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W.P.No.25252 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.25252 of 2012

R.Olimaran

...Petitioner

vs.

1. The Managing Director,
State Express Transport Corporation Tamilnadu Limited,
Pallavan Salai,
Chennai – 600 002

2. The General Manager,
State Express Transport Corporation Tamilnadu Limited,
Pallavan Salai,
Chennai – 600 002

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of the impugned order No.34381 D.L.4/SETC/2012 dated 16.08.2012 imposing punishment of increment cut without cumulative effect for a period of three years on the petitioner and to quash the same and to direct the respondents to pay the consequential benefits to the petitioner.



W.P.No.25252 of 2012

WEB COPY

For Petitioner : No Appearance
For Respondents : Ms.M.Preetha
for Mr.K.Kathiresan
Standing Counsel

ORDER

There is no representation for the petitioner today.

2. When the matter was posted on earlier hearing i.e. on 05.06.2024, there was no representation for the petitioner.

3. Heard Ms.M.Preetha, learned representing counsel for the respondents.

4. The petitioner has stated in the affidavit that he has been working in the respondent Transport Corporation for more than 30 years. At the relevant point of time, he was working as Superintendent [employee No.A0773]. The petitioner had already worked in Motor Accident Claims Tribunal (MACT) Section before his transfer to Cash and Ticket section on 16.08.2001. On his first day at Reservation Counter in Parry's Bus Stand on 16.08.2001, he issued journey ticket No.94501 to one of the passenger,



W.P.No.25252 of 2012

who was to go to Thirupathi. In the Journey bill, he mistakenly entered the ticket No.94251 instead of 94501.

5. The petitioner has further averred that the Checking Inspector came to wrong conclusion that the passenger was in possession of ticket No.94501. There was no fraud committed on the part of the petitioner.

6. The petitioner was issued the way bill No.56368 on 16.08.2001 which contained the block of tickets 94501 to 94550. He sold the tickets from 94501 to 94519 and returned the remaining tickets contained in the block.

7. The report of the Checking Inspector who had found in the journey bill that the sale of ticket No.94501 was written as 94251, which is only a clerical error. An order of suspension was issued to the petitioner on 28.08.2001. Charge memo was issued on 06.09.2001 and he was called upon to render his explanation. An inquiry was conducted on 30.10.2001, wherein the petitioner refuted all the charges framed against him in the charge memo.



W.P.No.25252 of 2012

8. He was imposed punishment of increment cut for a period of 3 years with cumulative effect by an Order dated 31.12.2001. On appeal, it has been reduced to increment cut for a period of 3 years without cumulative effect.

9. The petitioner who was working as Superintendent is expected to maintain the records with correct particulars. He himself has stated that he entered in the journey bill incorrect ticket No.94251 instead of 94501. For which, upon inquiry the above said punishment was imposed, and on appeal, it was reduced to increment cut for 3 years without cumulative effect.

10. As regards the power of the Court relating to judicial review of the order passed by the Disciplinary Authority, the Honourable Supreme Court, in one of its decisions reported in 1995 6 SCC 749 (*B.C.Chaturvedi v. Union of India*), 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



W.P.No.25252 of 2012

WEB COPY

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 re appreciate 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



W.P.No.25252 of 2012

facts of each case.

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13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate 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)”

11. In AIR 1963 SC 1723 (State of Andhra Pradesh Vs. S.Sree Rama Rao), a Three Judge Bench of the Honourable Supreme Court has held as under:-

“The High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the



W.P.No.25252 of 2012

departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.”

12. In 2020 SCC Online SC 886 (State of Rajasthan Vs. Heem Singh), the Honourable Supreme Court summed up the law in the following lines:-

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



W.P.No.25252 of 2012

WEB COPY

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



W.P.No.25252 of 2012

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 reappreciate 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."

13. The settled position of law is that it is the domain of the Appointing Authority/Disciplinary Authority to decide as to the punishment to be imposed on the Delinquent provided that the punishment is proportionate to the delinquency. If the punishment is disproportionate or shocking the conscience of the Court, the Court shall interfere with the



W.P.No.25252 of 2012

same in exercise of powers conferred under Article 226 of the Constitution of India.

14. While awarding the punishment, considering the nature and gravity of the charges, the entire service records of the Petitioner may be looked into by the appointing authority. The pivot question is as to whether the punishment inflicted on the Petitioner herein is reasonable and proportionate to the gravity of the proven charges.

15. The major charge is that he has earned bad name to the department, he was grossly negligent in duty and violated the rules.

16. The sum and substance of the charge is that he wrote the ticket number mistakenly.

17. He has not reported any violation of principles of natural justice in the conduction of the enquiry or the orders suffers on account of bias. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. The disciplinary authority is the ultimate



W.P.No.25252 of 2012

authority to decide about the issue. The appellate authority has coextensive power to re-appreciate the evidence or the nature of the punishment. This Court may interfere when there is a violation of rules of principles of natural justice or violation of statutory rules or the punishment is disproportionate to the charges.

18. On a careful perusal of the entire affidavit, nowhere the petitioner has canvassed as to any omission as mentioned above.

19. Based on the aforestated discussions and legal positions, i am of the considered view that there is no perversity in the impugned orders and accordingly, this writ petition stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition, if any stands closed.

23.07.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

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W.P.No.25252 of 2012

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R.KALAIMATHI, J.

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W.P.No.25252 of 2012

W.P.No.25252 of 2012

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