

Meena/Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.390 OF 2014

Ravindranath A. N. Gaonkar,
Major, dismissed Assistant Jailor,
residing at Sattari Wadda, Camurlim,
Bardez, Goa.

...Petitioner

VERSUS

1. The Chief Secretary And
The Appellate Authority
Under the CCS CCA Rules 1965,
Secretariat, Porvorim, Goa

2. Inspector General of Prisons
(Disciplinary Authority) Collectorate
(North), Panaji, Goa

3. State of Goa,
Through Chief Secretary
Secretariat, Porvorim, Goa.

...Respondents

Mrs. A.A. Agni, Senior Advocate with Ms. J. Sawaikar, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for the Respondents.

**CORAM : M. S. SONAK AND
R.N. LADDHA, JJ.**

Reserved on : 21st February, 2022.

Pronounced on : 27th May, 2022

JUDGMENT : (Per R.N. Laddha, J.)

This petition, under Article 226 of the Constitution of India, is directed against the order dated 04/04/2014 passed by the Chief Secretary, Government of Goa and Appellate Authority, whereby the Appellate Authority has confirmed the major penalty of dismissal from service, imposed upon the Petitioner and dismissed the appeal filed by the Petitioner.

2. The Petitioner was in service of the Respondent – State of Goa and while he was posted at Margao sub-jail cum judicial lockup as an Assistant Jailor, he remained unauthorizedly absent which resulted into escape of 14 under trial prisoners on 16.09.2007. Hence, a departmental enquiry was initiated against the Petitioner, *inter alia*, on the grounds that the Petitioner, while functioning as an Assistant Jailor during the period from 12th May 2007 to 16th September 2007, at the judicial lockup Margao, committed misconduct inasmuch as he failed to ensure proper functioning of the judicial lockup by remaining absent on duty unauthorizedly from 13th September 2007 to 16th September 2007 and showing no devotion to duties at all. From the date he was appointed at the Judicial Lockup, Margao, he miserably failed to maintain proper control and supervision over his sub-ordinate staff as he remained absent frequently. This lack of

devotion to duties proved costly, as on 16th September 2007, 14 under trial prisoners escaped from the Margao judicial lockup.

3. As the inquiry was held into the said charges, the Enquiry Officer recorded a finding that the charges leveled against the Petitioner have been proved. The Disciplinary Authority accepted the findings and passed an order imposing a major penalty on the Petitioner, of dismissal from service. A statutory appeal was thereafter taken by the Petitioner to the Respondent no.1 being an Appellate Authority. The Appellate Authority, however, found no illegality or irregularity in the impugned order passed by the Disciplinary Authority and the appeal was accordingly dismissed. Aggrieved thereby, the Petitioner has filed this petition urging various grounds.

4. The second respondent, in the reply affidavit, defending impugned order, states that the charge against the Petitioner is more serious than the one framed against the co-delinquents in this case. In addition, the reply states that the Petitioner has disrupted the team work at judicial lockup, Margao owing to periodic, sudden and prolonged absence and that he remained continuously absent for 22 days in July, 2007, for 29 days in August, 2007 and was absent without any leave granted even beyond i.e. from 01st September, 2007 up to the jailbreak. Memorandum bearing

No.11/298/2000/IGP/0392 dated 15th March, 2000 mandates the Jailor or Assistant Jailor to make themselves available on duty for 24 hours on rotation on their term during night hours, irrespective of Sunday and holidays. Again, vide Memorandum, bearing No.11/298/2000/IGP/437 dated 21st August, 2007, attention of the supervisory executive staff was invited to the aforementioned Memorandum dated 15th March, 2000 to ensure their availability for 24 hours on rotation. In spite of these instructions, the Petitioner chose to remain absent putting the jail security in peril.

5. Further, the reply states that the Petitioner was frequently absent from the duty right from joining the Department. It is also stated in the reply affidavit that the office record shows that the Petitioner had misappropriated Government monies, demonstrated gross negligence in the performance of his supervisory duties, poor and inefficient disposal of work, complete lack of integrity and devotion to his duties.

6. Mrs. A. A. Agni, learned Senior Counsel appearing on behalf of the Petitioner urged with vehemence that the Enquiry Officer considered the absence of the petitioner for the period from 1st to 5th September, 2007 and 14th to 15th September, 2007 when the charge was subsequently about the unauthorized absence from duty since 13th to 16th September, 2007. However, the service record of the Petitioner shows that on 13th September,

2007 he was very much present on duty. It has been contended by the learned Senior Counsel for the petitioner that 14th September 2007 was a Restricted Holiday being Hartalika day whereas 15th and 16th September, 2007 were Public Holidays and therefore, the question of leave on those two days would not arise. In respect of the frequent absenteeism of the Petitioner, the learned Senior Counsel submitted that for the period from 10th July, 2007 to 31st July, 2007 the petitioner was granted leave and in the Muster Roll it was marked as “Earned Leave”. In respect of the second spell, i.e. from 4th August, 2007 to 31st August, 2007, the same was regularized subsequently by order dated 04th September 2007 and the leave salary for both the spells of leave had been drawn. As the leave was sanctioned, the employer thereafter cannot initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline. In support of her submissions, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in the case of *State of Punjab v/s. Dr. P. L. Singla*¹.

