



W.P.(MD)No.7563 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.7563 of 2020
W.M.P(MD).No.7023 of 2020**

C.Arunnath

... Petitioner

Vs.

- 1.The Director General of Police,
O/o.Director General of Police,
Mylapore,
Chennai-600 004.
- 2.The Inspector General of Police,
Armed Police, Trichy,
I/C Deputy Inspector General of Police,
Armed Police,
Trichy District.
- 3.The Commandant,
O/o.The Commandant,
Tamil Nadu Special Police,
VI Battalion,
Madurai-14.
- 4.The Assistant Commandant,



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O/o.Assistant Commandant,
Tamil Nadu Special Police,
VI Battalion,
Madurai-14.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of Removal from Service in PR.No. 09/2017 dated 04.08.2017 on the file of the respondent No. 3 and consequential impugned order in C.No. A2/Appeal- 37/2017 dated 07.11.2017 on the file of the respondent No. 2 and consequential impugned order in R.C.No. 203940/AP.3(1)2017 dated 13.07.2018 on the file of the respondent No.1 and quash the same as illegal and consequently directing the respondents to reinstate the petitioner (PC No.2007) in the post of Police Constable in Tamil Nadu Special Police VI Battalion, Madurai with all consequential monitory benefits.

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.S.P.Maharajan
Special Government Pleader



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ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order of removal from service in PR.No. 09/2017 dated 04.08.2017 passed by the respondent No. 3 and consequential impugned order in C.No.A2/Appeal- 37/2017 dated 07.11.2017 passed by the respondent No. 2 and consequential impugned order in R.C.No. 203940/AP.3(1)2017 dated 13.07.2018 passed by the respondent No.1, quash the same as illegal and consequently, direct the respondents to reinstate the petitioner (PC No.2007) in the post of Police Constable in Tamil Nadu Special Police VI Battalion, Madurai with all consequential monitory benefits.

2. The case of the petitioner is that the petitioner was working as Police Constable in Tamil Nadu Special Police-VI Battalion, Madurai. On 18.04.2017, a charge memo was issued against the petitioner under Section 3(b) of the Tamil Nadu Police Subordinate Service Discipline and Appeal



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Rules, 1955, by the third respondent on the ground that while he was in bandobust duty, he has consumed liquor and it was found by the Assistant Commissioner of Police; Hence, he was produced before the Medical Officer by the Assistant Commissioner of Police and the Medical Officer has given a report stating that the petitioner has consumed liquor; based on the same, he was suspended from service on 03.04.2017. Thereafter, on 27.05.2017, the oral enquiry was conducted by the 4th respondent and the fourth respondent has given an observation that as per the medical record, the delinquent consumed liquor, but is not under its influence. Based on the enquiry report, the 3rd respondent had imposed the punishment of removal from service. Hence, the petitioner had preferred an appeal before the 2nd respondent and the same was rejected on 07.11.2017. Thereafter, he filed a mercy petition before the 1st respondent and the 1st respondent has also confirmed the order passed by the second respondent and the third respondent. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the Medical Officer has issued a report as against the petitioner as if



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the petitioner has consumed liquor. However, at the relevant point of time, the petitioner was suffered with cold and thereby, he was prescribed to take cold syrup and therefore, the smell of syrup is likely to be that of alcohol. Though the 4th respondent has conducted the oral enquiry by examining five prosecution witnesses, the fourth respondent has given an observation in the enquiry report that the petitioner consumed liquor, but is not under its influence. Without considering all these things, the punishment of removal from service has been imposed on the petitioner. Hence, he prays for allowing the present writ petition.

4. In support of his contention, the learned counsel appearing for the petitioner relied upon Sub-clause (2)(c)(v) of Rule 80 of the Police Standing Order which provides that “the delinquent should be directed to submit his written statement within a sufficient specified time and also to produce a list of documents he proposes to cite and a list of witnesses whom he proposes to examine in defence”. However, the said procedure was not followed by the disciplinary authority as well as the Appellate Authority while imposing the punishment of removal from service against



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the petitioner. Hence, without providing sufficient opportunity to the petitioner, the punishment of removal from service imposed against the petitioner is not sustainable one.

5. The learned Special Government Pleader appearing for the respondents would submit that on 28.02.2017, while he was in bandobust duty to the statute of Ambedkar, he was in a drunken mood. It was found by the Assistant Commissioner, Anti Dowry Cell, Madurai. Thereafter, he was produced before the Medical Officer, Government Rajaji Hospital, Madurai and the Medical Officer has also given a report that the petitioner has consumed liquor, but is not under its influence. Thereafter, after conducting oral enquiry, the punishment of removal from service has been imposed against the petitioner. Further, earlier five punishments were imposed against the petitioner and a grave allegation is made in one of the punishments that the petitioner, in a drunken mood, without wearing the dress, knocked the door of the lady Constable and misbehaved with her. Hence, a punishment of postponement of next increment for a period of two years with cumulative effect has been imposed against the petitioner.



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He was frequently absent from duty, for which, disciplinary proceedings were also initiated. A person who is working in disciplined force, is expected to perform the duties with due care and diligence. If such a person is allowed to continue in the disciplined force, it will cause great inconvenience to the Government. Hence, he prays for dismissing the present writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

7. The facts in the present case are not in dispute. Admittedly, the petitioner was working as Police Constable in Tamil Nadu Special Police VI Battalion, Madurai. He was placed under suspension on the ground that on 28.02.2017, while he was in bandobust duty, he was in a drunken mood. He was produced before the Medical Officer, Government Rajaji Hospital, Madurai and the Medical Officer has also given a report that the petitioner has consumed liquor. Thereafter, the 4th respondent has also conducted oral enquiry by examining five prosecution witnesses and seven prosecution



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exhibits were also filed. An opportunity was given to the petitioner to cross-examine the witnesses and he has cross-examined the witnesses Nos. 2 and 4 and he did not cross-examine the other witnesses. Earlier, five punishments were imposed against the petitioner, in which, a grave allegation is that the petitioner without wearing the dress, in a drunken mood, has misbehaved with one lady. Considering the past attitude of the petitioner and the allegations made against him, the punishment of removal from service has been imposed on him.

8. 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 by the disciplinary authority, 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



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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 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.”

9. 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



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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 above said 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



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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.”

10. 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



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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.



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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



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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.”*

11. 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



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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.

12. In the opinion of this Court, a person, who is working in disciplined force, is expected to perform the duties with due care and diligence, without any remarks. Hence, this Court is not inclined to interfere with the impugned orders.

13. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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To

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- 1.The Director General of Police,
O/o.Director General of Police,
Mylapore,
Chennai-600 004.
- 2.The Inspector General of Police,
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M.DHANDAPANI,J.

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