



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.1345 of 2015

and

M.P(MD)Nos.1, 3 and 4 of 2015

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S.Samuel

... Petitioner

Vs.

1.The Home Secretary,
Secretariat,
St.George Fort,
Chennai.

2.Director General of Police,
O/o.Director General of Police,
Chennai.

3.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

4.The Superintendent of Police,
Tirunelveli District
At Nagercoil.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent and quash the impugned order in G.O(2 D) No.577 Home (Pol VI) dated 01.10.2013 the punishment reduction in pay by two stages for two years, which shall operate to postpone his future increment, which is also a belated punishment as illegal and unlawful and arbitrary and quash the same and also direct the respondents to grant subsequent benefits for the delayed and belated impugned proceedings of the 1st Respondent.

*(Prayer amended vide order of this
Court dated 02.12.2020 in MP(MD)2 of 15)

For Petitioner : Mr.A.Gandiappan

For Respondents : Mr.D.Muruganandham
Addl.Govt.Pleader

O R D E R

The order, dated 14.05.2010, imposing the punishment of reduction in pay by two stages, for two years, which shall operate to postpone future increment, is under challenge in the present



Writ Petition.

2. The petitioner was working as Head Constable in Armed Reserve at Nagercoil. A criminal case was registered against him in Eraniel Police Station in Crime No.289 of 1996, for the offence under Sections 147, 148 and 307 IPC., and Section 3 of Indian Explosive and Substance Act, 1908.

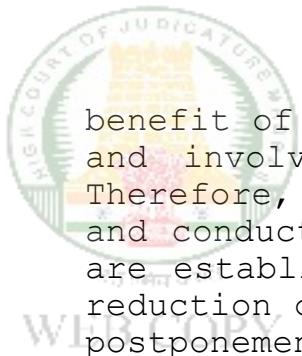
3. The petitioner was placed under suspension on initiation of departmental disciplinary proceedings and a Charge memo, under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, was issued against the Writ Petitioner. The allegation against the petitioner was that he attacked one Mr.Wilson, on 18.05.1996, by throwing Bombs and caused grievous injuries and thereby, involved in the criminal case as an accused in Eraniel Police Station in Crime No.289 of 1996.

4. Initially, the trial Court convicted the petitioner. Against the conviction, the petitioner preferred a Criminal Appeal, which ended with an order of acquittal. Soon after the conviction, the petitioner was dismissed from service and on acquittal, he was reinstated and the disciplinary proceedings initiated against him was continued, by conducting an enquiry into the charges. The Disciplinary Authority appointed an Enquiry Officer, who in turn, conducted a detailed enquiry and finally, the punishment of reduction in pay by two stages, for two years, which shall operate to postpone his future increment was imposed.

5. The learned counsel for the writ petitioner strenuously contended that the entire case is false. No such occurrence took place. The petitioner is an innocent person. Undoubtedly, there was a civil dispute between the parties to the criminal case. However, the case against the petitioner was beyond truth and the petitioner was acquitted in the Criminal Appeal. It is further contended that the Superintendent of Police himself formed an opinion that the Writ Petitioner has not involved in throwing of any bomb against the other group, who was proceeding towards a Pond.

6. In view of the fact that the Superintendent of Police has also considered that the criminal case is false, the punishment imposed is exorbitant and not in commensuration with the gravity of the proved charges against the writ petitioner. The learned counsel for the petitioner solicited the attention of this Court that the Charge memo itself was issued belatedly, after many years. The Charge Memo was issued with vague contentions. The punishment is excessive and therefore, the impugned order of punishment is liable to be scrapped.

7. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contentions by stating



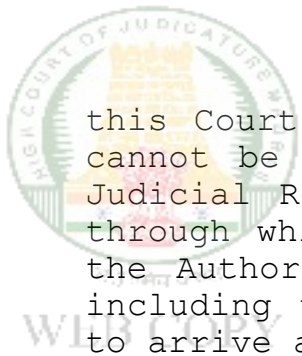
benefit of doubt. The Writ Petitioner was working as Head Constable and involved in an offence under the Explosive Substances Act. Therefore, the Departmental Authorities have taken a serious view and conducted an independent enquiry and found that the allegations are established and based on the proved charges, the punishment of reduction of pay by two stages for two years, which shall operate to postponement of further increment was imposed. There is no infirmity as such in respect of the procedures followed. The Writ Petitioner was given an opportunity to defend his case. The Appeal filed by the Writ Petitioner was also rejected. The Mercy Petition filed by the Petitioner was also dismissed by the Government. Thus, the order is in accordance with Law and the Writ Petition is liable to be dismissed.

8. This Court is of the considered opinion that mere acquittal in a criminal case would not be a bar for initiation or continuance of departmental disciplinary proceedings. So also, acquittal in a criminal case would not provide any automatic exoneration of an employee from the departmental disciplinary proceedings. In other words, based on the acquittal granted in a criminal case, exoneration from the departmental proceedings cannot be sought for nor be granted.

