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W.P.No.27530 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2024

PRONOUNCED ON : 23.07.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.27530 of 2023

and

W.M.P.No.26977 of 2023

M.Sridhar

... Petitioner

Vs.

1.The Chief Secretary to Government,
Public (Special-A) Department,
Secretariat, Fort St. George,
Chennai – 600 003.

2.The Registrar General,
Madras High Court,
Chennai – 600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order passed by the 1st respondent in G.O.Ms.No.359, Public (Special-A) Department dated 19.06.2023 and to quash the same and further direct the respondents to reinstate him into service



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with all service and monetary benefits and grant such other further relief as this Court may deem fit in the circumstances of the case.

For Petitioner	: Mr.K.Venkataramani Senior Counsel For Mr.M.Muthappan
For R1	: Mr.T.Chandrasekaran Special Government Pleader
For R2	: Mr.B.Vijay

ORDER

S.M.SUBRAMANIAM, J.

THE FACTUAL MATRIX:

The writ petitioner was appointed as Civil Judge by direct recruitment in the year 1999. He was promoted as Subordinate Judge in the year 2010 and further promoted to the post of District Judge in the year 2015.

2. A charge memorandum was issued under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules read with Rule 6(4)(a)(i) and Rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973 in proceedings dated 25.02.2021. Serious misconduct of deposit of huge sum of



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cash credit, suspicious transactions in his bank accounts and of his family members, and for purchase of properties without prior permission are set forth. On 12.03.2021, the delinquent Officer submitted his written statement of defence denying the charges and imputations. On 14.06.2021 the Hon'ble Administrative Committee resolved to appoint an Enquiring Judge to conduct departmental disciplinary proceedings against the writ petitioner.

3. On 09.01.2021, the Presenting Officer marked Ex.P1 to Ex.P12 to prove the charges levelled against the writ petitioner. The Presenting Officer submitted that the Department has no witness to examine, since the nature of charges are relating to documents and the documents produced by the Department would be sufficient to prove the charges. The delinquent Officer had no objection for marking the documents by the Presenting Officer without examining any witnesses. The delinquent Officer has marked Ex.D1 to Ex.D42 and examined DW1 to DW8 as witnesses to disprove the charges.

4. The enquiry was conducted by affording opportunity to the delinquent Officer. The learned Enquiring Judge submitted his final report on 02.08.2022 holding that the charges levelled against the petitioner have been duly proved. Consequently, the Disciplinary Authority has furnished the copy



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of the enquiry report to the delinquent Officer on 06.09.2022 and called for his further representation on the findings rendered by the learned Enquiring Judge. The delinquent Officer made further representations on 27.09.2022 and 25.09.2022 to furnish certain copies of documents marked during departmental enquiry as defence side exhibits and sought for further time of 15 days to submit additional objections. Accordingly, the documents sought by the delinquent Officer, which were marked as Ex.D6 and Ex.D36 were furnished to him on 03.11.2022 and extension of time was granted to submit further representation. The delinquent Officer has made representations to furnish certain copies of orders to ascertain the decision taken on his earlier requisitions and also to get remedy by preferring appeal or revision or review and to drop further proceedings against him and for consequential reinstatement into service. The representations were made on 16.11.2022, 08.01.2023 and 19.01.2023.

5. On 06.03.2022, the Hon'ble Administrative Committee has resolved to reject representation for furnishing of certain documents, which were not formed part of the disciplinary proceedings. The Hon'ble Administrative Committee has unanimously resolved to accept the report of the learned Enquiring Judge and recommended to impose punishment of compulsory



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retirement, subject to approval of the Hon'ble Full Court. On 11.04.2023, the Hon'ble Full Court, by majority, has resolved to defer from the decision taken by the Hon'ble Administrative Committee and resolved to impose the punishment of dismissal from service. Accordingly, the Registrar General, High Court of Madras, has forwarded records relating to the disciplinary proceedings to the Government and requested to issue orders imposing punishment of dismissal from service. The Government upon independent examination of records pertaining to disciplinary proceedings, has decided to accept the recommendations of the High Court for imposing punishment of dismissal from service and consequently, the State Government has imposed the punishment of dismissal from service against the delinquent Officer for the proven charges by order dated 19.06.2023. Hence, the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONER:

