

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 22387 of 2011

Sanjay Kumar

Vs.

Union of India & Ors.

For the Petitioner : Mr. Abhishek Banerjee.

**For the Respondent/
Union of India** : Mr. Bhudeb Chatterjee.

Hearing concluded on : 25.09.2024

Judgment on : 25.09.2024

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred praying for direction upon the respondents to recall and/or quash the order of punishment dismissing the petitioner from service with effect from 1st July, 2009.
2. The petitioner's case is that the respondents by conducting a Summary Security Force Court trial without following the proper procedure and in an unfair manner, conducted the enquiry/investigation, without any authority completed the trial and finding the petitioner guilty, dismissed him from service.
3. During hearing, affidavit-in-opposition was used by the respondent/Union of India though no reply was filed by the writ petitioner. Both parties have filed their written notes.
4. The Respondent/Union of India's case is that due procedure was followed and on recording proper evidence both oral and documentary, the appropriate authority being satisfied with the guilt of the petitioner being proved, directed his dismissal from service on finding him guilty of all charges.
5. From the materials on record including the evidence it appears that due procedure was followed by the authority concerned as per the provisions of the Boarder Security Force Act, 1968.
6. It is further submitted by the learned counsel for the respondents that in spite of being given the opportunity to cross-examine the witnesses, the petitioner/incumbent did not avail of such opportunity.

7. It is, thus, submitted that after a fair trial following the principle of natural justice, the appropriate authority came to the said finding and considering the nature of evidence proved and the conduct of the petitioner, proportionate penalty was imposed upon the petitioner by dismissing him from service.
8. **In the present case**, the enquiry authority/disciplinary authority **has followed the rules of natural justice**. The orders, findings and finally the penalty have all been given **on proper reasons and clear findings, based on evidence**. The reasoning given on the findings have prima facie proved that the petitioner has committed the irregularities.
9. The Disciplinary Authority in its **well reasoned detailed order**, gave specific findings proving the charges of misconduct against the petitioner. (*State of Rajasthan and Ors. Vs. Heem Singh., 2020 SCC OnLine SC 886*)
10. **The said findings are balanced and not biased, considering that they are based on extensive evidence, both oral and documentary.**
11. The penalty as imposed by the appointing authority is **prima facie** appropriate keeping in view of the magnitude and gravity of the misconduct. (*B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749*)
12. It appears from the materials on record, that after the petitioner was penalized, being dismissed from service, the petitioner did not approach the appellate authority but chose to approach the High Court in its writ jurisdiction. The scope of a writ Court is limited in respect of disciplinary proceeding conducted by the respective authority under their respective Acts, whereas the power of an

appellate authority under the said Acts are wide and the appellate authority can look into in details even appreciate the evidence afresh and the forum is thus more appropriate for redressing the grievance of a person found guilty in a disciplinary proceeding.

13. The Supreme Court in the ***State of Rajasthan and others – vs – Heem Singh, in Civil Appeal No. 3340 of 2020 decided on 29th October, 2020*** held :-

“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."

14. In *B. C. Chaturvedi – vs – Union of Indian and others* [(1995) 6

***Supreme Court Cases 749 in Civil Appeal No. 9830 of 1995*], the**

Supreme Court held that :-

"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.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not

material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in *Shivdeo Singh* case that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every Court, not to speak of a court of plenary jurisdiction like a High Court. Of Course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.

24. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as *Bank Nationalisation* case, which thinking was extended to cases attracting Article 21 in *Maneka Gandhi v. Union of India*, the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in *Bhagat Ram v. State of H.P.* also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.”

15. In Civil Appeal No. 5848 of 2021 (Union of India & Ors. vs. Dalbir Singh) the Supreme Court held (relevant paragraphs are reproduced herein):-

“25. This Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.*, (2005) 7 SCC 764 held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”.

It was held as under:-

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

(Emphasis Supplied)

26. This Court in **Noida Entrepreneurs Association v. NOIDA & Ors. (2007) 10 SCC 385**, held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive

have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [(1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011], Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

“8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short ‘the Evidence Act’]. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be

considered in each case depending on its own facts and circumstances.”

27. This Court in **Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699**, held that 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. It was held as under:

“7. ...There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. 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 Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.” (Emphasis Supplied)

28. Mr. Yadav, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition before the High Court, 9 (1997) 2 SCC 699 the appellants were given opportunity to produce the registers of the entrustment of S.L.R. to the writ petitioner. But it was stated that record was not available being an old record as the incident was of 1993. The enquiry was initiated in 2013 after the acquittal of the writ petitioner from the criminal trial. Therefore, in the absence of the best evidence of registers, the oral evidence of use of official weapon stands proven on the basis of oral testimony of the departmental witnesses. 29. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a

terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time.”

- 16.** A writ Court has the jurisdiction in such proceedings to only ensure that the person aggrieved has had a fair trial and that principle of natural justice was followed while deciding the case and as to whether the punishment given is in proportionate to the offence committed. A writ Court cannot go into the details of evidence recorded and as to the discrepancies of the said finding and proceedings conducted by a disciplinary authority.
- 17.** Thus, considering the said circumstances, the writ petitioner, in the interest of justice is granted liberty to approach the appellate authority with his appeal against the order of the disciplinary authority, within two months from the date of this order.
- 18.** On being approached, the appellate authority considering the materials on record and giving an opportunity to the parties and on a

fair hearing, shall dispose of the appeal, in accordance with law within a period of four months from the date of filing the appeal.

- 19. The writ petition being WPA 22387 of 2011 is thus disposed of.**
- 20.** All connected applications, if any, stand disposed of.
- 21.** Interim order, if any, stands vacated.
- 22.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)