



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.2232 of 2010

S.P.Balasubramanian

: Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Forest Plantation Corporation Limited,
Tiruchirapalli-620 101.

2. The Regional Manager,
Tamil Nadu Forest Plantation Corporation Limited,
Pudukottai.

: Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records relating to the orders in (1) Pro.No.848/2009/Pa.2, dated 07.12.2009 of the first respondent and (2) Pro.No.6873/2007/Pa., dated 28.11.2008 of the second respondent and quash the same and issue consequential directions to the respondents to reinstate the petitioner in service with consequential service and monetary benefits.

For Petitioner : Mr.C.Deepak for Mr.M.Ravi

For Respondents : Mr.SC.Krena Ranjitham

ORDER

The case of the petitioner is that he joined the service of the respondent/Tamil Nadu Forest Plantation Corporation Limited, as Jeep Driver on 16.04.2007, on compassionate ground. Whiles, a charge memo, dated 29.08.2008, was issued to the petitioner under Rule 56(b) of the Tamil Nadu Forest Plantation Corporation Service Regulations, on the ground that the petitioner has drove the official vehicle rashly and negligently and caused two accidents on 08.06.2007 and 17.08.2008 and, thereby, caused huge loss to the tune of Rs.1,46,073/- to the respondent Corporation, towards repair charges. Enquiry was initiated in which the petitioner also participated and after conclusion of enquiry, report was filed by the enquiry officer holding the petitioner guilty of the charges alleged and after obtaining further explanation from the petitioner, the second respondent has passed the impugned order, dated 28.11.2008,



dismissing the petitioner from service. Challenging the order of dismissal, dated 28.11.2008, passed by the second respondent, the petitioner preferred an appeal before the appellate authority/first respondent.

2. Pending the appeal before the first respondent, the petitioner filed Writ Petition in W.P.(MD)No.11107 of 2009 for early disposal of the appeal filed by him and this Court, by order, dated 03.11.2009, directed the first respondent to dispose of the appeal on merits and in accordance with law within a period of four weeks. Thereafter, the first respondent passed an order dismissing the appeal filed by the petitioner, vide order dated 07.12.2009. Challenging the same, the present Writ Petition is filed.

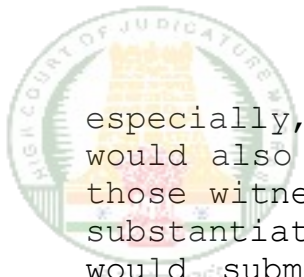
3. Heard Mr.C.Deepak, learned counsel for the petitioner and Mr.SC.Krena Ranjitham, learned Counsel for the respondents.

4.The learned Counsel for the petitioner submits that the accidents, which were the reason for dismissal of the petitioner, were not on account of the negligence of the petitioner but was on account of the rash driving of the opposite vehicle. Further, the petitioner has been dismissed from service even during the probation period. It is the further submission of the learned counsel for the petitioner that no witnesses to speak about the accident and the culpability of the petitioner were examined during the enquiry and the respondents simply fixed the responsibility on the petitioner as the person, who drove the vehicle in a rash and negligent manner and dismissed the petitioner from service, which is wholly unsustainable. The conduct of the proceedings of enquiry is in violation of principles of natural justice as no witnesses were examined and, therefore, the impugned order suffers the vice of arbitrariness and is unsustainable and unreasonable.

5.Per contra, the learned Counsel for the respondents submits that admittedly the accidents had happened due to the rash and negligent driving by the petitioner and to controvert the said stand, the petitioner has not examined any witness during the enquiry to rebut the charges framed against him. The petitioner cannot, merely come before this Court and claim that he had not caused the accident and shift the burden on the shoulders of the respondents. The evidence that is required in a disciplinary proceedings is not akin to evidence required in a criminal case and the disciplinary authority, on the touchstone of preponderance of probabilities, has held that the petitioner is guilty as held by the enquiry officer and imposed the punishment and this Court, sitting under Article 226 shall not interfere with the same in exercise of judicial review.

6.It is the further submission of the learned Counsel for the respondents that the respondents have no power to summon witnesses, who are not subordinates to them and not working under their control,

<https://hsewritescourts.gov.in/hsewritescourts>



especially, in matters involved in disciplinary proceedings. He would also submit that if the petitioner was very much interested in those witnesses, it is for the petitioner to bring those witnesses to substantiate his case during the enquiry proceedings. Further, he would submit that at the time of dismissing the petitioner from service, the petitioner was undergoing probation period and that even enquiry is not necessary to dismiss the petitioner, however, in adherence to the principles of natural justice, enquiry was conducted which has culminated in the dismissal of the petitioner and, therefore, no interference is warranted with the order impugned herein.

7.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 in disciplinary proceedings, 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 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 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)

8. 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."