9. To convict a person in a criminal case, high standard of proof is required. However, no such strict proof is required in a departmental disciplinary proceedings. The procedures followed in a criminal case and in a departmental proceedings are distinct and different. Both cannot be compared at all. Preponderance of probabilities are sufficient to punish an employee under the departmental disciplinary proceedings. Even a moral turpitude is enough to punish an employee. Thus, the contention of the Writ Petitioner is that the order of acquittal is also a ground to quash the punishment deserves no merits consideration.

10. In the present case, admittedly, a criminal case was registered against the Writ Petitioner, who was holding the post of Head Constable. Initially, he was convicted by the trial Court, however, he was acquitted by the Appellate Court, on the ground of benefit of doubt. Thus, the Department has rightly continued the departmental proceedings, by conducting an enquiry with reference to the charges framed under Rule 3(b) of the Tamil nadu Police (Disciplinary and Appeal) Rules. An independent enquiry was conducted. The Writ Petitioner was provided with an opportunity to defend his case. The procedures contemplated under the Rules were followed by the Authority Competent and finally, the order of punishment was imposed. Thus, this Court could not trace out any procedural violation in respect of the disciplinary proceedings conducted by the Disciplinary Authority.

11. Let us now consider the scope of the Judicial Review, under Article 226 of the Constitution of India. It is repeatedly held by



this Court that the decision arrived at by the Competent Authority cannot be interfered with an ordinary circumstances. The scope of Judicial Review, under Article 226, is to scrutinize the process through which the decision is taken and the procedures followed by the Authority and to find out whether the established Principles, including the Principles of Natural Justice was followed, in order to arrive a conclusion.

12. The punishment can be interfered with by the Courts only such punishments are shocking the conscience of the Court or disproportionate with the gravity of the allegations set out are illegal under any statutes. Therefore, the decision cannot ordinarily be interfered with by the Courts. Only an exceptional circumstances, Courts are empowered to interfere with the quantum of punishment imposed under Article 226 of the Constitution of India and otherwise, the power of Judicial Review is certainly restricted to the extent of scrutinizing the process through which such a decision is taken as well as the fairness of the decision arrived at by the Competent Authority. The said view was taken by this Court in humpty number of Judgements.

13. The recent Judgment of the Hon'ble Supreme Court of India also confirmed the said view of this Court, in the case of **Praveen Kumar Vs. Union of India** reported in **2020 AIR (Civil) 884**). The Three Judges Bench of the Hon'ble Supreme Court of India in unequivocal terms held as follows: -

25. Learned counsel for the appellant spent considerable time taking us through the various evidences-on-record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by Constitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.

26. These principles are succinctly elucidated by a three-judge Bench of this Court in **BC Chaturvedi v. Union of India** in the following

extract:



"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728



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."

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28. It is thus well settled that the Constitutional Courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority."

14. As far as the present Writ Petition is concerned, the Disciplinary Authority has independently considered the allegation against the Writ Petitioner with reference to the Enquiry Report submitted by the Enquiry Officer. The Disciplinary Authority viz., the Superintendent of Police has rightly formed an opinion that mere acquittal in a criminal case does not mean that the delinquent is an innocent and not committed any kind of criminal activities. Therefore, the Disciplinary Authority formed an opinion that the allegations against the Writ Petitioner was serious, affecting the very discipline to be maintained in the Uniformed Services and therefore, conducted an enquiry and accordingly, imposed the punishment on the proved charges.

15. In order to consider the grounds, this Court has no hesitation to form an opinion that the procedures followed by the Authorities Competent are fair and in consonance with the established principles. The petitioner could not able to cite any procedural irregularities in the matter of conduct of disciplinary proceedings by the Competent Authority. Even the punishment imposed cannot be construed as disproportionate to the gravity of the charges proved against the Writ Petitioner. The allegation against the Writ Petitioner was, he has thrown bombs against the rival group, while they were proceeding towards the pond to take bath. Thus, the allegations are serious in nature and the departmental enquiry proceedings ended with an order of punishment, based on the findings of the Enquiry Officer.

16. This being the factum established, this Court is of the considered opinion that the quantum of punishment imposed is non-disproportionate and the procedures followed by the Authorities are also in consonance with the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and under these circumstances, the petitioner could not able to establish any acceptable grounds, for the purpose of considering the relief as such sought for in the present Writ Petition. Thus, the Writ Petition is devoid of merits



and stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

MPK

To

1.The Home Secretary,
Secretariat,
St.George Fort,
Chennai.

2.The Director General of Police,
O/o.Director General of Police,
Chennai.

3.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

4.The Superintendent of Police,
Tirunelveli District
At Nagercoil.

+1 CC to M/s.GP (SR-23922[F] dated 03/12/2020)

W.P. (MD)No.1345 of 2015

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SSS (CO)

AP (21/12/2020) 7P 6C