IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 575 OF 2001

SHRI. GANGARAM BHIMJI NIGHUT
Adult, Indian Inhabitant residing at Sector 6, Room No.13, Koparkhairne, Thane Belapur Road, New Mumbai, Dist. Thane.

….PETITIONER

Versus.

1. THE CHAIRMAN,
   The Railway Goods Clearing & Forwarding Establishments Labour Board for Greater Bombay (established under The Maharashtra Mathadi, Hamal & Other Manual Workers (Regulation of Employment & Welfare) Act, 1969] & having its Office at 84 A, Broach Sadan Devji Ratanshi Marg, Dana Bunder, Mumbai-400 009.

2. THE SECRETARY

3. THE ACCOUNTANT,
   The Railway Goods Clearing & Forwarding Establishments Labour Board and both having its Office at 84 A, Broach Sadan Devji Ratanshi Marg, Dana Bunder, Mumbai-400 009.

4. SHRI. T.M. SAWALE
Assistant Accountant, The Railway Goods Clearing & Forwarding Establishments Labour Board and both having its Office at 84 A, Broach Sadan Devji Ratanshi Marg, Dana Bunder, Mumbai-400 009.

5. SHRI. B.T. MOHITE
The Enquiry Officer, 84-A, Broach Sadan, Devji Ratanshi Marg, Dana Bunder, Mumbai-400 009.

6. THE STATE OF MAHARASHTRA
Through Government Pleader, H.C. Annex Bldg, Ground Floor, Fort, Mumbai. **...RESPONDENTS**

APPEARANCES :

Dr. Uday P. Warunjikar, Advocate for the Petitioner.

Mr. Sanjay P. Shinde with Mr. Prathamesh T. Bhanuwanshe, Advocate for Respondent no.1.

CORAM : NITIN JAMDAR, &
SANDEEP V. MARNE, JJ.

Dated : 2 August 2023.

JUDGMENT *(Per Sandeep V. Marne, J.) :*

1. Petitioner, a former Clerk employed by The Railway Goods Clearing & Forwarding Establishments Labour Board for Greater Mumbai (**the Board**), has challenged the chargesheet dated 14 June 1994, enquiry officer's report and removal order dated 12 June 2000. passed by the disciplinary authority imposing the penalty of removal from service. Rule in the Petition was issued on 24 April 2001.

2. Briefly stated, facts of the case are that, Petitioner came to be appointed as a Clerk by the Board which is established under the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969. Petitioner was served with a Memorandum of Chargesheet dated 14 June 1994 proposing to initiate disciplinary proceedings against him for the charge of committing misappropriation and causing huge financial losses to the Board. It was alleged that during the financial year 1991-92, Petitioner inserted undue and additional amounts in provident fund register in respect of 35 employees of the Board than the ones actually deducted from them, which also resulted in an equivalent increase in amount of contribution by the Board. By such conduct, he caused huge financial loss of

Rs.82,000/- to the Board. It was further alleged that, after making false entries in the provident fund register maintained by him, he obtained signatures of senior officers thereon to cheat the Board. Alongwith the chargesheet, details of such entries made in cases of 35 workers were provided.

3. Upon receipt of the chargesheet, Petitioner made representation dated 22 June 1994 seeking details of various registers, receipts and payment sheets in respect of 35 workers referred to in the chargesheet. The Board appointed an Enquiry Officer to conduct the enquiry into the charges. During pendency of the disciplinary proceedings, the Board found out similar misconduct being committed in respect of 15 more workers and issued supplementary chargesheet dated 26 August 1997 giving particulars of additional 15 workers. Petitioner appointed his defence representative, who represented him throughout the enquiry. The Enquiry Officer was changed due to administrative reasons on 3 January 1998. The two Enquiry Officers together conducted 63 + 46 = 109 sittings between the years 1994 to 1999. The Board examined two prosecution witnesses, who were cross-examined by Petitioner's defence representative. Additionally, he desired to examine two defence witnesses, who despite summoning did not adduce evidence. The Enquiry Officer submitted detailed

report holding that the charges levelled against Petitioner were proved. Enquiry Officer's report was served on Petitioner and a show cause notice dated 16 December 1999 was issued proposing to impose penalty of removal from service. Petitioner submitted his reply dated 6 January 2000 to the show cause notice. After consideration of Petitioner's reply, the Disciplinary Authority passed order dated 12 January 2000 holding him guilty of misconduct and imposed the penalty of removal from service.

4. Petitioner preferred Appeal dated 6 March 2000 to the Board. By order dated 29 September 2000, the Appellate Authority held that the three members of the Board had already taken a decision to punish the Petitioner and that there was no provision under which the Board could reconsider the decision. Petitioner has accordingly filed the present petition challenging the chargesheet, report of the Enquiry Officer and the order passed by the Disciplinary Authority removing him from service.

