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W.P.No. 10376 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.10376 of 2020

S.Kannan

....Petitioner

Vs

1. The Director General of Police,
Mylapore, Tamil Nadu,
Chennai – 600 004.
2. The Deputy Inspector General of Police,
Madurai Range, Madurai.
3. The Superintendent of Police,
Virudhunagar District,
Virudhunagar

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorari to call for the records connected with proceedings issued in Tha.Pa.No.03/2017 u/r 3(b) dated 29.05.2017 passed by the 3rd respondent and C.No.A4/7969/AP/2017 R.O.No.86/2018 dated 20.02.2018 passed by the 2nd Respondent and Rc.No.001168/AP.2(3)/2019 dated 17.03.2019 passed by the 1st Respondent and quash the same.

For Petitioner : Mr.S.Ilamvaludhi
For Respondents : Mr.A.M.Ayyadurai
Government Advocate



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ORDER

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The impugned Writ Petition has been filed challenging the order of the Disciplinary Authority dated 20.02.2018 and the Appellate Authority dated 17.03.2019.

2.1 The learned counsel for the petitioner would vehemently submits that the petitioner joined in the Police Service in the year 2009 as Police Constable, and that he was posed as Driver for patrol vehicle bearing Reg.No.TN67 G 0337 in the Armed Reserves. While so, a charge was framed against him based upon the report of the Inspector of Police, Technical Wing, that he caused loss to the sum of Rs.6,900/- by manipulating records.

2.2 The learned counsel for the petitioner would further submit that there is no misappropriation or any other falsification of records and only based upon the Technical Wing Inspector's Report, the alleged loss has been assessed and compensated by the petitioner. Therefore, there are no ground to proceed against the petitioner, but in the contrasts, petitioner was awarded with the punishment of withholding the increment with



cumulative effect, which shocks the conscience of the Court. He would further contend that, since the petitioner being a young police personnel, such punishment is shockingly disproportionate to the proved charges and that, such harsh punishment will have a cascading effect in his future career. Hence, he prayed for interference of this Court.

3. Per contra, learned Government Advocate would contend that the respondent has followed all due procedures, and only based upon the materials available on record, the Enquiry Officer found that the charges were proved against the petitioner. He would further contend that, it was not a mere loss to the Government money and such loss has been effected by the petitioner by way of fraud and therefore, order of punishment is proportionate to the gravity of the proved charge. Hence contend that, there are no ground to interfere with the order of the Disciplinary Authority and the Appellate Authority.

4. I have given my anxious consideration to either side submissions.

5. The main contention put forth by the learned counsel for the petitioner is that the alleged loss to the Government has been paid by the



petitioner, and that the loss was calculated based upon the meter reading and that there are no proof for misappropriation. Before, we delve into merits of the above submissions, it is appropriate to deal the legal principle regarding the power of Judicial Review.

6. 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 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 conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate***



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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)

7. 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.”

8. 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



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conclusion.

(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.

9. Let us consider the submission of the petitioner keeping in mind with the above legal principles. It is the submission of the learned counsel for the petitioner that, if at all there was any loss on his part, that could only because of his negligence and that, he has made good the loss. For better appreciation and for ready reference, this Court deem it appropriate to extract the charge framed against the petitioner.

அருப்புக்கோட்டை நெடுஞ்சாலை ரோந்து பணியில் TN 67 G 0337

Spacio என்ற வாகனத்தில் ஒட்டுனராக பணிபுரிந்த போது, 01.10.2016 அன்று முதல் 31.10.2016 வரை வாகனம் 3521.91 கிமீ ஓடியதற்கு பதிலாக 4840 கிமீ ஓடியதாகவும், கூடுதலாக 1320 கிமீ தூரம் ஓடியதாக 120 லிட்டர் எரிபொருளுக்கான தொகை ரூ.6900/- அதிகமாக பெற்று அரசு பணத்தை மோசடி செய்து, அரசிற்கு இழப்பீடு ஏற்படுத்தி, தமிழ்நாடு காவல் நடத்தை விதிகள் 1964 விதி 24ஐ மீறிய கண்டிக்கத்தக்க செயல்

10. As per the above charge, it is apparent that the petitioner though drove the vehicle only for 3521.91 kms, he created records as if the vehicle



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was driven for 4840 kms, and thereby, claimed a sum of Rs.6,900/- as fuel charge by playing fraud. Therefore, the submission made by the learned counsel for the petitioner that the charge is only causing loss not misappropriation cannot be accepted. According to the charge, beyond the loss there is also a charge for fraud. To sustain the charge, the Enquiry Officer relied upon three witnesses namely (1) Kandhasamy, (2) Manuvel and (3) Ramanadhan and that through their evidence, the Enquiry Officer found that there was manipulation of records by the petitioner. In this regard, a report was also placed before the Enquiry Officer. Thus, there are enough materials available against the petitioner.

11. It is settled principle of law that, unless the finding of the Enquiry Officer is perverse, this Court cannot re-appreciate the evidence, except making some threshold attempt to appreciate the evidence just to find out whether the Enquiry Officer's finding is based upon some evidence. By such threshold exercise, this Court finds no infirmity in the order of the Enquiry Officer.

12. Nextly, while coming to the proportionality of the punishment, unless the punishment is shockingly disproportionate, Writ Court cannot



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go into the same. Here, while looking at the charge, the charge is not only cause the loss to the Government, but the loss has occurred because of the fraud played by the petitioner, and that such charge of fraud has also been proved against the petitioner. In such a circumstances, this Court could not find any disproportionality in the punishment of withholding the increment for three years with cumulative effect. As a concomitant, this Court find no merits in this petition.

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

28.10.2024

Index :Yes/No
Neutral Citation : Yes
Speaking order : Yes
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C.KUMARAPPAN, J

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