

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
16.12.2020	22.12.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 1428 OF 2014

R.Govindaraju

..Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By Secretary to Government
Commercial Taxes & Registration Dept.
Secretariat, Chennai 600 009.
2. The Inspector General of Registration
Chennai 600 028.

..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 on the file of the 1st respondent relating to the order in G.O. (2D) No.105, Commercial Taxes and Registration (H) Department, dated 5.8.2013, quash the same and to issue consequential directions to the respondents to regularise the period of suspension from 13.2.08 to 29.2.08 as 'duty' for all purposes and declare that the petitioner shall be deemed to have been reinstated in service on 13.2.08 and retired from service on 29.2.08 without any condition and with all pensionary and retirement benefits.

For Petitioner : Mr. M.Ravi
For Respondents : Mr. T.M.Pappiah, Spl. GP

ORDER

It is the case of the petitioner that he entered the service of the 2nd respondent as Junior Assistant and after obtaining a series of promotions, at the crucial point of

time, was functioning as District Registrar and the petitioner, on attaining the age of superannuation, was due to retire from service on 29.2.08. While serving thus, vide G.O. (D) No.55, Commercial Taxes and Registration (H1) Department, dated 13.2.08, the petitioner was placed under suspension in contemplation of grave allegations/charges and vide G.O. (D) No.84, Commercial Taxes and Registration (H1) Department, dated 29.2.08, invoking the powers under FR 56 (1) (c), the petitioner was not permitted to retire from service until completion of inquiries into the charges framed against him.

2. Thereafter, the Tribunal for Disciplinary Proceedings (for short 'TDP'), issued a charge memo dated 9.4.08 with regard to accumulation of assets to the tune of Rs.10,19,361/- disproportionate to the known sources of income of the petitioner during the check period from 1.1.95 to 31.12.01 and consequent violation of Rule 20 (1) of the Tamil Nadu Government Servant's Conduct Rules. The petitioner, on receipt of the charge memo, submitted his explanation denying the allegations and stating that the properties were acquired by his wife from her independent source of income derived from Cable TV business and not from the income of the petitioner and that his wife is an income tax assessee and all the income earned by her from her independent source have been disclosed in the income tax statements for the relevant years. However, not satisfied with the explanation, proceedings were conducted by the TDP and an enquiry report, dated 30.8.11 was submitted holding that the charges framed against the petitioner stood proved. The copy of the enquiry report was furnished to the petitioner and he was put on notice as to why punishment should not be imposed on him to which the petitioner submitted his further explanation. Not satisfied with the said explanation, the 1st respondent, in consultation with the Tamil Nadu Public Service Commission, passed the order, impugned herein, imposing the punishment of 'Dismissal from Service' on the petitioner, which is assailed before this Court in the present writ petition.

3. Learned counsel appearing for the petitioner that the findings arrived at by the TDP is not based on evidence available on record, but it is mere acceptance of the materials placed by the employer against the delinquent. The materials placed by the delinquent/petitioner has not been properly appreciated while rendering a finding as to the delinquency of the petitioner.

4. It is the further submission of the learned counsel for the petitioner that during the check period from 1.1.95 to 31.12.01, the amount of assets, which is stated to be disproportionate to the known source of income of the petitioner, does not form part of the asset of the asset of the

petitioner, but were standing in the name of the petitioner's wife, who has her own source of income, for which necessary documents have been filed to establish the source from which the petitioner's wife was deriving her income. It is the further submission of the learned counsel for the petitioner that the said income was also shown in the income tax assessment of his wife, as part of her income. Such being the case, when the petitioner has properly established that his wife was having her own source of income by running business and earning profits, which were shown in the income tax assessment for the various years, bringing the said income into the income of the petitioner to arrive at the asset at the hands of the petitioner is wholly impermissible.

5. It is the further submission of the learned counsel for the petitioner that the jewels of the petitioner's wife, were part of the 'stridhana' given to her at the time of her marriage with the petitioner, which were sold for purchasing some of the properties, which sale of jewels have been established by the petitioner through proper documentary evidence. It is the further submission of the learned counsel for the petitioner that each and every transaction of the petitioner's wife has been proved not only by documentary evidence, but also by adducing oral evidence. The TDP has failed to take note of the said materials while rendering a finding as to the disproportionate asset at the hands of the delinquent.

