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W.P.No.5632 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.5632 of 2020

D.Rajeshwari

....Petitioner

Vs

1. The Director General,
Central Industrial Security Force,
Lodhi Road, CGO Complex,
New Delhi.
2. The Inspector General,
CISF, South Sector Hqs,
Chennai- 600 009.
3. Office of the Dy. Inspector General,
The Hon'ble Deputy Inspector General
CISF Unit NLC- Neyveli.
4. The Hon'ble Senior Commandant
CISF Unit NLC – Neyveli

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records and quash the order of “Dismissal from Service” passed by the 2nd respondent dated 18.01.2019 through its Letter No.V-15016/CISF/SS/L&R/Rev/DR/03/2019-703 confirming the order of the 3rd respondent vide appellate order No.V-15014/CISF/NLC/Disc/Appeal/DR/2018-4477 dated 22.6.2018 and the order of the 4th respondent in Letter No.V-15014/CISF/NLC/Dic/Maj-(11)



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DR/2018-1394 dated 28.02.2018 and reinstate the petitioner with back wages and all service benefits.

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For Petitioner : Mr. P.Prakash Paul
For R1 to R3 : Mr.M.Srinivasa Murthy
SPCGSC

ORDER

The instant Writ Petition has been filed challenging the order of punishment passed against the petitioner dated 03.08.2017.

2. The learned counsel for the petitioner would submit that, the petitioner was serving as a Constable in CISF and that the charge against the petitioner is theft of money from three passengers on 23.06.2017 and 26.06.2017 at Bangalore International Airport. He would further submit that, in order to prove the charge, the individual passengers were not examined, and that only based upon the unclear CCTV footage, the capital punishment was erroneously imposed against the petitioner.

3. It is the further submission of the learned counsel for the petitioner that, prior to the charge, he had 10 years of unblemished service, and that there are no ground put forth in the final order as to why such a grave punishment has been imposed against the petitioner. He further submits that, charge memo has been issued to the petitioner only upon the personal



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grudge of DIG, CISF. He would further submit that, the findings of the Enquiry Officer is based upon the inadmissible evidence and therefore, the enquiry report is perverse and liable to be interfered with.

4. Per contra, the learned Standing Counsel appearing for the respondent would vehemently contend that, there are abundant evidences available, and that the Enquiry Officer had arrived at a conclusion based on the evidences, and that, though the individual passengers were not examined, it is not the case of the petitioner that those passengers had grudge against this petitioner. It is his further submission that, the Airport, is High Security Zone and any trivial incident may have greater ramification in the context of securing of the Airport and the credibility of the CISF, in such view of the matter, the integrity of the police personnel should be beyond doubt. Here the petitioner was charged for theft and that too on three occasions and therefore, imposing of punishment of dismissal from service is proportionate to the gravity of the charge and therefore there are no ground to interfere, thus prayed for dismissal of this petition.

5. I have given my anxious consideration to the either side submissions.



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6. The main submission put forth by the learned counsel for the petitioner is that, passengers/complainants the individual victims were not examined and only by relying upon the CCTV footages, the Enquiry Officer arrived at a conclusion that the charge against the petitioner has been proved. Before we delve into the other merits of the matter, this Court deem it appropriate to discuss as to the Judicial Pronouncements about power of the Writ Court while exercising the Judicial Review.

7. In ***B.C.Chaturvedi Vs. Union of India*** reported in (1995) 6 SCC 749, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

“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



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conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge.

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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.

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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*



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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 by this Court)

8. In *Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava* reported in (2021) 2 SCC 612, the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

“25. 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 if 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 is perverse or suffers 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.

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29. *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 malafides 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 that 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."*

9. Through the above judgments, the following principles are emerging:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.



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(vi) While exercising the power of judicial review, so

long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

10. In view of the above settled legal principle, the Writ Court cannot re-appreciate the evidences adduced before the Enquiry Officer, however a threshold exercise has to be done as to whether the enquiry report is based upon some evidence available before him against the petitioner. In this regard, if we look at the enquiry report, the Enquiry Officer has relied upon the CCTV footages of the respective timings of the checking of the complainants qua (1) Andhuska D Almeida, (2) Suprava Bisoi and (3) Sujata Jha while they were checked by this petitioner. According to the CCTV footage, the petitioner removed money from the baggage and placed in her trouser packet. Similarly, the Enquiry Officer has found video evidence supporting the complaint of Mr. Suprava Bisoi. The petitioner also stole money from the baggage of Andhuska D Almeida and placed in her trouser packet. Similarly for the other complaint of Sujatha Jha, CCTV footage was verified and it was found that, petitioner stole money even from his baggage. These CCTV footage has been proved through PW4 along with other prosecution witnesses.



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11. Therefore, while looking at the above findings, this Court is very much satisfied that there are abundant evidences available against this petitioner. However the contention of the learned counsel for the petitioner is that the CCTV footage is not clear, but such contention cannot be adjudicated while exercising Judicial Review as the possibility of having different view cannot be a ground to interfere with the findings of the Enquiry Officer. Therefore, this Court is very much satisfied with the findings rendered by the Enquiry Officer about the guilt of the petitioner and it is perfectly in order. The ground urged for non examination of complainant will not stand scrutiny as their complaint is sufficient and the same was substantiated through the video footage maintained in the Airport. Therefore, I am of the firm view that, the finding of the Enquiry Officer is perfectly in order, and this Court has no ground to interfere with well merited findings.

12. Coming to the proportionality of the punishment, as rightly pointed out by the learned Standing Counsel that the police personnel posted at Airport is expected of with high integrity, as they are discharging sensitive duty involving reputations and security of the Airport & Nation.

Here, the petitioner being a constable and in CISF had committed an act of



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theft, and the same as rightly contented by the learned Standing Counsel is a grave misconduct. In such view of the matter, the punishment of dismissal cannot be contended as disproportionate. Therefore, this Court do not find any merits in the present Writ Petition.

13. In the result, the Writ Petition stands dismissed. No costs.

23.10.2024

Index : Yes/No
Neutral Citation : Yes
Speaking order : Yes
Sma

To

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C.KUMARAPPAN, J
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