5. Dr. Warunjikar, the learned counsel would appear on behalf of the Petitioner. He would submit that the entire enquiry proceedings are conducted in gross violation of principles of natural justice. That Petitioner demanded inspection of various documents relating to 35 cases originally included in the chargesheet by his

representation dated 22 June 1994, which were not supplied to him. That non-supply of the said documents has caused grave prejudice to Petitioner's defence. He would further submit that the Respondents have selectively chosen only Petitioner for imposing harsh penalty of removal from service while letting off all other superior officers, who are equally responsible in the case. He would particularly highlight the case of Shri. T. M. Sawale, the Assistant Accountant, who also faced same charges and was let off with an insignificant penalty of reversion to the lower post. He would submit that Shri. Sawale was Petitioner's immediate superior officer who had countersigned the entries made by him. That if Shri. Sawale can be let off with penalty of reversion, Petitioner could not have been removed from service. He would further submit that, in addition to Shri. Sawale, several other superior officers were also issued similar chargesheets, which would show that the concerned entries were made with full knowledge and approval of the superior officers. In such circumstances, Petitioner should not have been made a scapegoat and thrown out of service. Lastly, Dr. Warunjikar would submit that the penalty imposed on Petitioner is grossly disproportionate to the misconduct proved.

6. *Per-contra*, Mr. Shinde, the learned counsel appearing for Respondent no.1-Board would oppose the petition submitting that

the Board has taken action against all employees and officers responsible in the case. He would submit that Petitioner had manipulated and interpolated entries in the Register, which misconduct has been proved in the enquiry. That the findings of the Enquiry Officer are based on evidence of two management witnesses. That Petitioner has been afforded full opportunity of defence in the enquiry. That there is no perversity in the findings recorded in the enquiry and hence no interference at the hands of this Court is warranted. So far as the case of Shri. Sawale is concerned, Mr. Shinde would invite our attention to the Resolution adopted by the Board while imposing penalty on Shri. Sawale, which would indicate that some of the charges levelled against him were not proved. That therefore there is no similarity between two cases. He would pray for dismissal of the petition.

7. Rival contentions of the parties now fall for our consideration.

8. Petitioner faced serious charge of manipulating the Provident Fund Register by inserting therein undue and additional amounts against names of 35 plus 15 workers of the Board. The misconduct alleged against the Petitioner was that while making

entries in the Provident Fund Register, he indicated additional amounts in the Register than the one actually deducted from their salaries for being deposited in the Provident Fund accounts. On account of such extra amounts being included as workers' contribution, equivalent additional contribution from the Board also became payable. Additionally, he was charged with a misconduct of showing deposits in the Provident Fund accounts of the workers who had resigned. By such actions, he caused loss of Rs.82,000/- to the Board. To illustrate, in case of the employee-Shri. Sampat Punja Ghodake, Petitioner indicated additional amount of Rs.1,000/- in the Provident Fund Register as employee's contribution and equivalent amount of Rs.1,000/- as Board's contribution. This is how Rs. 2,000/- were shown to have been deposited extra in the provident fund account of the said employee. This caused financial loss of Rs.2,000/- to the Board in respect of the said employee. In the enquiry conducted against Petitioner, the charges levelled against him have been proved. No case is set up either in the enquiry or before us that the additional amounts were correctly entered by him in the Provident Fund register. Thus, there is no dispute to the position that the concerned entries made by Petitioner in Provident Fund register were indeed erroneous.

9. So far as the first ground of attack to the order of removal about violation of principles of natural justice is concerned, we find that Petitioner was given full opportunity to defend himself in the enquiry. He was given an opportunity to engage defence representative who cross-examined both the management witnesses in the enquiry. The report of the Enquiry Officer was served on Petitioner and his explanation was called. He was also heard in respect of the penalty proposed to be imposed upon him. The only grouse sought to be raised by Mr. Warunjikar is about non-grant of opportunity to inspect the documents requisitioned by Petitioner vide application dated 22 June 1994. We however find the said grievance to be totally baseless. The report of the Enquiry officer would indicate that Petitioner was given opportunity to inspect all the documents sought for in the application dated 22 June 1994. Even in respect of 15 additional cases subsequently included in the charges, he was supplied photocopies of provident fund statements of those 15 cases as well. In this regard, following findings recorded by the Enquiry Officer would be relevant:

> " After issue of the charge-sheet dated 14-06-94, the C.S.E. Shri. Nighut vide his application of 22-06-94 requested the management for permission to inspect certain documents as listed in the application. This was allowed in the enquiry held on 22/06/1994. It was directed by the E.O. that the Inspection might be carried out on 04/07/1994 at 3.00 p.m.

