

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4417 of 2011

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Arun Kumar Shukla, S/O Late Raj Kishore Shukla, R/O Vill-Jalalpur, P.O.-
Jalalpur, P.S. Lalganj, Distt-Vaishali

... .. Petitioner/s

Versus

1. The Union of India through the Director General, Department of Post, Government of India, New Delhi-110001
2. The Member (P), Postal Services Board, Government of India, Ministry of Communication and I.T., Department of Post, Dak Bhawan, Sansad Marg, New Delhi
3. The Deputy Director General (Vigilance), Department of Post, Government of India, New Delhi-110001
4. The Chief Post Master General, Bihar Circle, Patna-800001
5. The Post Master General, Northern Region, Muzaffarpur
6. The Director of Postal Services, Northern Region, Muzaffarpur
7. The Superintendent, R.M.S. 'U' Division, Muzaffarpur
8. The Head Record Officer, R.M.S. 'U' Division, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Advocate Mr. Dipak Kumar, Advocate
For the Respondent/s	:	Mr. Praveen Kr. Sinha, Sr. Panel Counsel Mr. Radhika Raman, CGC

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 17-01-2022

The judgment and order dated 23.04.2010, in O.A. No. 33 of 2003 passed by a Division Bench of Central Administrative Tribunal, Patna Bench, whereby the petitioner's application under Section 19 of the Administrative Tribunal Act has been



dismissed is under challenge in the present writ application filed under Article 226 of the Constitution of India.

2. We have heard Mr. Chakrapani and Mr. Dipak Kumar, learned counsel for the petitioner and Mr. Praveen Kumar Sinha, learned Senior Panel Counsel with Mr. Radhika Raman, learned Central Government Counsel for the respondents.

3. The undisputed facts of the case are that a disciplinary proceeding was initiated against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal), Rules, 1965 [hereinafter referred to as the CCS(CCA) Rules] with the issuance of charge-sheet containing altogether six articles of charges which read as under :-

“Article-I

That the said Sri Arun Kumar Shukla while functioning as Sorting Asstt. HRO RMS 'U' Dn. Muzaffarpur is alleged to have purchased out of his fund a plot of land measuring 1 (one) Katha 1 (one) dhoor in the name of his widow mother Mosmat Yasoda Kuer on 31.01.1978 from one Smt. Shakuntala Devi W/o Sri Jaleshwar Prasad, vill. Kalyanpur, PS-Paroo Distt. Muzaffarpur in Mohalla Bramhapura PS-Brahmpura Distt. Muzaffarpur on the premium of Rs.4000/- without the previous knowledge of the prescribed authority and thereby violated the provision of Rule-18(2) of CCS(Conduct) Rules, 1964 and acted



in a manner which is unbecoming of a Govt. Servant. Thus Sri Arun Kumar Shukla is therefore charged for violation of provision of Rule 18(2) and Rule 3(i)(iii) of CCS (Conduct) Rules, 1964.

Article-II

The said Sri Arun Kumar Shukla while functioning as Stg Asstt. HRO RMS 'U' Dn. Muzaffarpur/Platform Inspector, Muzaffarpur RMS during the period 1978 is alleged to have constructed a double storyed building "Kishoralaya Bhawan" in mohalla Brahmpura now known as mohalla Bibiganj on the land purchased in the name of his mother on a carpet area of 3268.44 Sq. ft at cost of about Rs.3,00,000/- three lacs) without 'previous knowledge of the prescribed authority and thereby violated the provision of Rule-18(2) of CCS(Conduct) Rules, 1964 and also failed to reply when asked for the information in r/o above building vide this office letter no.B-3/725 dtd. 14.10.97 in utter violation of provision of Rule 18(4) of CCS(Conduct) Rules, 1964 and thereby acted in a manner which is unbecoming of a Govt. servant.