6. It is the submission of the learned counsel for the petitioner that insofar as the property purchased in the name of his son is concerned, the said purchase was at the behest of the mother of the delinquent, being her last wish in the Will and the same was purchased during the check period, however, the prior information was not given to the respondents and permission taken from them, which was on account of the action taken against the petitioner, which pressure had made him to inadvertently not inform the same to the respondents.

7. It is the further submission of the learned counsel appearing for the petitioner that the disciplinary authority has not applied his mind to the materials available on record as also the enquiry report, but has mechanically, accepted the findings rendered by the TDP and without taking into proper consideration the explanation offered by the petitioner, has imposed the punishment, by way of an order, which is totally against the well laid precedents in law on the subject, as the said order is a non-speaking order, but equally the punishment imposed on the petitioner is also disproportionate to the delinquency alleged and shocking the conscience of this Court, which requires to be set aside in limine and the matter remitted

to the respondent for fresh consideration on merits and in accordance with law.

8. In fine it is the submission of the learned counsel for the petitioner that the petitioner, through oral and documentary evidence has established all the amounts, which were shown to be assets disproportionate to the known source of income of the petitioner, which has not been appreciated in proper perspective by the TDP and, therefore, the punishment imposed by the respondent on the basis of the findings rendered by the TDP, which are erroneous on the face of it, does not deserve to be sustained and, accordingly, prays for allowing the present petition. In the alternative, it is submitted that the order passed by the respondents, being non-speaking in nature, the matter atleast deserves to be remanded to the respondents for fresh consideration.

9. Per contra, learned Special Government Pleader appearing for the respondents submitted that the appreciation of evidence in the case of disciplinary proceedings is not unlike the appreciation in a criminal trial and it is only on the touchstone of preponderance of probabilities the evidence needs to be analysed by the enquiry officer. It is the further submission of the learned Special Government Pleader that even if the wife of the delinquent intends to enter into a business venture, with her own capital, which is from her own source of income, even then, it is incumbent on the part of the delinquent to inform his employer of the said fact. However, in the case on hand, the delinquent has not only failed to inform his employer at any point of time, during the check period, about his wife doing business. In this regard, sub-rule (1)(b) of Rule 8 of Tamil Nadu Government Servants' Conduct Rules, 1973, is pressed into service to submit that the non-furnishing of information by the delinquent is a violation of the rule, which attracts a grave charge.

10. It is the further submission of the learned Special Government Pleader for the respondents that there is a categorical finding recorded by the TDP that during the period 1997-1998, 1998-1999 and 1999-2000, the earnings of the delinquent's wife are much lower than the value of the assets purchased by her for which there is no explanation forthcoming from the petitioner. Though it is the explanation of the delinquent that his wife had sold her jewels, which were given as 'stridhana', however, the sale of jewels is later in point of time to the said acquisition of properties. The proof submitted by the petitioner falls much short of establishing the fact that his wife was carrying on separate business from which she was earning well.

11. It is the further submission of the learned Special Government Pleader that the delinquent has not shown the jewels and cash given as 'stridhana' to his wife during marriage or at any time after marriage in his property statement filed with the Department, which is an infraction of the Conduct Rules and in the absence of finding any of the said properties in the statement of the delinquent as that being the properties of his wife, the stand taken now could only be termed to be a stand taken for the purpose of wriggling out of the predicament in which the petitioner finds himself.

12. The petitioner has stated about the business activities of his wife only during the enquiry by the vigilance officials on 7.2.02 and had in fact gone on to state that he came to know about her business activities only after the enquiry by the vigilance officials. Not only the said statement falls short of inspiration, as the petitioner and his wife, have all along been living as husband and wife under a same roof, the ignorance pleaded by the petitioner as to not having any knowledge about the business activities of his wife for such a long time does not appeal as plausible to the mind of any prudent person.