6. Shri.K.Venkataramani, learned Senior Counsel appearing on behalf of the petitioner would contend that the principles of natural justice has been violated. The charges are vague, non-specific and cannot be held as proved. The Presenting Officer has not examined any witness. The allegation of disproportionate assets and suspicious bank transactions cannot be proved



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without examining witnesses. The bank entries are to be proved only through witnesses in the present case. Admittedly, the Presenting Officer said the Department has no witness. Along with the enquiry report, supportive materials are not furnished to the delinquent Officer. In the absence of enclosing the related materials along with the enquiry report, the delinquent Officer may not be in a position to submit his further objections on the findings in the enquiry report.

7. Shri.K.Venkataramani, learned Senior Counsel would further submit that the writ petitioner has explained 196 entries in the bank accounts including the accounts stand in his name, his wife's name and his son's name. With reference to 18 entries in the bank accounts, the delinquent Officer has examined 8 witnesses and disproved 9 entries. In respect of 9 entries alone, he is not in a position to explain on account of efflux of time. He do not remember those entries and unable to explain. The explanations given by the delinquent Officer in respect of 196 entries ought to have been accepted by the learned Enquiring Judge and the Disciplinary Authority for dropping the allegations. Therefore, the manner in which the allegations are held as proved is not in accordance with the established principles. Thus, the rules of natural justice has been violated.



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WEB COPY 8. Shri. K.Venkataramani, learned Senior Counsel would question the competency of the High Court by stating that charges relating to disproportionate assets must be enquired into by conducting appropriate investigation by Investigating Agency. High Court cannot form an opinion with reference to such nature of allegations of disproportionate assets, which require deeper investigation. That apart, there is no additional materials available on record before the Hon'ble Full Court to impose the major penalty of dismissal from service by deferring the decision taken by the Hon'ble Administrative Committee to impose the punishment of compulsory retirement. When the Hon'ble Administrative Committee took a decision to impose the punishment of compulsory retirement, the Hon'ble Full Court in the absence of any additional materials ought not to have imposed the punishment of dismissal from service. In this context, there is no discussion or findings in the order impugned. Thus, on that ground also the impugned order is to be held as untenable.

9. Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 2013 categorically enumerates that the final order passed must be a speaking order. However, in the present case, the Government has simply



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referred the procedures and issued the impugned order of dismissal from service. Reasonings are absent in the impugned order. Therefore, the order impugned is liable to be set aside on the ground that it is non-speaking.

10. To substantiate the above grounds, the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Union of India and Another vs. Tulsiram Patel*** reported in **(1985) 3 SCC 398** has been relied on. In paragraph 96, the Hon'ble Supreme Court held as follows:

“96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to



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cross-examine them, and to lead his own evidence, both oral and documentary, in his defence.”

11. In the case of ***State of Uttarakhand and Others vs. Kharak Singh*** reported (2008) 8 SCC 236, the Hon'ble Supreme Court held as follows;

“11) From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to



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lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

12. In the case of ***Roop Singh Negi vs. Punjab National Bank and Others*** reported in ***(2009) 2 SCC 570***, following observations are made. In the above case, the Supreme Court held that no witness was examined to prove the documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Relying on the said observations, the learned Senior Counsel would submit that in the present case also the Presenting Officer said that there is no witness on the side on the Department.

13. In the case of ***State of Uttar Pradesh and Others vs. Saroj Kumar*** reported in ***(2010) 2 SCC 772***, the Apex Court held as follows;

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be



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a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required



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understanding the allegations in the charge memorandum, he had submitted his explanations denying all the charges specifically. His explanations would be sufficient to form an opinion that the charges are not vague and he denied the allegations specifically. Even before the learned Enquiring Judge, the delinquent Officer has not raised the ground regarding vagueness of charges. The delinquent Officer during the course of enquiry defended his case by marking documents and examining witnesses on his side. All the charges have understood clearly by the delinquent Officer. He denied the charges through his written statement of defence and during the course of enquiry also defended the allegations. Thus, the ground of vagueness is unacceptable.