Thus Sri Shukla is charged for violation of sub-rule 2 & 4 of Rule 18 of CCS(Conduct) Rules, 1964 and Rule 3(i)(iii) of CCS(Conduct) Rules, 1964.

Article-III

That the said Sri Arun Kumar Shukla while functioning as Stg, Asstt. HRO RMS 'U'Dn. Muzaffarpur without



having any authorised access is alleged to have kept in his personal custody copy of memo no.R&E-21/98 dtd. 17.11.98 issued by the Director Postal Services, Northern Region, Muzaffarpur addressed to the undersigned and copy of reply thereto contained in Supdt. RMS 'U' Dn. Muzaffarpur letter no.B1-3/PT/98 dtd.23.11.98 and passed on them still unauthorisedly to press, the reference of which was got published by him in the column of daily news paper "Aaj" at page no.3 of 25th Nov. 1998 and thereby the said Sri Shukla is alleged to have failed to maintain devotion to duty and also acted in a manner which is unbecoming of a Govt. servant.

Sri Arun Kumar Shukla is thus alleged to have violated the provisions of Rule 201 of the Postal Man. Vol. III, Rule 11 and 3(i) (iii) of CCS(Conduct) Rules, 1964.

Article-IV

That the said Sri Arun Kumar Shukla while working as Stg. Asstt. in Muzaffarpur RMS/1 dtd. 21.10.97 during his duty hours is alleged to have left his office and duty without permission of competent authority came to HRO 'U'Dn. Muzaffarpur before the Accountant no.1, Sri Mahendra Thakur of HRO RMS 'U'Dn. Muzaffarpur at about 1330 hrs and asked him to show him his own service book, which was shown to Sri Shukla who wanted unauthorisedly to make remark of objection in the service book in his own pen which was objected to



and the service book was kept back by said Sri Thakur. It is alleged that Sri Shukla forcibly snatched the service book from Sri Thakur and wrote the word "objected" unauthorisedly under his dated signature and also entered into quarrel with said Sri Thakur and abused him by using unparliamentary languages, due to which the normal working of the account Branch of HRO 'U' Dn: Muzaffarpur was disrupted and thereby acted in a manner which is unbecoming of a Govt. servant.

Sri Shukla is therefore charged for violation of Rule 62 of Postal Man. Vol.III corrected upto 01.07.1986 and also Rule 3(i)(iii) of CCS(Conduct) Rules, 1964.

Article-V

That the said Sri Arun Kumar Shukla while working in the 0/0 the Postmaster General, Northern Region, Muzaffarpur as Stg. Asstt. on 16.09.96 at about 1500 hrs is alleged to have appeared in the office of Supdt. RMS 'U'Dn. Muzaffarpur unauthorisedly wanted to misuse the service telephone of Supdt RMS. 'U'Dn: Muzaffarpur and on denial to do so alleged to have tumulted and obstructed the Supdt. RMS 'U' Dn. in due discharge of his official duty and is, therefore, alleged to have exhibited gross Indiscipline as well as acted in a manner, unbecoming of a Govt. servant.

Sri Shukla is, therefore, charged for violation of Rule (i)(iii) of CCS(Conduct) Rules, 1964.

Article-VI



That the said Sri Arun Kumar' Shukla while working as Stg. Asstt., HRO RMS 'U' Dn, Muzaffarpur is alleged to have participated in a hunger strike launched by a so called joint Action Committee of some service unions of RMS 'U' Dn. in front of the 0/0 the Supdt, RMS 'U' Dn. Muzaffarpur on 10.3.99 and alleged to have raised filthy slogans by using loud speaker and is also alleged to have used unparliamentary words against the Supdt. RMS 'U'Dn. Muzaffarpur as well as some staff working in Divl. office and HRO RMS 'U'Dn, Muzaffarpur due to which normal functioning of the work of office of the Supdt. RMS 'U'Dn. Muzaffarpur was subjected to disruption. It is further alleged that the said Sri Shukla has given press statement in this regard which were published in the daily news paper "AAJ" and "Hindustan(Hindi)" dtd. 11.3.99 and thereby Sri Shukla is alleged to have acted in a manner which was subversive of discipline besides being harmful to public interest which is an act of unbecoming of Govt. servant.

