

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No. 24354 of 2008

D. Anandan

Vs

Union of India & Ors.

For the Petitioner : Mr. K.B.S. Mahapatra.

For the Respondents : Mr. Rahul Sarkar,
Ms. Dipika Sarkar,
Ms. Tannu Raj.

Hearing concluded on : 20.09.2024

Judgment on : 01.10.2024

Shampa Dutt (Paul), J.:

1. The Petitioner's case in the present writ is as follows:-

".....i. The petitioner is employed in the Central Industrial Security Force (here-in-after called the CISF).

ii. When he was transferred to the present Unit from CISF Unit, Durgapur Steel Plant, he was sanctioned 15 days Earned Leave along with joining time, so that he could go to his native place to sort out urgent domestic problems.

iii. Accordingly he arrived at his native place. Unfortunately at that point of time his native place was effected with "CHICKENGUNIA" and other disease, and the petitioner was also attacked with the said disease. Once a person is attacked with such type of disease, one should not undertake any travel until he is cured, as otherwise there is possibility of spreading of the disease. As a result he could not undertake the journey and could not report in time at his new place of posting. His wife had intimated the Commandant, CISF Unit, DSP, Durgapur about the disease and his inability to report at his new place of posting due to chickengunia.

iv. He reported at CISF Unit, FBP Farakka after being cured and after being fit to resume his duties. The petitioner was allowed to resume his duties and he duly submitted all the medical

certificates and he prayed for regularization of the sick period by grant of medical leave.

- v. Surprisingly he was issued with a Memorandum of charges dated 27th April, 2007, wherein it was alleged that the petitioner had overstayed for 174 days without any permission from the competent authority.*
- vi. In his reply he submitted that due to the chickengunia he was advised rest by the Doctor and as such he could not report for duty in time. Thereafter the Disciplinary Authority Ordered for a Departmental Enquiry.*
- vii. The petitioner states that on completion of the enquiry proceedings, the Disciplinary Authority communicated the Findings prepared by the Enquiry Officer by his letter dated 7th September, 2007, wherein the Enquiry Officer has recorded the fact of suffering of the petitioner from chickengunia and other diseases, but at the same time the allegation of overstay and **misconduct was also proved.** The Enquiry Officer could not adduce any evidence as to whether the alleged call up notices at all were served or not, but he recorded that the notices were sent. The findings as was recorded by the Enquiry Officer is not only biased but also without consideration of the fact as to whether the petitioner should have come back even if he was suffering from chickengunia and advised rest, and as to*

whether the authorities would have been able to take him for duties when he was advised to unit for duties due to chickengunia.

viii. *The petitioner in his representation dated 28th September, 2007 submitted that he could not report for duties due to chickengunia and other diseases.*

ix. *Thereafter the Commandant by his purported Final Order, without any application of mind, mechanically inflicted the **penalty of reduction of pay by three stages for two years and with cumulative effect.***

x. *The petitioner states that he was required to file appeal within 30 days, but before expiry of 30 days, the disciplinary authority, with a view to give final effect to the said purported final order, issued a show cause notice dated 29th October 2007 proposing to regularize the period entailing loss of pay and also debit of equal number of leave.*

xi. *Being aggrieved by the said purported Final Order of penalty he preferred an appeal dated 2nd November 2007 before the Appellate authority.*

xii. *He also submitted representation against the purported show cause notice.*

xiii. *The Appellate Authority by his purported appellate order dated 23rd November 2007 rejected the appeal and confirmed the penalty.*

xiv. *The Disciplinary Authority by his purported Order dated 4th February 2008 regularized the period as dies non, entailing loss of pay for 174 days and also debited of 174 days leave, which is double jeopardy.*

xv. *The petitioner states and submits that the concerned respondents failed to take a note of the fact that the period is covered by the medical unfit/fit certificate and therefore, the period should have been regularized by grant of medical leave.*

xvi. *The petitioner states and submits that the period is covered by the medical certificates issued by the authorized medical officers, therefore the purported penalty is not maintainable.....”*

2. Hence the writ petition.

3. From the materials on record, the following is relevant:-

“ARTICLE OF CHARGE

- i) *An act of gross indiscipline, dereliction of duty which amounting to a misconduct on the part of No. 824290234 HC/GD, D. Anandan of CISF Unit FBP. Farakka in that he overstayed from joining time for a period of 174 days from 16.08.06 to 05.02.07 without any permission of the competent authority. Hence the charge.”*

- ii) The petitioner has admitted his absence and defence taken is that he was suffering from a contagious disease (CHICKENGUNIA) **from 11.08.06 to 04.02.07 (almost 6 months, 174 days).**
- iii) His further defence is that as he did not know the address and phone number of his employer, he could not inform them even though several call up notices were issued upon him.
- iv) Six Medical Certificates were placed by the petitioner before the enquiry authority for consideration.
- v) The medical prescriptions show that the petitioner had contacted chickengunia, but most of the prescriptions are illegible. One of the certificates show that he was suffering from 'Reflux Oesophageal', another for **Acid/peptic ulcer**. In this manner the petitioner tried to support/substantiate his long absence without intimation.
- vi) As it appears from medical journals/bulletins, the **recovery from Chicken gunia takes about a week.**
- vii) **The medical papers (Six) submitted by the petitioner clearly do not justify absence of 174 days that too without intimation, more so in a disciplined service.**

4. Power of revision under the Central Industrial Security Force Act, 1968 is under Rule 54 :-

*“..... **54.Revision.-** (1)Any authority superior to the authority making the order **may** either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, and may-.....”*