16. The contention of the delinquent Officer that the Presenting Officer has not examined any witness, the Department found that examination of witnesses are not required in such nature of allegations, where documentary proofs are sufficiently available. In the present case, the charge memorandum itself provides details and entries in the bank accounts. When the bank entries are extracted in the charge memorandum and in respect of properties, list of documents are stated in Annexure 3 to the charge memorandum, the Department thought fit that examination of witnesses are not required and accordingly, the Presenting Officer could prove the charges through the



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documents. It is the decision of the Department to prove the charges through documents. Such a decision would not cause any prejudice to the delinquent Officer to defend the charges. Therefore, the decision of the Presenting Officer not to examine any witness would not support the case of the delinquent Officer. The said ground is absurd. It is not for the delinquent Officer to form an opinion that the Department must examine witnesses to establish the charges. It is beyond the realm of the rule of natural justice in disciplinary matters.

17. Burden of proof is on the side of the delinquent Officer. Once the charges are framed and the list of documents are furnished to the delinquent Officer, it is for the delinquent Officer to disprove the allegations by availing the opportunity provided to him. Instead of disproving the charges, the delinquent Officer cannot shift the burden on the Presenting Officer. The documentary evidences found to be sufficient and charges are framed. Thus, the said ground is also untenable.

18. To substantiate the above reply, the respondents relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Director General, Indian Council of Medical Research and Others vs. Dr. Anil***



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Kumar Gosh and Another reported in (1998) 7 SCC 97, wherein, the Apex

Court made the following observations;

“10. The entire record of the enquiry proceedings have been placed before us. We have gone through the same and we find that there is absolutely no justification in the allegation that principles of natural justice have been violated. We have already referred to the fact that the first respondent did not furnish any list of witnesses and only in the course of enquiry, he requested the Enquiry Officer to examine the officials of the Municipality who had issued the certificates produced by him in support of his claim of HRA. It is surprising that the High Court overlooked the simple fact that the said certificates were produced by the first respondent himself as having been issued by the high officials of the Municipality and unless the factum of such issuance was in dispute, there was no necessity to examine those officials. At another stage, the first respondent challenged the authenticity of the internal audit report and wanted the author thereof to be examined in order to substantiate the same. The Presenting Officer stated that the said report was not necessary for the case and the same was not introduced in evidence.



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themselves to the criticism offered by the High Court.

6. On a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us hereinabove viz., that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary enquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those notings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made



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produce the inspection records. The Enquiry Officer specifically asked the defence representative to mention the inspection registers in respect of the units which are required. The defence representative specifically makes a request for the inspection records in respect of the units mentioned in the charge sheet. The Enquiry Officer directs the presenting officer to examine the request and records, if available, be given. Thereafter, it has come on record that the Presenting Officer produced the inspection register for the relevant period for perusal of the Enquiry Officer and the defence representative. On this, the defence representative stated that they would respond, after going through the documents. In the written submissions filed, a grievance is raised that the records pertaining to inspection were produced at the fag end of the enquiry. We are not impressed with the submission since, it was after the production of the inspection register that the defence representative of the respondent had stated, that they will respond after going through the said documents. No response was forthcoming. Neither from the records nor at the hearing has it been demonstrated as to how the charge of failure to conduct the inspection was countered by the



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respondent. The records sought being made available, the onus did shift to the respondent to show that the charge was untenable.

