



2024:DHC:10125-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6193/2017**

MANOJ KUMARPetitioner

Through: Mr. Abhimanyu Redhu, Adv.
with petitioner in person

versus

UNION OF INDIA AND ANRRespondents

Through: Mr. Sandeep Kumar Mahapatra,
CGSC with Mr. Tribhuvan and Mr. Ishan
Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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19.12.2024

C. HARI SHANKAR, J.

1. A judgment, rendered by the Central Administrative Tribunal¹ on 22 December 2016 in OA 3894/2013, is under challenge before us in the present writ petition, instituted by the unsuccessful applicant before the Tribunal.

2. The impugned judgment is clearly unsustainable. In a challenge to disciplinary proceedings, which culminated in a finding of guilt against the petitioner and his consequent dismissal from service by the

¹ "the Tribunal" hereinafter



Disciplinary Authority², the Tribunal has, completely eschewing any discussion on the merits of the findings of the Inquiry Officer³ or the DA, dismissed the OA on the premise that, once the inquiry was found to have been conducted in conformity with the principles of natural justice and as per the prescribed procedure, its remit stood exhausted, and nothing further as to be seen, except the aspect of proportionality.

3. The findings of the Tribunal, in the impugned judgment, are preceded by reference to extracts from the judgment of the Supreme Court in *B.C. Chaturvedi v UOI*⁴, *UOI v P. Gunasekaran*⁵ and *Ranjit Thakur v UOI*⁶. Thereafter, the Tribunal proceeds to observe and hold, in paras 16 and 18, thus:

“16. From *P. Gunasekaran (supra)*, it is quite clear that the courts can exercise the power of judicial review in disciplinary inquiry matters only if it is established that the de-proceedings have not been conducted in the prescribed manner, principles of natural justice have not been followed in the penalty imposed is disproportionate to the offence committed.

18. In the instant case we find that the DE proceedings have been conducted in accordance with the procedure laid down. The applicant has participated in the inquiry. Principles of natural justice have also been observed. The inquiry officer in his report has held that the charge against the applicant is proved based on which the competent authority took action to impose the punishment of dismissal on the applicant. The applicant has been abolished for indulging in an indecent act with the lady passenger compartment, which is, undisputedly, is a public place. Indecent behaviour as definitely tarnished the image of the organisation in the eyes of the public. Therefore, we do not find any illegality or

² “DA’ hereinafter

³ “IO” hereinafter

⁴ (1995) 6 SCC 749

⁵ (2015) 2 SCC 610

⁶ (1987) 4 SCC 611



perversity in the action of the respondents in dismissing the applicant from service. Such persons do not deserve to be continued as a public servant. We are sanguine that the punishment against such public servants would not only help in setting up of moral standard but would also deter others from indulging into such immoral activities.”

4. From a conspectus of the above discussions, we find that the submissions of the petitioner regarding the legitimacy of the inquiry as well as on merits have not been considered at any stage.

5. We may, at this stage, advert to the facts of the case. The petitioner was, at the relevant point of time, employed with the respondent Railways as a Train Ticket Examiner⁷. According to the case set up by the petitioner before the Tribunal, on 4 June 2009, when he was on duty on a train bound from Delhi to Varanasi, he found, on entering the coach at Haridwar, that Berth 7, which was meant for the TTE, was occupied by a lady, who held a General Ticket from Haridwar to Lucknow. The lady requested the petitioner to allot her a berth, as she claimed to be travelling to Lucknow to perform the last rites of one of her relatives. Given the predicament in which the lady was, the petitioner claimed to have allowed her to occupy Berth 7, after collecting the reservation charges therefore, against receipt. At Laksar, one Suresh Chand entered the coach and requested the petitioner to allot a berth. He claimed to be the editor of a weekly newspaper. As no berth was available, the petitioner expressed his inability in being able to accommodate Suresh Chand. This, according to the petitioner, infuriated Suresh Chand, who addressed a

⁷ “TTE” hereinafter



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complaint to the Railway authorities, alleging that he had seen the petitioner indulging in indecent activity with the lady occupying Berth 7. He also claimed to have submitted a CD of the incident to the Railways. After conducting a preliminary inquiry, the respondents issued a chargesheet to the petitioner on 6 July 2010, alleging that the act of indulging in indecent activities with the lady occupying Berth 7, as committed by the petitioner, amounted to failure to maintain absolute integrity and lack of devotion to duty as well as acting in a manner unbecoming of a railway servant. He was, therefore, directed to show cause as to why disciplinary proceedings be not initiated against him. Thereafter, an IO was appointed to enquire into the chargesheet. The petitioner participated in the inquiry. The IO submitted his Inquiry Report on 28 January 2013, opining that the charge against the petitioner stood proved. The DA, accepting the said Inquiry Report, dismissed the petitioner from service on 3 July 2013. A statutory appeal, preferred against the decision of the DA, was also dismissed by the appellate authority on 5 August 2013. A revision petition, further preferred against the decision of the Appellate Authority by the petitioner, was also dismissed by order dated 9 October 2013. Challenging these decisions, the petitioner instituted OA 3894/2013 before the Tribunal.