> Accordingly, the Inspection was carried out on 04/07/1994 and was continued on 05/07/1994. The D.R. demanded vide his letter dated 05/07/1994 Zerox copies of the P.F. entries in the P.F. Register. This was objected by the M.R. The E.O. directed that the management should provide the Zerox copies (05/07/1994).
>
> The M.R. furnished Zerox copies of P.F. deduction statements of 33 workers out of the 35 workers listed in the accompaniment of the charge-sheet dated 14/06/1994. The N.R. informed that the Zerox copies of the P.F. being large size, could not be taken out and the D.R. would write down himself the information required by him.
>
> As regards the statement of P.R. received by the workmen on resignation, when the D.R. wanted Zerox copies of all the 35 cases, the E.O. told him that, at random he should check about 15 cases. Accordingly, without going through the details of the cases and after consultation of the C.S.E. the D.R. had chosen 15 cases as mentioned in the proceedings dated 12/07/1994. The Zerox copies of the P.F. statement of the said 15 cases were furnished to the D.R. on 21/07/1994 and later on."

10. We accordingly find that Petitioner has been provided with photocopies of all the documents that he demanded by his letter dated 22 June 1994. Additionally, he was also provided with records relating to 15 additional cases. It must also be observed that the two Enquiry Officers conducted as many as 109 sittings during the years 1994 to 1999. It therefore cannot be contended by any stretch of imagination that Petitioner was not provided with proper

opportunity to defend himself in respect of the charges levelled against him. The objection of Mr. Warunjikar about enquiry being held in violation of principles of natural justice is thus baseless and deserves to be rejected.

11. It must be observed that Petitioner has not set up a case of perversity or total absence of evidence. We have gone through the enquiry report submitted by the Enquiry Officer running in 39 pages. The Enquiry Officer has considered the entire evidence on record and has arrived at a conclusion that Petitioner has carried out manipulation/interpolation in the Provident Fund Register. Thus the charge of making interpolation/manipulations in the Provident Fund Register has been proved against Petitioner and the same is supported by the evidence on record.

12. Faced with the position that the charge of manipulation/interpolation in the Provident Fund Register is proved against Petitioner, Dr. Warunjikar, would invite our attention to the following observations made by the Enquiry Officer in his report:

> " Asking these questions by the defence was also not correct. It otherwise indicates acceptance by the defence that though Shri. Nighut had made additions

alterations etc. in the P.F. main register, he himself was not benefited by such irregularities.

In such circumstances, there is a preponderance of probability that there must be somebody having authoritative power who might have brought Shri. Nighut in the P.F. Section and made Shri Nighut instrumental to those irregularities and, of course, Shri. Nighut might not have done such things without any consideration, in any way. It can also be inferred that authoritative person might have got transferred Shri. Nighut to the P.F. Section in Jan. 1992 and managed to continue him in the P.F. Section for further period without any official orders. Shri. Nighut has also accepted this fact in his cross-examination stating that he was working in the P.F. Section after April 1992 on verbal instructions from his authorities without naming the person/persons (Q.6, 22/02/99 p-177).

The defence, that Shri. Nighut was not benefited in any way monetarily or otherwise, does not stand on the face of the fact that the Board had suffered a loss to the tune of Rs.1,08,554.22 due to additions alterations by overwriting in the P.F. main register, made by the P.F. Clerk, Shri. Nighut, as alleged."

13. By relying upon the above observations, Dr. Warunjikar would contend that the senior officers had directed Petitioner to carry out the irregularities in the Provident Fund Register. That he has not received any monetary consideration for carrying out the said irregularities.

14. True it is that at the end of the enquiry, Petitioner is not found guilty of causing monetary gain to himself. However, in our view the said aspect is totally irrelevant to the charges levelled against him. He was charged with the misconduct of reflecting undue amounts against the names of serving and ex-employees, on account of which the Board was required to make payments in the Provident Fund Accounts of the concerned employees. Cause of loss to the Board has been proved and Petitioner is held liable for causing such loss. Whether Petitioner gained financially while causing such loss is an altogether different aspect. So long as it is proved that Petitioner is responsible for causing financial loss due to his overt acts, the Board cannot be faulted for punishing him.