21. Regarding the contention of the petitioner that there is no additional materials available for the Hon'ble Full Court to defer the decision of the Hon'ble Administrative Committee, the respondents would submit that the decision of the Hon'ble Administrative Committee is subject to approval of the Hon'ble Full Court. Therefore, the final decision making authority is the Hon'ble Full Court. The deliberations made by the Hon'ble Administrative Committee cannot be construed as a final decision taken. The deliberations made by the Hon'ble Administrative Committee are not communicated to the delinquent Officer. It is a proposed decision deliberated by the Hon'ble Administrative Committee and the final approval is to be granted by the Hon'ble Full Court. Thus, the Hon'ble Full Court is empowered to take decision independently. Deferring the decision of the Administrative Committee would not provide a ground to the writ petitioner to assail the punishment of dismissal from service.

LEGAL POSITION:

22. This Court thought fit to consider the legal principles emerged in



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disciplinary matters through various judgments. We have deliberated in view of certain ambiguities prevailing in disciplinary matters, while dealing with the writ proceedings before the High Court. The scope of judicial review in disciplinary matters, the procedures to be followed in the context of the right of the charged officials are of paramount importance.

23. Basically certain discrepancies in the evidence in disciplinary matters will not make it a case of no evidence. Generally in exercise of judicial review, the Courts must restrict its review to determine;

- (i) Whether the rules of natural justice have been complied with;
- (ii) Whether the finding of misconduct is based on some evidence;
- (iii) Whether the Statutory rules governing the conduct of the disciplinary enquiry have been observed;
- (iv) Whether the finding of the disciplinary authority suffer from perversity;
- (v) Whether the penalty is disproportionate to the proven misconduct.

24. In the case of ***State of Rajasthan and Others vs. Heem Singh*** reported in ***(2021) 12 SCC 569***, the Apex Court considered the principles of preponderance of probabilities and judicial review over disciplinary matters,



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“H. On a “preponderance of probabilities”

32. *In M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das [M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, (2020) 1 SCC 1] , a Constitution Bench of this Court has described the standard of “preponderance of probabilities” in the following terms : (SCC pp. 540-41, paras 720-21)*

“720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly : If therefore, the evidence is such that the court can say ‘we think it more probable than not’, the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence] In Miller v. Minister of Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372] , Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H)



‘(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice.’

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. In Bater v. Bater [Bater v. Bater, 1951 P 35 (CA)] , where he formulated the principle thus : (p. 37)

“... So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter.” ”

I. Judicial review over disciplinary matters

34. We have to now assess as to whether in arriving at its findings the High Court has



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*transgressed the limitations on its power of judicial review. In **Moni Shankar v. Union of India** [**Moni Shankar v. Union of India**, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] , a two-Judge Bench of this Court had to assess whether the Central Administrative Tribunal had exceeded its power of judicial review by overturning the findings of a departmental enquiry by reappreciating the evidence. In regard to the scope of judicial review, the Court held thus : (SCC p. 492, para 17)*

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability.



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If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See State of U.P. v. Sheo Shanker Lal Srivastava [State of U.P. v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276 : 2006 SCC (L&S) 521] and Coimbatore District Central Coop. Bank v. Employees Assn. [Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68])”

25. In the case of ***Union of India and Others vs. Dalbir Singh*** reported in **(2021) 11 SCC 321**, the Apex Court carved out principles on disciplinary proceedings as under;

“20. A three-Judge Bench of this Court in State of Haryana v. Rattan Singh [State of Haryana v. Rattan Singh, (1977) 2 SCC 491 : 1977 SCC (L&S) 298] was dealing with the issue of non-examination of passengers when the allegation against the conductor was non-issuance of the tickets. This Court held that in a domestic enquiry, strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and that all materials which are logically probative for a



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prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. This Court held as under :

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.”

21. This Court in Union of India v. P. Gunasekaran [Union of India v. P. Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under : (SCC pp. 616-17, paras 12-13)

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central



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Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*



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(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

22. In another judgment reported as B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , it was held that the 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



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necessarily correct in the eye of the court. The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is to examine as to whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. This Court held as under : (SCC pp. 759-60, paras 12-13)

“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 enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry 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 enquiry 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 the Evidence Act nor of proof of fact or evidence as defined therein,



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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 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 enquiry 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that



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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 [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] 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.”