6. In order to appreciate the case set up by the petitioner before the Tribunal, we deem it appropriate to reproduce paras 4.4 to 4.8, 4.10, 4.11, 4.15 to 4.17, 4.20, 4.21, 4.23 24.25, 4.30, 4.34, 4.46, 4.49, 4.50, 5.2, 5.3, 5.7 to 5.10 and 5.29 of the OA filed by the petitioner before the Tribunal as well as paras 8 and 10 to 12 of the impugned



judgment, thus:

Relevant paras from the OA

“4.4 That on 04.06.2009, as per the Duty Roster, he resumed his duties in Coach No. S-1 & S-2 of Train No. 4266, Dehradun to Varanasi. Two Sleeper Coaches i.e. S-1 & S-2 were attached from Haridwar with the said train and the applicant was deployed as the Ticket Examiner with the two coaches. He was given the Reservation Chart and on checking the said coaches, he found all the berths occupied by the passengers holding the proper reservation tickets for their journey and no berth was vacant.

4.5 That the applicant, while checking, observed that a lady passenger was already occupying Berth No. 7 in Coach S-1. On questioning, she requested for allotment of a sleeper berth. She was holding a 2nd Class M/E General Ticket from Haridwar to Lucknow. She had to take up the journey urgently because she had to attend the last rights of one of her close relation. The due charges of Rs. 355/-, including the penalty charges, were recovered from her, for which a proper Excess Fare Ticket, EFT for short, was Issued to her. She was accommodated on Berth No. 7, which was earmarked as per Railway Rules for the Ticket Examiner on duty, considering her pitiable condition and urgency so explained by her.

4.6 That on arrival of the train at Laksar at about 22.00 hrs., another person, namely Shri Suresh Chand, entrained the Coach from Laksar alongwith his family, which was objected by the applicant. The said passenger was holding valid wait-listed tickets for the journey from Laksar to Bareilly and requested for allotment of the berths. The position was explained to him that no berth is vacant and is available, which could be allotted to him, but he insisted posing himself as a Journalist of a Hindi Newspaper. However, as there was no berth available, the applicant expressed his helplessness and regrets.

4.7 That the said passenger, after sometime, took out some sweets and offered the same to the applicant. Though reluctant, he could not refuse as the same was offered by him as 'Bhagwan Ka Prasad' and was heavily pressed by the said Journalist. After taking the Prasad, the applicant felt dizziness and baffled and to regain full consciousness, he also sat on Berth No. 7 with the consent of the lady passenger.



4.8 That thereafter, the said Journalist detrained at Bareilly and the applicant continued with the train to the destination. Nothing was unusual nor there was any kind of complaint, much less any sort of misconduct or indecent behaviour on the part of the applicant. It is pertinent to point out that there are about 72 berths in 2nd Class Sleeper Coach. All the passengers happily completed their journey in a satisfactory manner and there was no whisper much less a complaint at all about any indecent behavior/conduct of the applicant with any of them.”

4.10 That the applicant was called to Baroda House and in the Commercial Branch, a Commercial Inspector recorded his statement on 04.12.2009. The applicant stated the detailed factual position, in which a lady passenger was allowed to occupy Berth No. 7, so earmarked for the use of Ticket Examiner on duty with the coach. The statement is marked and annexed herewith as Annexure-A-6.

4.11 That Shri Sudershan Singh, PCI/HQ, conducted an investigation in the alleged complaint and submitted his report, Annexure-A-6-a. He recorded the statement of the applicant as aforesaid and also referred to the CD, so received along with the complaint. He observed that the complainant had entered the coach at Laksar forcibly without any reservation and wanted to be accommodated along with his family by way of preference being a Journalist. He concluded in his report that the applicant, though admitted his availability at the relevant point of time, did not admit the charges.

4.15 That a Major Penalty Chargesheet dated 06.07.2010, Annexure - A-9, was issued to the applicant with the charge that the applicant, while on duty with the aforesaid train on 04.06.2009, was detected to have committed serious misconduct as allegedly found indulging in indecent activities with a lady passenger on his Berth No. 7 in S-1 Coach as exposed in the CD, so recorded by the complainant Sh. Suresh Chand, who posed to be a Journalist of Hindi Weekly Newspaper 'Man Ki Jyoti'. The list of documents contained 8 documents and list of witnesses contained 4 witnesses.