7. It has been submitted that the Memorandum dated 15th March, 2000 which require the Jailor/Assistant Jailor to be on 24 hours duty rotation was never circulated and the petitioner came to know about the same only on 10th September, 2007. Mrs. Agni, further submitted that the petitioner

1 (2008) 8 SCC 469

was singled out to impose the penalty of dismissal whereas the Jailor against whom identical charges were framed has been left scot-free with a minor penalty of withholding two increments. Even in respect of Jail guards major penalty was not imposed. She further submitted that the doctrine of equality applies to all who are equally placed, even among persons who are found guilty and that the parity among co-delinquents has to be maintained when punishment is being imposed. In support of her contention the learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of *Rajendra Yadav v/s. State of Madhya Pradesh And Others*².

8. At all events, according to Mrs. Agni, the learned Senior Counsel, applying the doctrine of proportionality to the case in hand, the order of dismissal, even if we accept the same as justified, is shockingly disproportionate to the gravity of the misconduct. She relies on *Raghubir Singh v/s. General Manager, Haryana Roadways, Hissar*³, in support of her contentions.

9. On the other hand, Mr. Pravin N. Faldessai, the learned Additional Government Advocate appearing on behalf of the respondents and relying upon the affidavit in reply filed on behalf of the respondent no.2, submits

2 (2013) 3 SCC 73

3 (2014) 10 SCC 301

that the petitioner had disrupted the teamwork at Judicial Lock-up Margao owing to his periodic, sudden and prolonged absence. The petitioner was frequently absent from duty right from the beginning of his joining the Department. By the Memorandum dated 15th March, 2000, it was directed to all concerned that the Jailors/Assistant Jailors should ensure to make themselves available on duty for 24 hours in rotation in their turn during night hours, irrespective of Sundays and Holidays. Again, vide Memorandum dated 21st August, 2007, the attention of the Supervisory Executive Staff was invited to the Memorandum dated 15th March, 2000 and was directed to ensure their availability for 24 hours in rotation. However, in spite of these instructions, the petitioner chose to remain absent. In his view, the service in jail administration demands discipline and that the frequent absence from duty has caused immense problems to the jail administration which eventually resulted in the escape of prisoners. It has been submitted that the inquiry clearly reveals the role of the petitioner. The charge levelled against the petitioner was more serious than those levelled against the co-delinquent.

10. We have carefully considered the rival submissions advanced by the learned Counsel for the parties and perused the material available on record.

11. It is settled principle of law that when the disciplinary proceedings have been initiated and findings of fact have been recorded in such inquiry, the same cannot be interfered with unless such findings are based on no evidence or the punishment is totally disproportionate to the proved misconduct of the employee or in such domestic inquiry there was flagrant violation of the principles of natural justice. In the case of *B. C. Chaturvedi v/s. Union of India & Others*⁴, it was held that the Disciplinary Authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has co-extensive powers to re-appreciate findings or the nature of the punishment. Further, it has been held therein that Court should not interfere unless the punishment awarded was one which shocks the conscience of the Court.

12. Upon perusal of the documents placed on record it is found that a detailed inquiry was conducted through the Deputy Collector, Panaji against the petitioner. In the Enquiry Report it has been pointed out that the first spell of earned leave in the month of July was applied for by the petitioner on 9th July, 2007 and he did not attend the office w.e.f. 10th July, 2007. The leave sanction order for 10th July, 2007 to 1st August, 2007 was issued only on 30th July, 2007. Similarly, the petitioner further applied for earned leave from 4th August, 2007 to 31st August, 2007 on 3rd August, 2007. He was marked in the Muster Roll as absent for this period. But

4 (1995) 6 SCC 749

subsequently, like in the month of July, 2007, his absence was regularized *ex-post facto* through the sanction order dated 04th September, 2007. The petitioner again applied for leave on 31st August, 2007 for the period from 1st September, 2007 to 30th September, 2007 which was rejected by the sanctioning authority and he joined duty on 6th September, 2007 and remained on duty until 13th September, 2007. It is thus quite clear that the petitioner is in the habit of applying for leave, did not wait for the appropriate leave sanction orders and did not attend the office, taking it for granted that his leave would be sanctioned. Therefore, he remained authorizedly absent till the absence was regularized through an appropriate sanction order. Only because his absence got regularized through *post facto* orders on some occasions, he could not be exculpated of the charge of being a frequent absentee. This is more important when he is serving in a security sensitive department like a Jail. Unauthorized absence or overstaying leave is an act of indiscipline and it cannot be denied that in the sensitive service, discipline is of the utmost importance. The question of penalty depends upon the nature of service and the position held by the delinquent. From the aforesaid discussion, it is clear that the petitioner was in the habit of remaining absent on duty without obtaining prior sanction of leave and that he used to submit his application just a day before he intended to proceed on leave and without waiting for any orders sanctioning the leave from the Sanctioning Authority, he used to proceed on leave and thus used to remain absent.