Sri Shukla is, therefore, charged for violation of Rule-7(i) read with Govt. of India's decision below Rule-7 and Rule-3(i)(iii) of CCS (Conduct) Rules, 1964."

4. The Enquiry Officer held charges No. 1, 2 and 6 as proved and charge No. 5 as partly proved. Charges No. 3 and 4



were held not proved by the Enquiry Officer.

5. The Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer in respect of charges No. 3, 4 and 5 and concluded that all the charges against the petitioner stood proved. Undeniably, before recording his findings in relation to the said charges No. 3, 4 and 5, the Disciplinary Authority had allowed the petitioner to represent against the tentative notes of disagreement. As there was no representation received from the petitioner against the tentative notes of disagreement, the Disciplinary Authority after recording his own finding holding all the charges against the petitioner to have been proved, imposed punishment of dismissal from service, by an order dated 04.09.2000.

6. The petitioner preferred an appeal against the order of the Disciplinary Authority. The Appellate Authority affirmed the findings recorded by the Disciplinary Authority. He, however, took a lenient view and considered the punishment imposed to be severe, bearing in mind the petitioner's family commitments. Accordingly, the Appellate Authority i.e. the Director, Postal Services, Northern Region, Muzaffarpur (Annexure-11 to the writ application) by an order dated 16.02.2001, modified the order of punishment of dismissal to compulsory retirement.



7. The petitioner, thereafter, preferred a revision application before the Revisional Authority, namely, Member(P), Postal Services Board, Government of India, Ministry of Communication and I.T., Department of Posts (Respondent No. 2). The Revisional Authority, evidently, upon analysis of the evidence on record concluded that charges No. 1, 2 and 6 against the petitioner stood proved, charges No. 4 and 5, partly proved and charge No. 3, not proved.

8. Having recorded his finding in respect of each of the charges, the Revisional Authority by an order dated 20.09.2001 (Annexure-12) decided to modify the punishment of compulsory retirement to reduction in pay by three stages for a period of three years with cumulative effect. The petitioner, thereafter, preferred an application before the Patna Bench of the Central Administrative Tribunal by filing O.A. No. 33 of 2003 seeking following reliefs :-

“8(a) That the punishment of dismissal from service awarded vide memo dated 04.09.2000 contained in Annexure-A/20 and the appellate order dated 16.02.01[Annexure-A/21] modifying the punishment to that of compulsory retirement may be quashed and set aside.

(b) That the order passed by the respondent no. 2 in his office memo no. C-170-3-86-200 VP dated 20.09.2001



[Annexure-A/22] may be declared without application of mind and quashed and set aside.

(c) That the order passed by the respondent no. 2 in his letter No. C-170B/86/2001 dated 13.03.2002 may be declared without application of mind and quashed.

(d) That the orders for pay fixation issued vide Memo dated 3.2.04 contained in Annexure-A/24 by respondent no. 7 may be quashed and set aside.

(e) That the respondent authorities may be directed to treat the period from 4.9.2000 to 11.10.2001 as duty for all purposes and allow other consequential benefits.

(f) That any other relief or reliefs as Your Lordships may deem fit and proper.”

