



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 01.08.2023

%

Judgment delivered on: 18.08.2023

+ **LPA 406/2019 & C.M. No.28019/2019**

SUNIL KUMAR SAXENA

..... Appellant

Through: Mr. Parveen Kumar, Advocate along
with appellant in person.

versus

EXPORT INSPECTION COUNCIL & ORS. Respondents

Through: Mr. L.R. Khatana, Advocate for
respondents No.1 to 4.

Mr. Rakesh Kumar, CGSC with
Mr.Sunil, Adv for respondent No.5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal is arising out of judgment dated 22.04.2019 passed by the learned Single Judge in W.P.(C.) No. 8335/2017 titled *Sunil Kumar Saxena Vs. Export Inspection Council*, dismissing the writ petition against the order of removal dated 02.11.2015, inflicted by way of punishment by the Competent Disciplinary Authority in exercise of powers conferred under the Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978 (Rules of 1978). The appellant has also challenged the order dated 14.02.2017, passed by the Appellate Authority.



2. The undisputed facts of the case reveal that the appellant before this Court was appointed on 25.01.1980 to the post of Peon in the services of Export Inspection Council. On 26.02.2012, an incident took place involving a minor scuffle between Mr. Deepak Shekhar and Mr. Praveen Sakhuja. On account of a minor scuffle between the aforesaid two persons, on 29.10.2012, an order was passed placing the petitioner under suspension in exercise of powers conferred under sub-Rule (a) of Rule 6 of the Rules of 1978 contemplating a departmental inquiry alleging his involvement also in the incident dated 26.02.2012.

3. A charge-sheet was issued on 30.10.2013 alleging violation of the Central Civil Services (Conduct) Rules 1964 – which are also applicable to the employees of the Export Inspection Agency (EIA). It was alleged that the appellant Sunil Kumar Saxena – while functioning as the Despatch Rider, conspired and connived with one Praveen Sakhuja – who was working as the Technical Officer at the EIA, as a result of which Shri Praveen Sakhuja physically assaulted Deepak Shekhar – retired Joint Director, Export Inspection Agency, Delhi, in the office premises. The statement of Article of Charge framed against the Appellant Sunil Kumar Saxena is reproduced as under:

“Statement of article of charge framed against Shri Sunil Kumar Saxena, Dispatch Rider/Under Suspension, EIA- Delhi

That said Shri Sunil Kumar Saxena, while functioning as Dispatch Rider, Export Inspection Agency-Delhi during the year 2012 conspired and connived with Shri Praveen Sakhuja, the then Technical Officer (now an ex-employee) in ETA-Delhi as a result of which Shri Praveen Sakhuja physically assaulted Shri Deepak Shekhar, Retd. Joint Director, EIA-Delhi in the office premises when Shri Deepak Shekhar visited the EIA-



Delhi in the evening of 22/02/2012. The abovenamed Shri Sunil Kumar Saxena remained present during the entire period of the incident and his to and fro movements within, office premises prior and after the occurrence of incident as captured by CCTV cameras installed in the office premises of the EIA-Delhi show his active connivance with Shri Praveen Sakhuja.

By his above act, Shri Sunii Kumar Saxena, Dispatch Rider, EIA-Delhi has committed misconduct, which is highly unbecoming of an EIA employee and thereby contravened Rule-3(1)(iii) of the Central Civil Services(Conduct) Rules,1964, which are applicable to the EIA employees by virtue of Rule-7 of the Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978.”