13. Now it is not in dispute that the petitioner was on duty on 13th September, 2007. 14th September, 2007 was a Restricted Holiday for which the petitioner had applied but was not granted leave of absence by the Competent Authority. The next two days, i.e. 15th and 16th September, 2007, were Public Holidays on account of Ganesh Chaturthi. The contention of the petitioner is that he was entitled to the Public Holidays. However, the Office Memorandum dated 21st August, 2007 mandated all the jail staff to be on 24 hours duty. Further, the contention of the petitioner is that the aforesaid Office Memorandum was brought to his notice only on 10th September, 2007 which was just 5 days before the incident of the escape of the under trial prisoners. This is a strange argument on the part of the petitioner to shirk his own responsibility and put the blame on someone else when he was absent on duty. The petitioner, who was a responsible officer, cannot plead ignorance of the Office Memorandum. The petitioner himself has admitted that 14th September, 2007 was a Restricted Holiday and he had applied for it on 13th September, 2007 but nothing is on record even to remotely indicate that the same was granted. It is clearly seen from the record that this time also without waiting for any orders of prior sanction of the leave, he remained absent. Umesh N. Sawant, Jailor has stated that as per the instructions of the Assistant Jailor, Margao he and the petitioner were put on rotation duty. He was present on 14th September, 2007 and had handed over charge to Headguard Santan Fernandes and resumed duty on 16th

September, 2007. Upon perusal of the Articles of Charge and the Enquiry Report in respect of Umesh Sawant, Jailor, it is seen that he was not charged for frequent absenteeism. Therefore, the case of the petitioner is clearly distinguishable from that of the Umesh Sawant.

14. We have gone through the judgments relied upon by the learned Senior Counsel for the petitioner. Further, according to her, facts in the present petition are quite similar to the facts in the judgments cited above. *State of Punjab v/s. Dr. P. L. Singla* (supra) is a case of unauthorized absence. In the aforesaid case, it was enunciated that if the employer is satisfied that there was sufficient cause or justification for the unauthorized absence, the employer may condone the act of indiscipline and sanction leave *post facto*. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline. However, in the same judgment, it has been clearly laid down that the request for condoning the absence may be favourably considered where the unauthorized absence is of a few days or few months and the reason for absence is stated to be sudden, serious illness or unexpected bereavement in the family. Long and frequent unauthorized absence is not usually condoned. In fact, in Security Services where discipline is the utmost importance, even a few days of overstay is viewed

very seriously. In the case of *Rajendra Yadav v/s. State of Madhya Pradesh And Others*(supra), it has been held that punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e. lesser punishment for serious offences and stringent punishment for lesser offences. Here, in this case, the Jailor was awarded the penalty of stoppage of 2 increments whereas the petitioner was dismissed from service. However, the charge of frequent absenteeism was not framed against Mr. Sawant, the Jailor. He alongwith petitioner and others was held responsible for the escape of the under trial prisoners. In the case of *Raghubir Singh v/s. General Manager, Haryana Roadways, Hissar* (supra), no inquiry was conducted resulting in violation of principles of natural justice and neither any show cause notice was issued calling upon the delinquent to show cause as to why termination order should not be passed against him. However, in the present case, the facts are totally different. Thus, the aforesaid judgments cited by the learned Senior Counsel for the petitioner are clearly distinguishable.

15. In the present case, it is not in dispute that the inquiry was held by the Competent Authority. There is no allegation that the authorities have allowed themselves to be influenced by any irrelevant or extraneous considerations. The conclusions arrived at by the Appellate Authority

cannot be said to be so arbitrary or capricious that no reasonable person could ever have arrived at such a conclusion. There is nothing on record to show that the finding of fact is based on no evidence. In the Writ Jurisdiction, we cannot go into the proportionality of punishment unless it shocks the conscience.

16. The decision of the Hon'ble Supreme Court in the case of *Union of India and Others vs. P. Gunasekaran*⁵, wherein the aforesaid aspect was considered, illuminates the path. It reads as under:-

“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, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. 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 Article 226/227 of the Constitution of India, shall not venture into re-appreciation 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*

5 (2015) 2 SCC 610

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 Article 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 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.”*

17. Similarly, the Hon'ble Supreme Court in the case of ***State of A.P. vs. Chitra Venkata Rao***⁶, has held that:-

⁶ (1975) 2 SCC 557

“23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and 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. (See Syed Yakoob v. K.S. Radhakrishnan.)

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the

conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.”

In the backdrop of the aforesaid legal position, we must refrain from disturbing the order of the Respondent-Appellate Authority.

18. For all the aforesaid reasons, we find no merit in this petition. The same deserves to be dismissed and is hereby dismissed. There shall be no order as to costs.

R.N. LADDHA,J.

M. S. SONAK, J.