9. 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, advertent 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



WEB COPY

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 :

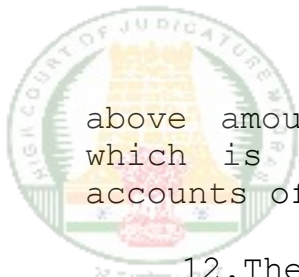
"13. Under Articles 226 / 227 of the Constitution of India, the High Court shall not :

- (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)

10. 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.

11. The facts in the present case are not in dispute. Two accidents have taken place when the petitioner was performing his duties as the driver of the vehicle and an amount in excess of Rupees One Lakh had been incurred towards repairs of the vehicle. The

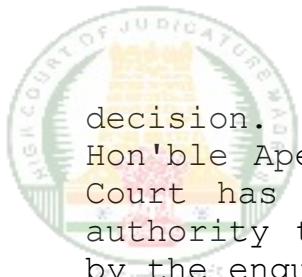


above amount has been shelled out by the respondent Corporation, which is an unnecessary expenditure and a loss in the books of accounts of the Corporation.

12.The petitioner is under probation and his service has not yet been regularised on the date of inflictment of punishment. It is also well settled that during probationary period, there is no necessity for the employer to initiate any enquiry, but the services of the employee can be terminated at any time. However, as a matter of precaution and without violating the principles of natural justice, the respondents have gone ahead with the enquiry and after finding the petitioner guilty in the enquiry, the 2nd respondent has imposed the punishment of dismissal from service.

13.Though it is the contention of the petitioner that no witnesses have been examined to substantiate that it was the petitioner who was instrumental in causing the accident due to his rash and negligent driving, however, it is a matter of record that one Kulanthaisamy, who was the complainant, was examined and the said witness has also been cross examined by the petitioner. Based on the evidence of Kulanthaisamy, the respondents have arrived at the conclusion that the petitioner has been instrumental in causing the accident, which has caused loss to the respondent Corporation to the tune of more than Rupees One Lakh. It is also evident from the evidence of the witness that the accident had happened due to the rash and negligent driving of the vehicle by the petitioner.

14.Once a finding is rendered by the enquiry officer, which has been accepted by the disciplinary and appellate authority, as stated above, this Court, sitting under Article 226 of the Constitution cannot reappreciate the evidence in toto, as if it is sitting in appeal. Once this Court finds that the procedure has been followed in the conduct of the disciplinary proceedings, unless it is shown that a fair conclusion is not reached or that the evidence has not been admitted or inadmissible evidence has been admitted which prevailed upon the disciplinary authority to come to the erroneous conclusion, this Court would not be justified in interfering with the decision arrived at by the disciplinary authority. Further, the petitioner having participated in the enquiry proceeding, but having not placed any evidence to disprove the case of the Management and substantiate his case, it is not open for the petitioner to contend that either the enquiry has not been conducted in a proper manner or that the enquiry officer has not appreciated the materials in proper perspective while rendering his finding. Further, it is also evident that no extraneous considerations have influenced either the enquiry officer or the disciplinary authority. Such being the case, there being no lacunae or discrepancy, as pointed out by the Hon'ble Supreme Court, in the conduct of the departmental proceedings, this Court, in exercise of its powers under Article 226 is not inclined to reappreciate the evidence as if sitting in appeal over the appellate



decision. In the above backdrop of the ratio laid down by the Hon'ble Apex Court and in view of the findings recorded above, this Court has no hesitation to hold that decision of the disciplinary authority to punish petitioner on the basis of the finding rendered by the enquiry officer does not require any interference.

WEB COPY

15. Insofar as the punishment awarded to the petitioner is concerned for the delinquency, it has been the consistent view of the Courts that, it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In **Prem Nath Bali - Vs - High Court of Delhi** reported in **(2015 (16) SCC 415)**, the Hon'ble Supreme Court has held as under :

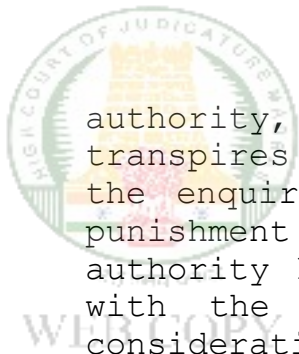
"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

16. In the case on hand, a careful perusal of the entire records relating to the enquiry as also the order passed by the disciplinary

<https://hcservices.ecourts.gov.in/hcservices/>



authority, as confirmed by the appellate authority, it clearly transpires that the disciplinary authority has applied his mind to the enquiry report and all the other materials while imposing the punishment of dismissal from service and on appeal, the appellate authority has appreciated the materials independently and concurred with the view of the disciplinary authority. On an overall consideration of the materials, this Court is in consensus with the order passed by the disciplinary authority as confirmed by the appellate authority 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.

17. For the reasons aforesaid, this Court is not inclined to interfere with the order impugned herein and, accordingly, the writ petition fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy //

/ /2021
Sub Assistant Registrar(CS-)

CMR
TE : 19/01/2021 : 11P/1C

Order made in
W.P. (MD) No.2232 of 2010
04.01.2021