9. It would be apt to note at this juncture that upon reinstatement of the petitioner in service pursuant to the aforesaid order of the Revisional Authority dated 20.09.2001, a show cause notice was issued to the petitioner in respect of the regularization of intervening period of service from 04.09.2000 to 11.10.2001 (from the date of dismissal to the date of reinstatement). The Revisional Authority, upon consideration of the facts and circumstances of the case and the gravity of misconduct proved against the petitioner, has passed following order on 13.03.2002 :-



*“(i) During the period of absence from his duty from 4.9.2000 to 11.10.2001 Shri Arun Kumar Shukla shall be paid pay and allowances equivalent to the subsistence allowance that he was being paid before removal from service.
(ii) The period shall be treated as duty for the purpose of counting service for pension only except that pay and allowances that will be restricted as indicated in sub para (1) above.”*

10. The said order dated 13.03.2002, was also subject matter of challenge before the Tribunal. The Tribunal dismissed the petitioner's application by the impugned judgment and order dated 23.04.2010, operative portion of which reads as under :-

“9.-----The revisional authority passed a detailed and elaborate order. He disagreed with the findings of the Disciplinary Authority and the Appellate Authority on the point of charges being substantiated and also on the point of punishment. He passed a simple punishment of reduction in pay by three stages for a period of three years with cumulative effect. This punishment shows that the revisional authority acting judiciously had passed a fair order.

10. Considering the facts and circumstances of the case, rival submissions made and discussion made above, we are of the view that there is



no merit in the OA and the same is fit to be dismissed.”

11. The petitioner's challenge to the order of Revisional Authority dated 13.03.2002 in relation to regularization of intervening period of service has also been turned down by the impugned order passed by the Tribunal.

12. Mr. Chakrapani, learned counsel appearing on behalf of the petitioner has argued that the petitioner was elected as Circle Secretary of National Union of RMS Mail Guard, Class IV Employees, Bihar Circle in 1990 and continued as such till September 1999. During the said period the petitioner had complained against the functioning of one Jamadar Singh, who was posted as Superintendent in RMS 'U' Division, Muzaffarpur in January 1997. A criminal case was also instituted against the said Jamadar Singh. He contends that out of vengeance, the said Jamadar Singh started disciplinary proceeding against the petitioner in an arbitrary and malafide manner. He has also argued that though a request was made by the petitioner for appointing an *ad hoc* disciplinary authority, in place of said Jamadar Singh as the Disciplinary Authority, no heed was given to his request and Jamadar Singh, thus, continued to act as a Disciplinary Authority, finally imposed severest of the punishments i.e. dismissal from service.



13. He has relied upon Supreme Court's decision in case of *Arjun Chaubey vs. Union of India and others (AIR 1984 SC 1356)*. Referring to the said judgment, he has submitted that since Jamadar Singh was himself the accuser, he could not have become a judge, acting as the disciplinary authority. He accordingly contends that the order of the disciplinary authority is not only violative of one of the principles of natural justice that no one can become a judge on his own cause, the same is patently tainted with malafide. He has argued that the Revisional Authority miserably failed to appreciate that even if the charges No. 1 and 2 could be treated to be proved, the same did not warrant any punishment as the same cannot be treated to be misconduct inviting disciplinary action.

14. He has placed reliance on Supreme Court's decisions in case of *Arjun Chaubey vs. Union of India and others (AIR 1984 SC 1356)*, *A.L. Kalra vs. The Project and Equipment Corporation of India Ltd. (AIR 1984 SC 1361)*, *E.S. Reddi vs. Chief Secretary, Government of A.P. and another* reported in *(1987) 3 SCC 258*, *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and others* reported in *(1991) 2 SCC 716* and a decision of this Court in case of *Bihar State Electricity Board vs. Raghendra*



Prasad reported in ***2011(1) PLJR 242***.

15. Learned Senior Panel Counsel representing the Union of India, on the other hand, has argued that the petitioner has not been able to make out any case of violation of principles of natural justice nor breach of any mandatory statutory rules. He contends that findings of the Disciplinary Authority, Appellate Authority and the Revisional Authority are based on due appreciation of evidence adduced during the departmental enquiry. He contends that this Court, exercising power of judicial review, may not re-appreciate the evidence. He has argued that there has been due application of mind by the authorities as well as by the Tribunal. According to him, the findings recorded by the authorities and the Tribunal cannot be said to be perverse warranting this Court's interference, in exercise of power under Article 226 of the Constitution of India.