13. It is the further submission of the learned Special Government Pleader that the lease amount to the tune of Rs.4 Lakhs, said to have been received by the petitioner's wife from her business partner, one Pushparaj, viz., P.W.2, does not find place in the IT return submitted by the petitioner's wife for the period 1999-2000 or 2000-2001. Merely a sum of Rs.60,000/- is shown as the business income in the IT return for the Financial Year 1999-2000 and 2000-2001. Therefore, the said amount of Rs.4 Lakhs does not find disclosure in any place to be taken as the amount as income of the delinquent's wife and mere submission of some document, purporting about receipt of Rs.4 Lakhs would not suffice for the purpose of disciplinary proceedings to hold that the said amount is not disproportionate income at the hands of the petitioner.

14. It is the further submission of the learned Special Government Pleader that though the petitioner's wife is said to have earned Rs.60,000, Rs.95,000 and Rs.1,20,000/- during the financial years 1997-1998, 1998-1999 and 1999-2000, however, assets to the tune of Rs.2,15,173/-, Rs.6,17,130/- and Rs.3,11,320/- have been made purchased by the petitioner's wife during the financial years 1997-1998, 1998-1999 and 1999-2000, and the manner in which the said income has been earned by the wife of the delinquent has not been disclosed.

15. It is the further submission of the learned Special Government Pleader that the property purchased in the name of the petitioner's son, though stated to be the last wish of the

petitioner's mother in her Will, has not been disclosed to the Department, which is a violation of the Conduct Rules and the reason given by the petitioner to justify his act that the pressure and pre-occupation on his work front as also the enquiry against him had caused the inadvertent act, the same does not deserve acceptance for the simple reason that the enquiry was initiated against the petitioner only in the year 2002, however, the purchase of the immovable property in the name of his son was made in the year 2000 itself. Therefore, the stand taken by the petitioner that it is an inadvertent act, is only to absolve himself out of the trouble in which he finds himself.

16. It is the further submission of the learned Special Government Pleader that the 1st respondent, analysing the materials placed before him in the form of the enquiry report as also the explanation offered by the petitioner to the said findings recorded by the enquiry officer, has gone in-depth and concurred and accepted the findings recorded in the said enquiry and, therefore, once the 1st respondent concurs with the findings recorded in the enquiry, it is not necessary that each and every evidence has to be analysed by him separately by recording separate reasons and such an exercise by the 1st respondent cannot be termed to be violation of principles of natural justice necessitating remand of the matter to the 1st respondent for passing a fresh order, which would be nothing but an attempt on the part of the petitioner to multiply the proceedings and delay the outcome of the proceedings.

17. It is the submission of the learned Special Govt. Pleader that this Court, sitting under Article 226 of the Constitution, has very limited scope with regard to interfering in disciplinary proceedings. Unless there is serious violations of principles of natural justice or the findings of the enquiry officer are perverse or on the face of the facts, the punishment is extremely shocking to the conscience of the court, the Courts shall normally not interfere with the said order. Therefore, it is submitted that no interference is warranted with the findings as also the punishment recorded against the petitioner.

18. To the above contentions advanced on behalf of the respondents and countering the counter submitted by the respondents, a rejoinder has been filed by the petitioner, wherein the petitioner has emphatically denied all the averments made in the counter and taking particular reference to Rule 7 of the Tamil Nadu Government Servant Conduct Rules, which prescribes that if the acquisition of immovable properties by any member of the family is from their own source of income, it is not necessary for the government servant concerned to seek prior permission from the prescribed authority. It is the

submission of the petitioner that the acquisition of immovable properties being by the members of the petitioner's family from out of their own source of income, no necessity arises for the petitioner to seek prior permission of the prescribed authority.

19. It is the further submission in the rejoinder that the documentary evidence evidencing the source of income of the petitioner's wife stood established, which documents have also been placed before this Court in the form of additional typed set of papers and it is submitted that the petitioner's wife having individual source of income for which she has filed necessary return of income for the various assessment years, the acquisition made by the petitioner's wife would in no way act to his detriment in his official capacity and it is not necessary for the petitioner to seek prior permission of intimate the acquisition of asset by his wife to the prescribed authority.

20. This Court gave its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

21. The Hon'ble Supreme Court, in B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749), while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is

guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

22. 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."

