



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4116 OF 2024

1. Principal General Manager,
Telecom, BSNL, Telephone Bhavan
Amravati, District Amravati

2. Assistant General Manager,
O/o. Principal General Manager,
Telecom, BSNL, Telephone Bhavan
Amravati, District Amravati

..... **PETITIONERS**

...V E R S U S...

Abdul Ahmad s/o. Abdul Samad
Deshmukh,
Aged 64 yrs, occ. Nil,
R/o. Mominpura, Badnera,
Post Badnera, Tah. District Amravati

.....**RESPONDENT**

Mr. A.S. Deshpande, Advocate for the Petitioners.
Ms. B.A. Abhyankar, Advocate for Respondent.

CORAM:- NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.

DATE : 11.07.2024

JUDGMENT (Per : Abhay J. Mantri, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally,
with the consent of the learned counsel for the parties.

2. The petitioners, being aggrieved by the judgment and
order dated 28.03.2024, passed by Central Administrative Tribunal

Mumbai Bench, Camp at Nagpur (for short—" CAT") in Original Application (OA) No. 460/2022, whereby petitioners are directed to give the benefit of continuity of service and pension with pensionary benefit to the respondent herein, have preferred this petition,

3. Brief facts of the case are as under:

The respondent was appointed as Lineman w.e.f. 06.05.1979, by Sub Divisional Officer (SDO), Amravati and the appointment was confirmed vide order dated 04.08.1982 on the said post w.e.f. 07.05.1979. Based on the information/report, the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code (for short-'**IPC**') came to be registered against the respondent and was in police custody for ten days from 23.06.2002 and then was in Magisterial Custody. Therefore, his services were suspended w.e.f. 23.06.2002.

4. Thereafter, in Sessions Case no. 228/2002, vide judgment and order dated 19.07.2005, the learned Sessions Judge, Amravati, convicted the respondent for the offence punishable under Section 302 r/w 34 of the IPC and was sentenced to life imprisonment. The respondent has challenged the judgment and

order before this Court in Criminal Appeal No. 4215/2005, which appeal was allowed vide judgment and order dated 20.09.2017, resulting in his acquittal. It further appears that prior to the suspension of the respondent, a show cause notice was issued to him on 25.08.2005 and called upon him to explain why his services should not be terminated. The respondent refused to accept the said notice. Therefore, as per Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short -“*Rules*”), the services of the respondent came to be terminated vide order dated 02.11.2005. During the pendency of the appeal, he was superannuated on 30.11.2016. After acquittal, on 27.10.2017, the respondent filed representation, thereby requesting to set aside the suspension and to grant him full pay and allowances from the date of suspension along with pensionary as well as consequential benefits till the date of retirement, i.e. 30.11.2016. He has annexed a copy of the judgment along with the representation. Then again, on 22.01.2018, the respondent made a representation to the petitioners under rule 19(8) of the Rules to set aside the penalty of dismissal, but no response has been received.

5. On 05.11.2019, the respondent filed an Original Application to consider and decide the representation expeditiously; however, during the pendency of the O.A. on 27.04.2020, the representation was rejected by the petitioners, holding that the petitioner is not entitled to any relief as claimed. The said order was challenged in Original Application No. 460/2022. After considering the rival contentions, the Tribunal allowed the application and set aside the order dated 27.04.2020 and directed the respondents to give benefits of continuity of service to the applicant along with pensionary benefits.

6. Heard Mr. S.A. Deshpande, the learned counsel for the petitioner, has vehemently argued that as per Rule 19(1) of the Rules, the petitioners have rightly terminated the services of the respondent and, therefore, the respondent was not entitled to any pensionary benefit. However, without considering the said provisions, the learned Tribunal has erred in directing the petitioners to pay the benefits of continuity to the respondent's services and pensionary benefits. He has further canvassed that the Tribunal has overlooked the fact that the respondent was suspended by order dated 27.06.2002 as he was arrested on the allegations of

committing murder. Also, the learned Sessions Judge has convicted him for the said offence. Therefore, the termination was proper. Alternatively, he submitted that a show cause notice was issued to the respondent. However, he opted not to accept the same. Therefore, as per Rule 19(1) of the Rules, the petitioners were empowered to award the penalty. But, without considering the same, the Tribunal should not have allowed the Original Application. Hence, the order impugned is not sustainable in the eyes of the law. Thus, the findings of the Tribunal are contrary to the settled provisions of the law and cannot be sustained as the respondent was terminated under Rule 19. As such, he cannot claim the relief as per Rules 14 and 18 of the Rules after acquittal from the offence.