4.16 That Shri M.A. Khan, Chief Inspector Tickets/Law, was appointed as an Inquiry Officer, who conducted the disciplinary proceedings against the applicant. The applicant submitted his representation dated 01.10.2012, Annexure - A-10, and requested for supply of six additional documents, which was materially



important for applicant's defence. However, the Inquiry Officer supplied only two documents, SI. No. 2 & 6, and vide his letter dated 15.10.2012, Annexure - A-11, rejected rest of the documents without assigning any reason.

4.17 That the Inquiry officer held the proceedings on different dates. Three PWs, out of four so mentioned in the list of witnesses, were examined by the Respondents. Witness No. 4 Shri Sudershan Singh, Public Complaint Inspector/HQ, who had conducted the investigation at HQ level and whose report has been relied upon, was not examined at all without assigning any reason and without any notice to the applicant, who has been deprived of cross-examining him, particularly with regard to the report, so submitted by him. Though the said witness did not appear before the Inquiry Officer yet his report has been relied upon, which can only be done after the same was proved by the author, which has caused a serious grievance to the applicant.

4.20 That the complainant was examined as PW-1, who of course, admitted that he had made a complaint against the applicant, alleging indecent behaviour with a lady passenger and also relied upon a CD, so prepared by him. He failed to give the details of the said lady, nor produced any complaint from her side.

4.21 That Shri J. Prasad, JIT/Najibabad, PW-2, was examined and he deposed that though he was on duty as Conductor on the said train, and was overall Incharge of the Ticket Checking Staff, but no report/complaint was either made or brought to his notice regarding any indecent behavior as alleged against the applicant.

4.23 That as humbly submitted in the foregoing paras, all the berths in the coach were fully occupied and the alleged complainant was also accompanied by his family, it is astonishing that none else saw the applicant indulging in any kind of indecent activity or behaviour with the lady passenger, there is no whisper from anybody in this regard and because the applicant did not accommodate the complainant and did not provide him a berth out of priority, more so when no berth was vacant, he earned complainant's annoyance, who, in the profession of journalism, misused his status and fabricated a false case against the applicant.

4.24. The falsity of the complaint stands established that the complainant had not given even the name of the lady passenger,



leave aside her particulars, nor any complaint has been made by her or on her behalf. She ought to have been produced as a Prosecution Witness, being the affected party, which has deprived the applicant of cross-examining her to establish his, innocence and the real truth.

4.25 That the complainant has not cited any eyewitness thought the coach was fully occupied and jammed packed. The complainant did not even contact the Train Conductor or the Guard of the train. He did not even lodge a formal complaint either with the Railway or Police Authorities at the destination station. The complaint is the result of afterthought.

4.30 That the Inquiry Officer did not allow the applicant to examine himself in his defence nor did he afford any opportunity to produce any Defence Witness. In fact, as substantiated by the evidence of Shri Jagdish Prasad, JIT/ Najibabad, who was working as Conductor with the said train, supports the case of the applicant that nothing was reported or brought to his notice by anybody, much less the complainant, which proves that nothing of the sort as alleged in the fictitious complaint happened.

4.34 That the applicant submitted his objections dated 05.02.2013, Annexure-A-18, and raised numerous legal objections, such as malafides of the Inquiry Officer, nonproduction of materially Important witness and many other legal infirmities. The contents of the same have not been reproduced here for the sake of brevity and convenience and may kindly be read as part of this para.

4.46 That the whole proceedings are a nullity in the eyes of law as there is no evidence from the prosecution side, supporting the charges. The Inquiry Report is based on NO EVIDENCE and is perverse. The Inquiry Report is a unilateral one sided version of the complainant, which is not supported by any evidence.

4.49 That under the heading "Assessment of Evidence", Para 6, document annexed PA-1 has been mentioned, but not supplied. Non-supply of the evidenciary documents recorded by the Inquiry Officer, has deprived the applicant of a fair and reasonable



opportunity of X-examination of all the PWs.

4.50 That similarly the “Examination” in evidence of the complainant has been recorded on page No. 56, 57 of the concerned file. X-examination of CO was conducted by the Inquiry Officer, instead of the respondents much to the disadvantage of the applicant who has been deprived of a reasonably fair opportunity to x-exam the PWS, to establish bonafides of the case. It is astonishing to be confronted with such an Inquiry Report.

5.2 Because the complaint of incident behavior of the applicant is not a genuine complaint, but has been fabricated and concocted by the complainant, who was not holding a valid confirmed reservation in the coach and forcibly entered, which was objected by the applicant and it earned the ire of the complainant.