16. As has been noticed herein above, Mr. Chakrapani has vehemently argued that the charges No. 1 and 2 framed against the petitioner do not constitute a misconduct and, therefore, no punishment could have been imposed in respect of the said charges. As can be noticed from the charges levelled against the petitioner, he was charged of having purchased, out of his own fund, a plot of land measuring 1 *Katha* 1 *Dhur* in the



name of his widow mother on 31.01.1978 while functioning as a Sorting Assistant, HRO RMS 'U' without previous information to the prescribed authority and thereby violated the provision of Rule 18 (2) of CCS (Conduct) Rules, 1964 and thus, acted in a manner which is unbecoming of a government servant.

17. It is the petitioner's contention that the petitioner's widow mother had received death-cum-retirement benefits after death of the petitioner's father and the said land was purchased from her own fund and, therefore, no misconduct is made out for purchase of land in the name of the petitioner's mother without intimation to the Competent Authority.

18. Sub-rule (2) of Rule 18 of CCS (Conduct) Rules mandates that no government servant shall acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family except with the previous knowledge of the prescribed authority. Rule 2(c) of the Conduct Rules defines members of the family in relation to government servant which includes (iii) any person related whether by blood or marriage to the government servant and wholly dependent on the government servant. It is not the petitioner's case that his mother was not wholly dependent on him particularly when the petitioner's



appointment itself was on compassionate ground, consequent upon death of his father.

19. On perusal of the order passed by the Disciplinary Authority and the Appellate Authority it can be easily noticed that the charge No. 1 has been duly discussed with reference to the evidence adduced in support thereof before recording a finding/ affirming finding of proof of the said charge. A piece of land was admittedly purchased in the name of family member of the petitioner without any intimation to the prescribed authority in breach of Rule 18(2) of the Conduct Rules. The finding in respect of charge No. 1, in the Court's opinion, cannot be said to be perverse, the same being based on some material duly considered by the authorities.

20. Similarly, charge No. 2 relates to construction of a building on the land purchased in the name of the petitioner's mother without previous knowledge of the prescribed authority. In our considered opinion, the findings recorded by the authorities in respect of charge No. 2 also cannot be said to be perverse, this being an admitted fact that the petitioner had not intimated about construction of the building over the land in question.

21. We are not referring to charge No. 3, which



has been held as not proved, finally by the Revisional Authority.

22. As has been noted above, charge No. 4 was held as not proved by the Enquiry Officer which related to the petitioner's behaviour of forcibly snatching service book from Accountant No. 1, Mahendra Thakur of HRO RMS 'U' Division, Muzaffarpur. The petitioner is said to have unauthorisedly written 'objected' in his service book after snatching the same from Mahendra Thakur. The Revisional Authority, on consideration of the evidence on record, has held that the charge to the extent that the petitioner himself wrote the words 'objectionable' (sic. 'objected') in the service book stands established. The Revisional Authority has held that the action of the petitioner was unwarranted and uncalled for. If he had any grievance with regard to his pay fixation, he should have represented to the higher authorities, in an appropriate manner. With this reasoning, the Revisional Authority held charge No. 4 to be partially proved.

23. In respect of charge No. 5, it is manifest from the order of the Revisional Authority that it has discussed the nature of allegation and considered the evidence adduced during the departmental enquiry and held the same to be partly proved, disagreeing with the finding of the Disciplinary Authority to the extent it had differed with the finding recorded by the Enquiry



Officer. The charge No. 5 relates to the petitioner's presence in the office of Superintendent RMS 'U', Muzaffarpur and unauthorized attempt to misuse service telephone of the Superintendent and when objected to, the petitioner tumulted and obstructed the Superintendent in due discharge of his official duty. The Revisional Authority, after duly discussing the materials concluded in his order that the argument of the petitioner that charge No. 5 is a concocted charge was clearly not tenable and it had been fully established that the petitioner had visited the office of Superintendent RMS 'U' division Muzaffarpur on the alleged date.