5. In view of the said provision ‘may’, the present writ is prima facie maintainable.
6. The petitioner has relied upon the following provisions of law in support of his case.

i) **Rule 63 of CISF Rules:-**

*“**63. Leave** - The Supervisory Officers and enrolled members of the Force shall be governed by the Leave Rules as are applicable to employees of the Central Government, excepting that they shall be entitled to fifteen days Casual Leave in a calendar year in respect of field formation where no specific working hours in a day or working weeks are prescribed and entitlement of Casual leave in static formation like Force Head Quarters, Sector Head Quarters etc., of Central Industrial Security Force will be 8 days in a calendar year as per Ministry of Home Affairs’ Office Memorandum No.27012/6/98/PF.I/419 dated 7.7.2000. The Regularization of leave will be subject to orders issued by Central Government from time to time.”*

- ii) **Rule 19 of Central Civil Services, Leave Rules** relates to Grant of leave on medical certificate to Gazetted and non-Gazetted Government servants.

iii) **Rule 19(3), CCS, Leave Rules :-**

*“**19(3)** The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.”*

iv) **Rule 25(2) of CCS, Leave Rules:-**

“25(2). Wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.”

7. Rule 19(3) of the said rules is the discretion given to the competent authority to secure a second medical opinion.
8. Rule 25 relates to unauthorized leave to be adjusted against leave due, if leave is not regularized by authority concerned.
9. From the provisions of law relied upon by the petitioner, it appears that the said rules are applied as per the discretion of the authority concerned on being prima facie satisfied with the conduct of the incumbent.
10. In the present case, the authorities concerned in the enquiry and disciplinary process have duly considered the medical papers produced by the petitioner and rightly held that the said documents do not justify the petitioner's absence of 174 days without intimation, more so in a disciplined service.
11. The petitioner has also challenged the show cause notice dated 29.10.2007 (Annexure – 5) which goes as follows :-

**“..... Subject : SHOW CAUSE NOTICE FOR
REGULARISATION OF OSL/AWL PERIOD REG.**

Whereas CISF No. 824290234 HC/GD D Anandan of this Unit over stayed himself from joining time un-authorisedly from 16/08/2006 to 05/02/2007 i.e. 174 days without any prior permission/order of the competent Authority and has

been awarded the punishment of “Reduction of pay by three stage @ Rs 4305/- to 4050/- in the time scale of pay of Rs. 3200-85-4900 for a period of two years” with immediate effect vide final order No. V-15014/Maj-03/DA/CISF/FBP (F)/DISC/07-3716 dated 10/10/2007.

*And whereas the under signed proposed to regularize the period from 16/08/2006 to 05/02/2007 un-authorised absence under rule 25(1) of CCS (Leave) Rules read with FR-17 treating the entire duty absent period as unauthorised absence and entailing loss of pay for such absence with debit of **equal number of HPL/EOL.....**”*

- 12.** It thus appears that on granting penalty of reduction of pay, which was upheld by the Appellate authority, the Respondents sought to adjust the (duly proved) unauthorized absence of the petitioner towards his leave account.
- 13.** This court finds no irregularity in such procedure, because the penalty imposed is for the irresponsible/indisciplined conduct of the petitioner whereas the adjustment of leave is a procedural formality. In this case the unauthorised absence being adjusted towards HPL (Half Pay Leave) and EOL (Extraordinary Leave), which entails loss of pay as per rules.
- 14.** Thus no regularity is seen as to the steps taken by the authority concerned.
- 15.** Accordingly the said findings under appeal do not warrant interference by this Court.

16. In ***The State of Karnataka & Anr. vs Umesh, in Civil Appeal Nos.***

1763-1764 of 2022, decided on 22.03.2022, the Supreme Court

held:-

*“13. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. **The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities.** The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.*

14. In a judgment of a three judge Bench of this Court in ***State of Haryana v. Rattan Singh, (1977) 2 SCC 491***, Justice V R Krishna Iyer set out the principles which govern a disciplinary proceedings as follows:

*“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. **All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.** It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous*

materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. **The simple point is, was there some evidence or was there no evidence** — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

(emphasis supplied)

These principles have been reiterated in subsequent decisions of this Court including **State of Rajasthan v. B K Meena**, (1966) 6 SCC 417; **Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh**, (2004) 8 SCC 200; **Ajit Kumar Nag v. Indian Oil Corporation Ltd.**, (2005) 7 SCC 764; and **CISF v Abrar Ali**, (2017) 4 SCC 507.

16. In Karnataka Power Transmission Corporation Ltd. v. C. Nagaraju, this Court has held:

"9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and

departmental, are entirely different. They operate in different fields and have different objectives. In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different.”

The Court also held that:

“Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court.”

17. *In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is*

disproportionate to the proven misconduct. However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the inquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”

17. In the present case, this Court finds that the enquiry officer/disciplinary authority and the appellate authority have all:-

- i) Duly followed the rules of natural justice.
- ii) The findings misconduct is based on oral and documentary evidence.
- iii) Statutory rules governing conduct of disciplinary enquiry have been observed and
- iv) The findings of the disciplinary appellate authority do not suffer from perversity and
- v) Finally the penalty imposed is not disproportionate to the proven mis conduct. **(Para 17, The State of Karnataka & Anr. vs Umesh, (Supra)).**

18. The writ petitions being without merit stands dismissed.

19. All connected applications, if any, stand disposed of.

- 20.** Interim order, if any, stands vacated.
- 21.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)