



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.3809 of 2011

and

W.M.P. (MD) Nos.17403 and 17404 of 2017

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P.Pal Pandian

... Petitioner

vs

1.The State of Tamil Nadu,
Rep. by the Principal Secretary,
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.

2.The Principal Chief Conservator of Forest,
(Head of Forest Force),
Panagal Building,
Saidapet, Chennai - 600 015.

3.Additional Principal Chief Conservator of Forest,
(Forest Administration)
Panagal Building,
Saidapet, Chennai - 600 015.

4.Conservator of Forest,
Viruthunagar Circle,
Viruthunagar.

5.The Wildlife Warden,
Grizzled Squirrel Wildlife Sanctuary,
Srivilliputtur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling of the records of the first respondent in G.O.(3D) No.6, Environment and Forest Department, dated 19.02.2010 by confirming the impugned order in appeal bearing Sae.Mu.Order.No.AA/AA3/65100/2007 dated 24.12.2007 passed by the second respondent which confirms the order in original dated 30.11.2006 bearing Sae.Mu.Order No.9482/2006C passed by the fourth respondent and quash the same.

For Petitioner	:	Mr.S.Venkatesh for M/s.A.Sivaji
For Respondents	:	Mr.M.Muthugeethayan Special Government Pleader.

ORDER

This Writ Petition has been filed challenging the orders passed first respondent in G.O.(3D) No.6, Environment and Forest
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Department, dated 19.02.2010 by confirming the impugned order in appeal bearing Sae.Mu.Order.No.AA/AA3/65100/2007 dated 24.12.2007 passed by the second respondent which confirms the order in original dated 30.11.2006 bearing Sae.Mu.Order No.9482/2006C passed by the fourth respondent and quash the same.

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2. It is the case of the petitioner that he was appointed on compassionate ground as Junior Assistant on account of the death of his father and joined duty on 08.11.1985. Thereafter, in the year 1992, he was promoted as Assistant and further promoted as Forester from Tamil Nadu Ministerial Service by way of transfer and this post is governed by Tamil Nadu Subordinate Service Rules and joined duty as Forester on 01.02.1996. While he was working in W.Pudupatti Section in Srivilliputtur Forest Range, during his service, as Forester, for non-promoting him as Forest Ranger, he filed a Writ Petition before this Court in W.P.No.11884 of 2009 and this Court by its order dated 19.11.2009 directed the second respondent herein to include his name in the panel for promotion of Forest Ranger for the year 2009. Since the order was not complied with, the petitioner issued a Lawyer notice to the respondent for compliance of the order of this Court. In the meanwhile, for the Forest Ranger post a panel for the year 2010 was prepared by the said respondent on 10.12.2010. In that panel also, the petitioner's name was included, however, not selected. Challenging the same, the petitioner filed another Writ Petition before this Court in W.P.(MD)No.15020 of 2010 and the same is pending.

3. While he was working as Forester, the petitioner was issued with a charge-memo on 13.09.2006 under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, by the then Conservator of Forest, Virudhunagar on the ground that the petitioner did not inspect the Oil Company by name M/s.Madurai Essential Oil Company. As the licence of the said oil company was cancelled and also the No Objection Certificate for the said oil company was also cancelled by the superior authorities. Even thereafter, the petitioner did not inspect and seize the excess sandal wood possessed by the said oil company and the possession of the sandal wood by the oil company came to know after inspection of the law enforcing agency. Immediately thereafter, the petitioner submitted his explanation. However, as the explanation was not satisfactory, the original authority, namely, the fourth respondent imposed a punishment of stoppage of increment for one year without cumulative effect except leave period. As against the order of original authority, the petitioner preferred an appeal before the appellate authority. However, the appellate authority also confirmed the order of punishment on 24.12.2007. As against the order of appellate authority, the petitioner filed a revision before the Government on 23.07.2009. After considering the revision petition, the first respondent rejected the revision petition. Challenging the same the present Writ Petition has been filed.