26. In the case of *Union of India and Others vs. Subrata Nath* reported in **2022 Live Law (SC) 998**, the Apex Court held as follows;

“15. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.

16. In the above context, following are the



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observations made by a three-Judges Bench of this Court in *B.C.Chatruvedi (supra)*:

12.*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.*

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate 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*



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canvassed before the Court/Tribunal.”

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27. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. **However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra).**

DISCUSSIONS:

28. The charges framed against the delinquent Officer are undoubtedly serious and relatable to his doubtful integrity, as a Judge. The statement of allegations in the charge proceedings namely the imputations of unexplained accounts and questionable credits in the bank accounts and concealment of



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properties purchased in the name of his son and the top-up loan availed in the name of his wife, which is repayable from his salary are serious allegations.

The charge proceedings are specific. Annexure I provides charges 1 to 8. Annexure II provides the statements of allegations / imputations. Annexure III denotes the list of documents. Thus, we do not find vagueness or perversity in the charge memorandum issued to the delinquent Officer.

29. The delinquent Officer submitted his explanations in detail denying the charges. The statement of defence reveals that each bank entry has been explained by the delinquent Officer and he has specifically denied the charges. Therefore, the delinquent Officer has understood the charges and statement of imputations and submitted his statement of defence in detail. Each and every entry has been noted by the delinquent Officer and reply has been submitted. Therefore, the allegation that the charges are vague is unacceptable.

30. There is no complaint about the enquiry procedures adopted by the learned Enquiring Judge and the opportunities provided to the delinquent Officer. The delinquent Officer participated in the enquiry proceedings and defended his case by marking documents and examining witnesses.



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Therefore, the rules of natural justice has been complied with by the learned Enquiring Judge during the course of enquiry. 8 charges are framed against the delinquent Officer. The learned Enquiring Judge has considered the documents produced between the parties and examined each and every allegation and made findings. Full opportunity had been provided to the delinquent Officer. 8 witnesses are examined on his side. Certain relevant findings of the learned Enquiring Judge in his enquiry final report are extracted hereunder;

“66. The department has filed all the bank statements pertaining to the bank accounts of the charged officer, his wife and his son Ramprasad. The department has given particulars of the cash credits from unknown sources, as seen from the bank statements. When they have given particulars, the burden of proof to disprove that the said credits were not from unknown sources is shifted to the charged officer. It is for the charged officer to prove that the credits have been made from known sources and are legal. The facts existing within the knowledge of a particular person is required to be proved only by that person through cogent evidence. Therefore, the burden of proof is not on the side of the department, but, it is on the side of



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are found. There is no explanation for several cash deposits made into the bank accounts of the delinquent Officer's son in the Indian Overseas Bank, Egmore Branch. The explanations submitted by the delinquent Officer are found not candid nor any witnesses are examined to disprove those charges. The delinquent Officer could not provide any satisfactory explanation for numerous cash deposits made in the bank accounts of his wife and son. Pertinently, the delinquent Officer's son Mr.Ramprasad was a student at the time when the cash deposits were made into his bank accounts. Regarding the loan availed from finance company, the delinquent Officer himself admitted that he has not obtained prior permission from the High Court.

33. Regarding the purchase of properties paragraphs 84, 85 and 86 of the findings in the enquiry report would be relevant which reads as under;

“84.The charged officer's son Ramprasad has purchased a property measuring 1.04 acres in survey No.21/3B at Veppur Village by means of a Registered sale deed dated 04.09.2013 from Revathy. He purchased another property in survey No.85/1 in the same village measuring 926 sq.ft by means of another registered sale deed dated 09.09.2015 from one Rukkumani. He has also purchased another property in the same survey



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number measuring 1090 sq.ft through a registered sale deed dated 02.09.2015 from one Balakrishnan. The above sale deeds were marked as exhibits on the side of the department.

85. Ramprasad was a student at the time when the aforementioned sale deeds were executed in his favour. As seen from the said sale deeds, he was also not represented by a guardian. Admittedly, he had no source of income of his own. However, the sale deeds standing in his name disclose that the sale consideration for the purchase of the properties was paid by him.