23. 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 :-

"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)

24. 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.

25. In the case on hand, the principal contention advanced by the learned counsel appearing for the petitioner is on the nature of order passed by the disciplinary authority. It is the contention on behalf of the petitioner that the order passed is a non-speaking order and, therefore, the order is bad in law and deserves to be set aside.

26. It is trite that the Court may interfere in an order 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. In the case on hand, it is not the case of the petitioner that there is violation of rules of natural justice or violation of statutory rules. The enquiry, even according to the petitioner, has been conducted in a fair and proper manner and the petitioner has been afforded all opportunity to place materials, in fact, substantial materials to defend his case. Therefore, the enquiry having been conducted in a proper manner without there being infraction of any rules, no fault can be found with the enquiry proceedings.

27. However, the gravamen of the contention is only insofar as it relates to the non-speaking nature of order passed by the disciplinary authority. A perusal of the impugned order reveals that the conduct of the enquiry proceedings have been exhaustively quoted and so also the explanation offered by the petitioner. In fact, to say, the proceedings of the enquiry as also the explanation offered by the petitioner against the enquiry report are dealt with too exhaustively so as to suggest that the disciplinary authority has not left even an iota of information placed before him by either side. Further, the disciplinary authority, after detailing the various materials on which both sides support their stand, has, on independent application of mind, tend to side with the findings recorded by the enquiry officer.

28. However, it is the insistent submission of the learned counsel for the petitioner that the order passed by the disciplinary authority imposing punishment on the petitioner is a mere extraction of the various materials from the enquiry report and the explanation offered by the petitioner and the same cannot be said to be a reasoned order, which necessitates application of mind on the part of the authority to the materials placed before him.

29. In this regard, useful reference can be had to the judgment of the Hon'ble Apex Court in Barium Chemicals Ltd. - Vs - A.J. Rana (1972 (1) SCC 240), wherein the necessity to examine all the documents while considering the case for grant of prosecution has been dealt with. In the above context, the Hon'ble Apex Court held as under :-

"14. The words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect

(arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect" (vide Shorter Oxford Dictionary). According to Words and Phrases – Permanent Edition Vol. 8-A "to consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.

15. A necessary corollary of what has been observed above is that mind has to be applied with regard to the necessity to obtain and examine all the documents mentioned in the order. An application of the mind with regard to the necessity to obtain and examine only a few of the many documents mentioned in the order, while there has been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. If, however, there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of the authority concerned regarding the necessity to obtain the documents in question."

(Emphasis supplied)

30. Keeping in mind the ratio laid down by the Hon'ble Apex Court in Barium Chemicals case (supra), a careful consideration of the entire impugned order reveals the application of mind, which has been expressed and applied by the disciplinary authority, while dealing with the case of the petitioner culminating in the punishment being imposed on the petitioner. Though it can be gainsaid that the impugned order has not been couched in a way, which appeals to the person reading the said order so as to deem it as an order, in which independent

application of mind is said to exist, nevertheless, it is to be pointed out that an order should be read as a whole and not piecemeal. On a wholesome reading of the impugned order, it cannot be stated that the materials placed before the disciplinary authority has not been considered independently by the disciplinary authority. The application of mind of the disciplinary authority is exhibited in the application of law, wherein the disciplinary authority, on the findings rendered by the enquiry officer in the report and also the explanation submitted by the delinquent to the said report, as required under law, has taken the views of the Tamil Nadu Public Service Commission with regard to the imposition of punishment on the petitioner for the delinquency committed by him and after going through the opinion offered by the Tamil Nadu Public Service Commission on the punishment proposed to be imposed on the delinquent, on a careful analysis of the materials, the opinion and the nature of delinquency, has imposed the punishment on the petitioner. Merely because each and every finding recorded by the enquiry officer has not been dealt with individually by the disciplinary authority in the impugned order would not be a ground to outrightly reject the impugned order as a non-speaking order. If such a finding is to be recorded, it would only tend to mean that each and every finding has to be analysed by the disciplinary authority as if he is sitting in enquiry against the delinquent, which is not the way in which the principle underlying the analysis by the disciplinary authority has to be read. Giving such a narrower interpretation would defeat the very purpose of the role of disciplinary authority and would make the role of the disciplinary authority as that of an enquiry officer. Therefore, the contention that the disciplinary authority has not applied his mind individually to the findings recorded by the enquiry officer does not merit acceptance and the decision of the Full Bench of this Court definitely comes in aid to the respondents.