7 To buttress his submissions, he has relied upon the Hon'ble Apex Court's judgment in the *State of Rajasthan and Others Vs. Heem Singh (2021) 12 SCC 569 ("Heem Singh")*, *Manager, Reserve Bank of India, Bangalore Vs. S. Mani and Others (2005) 5 SCC 100* and *Y.P. Sarabhai Vs. Union Bank of India and another (2006) 5 SCC 377*. He drew our attention to paragraphs 37 and 38 in the case of *Heem Singh*, which reads thus:

“37. 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 recognised 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.

38. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In [Southern Railway Officers Association v. Union of India](#), this Court held: (SCC p.40, para 37)

“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.”

(emphasis supplied)

As such, he submitted that the acquittal in a criminal case cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. Therefore, he has urged setting aside the order impugned.

8. *Per contra*, the learned counsel for the respondent has strenuously argued that no show cause notice was served on the respondent through the jail authority, nor did the jail authority

inform the respondent about the said notice. The respondent never refused to accept any notice. As contemplated under rule 19(1) of the Rules, she draws support from the judgment in the case of *Union of India and Another Vs. Tulsiram Patel, (1985) 3 SCC 398*. She has further canvassed that no departmental enquiry was conducted against the respondent, and, therefore, passing an order of termination without holding an enquiry is not sustainable in the eyes of the law.

9. We have appreciated the submissions and have gone through the record and the citations relied upon.

10. At the outset, it appears that after the respondent's arrest, initially, he was suspended from services and subsequently terminated. The learned Sessions Judge convicted the respondent for the offence punishable under section 302 r/w 34 of the IPC; said judgment was challenged in Criminal Appeal No. 4215/2005. During the pendency of the appeal, the respondent was superannuated on 30.11.2016. On 20.09.2017, the appeal was allowed, and the respondent was acquitted. Therefore, the respondent has made a representation to the petitioners for setting aside the suspension and requesting a grant of full pay and

allowances along with pensionary benefits from the date of suspension till the date of his retirement.

11. The petitioners claim that as per Rule 19(1) of the Rules, the petitioners are empowered to impose the penalty of termination. By issuing notice, the respondent was offered an opportunity to make submissions on the proposed penalty of termination. As against this, the respondent categorically denied the service of notice to him nor refused to accept the notice. To ascertain the said controversy, it would be necessary to deal with rule 19(1) of the Rules, which is as follows:

19. Special Procedure in certain cases –
Notwithstanding anything contained in Rule 14 to Rule 18 -

(i) where any penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, or

The rules above confer the petitioner's power to impose the penalty of dismissal. It is not in dispute that the said notice was not served on the respondent. According to the petitioners, the respondent has refused to accept the notice; therefore, the same is deemed as service. Secondly, undisputedly, no disciplinary enquiry was conducted prior to passing the dismissal/termination order.

12. In the case of **Heem Singh**, the delinquent employee was acquitted in criminal appeal by giving the benefit of the doubt and enquiry was also conducted. In the said case, the punishment was imposed by the Disciplinary Authority. Therefore, the Hon'ble Apex Court has observed that '*the acquittal in a criminal case by itself cannot be a ground for interfering with the order of punishment imposed by the disciplinary authority. Also, the order of dismissal cannot be passed even if the delinquent employee has been acquitted of the criminal charge.*' In the said case, the witnesses turned hostile. However, in the case in hand, the petitioners have not conducted a departmental enquiry and, without performing the same and without offering the opportunity to the respondent to defend, have passed the order of dismissal and, therefore, observations in the judgement above will hardly be of any use to the petitioners to establish their case. As against, failure to conduct an enquiry would result in the respondent being exonerated of the charge.

13. Similarly, in the case at hand, the respondent was terminated without conducting departmental enquiry merely based on powers conferred under Section 19(1) of the Rules, as an offence

was registered against him. However, in the appeal, the respondent was acquitted; therefore, the law laid down in the judgments above is hardly of any assistance to the petitioners. Hence, by not conducting an enquiry, the respondent is entitled to be exonerated from the charges levelled against him.

14. In the impugned order, the learned Tribunal considered the said fact in its proper perspective and held that the penalty imposed by the petitioners without an enquiry is unsustainable in the eyes of the law. The Tribunal clarified that the respondent was not entitled to back wages since he was terminated. However, he was held entitled to continuity in service and pensionary benefits.

14. In view of the discussion above, we do not find any illegality in the impugned order; rather, the order seems to be just and proper, requiring no interference in it. The petition, being sans merit, stands dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)