

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITIONS NO. 739, 740 & 743 OF 2014
WRIT PETITION NO. 739 OF 2014

Pritesh V. Naik,
son of Vasant Naik, major of age, PC/Driver
(Gr.II), MT Section, Panaji, Goa, Resident of
Khalcha Wada, Sal, Bicholim, Goa.

... Petitioner. .

Versus

1. State of Goa,
through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa

2. The Inspector General of Police,
having office at
Police Headquarters,
Panaji, Goa.

3. The Superintendent of Police, (SPCR)
Police Headquarters,
Panaji, Goa.

...Respondents.

Mr. Richard Almeida, with Mr. Allan F.C. Andrade,
Advocates for the Petitioner.

Ms. Susan Linhares, Addl. Government Advocate for
Respondents.

WRIT PETITION NO. 740 OF 2014

Sahadev Sawal,
son of Suryakant Sawal, major of age,

IRB PC – 411, 'D' Coy, Panaji, Goa,
Resident of Naik Waddo, Mandrem, Pernem,
Goa.

..... Petitioner.

Versus

1. State of Goa,
through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa

2. The Inspector General of Police,
having office at
Police Headquarters,
Panaji, Goa.

3. The Superintendent of Police, (SPCR)
Police Headquarters,
Panaji, Goa.

...Respondents

WRIT PETITION NO. 743 OF 2014

Santosh K. Gawas,
son of late Krishna Gawas, major of age,
Head Constable, B. No.3424 SPCR,
Panaji, Goa
Resident of House No.890/2,
Vijayanagar, Porvorim, Goa.

..... Petitioner.

Versus

1. State of Goa,
through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa

2. The Inspector General of Police,
having office at Police Headquarters,

Panaji, Goa.

3. The Superintendent of Police, (SPCR)
Police Headquarters,
Panaji, Goa.

... Respondents.

**Mr. Richard Almeida, with Mr. Allan F.C.
Andrade, Advocates for the Petitioners.**

**Mr. Sagar Dhargalkar, Addl. Government
Advocate for Respondents.**

**CORAM: DIPANKAR DATTA, CJ &
M. S. SONAK, J.**

DATED: 17th August 2021

ORAL JUDGMENT (Per DIPANKAR DATTA, CJ.)

1. We propose to dispose of these three writ petitions by this common order.

2. Pritesh V. Naik (hereafter “Pritesh”, for short) and Santosh K. Gawas (hereafter “Santosh”, for short) were members of the Police force, while Sahadev Sawal (hereafter “Sahadev”, for short) is still in service. All the petitioners were proceeded against departmentally. Enquiry conducted into the charges framed against the petitioners resulted in findings being returned by the

Enquiry Officer that the charges levelled were proved, meaning thereby that they were guilty. Copies of the enquiry report were furnished to each of the petitioners seeking explanation as to why the enquiry report should not be accepted and penalties not imposed on each of them. It was proposed that Santosh would be reduced in rank from that of Head Constable to Police Constable. In so far as Pritesh and Sahadev are concerned, it was proposed to impose on them the penalty of reduction of pay to a lower stage in the time scale of pay by 3 stages and 2 stages, respectively. The petitioners represented against the enquiry report and claimed that they ought not to be punished. The Disciplinary Authority of the petitioners, however, did not agree with the explanations offered by the petitioners and by an order dated 7th November, 2012 imposed on Santosh and Pritesh, the penalty of dismissal from service, and on Sahadev, the penalty of reduction in pay by 3 stages, in terms of the provisions contained in the Goa Police Subordinate Service (Discipline & Appeal) Rules, 1975. The order of the Disciplinary Authority was carried in appeal by all the three petitioners. By a cryptic order dated 21st January, 2013, the Appellate Authority dismissed the appeals and

affirmed the orders of penalty passed by the Disciplinary Authority. The appellate orders were, thereafter, subjected to revision before the Chief Secretary, Goa by the petitioners. By a common order dated 9th October, 2013, the Chief Secretary dismissed the revision petitions.

3. In these writ petitions, the revisional order of the Chief Secretary is under challenge, together with the orders of the Disciplinary Authority and the Appellate Authority, which have since merged in the revisional order.

4. The allegations forming part of the memoranda of charges issued to the petitioners, have been noticed by the Revisional Authority in paragraph 2 of its order. We find the same to be distasteful and, therefore, refrain from referring to the same, but more particularly because of the limited nature of challenge laid before us.

5. Mr. Richard Almeida, learned Advocate appearing for the petitioners contends that the Appellate Authority did not consider the appeals presented before him by the petitioners in

the proper perspective and without any application of mind, as well as assigning reasons, proceeded to affirm the orders of the Disciplinary Authority. Mr. Almeida has taken the pains of inviting our attention to the appeal petitions, where specific points are shown to have been raised by the petitioners for consideration of the Appellate Authority but, unfortunately, the same were completely ignored. He also contends that since the witnesses could not conclusively say as to whether a figure in a recorded video was Santosh, no finding of guilt ought to have been reached.

6. We have read the appellate order. It is true that the appellate order does not deal with all the points raised in the appeal petitions. However, although the petitioners were afforded opportunity of personal hearing, it does not appear that they had urged the points for consideration by the Appellate Authority, as raised in the appeal petitions.

7. Be that as it may, we could have thought of interfering with the appellate order, applying the tests laid down by the Supreme Court in the decision in **Chairman, Disciplinary**

Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and ors., reported in (2009) 4 SCC 240.

8. However, we are not persuaded to so interfere having regard to the order passed by the Revisional Authority. We have read the detailed revisional order in between the lines. The Chief Secretary, with meticulous care, appears to have dealt with each and every point that had been raised by the petitioners in their revision petitions. The Chief Secretary rightly applied the principles that the Indian Evidence Act, 1872 does not strictly apply to departmental enquiries and that the standard of proof applicable to a disciplinary proceeding is distinct and different from a criminal proceeding. He referred to the oral evidence on record to demolish Santosh's claim that he had not been identified. All the relevant witnesses had deposed that the person in the video looked like or resembled Santosh. This, coupled with the documentary evidence, viz. station diary, log book, entries of the control room, etc., were referred to drive home the point that all three petitioners were on duty on the relevant dates on Robot VII, the police control van. Based on preponderance of

probabilities, the Chief Secretary arrived at a conclusion that the evidence on record was sufficient to hold that it is the petitioners who were involved in the alleged acts which were unbecoming of members of a disciplined force.

9. We discern an attempt on the part of Mr. Almeida to have the evidence on record re-analysed and re-appreciated by this Court. In a long line of decisions of the Supreme Court, the High Courts as well as the Administrative Tribunals have been cautioned not to embark on re-analysis and re-appreciation of the evidence brought on record in a duly constituted departmental enquiry on the principle that the Disciplinary Authority is the final judge of facts.

10. Ms. Susan Linhares, learned Addl. Govt. Advocate for the respondents has placed before us an unreported decision of the Supreme Court dated February 14, 2020 in Civil Appeal No.8071 of 2014 (*The State of Karnataka & Anr. vs. N. Gangaraj*) where the aforesaid principle has been reiterated.

11. Even otherwise, we see no reason to hold that in the given set of facts and circumstances the evidence was misread or that no reasonable person, acting in a similar situation, would not arrive at the conclusions the authorities reached.

12. We, therefore, see no reason to interfere with the order of the Revisional Authority. The writ petitions are devoid of any merit and accordingly, stand dismissed. There shall be no order as to costs.

M. S. SONAK, J.

CHIEF JUSTICE

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