86. The charged officer's wife is also a homemaker and does not have any source of income of her own. But, however, the charged officer claims that the sale consideration was paid by his wife from the money given by him as a gift to his wife and pin money. Admittedly, the charged officer has not informed the High Court as to the alleged gift given by him to his wife. Sale Deeds executed in favour of Ramprasad also disclosed that the sale consideration was paid only by Ramprasad. Therefore, the statement of the charged officer that the sale consideration was



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paid by his wife is absolutely false. There are also contradictions between the explanation submitted to the department by the charged officer and his deposition with regard to the sale deeds executed in favour of Ramprasad, the charged officer's son.”

34. The learned Enquiring Judge considered the judgments relied upon by the delinquent Officer. The legal principles governing the disciplinary matters are elaborately considered by the learned Enquiring Judge. The findings of the Enquiring Judge would reveal that the delinquent Officer has miserably failed to disprove the charges as seen from the evidence available on record. Regarding Onus of Proof also the learned Enquiring Judge formed an opinion that the delinquent Officer has to disprove such nature of allegations, which all are made by the Department based on documents.

35. The learned Enquiring Judge considered the documents and evidences and held that all the charges 1 to 8 framed against the delinquent Officer are held proved.

36. One of the ground raised regarding the findings of the learned Enquiring Judge by the petitioner is that the enquiry report reveals that the



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charges framed against the delinquent Officer are proved and the charged Officer is found guilty of the said charges. Mr.K.Venkataramani, learned Senior Counsel would submit that the learned Enquiring Judge cannot made a finding that the charged Officer is found guilty of the charges and the said finding reveals that the learned Enquiring Judge has predetermined the issues.

37. Such an argument is untenable in view of the fact that it is only reiteration of the findings that the charges are held proved. The findings that the charged Officer is found guilty of said charges would go to say that the charges are held proved against the delinquent Officer and the learned Enquiring Judge has not mentioned anything regarding punishment to be imposed on the proved charges. Therefore, the learned Enquiring Judge has not usurped the powers of the Disciplinary Authority and it is held that the charges are proved against the delinquent Officer and he is guilty of the said charges.

38. Yet another ground raised by the petitioner is that the Government has not assigned any reason. Perusal of the order impugned issued in G.O.Ms.No.359, Public (Special-A) Department dated 19.06.2023 reveal that the Registrar General, High Court of Madras submitted all the records



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relating to the disciplinary proceedings before the Government for consideration. The narration of facts in the impugned order would reveal that 8 charges framed against the delinquent Officer are considered and the procedures followed for conducting the disciplinary proceedings were also recorded by the Government in the order impugned. The entire procedures and the decision arrived by the Hon'ble Administrative Committee and the Hon'ble Full Court are considered by the Government independently. The nature of charges, conduct of enquiry, the procedures followed in accordance with Disciplinary Rules and the adherence of the compliance of rules of justice are considered by the Government independently and the Government found that no procedural irregularities in conducting the disciplinary proceedings against the delinquent Officer.

39. Yet another ground that the Hon'ble Full Court has modified the decision of the Hon'ble Administrative Committee is untenable. In disciplinary matters, the Hon'ble Administrative Committee after deliberation proposes the punishment / decision, which is subject to approval of the Hon'ble Full Court. Therefore, the approval of the Hon'ble Full Court became final, and the deliberation of the Hon'ble Administrative Committee is to assist the Hon'ble Full Court to arrive a final decision. The proposed decision



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of the Hon'ble Administrative Committee subject to approval of the Hon'ble Full Court are not communicated to the delinquent Officers. It is only a proposed decision arrived by the Hon'ble Administrative Committee and only after the approval of the Hon'ble Full Court, the order of punishment will be communicated to the delinquent Officers. That being the procedures adopted, the inter-departmental deliberations or the opinions formed by the Hon'ble Administrative Committee would not provide a cause for the delinquent Officers to raise a ground that the decision of the Hon'ble Administrative Committee and the decision of the Hon'ble Full Court are different. It is beyond the realm of the rules of natural justice to be provided to the delinquent Officers. Deliberations are inter-departmental in nature and no one can rely on the un-communicated proposed decisions taken by the Hon'ble Administrative Committee of the High Court.