31. Coming to the assessment of the evidence by the enquiry officer, as has been pointed out above, this Court is not sitting in appeal over the decision of the disciplinary authority or the enquiry officer, but it is only in the review jurisdiction, in which this Court has to look into the materials to render a finding. As held in Gunasekaran's case (supra), this Court is only to 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.

32. In the case on hand, all the materials placed by the petitioner, both oral and documentary, have been taken on record by the enquiry officer and have been analysed threadbare. Though this Court is not required to go into the correctness or the admissibility and credibility of the evidence and reappraise the same, however, the whole crux of the case of the petitioner being on the question that the evidence has not been properly looked into, more especially, the documents placed to support the income earned by the wife of the delinquent, this Court, in the interest of justice, is just looking at a few pieces of materials alone to find out whether the allegation made out by the petitioner is sustainable.

33. Before embarking upon the said expedition, it is to be pointed out that there is utter infraction of the provisions of the Conduct Rules by the petitioner. In that, the petitioner has not informed about the business venture of his wife, which, even according to him, has been carried on by her since 1997. The petitioner cannot feign ignorance and claim that he was not aware of the business carried on by his wife. The petitioner and his wife are living under one roof, which is not in dispute. Though it is the case of the petitioner that all was not well between him and his wife, that would not make the petitioner naïve even to the idea of knowing that his wife is into some business activity. The petitioner, from the materials available on record, as also the explanation offered by him, has outrightly pleaded his innocence and also his ignorance about the business run by his wife, which explanation, in no way appeals to the mind of this Court.

34. Conduct Rules are framed for the purpose of keeping a tab on the government servant from entering upon any fraudulent activities in detriment to his official duties. Though it is the case of the petitioner that the last wish of his mother in the form of the Will, had led to the purchase of the property in the name of his son, however, it is borne out by record that the petitioner has not informed the Department of the immovable property acquired in the name of his son. Though the petitioner claims that the allegations levelled against him affected him mentally and that had caused the inadvertence in not informing the acquirement of the immovable property in the name of his son, however, as rightly pointed out by the learned Special

Government Pleader, the immovable property was purchased in the name of his son on 27.9.2000, but the enquiry commenced only in the year 2002 and, therefore, the explanation of the petitioner claiming inadvertence in not informing of the said purchase, is nothing but an attempt on the part of the petitioner to wriggle out of the predicament in which he has found himself.

35. Coming back to the transactions made by the petitioner's wife, which, according to the petitioner are out of her income and, therefore, no intimation or permission need be taken by the Department, as stated above, though this Court is not necessitated to look into the evidence, however, in view of the fact that it has been reiterated by the petitioner before this Court that the materials have not been looked in proper perspective by the enquiry officer, this Court intends to shuffle through a few evidences to find out whether the said stand is made out.

36. It is the stand of the petitioner that the business venture relating to cable TV was started by his wife from out of her own source of income in the year 1997 by investing Rs.40,000/=. First of all, the source of Rs.40,000/- has no clear explanation except for the fact that the petitioner claims that the receipt of gifts from her family members since the time of their marriage was at the hands of his wife, which was used for starting the cable TV business. Be that as it may. The cable TV business, even according to the petitioner, was started in the year 1997 for which agreement was entered into with one Pushparaj, who was examined as P.W.2, on 14.11.1997. However, a perusal of the additional typed set of papers filed by the petitioner reveals that the permanent registration certificate for the cable TV operation was granted on 3.5.1999 for which application was submitted on 19.4.99. However, in the IT return filed by the delinquent's wife for the year 1997-1998 reveals an income of Rs.60,000/- from business. The business venture itself having been started only on 14.11.97, this Court is at a loss to understand as to the how the an income of Rs.60,000/- finds place in the IT return for the year 1997-1998, when no other business has been run by the petitioner's wife prior to the said date. Equally, only on 3.5.1999, registration certificate for cable TV has been granted, but for the year 1998-1999, an income of Rs.95,000/- has been shown to be the business income. There is no explanation on the side of the petitioner as to the above anomaly. Further, it is to be pointed out that it is the case of the petitioner that an amount of Rs.40,000/- had been invested by the wife of the petitioner in the business venture along with one Pushparaj. However, the manner in which the said amount was invested has not been spoken to by the petitioner. Neither the instrument by which the amount was invested nor an entry in the bank records to the