4. The Appellant/ petitioner submitted a reply to the charge-sheet on 02.01.2014, and an Inquiry Officer was appointed in the matter. The Inquiry Officer examined large number of witnesses, including Deepak Shekhar – who was examined (as SW-1). Shri Deepak Shekhar never stated in the departmental inquiry that he was assaulted by the appellant Sunil Kumar Saxena. He also admitted that the appellant never misbehaved with him.
5. Another witness Manoj Kumar Gupta was examined as SW-2, and in his statement, he did not levy any allegation in respect of misbehavior on behalf of the appellant/ petitioner. The appellant was examined on 15.06.2015 and made a request for examination of one Manoj Kumar Gupta as Defense Witness, however, his request was turned down by the Inquiry Officer on the ground that it was not made within time.
6. The Inquiry Officer, finally, submitted a report in the matter on 27.07.2015, and based upon the evidence captured by the CCTV and also retrieved from the DVD as well as the statement of witnesses, arrived at a conclusion that the charged official was present in the office; at the time of



the incident, he was present at the spot; and in those circumstances, he has arrived at a conclusion that the charged official actively conspired and connived with Praveen Sakhuja resulting in assault upon Deepak Shekhar. The inquiry report was furnished to the charged official, to which a representation was also made by the charged official, and finally, the punishment of removal from service was inflicted upon the appellant by an order dated 02.11.2015, against which an appeal was preferred. The Appellate Authority – after taking into account the entire evidence on record, has modified the punishment of removal from service to that of compulsory retirement by an order dated 14.02.2017.

7. The learned Single Judge after hearing the parties at length has dismissed the writ petition, and in those circumstances, the present LPA has been filed. The operative paragraphs of the order passed by the learned Single Judge – as contained in paragraphs 15 to 30, read as under:

“15. I have heard learned counsel for the parties and perused the material available on record.

16. Regarding the suspension order dated 29.10.2012 which continued beyond three months. The petitioner did not challenge the said order before this court and continued participating in the disciplinary proceedings which was finally concluded vide punishment order dated 02.11.2015 whereby the petitioner was removed from service. Challenging the suspension order at this stage is belated and hit by delay and latches. Moreover, the said order has been merged in final order dated 02.11.2015.

17. On the issue of appointment of the inquiry officer, who is a retired officer and is more than 70 years of age. In the rule, it is stated that the person should not be more than 70 years of age but if the person is in a sound mind and having good health, there is no embargo that such person cannot be appointed as



inquiry officer. Moreover, on this issue also, the petitioner did not come before the court at the appropriate stage, therefore, on this issue also, the petition is hit by delay and latches.

18. In case of Baikuntha Nath Das vs. Chief District Medical Officer: (1992) 2 SCC 299 whereby the Hon'ble Supreme Court has held that an order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. The principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. The Court would not examine the matter as an appellate court, it may interfere if satisfied that the order is passed mala fide or that it is based on no evidence or it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

19. In case of Sub-Divisional Officer, Konch vs. Maharaj Singh: 2003 (9) SCC 191 whereby the Supreme Court has held that the jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one, and as such the Court would not be justified in reappreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority.

20. In case of Union of India and Ors. Vs. P. Chandra Mouli and Ors.: 2003 (10) SCC 196 whereby the Hon'ble Supreme Court has held that once the charge against a delinquent is established, the quantum of punishment is for the employer to decide and the court ordinarily would not interfere with the order on the quantum of punishment once the court comes to a conclusion that there has been no infirmity with the procedure.

21. In case of State of UP vs. Sheo Shanker Lal Srivastava & Ors: 2006 (3) SCC 276 whereby the Hon'ble Supreme Court has held that doctrine of proportionality can be invoked only under certain situations. The Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

22. In B.C. Chaturvedi vs. Union of India & Ors.: (1995) 6 SCC 749 whereby it is held that a judicial review is not an appeal



from a decision but a review of the manner in which the decision is made. The 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. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence.

23. During the departmental inquiry, the CCTV footage was shown to the petitioner whereby it is established that the petitioner was looking at the incident like a mute spectator. If there was an altercation going on in the office and that is between the former employee and present employee of the department, it is atleast the moral duty of the employee present there to intervene and get them apart from fighting. As per the conclusion of the inquiry officer, there was no movement of the petitioner and saw the incident like a mute spectator.

24. Moreover, Shri Praveen Sakhuja (attacker) filed a similar writ petition vide W.P.(C) No.1156/2016 on similar grounds and with a similar prayer, which was dismissed by this court on 11.08.2016 with cost of ₹7,000/- upon the petitioner therein.