4.The learned Counsel appearing for the petitioner would submit that the said oil company is not situated within the jurisdiction of the petitioner and further, the petitioner was not aware of the cancellation of the No Objection Certificate by the superior authorities and the same was not intimated to the petitioner and after cancellation of No Objection Certificate, the procedure for seizure and inspection was not framed by the higher officials and the same was not informed to the petitioner. All those issues were not considered by the original authority and appellate authority including the revisional authority and accordingly, the order of the original authority, appellate authority and revisional authority are *non est* in law. Therefore, the petitioner prayed for allowing this Writ Petition.

5.Per contra, the learned Special Government Pleader appearing for the respondents would submit that in the present case, based on the Supreme Court's direction, the licence for all the sandal wood oil companies situated in Tamil Nadu was cancelled and No Objection Certificate issued by the Forest Department was also cancelled and subsequently, it is the petitioner's responsibility to inspect periodically in the oil companies as to whether they are in possession of sandal wood or not and they are manufacturing sandal wood oil. However, in the present case, the petitioner himself went along with the inspection team, namely, the law enforcing agency and the revenue officials and the law enforcing agency and revenue officials seized the contraband from the oil company in which the petitioner also signed as mahazer witness and the same was produced before the Criminal Court. Thereafter, the authorities came to know that the petitioner has not properly inspected the oil company situated within his jurisdiction and for proven lapses, the petitioner was issued with a charge-memo under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and the punishment was imposed by the original authority and the punishment of stoppage of increment for one year without cumulative effect itself is a meagre one and therefore, no interference is warranted with the orders impugned herein.

6.This Court paid its careful consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

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

(Emphasis Supplied)

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

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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 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;



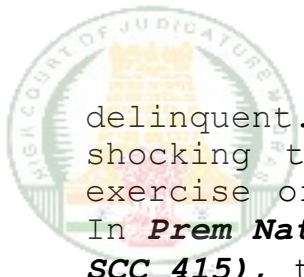
- (iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based;
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks 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. Admittedly, when the petitioner was working as a Forester, he has not properly inspected the oil company situated within his jurisdiction which came to the knowledge of the authorities after the inspection team, namely, the law enforcing agency and the revenue officials seized the contraband from the oil company in which the petitioner also signed as mahazar witness and the same was produced before the Criminal Court. Therefore, for the proven lapses on the part of the petitioner, the charge-memo under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued to the petitioner and on consideration of his explanation, as being not satisfactory, the punishment of stoppage of increment for one year without cumulative effect was imposed by the original authority. However, the petitioner states that the said oil company is not situated within the jurisdiction of the petitioner and further, the petitioner was not aware of the cancellation of the No Objection Certificate by the superior authorities and the same was not informed to the petitioner and after cancellation of No Objection Certificate, the procedure for seizure and inspection was not framed by the higher officials and the same was also not intimated to the petitioner. Though such a stand is taken by the petitioner, this Court is not able to appreciate the said stand as a genuine reason, which paved the way for the acts perpetrated by the petitioner.

12. 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 :

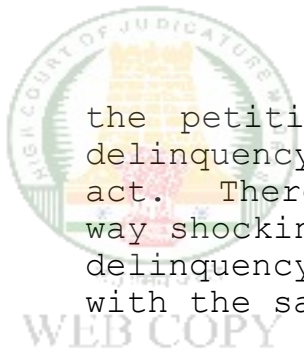
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"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The 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)

13. In the case on hand, a careful perusal of the entire records as also the order passed by the disciplinary authority, as confirmed by the other authorities, it clearly transpires that the disciplinary authority has applied his mind while imposing the punishment of stoppage of increment for one year without cumulative effect and on appeal and revision, the appellate and revisional authorities have 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 and revisional authority and 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.

14. For the reasons aforesaid, this Writ Petition fails and the same is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)

To

1. The Principal Secretary,
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forest,
(Head of Forest Force),
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5. The Wildlife Warden,
Grizzled Squirrel Wildlife Sanctuary,
Srivilliputtur.

+1 CC to M/s.A.SIVAJI, Advocate (SR-733[F] dated 11/01/2021)

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