that based on the baseless allegations, enquiry was conducted by framing two charges which were denied. However, the enquiry officer held the charges proved and after calling for further explanation, the disciplinary authority awarded the punishment

of reduction of pay by one increment for three years. In spite of the punishment, by invoking suo motu powers, the 4th respondent has issued the show cause notice on 21.01.2014 proposing to pass the order of dismissal from service. Though he submitted his reply to the show cause notice on 1.2.2014 to the 4th respondent, however the 4th respondent by order dated 8.10.2013 imposed the punishment of reduction of pay by minimum stage for period of five years. Challenging the same, he filed appeal before the 3rd respondent, which was rejected on 6.6.2014. Against the said punishment awarded, the present petition has been filed.

3. It is the contention of the learned counsel for the petitioner that though the 3rd respondent is clothed with power to enhance the punishment awarded to the petitioner, however, without following the due process of law, the 3rd respondent cannot impose any enhanced punishment. Further, it is the submission of the learned counsel for the petitioner that the 3rd respondent had made up his mind with a predetermined notion while calling upon the petitioner to submit his explanation, which vitiates the said impugned order of punishment. It is the further submission of the learned counsel for the petitioner that the standard of proof placed before the respondents was not sufficient to bring home the charge relating to the drunkenness of the petitioner. It is the further submission of the learned counsel that imposition of dual punishment for a single charge falls squarely within the realm of double jeopardy and, therefore, this court has to necessarily intervene in the punishment imposed on the petitioner. Hence he prays for allowing the writ petition. Learned counsel appearing for the petitioner drew the attention of this Court to the decision of this Court in Ex.CONST. R.S.Shekhawat- Vs - Union of India & others (WP. (C) No.1135/2007, dated 21.05.2008), wherein, in identical circumstances, this Court has considered the case of the petitioner therein and passed favourable orders. Accordingly he prays for allowing this writ petition.

4. Learned counsel appearing for the respondent assailed the finding that the authorities below, on proper and independent application of mind, has dealt with the case of the petitioner and have awarded the punishment and this Court shall not ordinarily sit in appeal over the decision of the disciplinary authority. It is the further submission of the learned counsel appearing for the respondents that the duty of this Court is to see as to whether the enquiry has been conducted in accordance with law and the Court shall not necessarily interfere with the punishment imposed in exercise of its inherent power under Article 226 of the Constitution unless it is shown that the

punishment imposed is perverse and is in violation of principles of natural justice. The respondents, in due adherence to the principles of natural justice, has conducted the enquiry and passed the punishment which does not require any interference at the hands of this Court.

5.This Court heard the submissions advanced by the learned counsel appearing on either side and also 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 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 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. It is to be stressed that the Court 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 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. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has

also codified the circumstances under which re-appreciation of evidence is permissible.

11. True it is that the records reveal that the respondents have followed the procedure contemplated for proceeding with the disciplinary enquiry by serving the petitioner duly and even the petitioner has no quarrel with the process of enquiry. It is only at the appellate stage, when the punishment is sought to be modified, the petitioner has a grievance. However, this Court, sitting under Article 226, in exercise of its inherent powers, shall not ordinarily interfere with the punishment, unless it is shown to be perverse.

12. In this regard, one crucial aspect requires the consideration of this Court. A perusal of the punishments reveal that dual punishment has been awarded, viz., one of reduction in pay by one increment for a period of three years and another punishment that the petitioner will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increment of pay. In effect, twin punishments have been awarded to the petitioner by the disciplinary authority. Further the punishment cumulatively means while during the subsistence of one punishment, the petitioner will also suffer another punishment and that on the completion of punishment, the petitioner will suffer another punishment of postponing of his future increment of pay on account of the reduction in pay suffered by him. This punishment imposed on the petitioner is nothing but punishing the petitioner twice for the same offence, which is nothing but double jeopardy, which cannot be allowed to stand. A delinquent has to suffer for a delinquency only once and a repeat is impermissible. However, the punishment imposed on the petitioner is nothing but repeating the punishment after the currency of the first punishment. The above punishment, awarded to the petitioner definitely deserves interference at the hands of this Court.

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 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)

14. In the case on hand, a careful perusal of the charge as also the findings recorded coupled with the dual punishment awarded to the petitioner, this Court is of the view that one of the punishment deserves to be interfered with. On considering the charge and the consequent finding rendered thereupon, this Court is of the considered view that the gravity of the offence committed by the petitioner, being a member of the disciplined force, being so very grave, the first portion of the punishment relating to reduction in pay by one increment for three years would be a just and reasonable punishment which would proportionate to the charges levelled against the petitioner.

15. For the reasons aforesaid, this writ petition is allowed

in part, modifying the punishment imposed on the petitioner to reduction in pay by one increment for a period of three years. Consequently connected miscellaneous petitions are closed. However, there shall be no order as to costs.

s/d

Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs

To

1. The Union of India.
Rep. By its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
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+1cc to Mr.A.S.Mujibur Rahman, Advocate, SR.No.38999

W.P. NO.22631 of 2014

LN(CO)
KKV/10/03/2021