25. In addition to above, the appointment of the inquiry officer was challenged by Shri Praveen Sakhuja in W.P.(C) No. 6168/2012 and when this court was not inclined to issue notice in the writ petition, he had withdrawn the same and disciplinary proceedings were concluded by the same IO.

26. It is not out of place to mention here that Shri Deepak Shekhar (victim) was the former incharge (head) of the Export Promotion Agency and the petitioner or Shri Praveen Sakhuja had no authority to question his visit to said agency which infact, was with prior intimation to a senior officer of the agency namely Shri Manoj Kumar Gupta, AD.

27. The relevant documents were supplied to the petitioner in accordance with law by giving proper hearing and the petitioner was participated through departmental proceedings,



therefore, there is no issue left which requires interference of this court.

28. The detailed removal order dated 02.11.2015 has been passed by the disciplinary authority whereby the petitioner was removed from service. Thereafter vide order dated 14.02.2017, the appellate authority modified the said order and imposed penalty of compulsory retirement which is in any sense not a punishment to the petitioner.

29. It is pertinent to mention here that on the issues discussed above, the petitioner filed the present petition of 106 pages with Annexures 33 (Total 394 pages). The grounds made in the present petition are A to JJJJJJ (140 grounds). With lot of difficulty, this court could get the facts and issues raised in the present petition by going through the whole petition, which is with repetitious, without sequence and with irrelevant facts, however, have been ignored by this court while dictating the judgment.

30. Keeping in view the facts and law discussed above, I find no ground to interfere in the order passed by the authority concerned.”

8. The order passed by the learned Single Judge reveals that the learned Single Judge has arrived at a conclusion that the departmental inquiry was held following the principles of natural justice & fairplay, and the High Court in exercise of its power of judicial review cannot examine the matter as an Appellate authority/ Court. Learned Single Judge – taking into account the judgment delivered by the Apex Court in ***Baikuntha Nath Das Vs. Chief District Medical Officer***, (1992) 2 SCC 299, has dismissed the writ petition. The learned Single Judge keeping in view the other judgments of the Hon’ble Supreme Court on the issue of limited scope of interference of the High Court in respect of departmental inquiry, has dismissed the writ petition. The learned Single Judge has also held that the order of



compulsory retirement is not a punishment and the principles of natural justice have no place in the context of an order of compulsory retirement.

9. This Court has heard learned counsel for the parties at length and perused the record.

10. The law regarding scope of interference in a departmental inquiry by High Courts has been dealt with in detail by the Hon'ble Supreme Court in ***Union of India Vs. P. Gunasekaran***, (2015) 2 SCC 610. In paragraphs 12 & 13 of the judgment in ***P. Gunasekaran*** (supra), the Hon'ble Supreme Court has held 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, 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.”

11. The Hon’ble Supreme Court in the case of ***State of Karnataka Vs. N. Gangaraj***, (2020) 3 SCC 423, has taken into account the earlier judgments delivered on the subject and reiterated that the scope of interference in departmental enquiry is quite limited. Interference in disciplinary proceedings can be done in case there is violation of principles of natural justice and fairplay or if the findings arrived at are based on no evidence/ perverse findings.



12. The Hon'ble Supreme Court in paragraph 7 of the judgment delivered in *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584, has held as under:

*“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. **Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.** (Vide *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , *Union of India v. G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , *Bank of India v. Degala Suryanarayana* [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and *High Court of Judicature at Bombay v. Shashikant S. Patil* [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)”*

(Emphasis supplied)

13. The Hon'ble Supreme Court in *State Bank of Bikaner & Jaipur* (supra) has held that the Courts can interfere where the findings recorded in departmental proceedings are based on no evidence, or they are clearly perverse.



14. The Apex Court in paragraph 24 of the judgment in the case of **SBI v. Ajai Kumar Srivastava**, (2021) 2 SCC 612, has held as under:

“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.”

(Emphasis supplied)

15. In **Ajai Kumar Srivastava** (supra), the Hon’ble Supreme Court has laid down the parameters of interference in the matter of disciplinary proceedings and it has been held that in case the findings of disciplinary proceedings 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.