effect that a cash transaction to an equivalent amount was involved was placed before to substantiate the contention that the said amount was invested by the wife of the petitioner, which is from her own source of income.

37. Though the enquiry officer has pointed out the receipt of the income during the year 1997-1998, 1998-1999 and 1999-2000, which works out to Rs.2.75 Lakhs, however, the purchases that have been made in the year 1999, 2000 and 2001 to the tune of Rs.11,43,623/- far exceeds the income earned by the petitioner. Though the petitioner has spoken about the sale of jewels for the purchase of the immovable properties, however, it is to be pointed out that the sale is only to the tune of Rs.60,000/-, in the year 2001. However, properties have been purchased in the year 1999 and 2000 for a value of more than Rs.8.30 Lakhs for which the source of income has not been clearly shown by the petitioner, except stating that the same was earned through the business venture, viz., cable TV, by the petitioner's wife. It is further to be pointed out that in the rejoinder, the petitioner has taken a stand that to purchase a house site in the year 1987, he had pledged the jewels gifted to his wife during marriage and raised an amount of Rs.12,000/- for which he had sought and obtained permission from the concerned authority. However, it is to be pointed out that though permission has been accorded to the petitioner to pledge the jewels and obtain loan, however, it is to be pointed out that regarding redemption of the jewels, no material whatsoever has been placed, which would go to show that the jewels redeemed by the petitioner were later sold by the petitioner's wife to raise the amount of Rs.60,000/- to purchase the assets.

38. One other crucial aspect, which requires to be pointed out, which has not been shown in the IT returns is the receipt of Rs.4 Lakhs as lease amount during the year 1999-2000. When the petitioner, all along, relies on the business of his wife as the source of her income, then for all intent and purposes, the amount of Rs.4 Lakhs, taken as lease amount, as early as on 25.3.2000 ought to have been shown as income in the particular year in the IT return. The said amount has not been shown in the IT return for the said year. It is also to be pointed out that in the year 1999-2000, the income shown in the IT return, said to have been earned by the delinquent's wife is only to the tune of Rs.1,20,000/-. In such circumstances, there is complete silence as to the Rs.4 Lakhs, said to have been received by the petitioner's wife as lease amount, which ought to have been shown as income at her hands, had she really received the said amount during that time. Further, the amount of Rs.4 Lakhs said to have been paid as lease amount, it is to be pointed out that no instrument towards the said payment nor any banking transaction evidencing the said amount as receipt in the account

of the petitioner's wife has been placed before the enquiry officer to substantiate the case of income of the petitioner's wife. The petitioner has merely relied upon certain unregistered document to establish his case as to the business venture of his wife and also relating to the receipt of Rs.4 Lakhs as lease amount.

39. Further, it is to be pointed out that in the application for obtaining permanent certificate for cable TV, while the application has been made by T.Pushparaj in his individual capacity in the name of 'Annai Cable Vision', the said application is bereft of details as to whether it is a proprietary/partnership/private limited firm or otherwise. Such being the status of the application, it would be unsafe for this Court to accept the submission of the petitioner that his wife was a partner in the business of cable TV business along with the said Pushparaj and that the said business yielded returns, which in turn manifested itself into the acquisition of asset by the wife of the petitioner and, therefore, such acquisition was from her own source of income and not from the income of the petitioner.