24. Charge No. 6 has been held to be proved concurrently by the Enquiry Officer, Disciplinary Authority, Appellate Authority as well as the Revisional Authority which related to the petitioner's participation in a hunger strike, use of filthy languages, unparliamentary words and issuance of press statement which was subversive of discipline besides being harmful to public interest and was an act unbecoming of a government servant. Nothing has been brought to our notice on the basis of which the Court, in the present proceeding under Article 226 of the Constitution of India, may record that the said finding in respect of charge No. 6 is perverse.



25. The submission made on behalf of the petitioner that the entire Disciplinary Proceeding is tainted with bias and malafide because the action was initiated by Jamadar Singh against whom the petitioner has made allegation about his functioning, cannot be accepted by this Court for interfering with the impugned order of the Tribunal for various reasons. Firstly, though the petitioner made allegations of bias and malafide against Jamadar Singh, he chose not to implead Jamadar Singh as party-respondent before the Tribunal. The allegation of malafide against Jamadar Singh as made by the petitioner is not at all sustainable.

26. The Supreme Court's decision in case of **Arjun Choubey** (supra) relied upon by learned counsel for the petitioner, in the Court's opinion, has no application in the facts and circumstances of the present case. In the case of **Arjun Choubey** (supra), the main thrust of the charge against the appellant of the said case was his conduct qua, concerned respondent, who after recording his satisfaction that it was not reasonably practicable to hold an enquiry into the appellant's conduct as provided by the Rules, concluded that the appellant was not fit to be retained in service and had, therefore, to be dismissed.



27. In the aforesaid facts and circumstances of the case, the Supreme Court noticed in the case of **Arjun Choubey** (supra) that the Disciplinary Authority assessed weight of his own accusation against the appellant and passed a judgment, relevant portion of the said decision reads as under :-

“The appellant submitted his further explanation, which also was considered by Respondent 3 himself. The order, of dismissal dated June 15, 1982 which was issued by Respondent 3 recites that he was fully satisfied that it was not reasonably practicable to hold an inquiry into the appellant's conduct as provided by the rules and that he had come to the conclusion that the appellant was not fit to be retained in service and had, therefore, to be dismissed. Evidently, Respondent 3 assessed the weight of his own accusations against the appellant and passed a judgment which is one of the easiest to pass, namely, that he himself was a truthful person and the appellant a liar. In doing this, Respondent 3 violated a fundamental principle of natural justice. The main thrust of the charges against the appellant related to his conduct qua Respondent 3. Therefore, it was not open to the latter to sit



in judgment over the explanation offered by the appellant and decide that the explanation was untrue. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Anyone who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and Respondent 3, was speaking the truth was decided by Respondent 3 himself.”

28. On the contrary, in the present case, based on some admitted facts noticed as above, a full-fledged enquiry was held, witnesses were examined and evidence was adduced. There is no material before us to take a view that there was any procedural lapse in holding departmental enquiry and the petitioner was not given due opportunity of hearing in the departmental enquiry.

29. Further, the petitioner has not levelled any allegation of malafide against the Appellate Authority and the Revisional Authority, who have independently formed their respective opinions upon due appreciation of evidence available



on record of the departmental enquiry.

30. It is evident from the discussions noted above that they have applied their minds not only while evaluating the evidence adduced during the course of departmental enquiry but also the quantum of punishment. In our view, thus, the orders of the Disciplinary Authority, Appellate Authority and Revisional Authority cannot be said to be without application of mind. The findings do not suffer from perversity, inasmuch as, the authorities have referred to the presence or absence of evidence in support of the respective charges.