16. In **B.C. Chaturvedi v. Union of India**, (1995) 6 SCC 749, the Hon’ble Supreme Court in paragraphs 12 & 13 has held as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the



*authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. **The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.***

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that **if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error***



on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

(Emphasis supplied)

17. In ***B.C. Chaturvedi*** (supra), the Hon’ble Supreme Court has held that the findings of the disciplinary authority can be interfered with if they are perverse, or based upon no evidence at all.

18. This Court – keeping in view the aforementioned judgments, has perused the entire evidence on record and finds that the present case is a case of no evidence.

19. In the present case, the victim of assault Deepak Shekhar has categorically stated before the Inquiry Officer that he was not at all assaulted by the Appellant. The only statement on the basis of which the appellant has been held guilty is the statement of Deepak Shekhar (SW-1) who has stated before the Inquiry Officer that the appellant was present at the spot. SW-1 has not categorically mentioned the involvement of the petitioner in respect of the assault. This Court really fails to understand as to how the appellant has been held guilty of conniving with the attacker by his mere presence at the spot, especially when he was an employee of the same department and his presence in the department – by virtue of being employee, is justified.

20. Another witness Manoj Kumar Gupta – who was also the Prosecution Witness, has also not at all stated about the involvement of the petitioner in respect of the assault. There is no other evidence on record, except the CCTV footage which simply establishes the presence of the charged official in the premises.



21. In the considered opinion of this Court especially in light of the statement of Deepak Shekhar – who was the victim, and Manoj Kumar Gupta – who was a Prosecution Witness, the present case is a case of no evidence. The Appellant who was an employee and was merely present at the spot cannot be charged for conniving assault upon another employee of the same organization. There is no whisper in the entire evidence to establish that it was the charged official who has connived to assault Deepak Shekhar (Victim). This Court is, therefore, of the considered opinion that in light of the judgment delivered in the case of *P. Gunasekaran* (supra), as the findings are based on no evidence, the findings arrived at by the Disciplinary Authority and the Appellate Authority are certainly perverse findings.

22. It is a well settled proposition of law that a High Court can interfere with the disciplinary inquiry or order passed by the competent authority, if the inquiry itself is vitiated on account of violation of principles of natural justice or where the disciplinary authority arrives at a finding that is unsupported by evidence or records a finding which no reasonable person could have arrived at. In the present case, the findings arrived at are based upon no evidence and, therefore, the order passed by the disciplinary authority and appellate authority deserves to be set aside.

23. The learned Single Judge – while dismissing the writ petition, has also arrived at a conclusion that the order of compulsory retirement is not a punishment and principles of natural justice have no place in the context of order of compulsory retirement. It is true that the punishment of removal was moderated to that of compulsory retirement but the fact remains that the compulsory retirement was inflicted upon the charged official by way of



punishment and is one of the punishments provided under the service rules. Therefore, as the present case is a case of no evidence, the order of punishment and the order passed by the disciplinary authority and appellate authority deserve to be set aside and are, accordingly, set aside.

24. While the matter was being argued, learned counsel for the appellant, has categorically stated before this Court that the appellant is not praying for back wages nor is he claiming regular salary for the period during which he was under suspension. Accordingly, we allow the writ appeal and hold that the appellant shall be entitled to be treated in service till his actual date of superannuation and the respondent shall fix his salary notionally till the date of his actual superannuation which will consequently result in enhancement of pension and terminal dues. It is made clear that he will not be entitled to back wages and salary for the period he was under suspension and for the period he was out of job as the appellant – who was present in Court, has not pressed for the aforesaid reliefs.

25. Resultantly, the writ appeal is allowed. The order of removal dated 02.11.2015, the order dated 14.02.2017 passed by the Appellate Authority, and the judgment dated 22.04.2019 passed by the learned Single Judge in W.P.(C.) No. 8335/2017, are hereby set aside with the aforesaid observations.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

AUGUST 18, 2023

LPA 406/2019

Page 15 of 15