40. As already stated above, the above evidences are culled out only to show the discrepancy in the submissions advanced on the side of the petitioner and not in line of appreciating the said evidence. The above evidence has been appreciated by the enquiry officer, in proper perspective, which has led to the filing of the report holding that the charges framed against the petitioner stood proved. It is to be pointed out that mere submission of documents and examination of witnesses on the side of the petitioner would not suffice to hold that the petitioner has discharged his liability of rebutting the prosecution through rebuttable evidence. The rebuttal should be of such a nature that equally the defence projected would appear to be a probable defence. However, as pointed out above, the defence stands shattered in the wake of the discrepancies pointed out above, which are not exhaustive, but only limited to analysing the manner in which the evidence has been appreciated by the Department, on the touchstone of preponderance of probabilities to come to a conclusion that the assets at the hands of the petitioner is disproportionate to his known sources of income.

41. Further, as pointed out above, the petitioner has not disclosed the acquiring of the asset in the name of his son to the Department, which is a gross violation of Rule 7 (1) (a) of the Conduct Rules. Further, the petitioner has also not disclosed in his property statement about the jewels of his wife, which were given as 'stidhana' to her at the time of their marriage, which is also in violation of Rule 7 (1) (a) of the

Conduct Rules. It is further to be pointed out that the petitioner and his wife, being under one roof till date, as evidenced from the fact that the petitioner has placed voluminous documents before the enquiry officer to establish the source of income of his wife, cannot feign ignorance about the business venture started by his wife and acquisition of assets by his wife and non-disclosure of the same definitely is violation under 8 (1) (b) of the Conduct Rules. Cumulatively, the petitioner has not brought to the notice of the Department any of the details pertaining to the asset acquired by the members of his family, which is one of the pre-requirement under the Conduct Rules and, therefore, definitely there is infraction of the Rules by the petitioner warranting action against him.

42. It is to be reiterated that the disciplinary authority is the sole judge of facts. 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.

43. The judicial arm can extend only to the limited extent of adjudicating the correctness of the order passed by the authorities, which is not in violation of principles of natural justice and which has been passed on the basis of tenable evidence, though not within the realm of the Evidence Act. The judicial review cannot extend beyond the demarcated scope, as adumbrated by the Hon'ble Apex Court time and again and there being no infirmity in the conduct of the proceedings as well as the appreciation of evidence, more so in a departmental proceedings, the orders passed by the authorities below does not

suffer the vice of principles of natural justice or procedural violation and the orders passed by the disciplinary authority as confirmed by the appellate authority cannot be said to be a prejudiced order or an order passed without application of mind, which requires interference at the hands of this Court.

44. The respondents, on holistic consideration of all the materials, including the report of the vigilance, the report of the enquiry officer holding the charges proved and the explanation of the petitioner being far from satisfactory, have decided to come to the conclusion that the allegations against the petitioner stood proved, this Court, sitting under Article 226 of the Constitution, invoking its power of judicial review, as already stated, cease to act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. Therefore, the conclusion arrived at by the disciplinary authority on an analysis and appreciation of the report filed by the enquiry officer holding the charges proved against the petitioner does not call for any interference.

45. 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.

46. 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)

47. In the case on hand, a careful perusal of the entire records right from the conduct of the enquiry culminating in the imposition of punishment reveal that there has been proper and independent application of mind on the part of the authority. It is expected of the petitioner, as a Government servant, to set the highest benchmark in standards of probity and conduct and as a senior officer, should be an example to the lower strata of the employees. However, the petitioner, giving his conduct a go-by to the winds, has involved himself in acts belittling his status of a Government servant and in such a scenario, the respondents have rightly initiated the proceedings, which if left to go unnoticed, would spread its tentacles far and wide by sending a wrong signal to the other employees under the respondents to resort to these types of activities which would undermine the public confidence in the governmental institutions. 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 and is of the view that the same does not warrant any interference at the hands of this Court. In such a backdrop, this Court further holds that 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.

48. For the reasons aforesaid, these writ petitions are devoid of merits and, accordingly, the same are dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Commercial Taxes & Registration Dept.
Government of Tamil Nadu
Secretariat, Chennai 600 009.

2. The Inspector General of Registration
Chennai 600 028.

+1cc to The Government Pleader, SR43152

W.P. NO. 1428 OF 2014

CO(GP)
BDL/08/01/2021

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