15. The scope of judicial review while examining the correctness of orders passed in a domestic enquiry is extremely narrow. In exercise of power of judicial review in a domestic enquiry, Courts evaluate the decision making process and not the merits of the decision. Fairness of treatment meted out to the delinquent employee and not the fairness of conclusions drawn is something which can be examined while exercising power of judicial review. Courts or Tribunals may interfere in the enquiry proceedings on limited grounds of violation of principles of natural justice or

perversity in findings recorded. Again, in respect of allegation of violation of principles of natural justice, interference is not warranted in every case of minor infraction of a Rule or prescribed procedure. The delinquent employee is required to prove cause of prejudice and in absence of proof of prejudice to the employee, Courts would be loathe in showing any interference. So far as the aspect of perversity is concerned, it must be proved that findings recorded in the enquiry are not supported by any evidence. In short, it must be a case of 'no evidence'. Adequacy or sufficiency of evidence is something which would fall outside the domain of judicial review by Courts and Tribunals. Even, if there is some evidence in support of the charges, however compendious it may be, the findings recorded in the enquiry cannot be disturbed. Evidence on record cannot be re-appreciated by Courts to find whether another conclusion is possible based on such evidence. These principles have been settled in catena of judgments of the Apex Court. We do not wish to burden this judgment with all those decisions of the Apex Court and would refer to only one decision of the learned three Judges of the Apex Court in **SBI v. Ajai Kumar Srivastava** (2021) 2 SCC 612, in which it is held as under:

> "22. **The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities dis-**

charged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of T.N. v. T.V. Venugopalan , (1994) 6 SCC 302 and later in State of T.N. v. A. Rajapandian (1995) 1 SCC 216 and further examined by the three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 wherein it has been held as under:

> "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 enquiry, 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 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."

23. It has been consistently followed in the later decision of this Court in H.P. SEB v. Mahesh Dahiya (2017) 1 SCC 768 and recently by the three-Judge Bench of this Court in Pravin Kumar v. Union of India (2020) 9 SCC 471.

24. **It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion.** The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry 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 or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. **To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.**

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee.

> It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.
>
> **28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.**

(emphasis supplied)

16. In the present case, we have not come across any infraction on principles of natural justice and we find that Petitioner was afforded full opportunity of defence in the enquiry. The findings recorded in the enquiry are supported by evidence. This is not a case of complete absence of evidence. Therefore, there is no scope for this Court to interfere in the findings recorded in the enquiry in exercise of power of judicial review.

17. This leaves us to the last submissions canvassed by Dr. Warunjikar about discriminatory treatment meted out to Petitioner in the matter of penalty as well as proportionality thereof. So far as the aspect of discrimination is concerned, case of Shri. Sawale is highlighted by contending that Shri. Sawale also faced same charges

as that of Petitioner and that in his capacity as an Assistant Accountant, he was Petitioner's immediate senior, who countersigned the entries inserted by the Petitioner. We have gone through the Resolution dated 6 December 1996 adopted by the Board in the case of Shri. T.M. Sawale, Assistant Accountant. The Resolution would show that the charges of causing loss to the Board and connivance with Petitioner was not proved. Only charge nos. 3, 4 and 5 relating to negligence in duty, violation of code of conduct and loss of confidence were proved. Since Shri. Sawale is not held responsible for causing loss to the Board nor the charge of connivance with the Petitioner was proved, the Board thought it appropriate to impose the penalty of reversion upon him. As against Shri. Sawale, all the charges have been held to be proved against Petitioner, particularly charge of causing financial loss to the Board. Therefore, we do not find that there is any similarity between the case of the Petitioner and Shri. Sawale with regard to penalties imposed on them. So far as other senior officials are concerned, who are retained in service, it is a well settled principle that right to equality enshrined under Article 14 of the Constitution of India is a positive concept, which cannot be enforced in a negative manner. Petitioner cannot demand that if any other official committing misconduct has gone unpunished, he must also be let off.

18. So far as the aspect of proportionality of penalty is concerned, the law is well settled that Courts cannot go into the issue of adequacy of penalty. The Disciplinary Authority is the best judge to decide the appropriate penalty to be imposed considering the gravity of misconduct. Courts cannot substitute its own opinion in that regard and hold that lesser penalty is warranted. The limited area where Courts can interfere in a penalty is where the same is shockingly disproportionate to the misconduct proved. The penalty must shock conscience of the Court. We may in this regard refer to three Judge Bench decision of the Apex Court in **B.C. Chaturvedi v. Union of India**, (1995) 6 SCC 749, wherein it is held as under:

> "**18**. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed**, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(emphasis supplied)

19. In the instant case, we find that the charges levelled and proved against Petitioner are of grave nature. The penalty of removal from service imposed upon proof of charge of manipulating Provident Fund register thereby causing financial loss to the Board does not shock our conscience. The penalty of removal from service imposed on Petitioner therefore cannot be said to be shockingly disproportionate to the misconduct proved against him. Therefore, the submission of Mr. Warunjikar about proportionality of penalty also deserves to be rejected.

20. Resultantly, we find the impugned decisions to be unexceptionable. Writ Petition, being devoid of merits, is accordingly dismissed. There shall be no orders as to costs.

21. Rule is discharged.

NEETA SHAILESH SAWANT

SANDEEP V. MARNE, J. **NITIN JAMDAR, J.**

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