40. In the present case, charges 1 to 8 are proved against the delinquent Officer. Rules of natural justice have been complied with. The ground raised in this regard by the petitioner is beyond the scope of the rules of natural justice and is rejected. The Statutory Rules governing the conduct of the disciplinary enquiry has been observed by the Disciplinary Authority in the present case. Charges are specific, explanations submitted by the delinquent



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Officer would reveal that he understood the charges clearly and submitted his statement of defence and participated in the enquiry proceedings. The learned Enquiring Judge has given full opportunity to the delinquent Officer to defend his case. The delinquent Officer has marked the documents and examined 8 witnesses. The delinquent Officer availed of the opportunities provided by the learned Enquiring Judge. The legal principles placed by the delinquent Officer were elaborately considered with reference to the documents and materials available on record. The findings of the learned Enquiring Judge is categorical with reference to the allegations of disproportionate assets and purchase of properties in the name of his family members without obtaining prior permission from the High Court as required under the Service Rules.

41. The findings of the learned Enquiring Judge in his enquiry report is clearly based on some evidence. Strict rule of evidence in disciplinary matters are unwarranted. If the allegations are proved with the assistance of some evidence, it would be sufficient to form an opinion for imposing penalty under the Discipline and Appeal Rules. The findings in the enquiry report are categorical and the learned Enquiring Judge has considered the documents with reference to the allegations in detail and therefore the findings in the



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enquiry report did not suffer from perversity.

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42. Strict proof of evidence is not required in departmental disciplinary proceedings. Preponderance of probability are sufficient to arrive a conclusion and to impose punishment in service law. The arguments advanced on behalf of the petitioner on the pretext that strict rule of evidence to be followed is beyond the realm of disciplinary matters in service jurisprudence.

43. Regarding the proportionality / quantum of punishment, this Court is of the considered opinion that the allegations against the delinquent Officer are serious in nature. The disproportionate assets established through various documents including bank accounts, property details, etc., would establish suspicious and doubtful integrity of the Judicial Officer. Unexplained cash deposits in bank accounts of the delinquent Officer and his family members and the properties purchased would result in drawing an inference that the Judicial Officer has doubtful integrity.

44. The factual inferences drawn by the learned Enquiring Judge and the Disciplinary Authority are based on documentary evidences available on



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record. Thus, this Court do not find any infirmity or perversity in respect of the findings made by the learned Enquiring Judge in his final enquiry report, which was accepted by the Disciplinary Authority.

45. Regarding the quantum of punishment, proved misconducts are serious and thus, the punishment of dismissal from service would be appropriate in the opinion of this Court. The deliberation made by the Hon'ble Administrative Committee was considered by the Hon'ble Full Court, during the course of discussions and the Hon'ble Full Court thought fit to impose the penalty of dismissal from service. The Hon'ble Full Court formed an opinion that the punishment of compulsory retirement is not in proportionate with the gravity of the misconducts proved against the delinquent Officer and passed a resolution unanimously to impose the punishment of dismissal from service.

46. Looking in any angle with reference to the grounds raised by the petitioner and materials available on record, we are able to arrive an irresistible conclusion that the disciplinary proceedings conducted against the delinquent Officer is in consonance with the Disciplinary Rules and the established principles settled by the Constitutional Courts across the Country



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and the punishment of dismissal from service is appropriate.

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47. Accordingly, this Writ Petition fails and stands dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

[S.M.S., J.] [K.R.S., J.]
23.07.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



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To

1.The Chief Secretary to Government,
Public (Special-A) Department,
Secretariat, Fort St. George,
Chennai – 600 003.

2.The Registrar General,
Madras High Court,
Chennai – 600 104.



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S.M.SUBRAMANIAM, J.
and
K.RAJASEKAR, J.

Jeni

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