31. On perusal of the order passed by the Tribunal, we find that the Tribunal has taken into account the pleadings and grounds taken by the petitioner to question the correctness of the decision of the respondents. From the grounds taken in the present writ petition, it is evident that the only ground which has been taken to question the correctness of the finding of the Tribunal's judgment is that the Tribunal misdirected itself in presuming that there was no violation of principles of natural justice as the Revisional Authority had substantially modified the orders of punishment from dismissal to reduction in pay by three stages for a period of three years with cumulative effect. No other ground has been taken in the writ



petition to question the correctness of the decision of the Tribunal.

32. It is by now well settled principle of law that the High Court in exercise of power under Article 226 of the Constitution of India does not interfere with the conclusion of the Disciplinary Authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding [see (1969) 1 SCC 502, **Railway Board Vs. Niranjan Singh**]. The adequacy or sufficiency of evidence ordinarily need not be gone into by the Court's exercising power of judicial review. The law in this regard has been elaborately laid down by the Supreme Court in case of **Union of India and Ors. Vs. P. Gunasekaran** reported in (2015) 2 SCC 610, paragraphs 12 and 13 of which are relevant and are being reproduced hereinbelow:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under



Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a 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 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.

13. Under Articles 226/227 of the



Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in 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.”*

33. The said decision in case of **P. Gunasekaran** (supra) has been considered subsequently in case of **Central Industrial Security Force and Ors. Vs. Abrar Ali** reported in **(2017) 4 SCC 507**, wherein the Supreme Court has emphasized that the High Court should not have entered into the arena of facts which tantamounts to reappreciation of evidence. The Court reiterated that reappreciation of evidence is not permissible in exercise of jurisdiction under Article 226 of the Constitution of India. In case of **State of Karnataka and Anr. Vs. N. Gangaraj** reported in **(2020) 3 SCC 423**, the Supreme Court noticing the



decisions in case of **State of A.P. Vs. S. Sree Rama Rao (AIR 1963 SC 1723)**, **B.C. Chaturvedi Vs. Union of India and Ors.** reported in **(1995) 6 SCC 749**, **High Court of Judicature at Bombay Vs. Shashikant S. Patil** reported in **(2000) 1 SCC 416**, **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya** reported in **(2011) 4 SCC 584** and **P. Gunasekaran (supra)** has held in paragraph 15 as under :-

“15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said judgment has not noticed the larger Bench judgments in S. Sree Rama Rao [State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] and B.C. Chaturvedi [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law.”

34. Recently, in case of **Director General of Police, Railway Protection Force and Ors. Vs. Rajendra**



Kumar Dubey reported in **2020 SCC OnLine SC 954**, the Supreme Court has observed, dealing with the facts of the said case, that the High Court was not justified in reappraising the entire evidence threadbare as a court of appeal, relying on the decision rendered in case of **P. Gunasekaran** (supra). In case of **Union of India and Ors. Vs. Dalbir Singh** reported in **2021 SCC OnLine SC 768**, the Supreme Court has again reiterated the view expressed by the Supreme Court in case of **P. Gunasekaran** (supra), wherein the Court held in paragraph 29 as under :-

“29. ----- It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time.”

35. We do not find any illegality in the decision of the Revisional Authority dated 13.03.2002 on the point of regularization of petitioner's service. The absence of petitioner's duty from 04.09.2000 to 11.10.2001 has been regularized, with a rider that he shall be paid pay and allowances equivalent to



subsistence allowance, which was being paid to him before removal from service and that the said period shall be treated as on duty for the purpose of counting service for pension.

36. For the aforesaid reasons, we do not find any merit in this writ application. The decisions rendered in case of *A.L. Kalra* (supra), *E.S. Reddi* (supra), *Maharashtra State Board of Secondary and Higher Secondary Education* (supra) and a decision of this Court in case of *Bihar State Electricity Board* (supra) do not support the petitioner's case, in our considered opinion.

37. This application is accordingly dismissed.

38. There shall however be no order as to costs.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J I agree.

(Madhuresh Prasad, J)

Rajesh/Karan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.01.2022
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