5.3 Because all the 72 berths in the coach was fully occupied by passengers, the complainant was also accompanying with his family and yet there is no whisper of any complaint regarding the misconduct or indecent behavior of the applicant.

5.7 Because in none of the two investigations, care was taken to call the lady passenger, who, in fact, being the affected party, ought to have been produced as witness. The complainant failed to give her whereabouts and did not bother to marshal any supporting credible evidence.

5.8 Because the incident allegedly took place after the train left Laksar Railway Station at about 22.00 hrs, and the train reached Varanasi next day and the affected lady passenger has enough time to lodge a complaint with either the Railway or Police Authorities. But nothing was done as the case is concocted and fabricated one.

5.9 Because a running of the CD by the Inquiry Officer did not reveal the person involved in the scene, but only shadows or images can be seen, which does not prove that it is a genuine CD, so prepared of the actual happening and at the actual site. The same cannot be a relied upon in evidence.

5.10 Because the complaint against the applicant alleging indecent behavior with the lady passenger is fabricated and concocted as the applicant did not favour the complainant and refused to accommodate his by providing a sleeper berth as none was available.



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5.29 Because the Inquiry Report is perverse and is based on NO EVIDENCE at all. None of the PWs have supported the charge and the finding arrived at is based on conjectures and surmises. There is no evidence to link the CO with the charge.”

Paras 8 and 10 to 12 of the impugned judgement of the Tribunal

“8. The main contention of the respondents in the reply is that berth No. 7 was meant for the TTE (applicant) which could not have been given out to any passenger. It is also submitted that since the applicant had indulged in indecent and vulgar behavior with a lady passenger, he did not deserve to be continued as a public servant.

10. Shri G.D. Bhandari, learned counsel for the applicant and Shri Shailendra Tiwari, learned counsel for the respondents argued the case. Learned counsel for the applicant submitted that the complainant Shri Suresh Chand had entered the compartment at Laksar, Railway Station and was to go to Bareilly. He had requested the applicant to allot him a berth which the applicant regretted as "no berth is available". The complainant offered him some sweets calling it as "Bhagwan ka Prasad", which the applicant could not refuse due to religious beliefs. After taking the Prasad, the applicant felt dizziness and baffled and to regain full consciousness, he sat on berth No. 7 with the consent of the lady passenger. He submitted that the complainant had fabricated false CD implicating the applicant solely with animus, since the applicant had refused him allotment of a berth. He also submitted that there were 72 berths in the coach and none of the occupant of those berths had made any complaint against the applicant towards his behavior to anybody. Shri Bhandari further submitted that since the fabricated CD had been used as an electronic evidence against the applicant, its authenticity was required to be established which had not been done. The CD only showed some shadows and no images could be seen which goes to indicate that it is not a genuine CD. The lady passenger ought to have been examined as a prosecution witness but that has not been done. Not only that even the complainant has not identified the said lady passenger in his complaint. Shri Bhandari further submitted that the applicant had sought some additional documents and wanted to examine some more witnesses but the same was not permitted by the 10. In



summary, the applicant has been penalized on the basis of no evidence and in complete disregard to the procedure of conduct of inquiry proceedings, Shri Bhandri argued.

11. To buttress his arguments, the learned counsel for the applicant has placed reliance on the following judgments:-

(i) *Anvar P.V. v. P.K. Basheer and Others*⁸, wherein the Supreme Court held that "... To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in *Navjot Sandhu case (supra)*⁹, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65 obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

(ii) *Sanjay Singh Ramrao Chavan v. Dattatray Gulabrao Phaike and Others*¹⁰, wherein it has been held "without source, there is no authenticity for transaction - Source and authenticity are the two key factors for an electronic evidence."

(iii) *Selvaraj v. State of Karnataka*¹¹, wherein it has been held that "The allegation of bribe taking should be considered along with other material circumstances. Demand has to be sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe and when the complainant is not available for examination during the trial, court has to be cautious while sifting the evidence of other witnesses."

12. Concluding his arguments, Shri Bhandari submitted that the applicant has been framed on the basis of a false complaint made by a person who had some definite grouse against the applicant and the applicant has been punished without any evidence and hence the prayers made in the OA may be allowed."

⁸ (2014) 10 SCC 473

⁹ *State v Navjot Sandhu*, (2005) 11 SCC 600

¹⁰ (2015) 3 SCC 123

¹¹ (2015) 10 SCC 230



7. Thus, it is clear that the petitioner had launched a multi-pronged attack at the disciplinary proceedings, questioning their legality and validity from every conceivable standpoint. Apart from categorically denying the allegations against him and submitting that there was no sustainable evidence to buttress the charge of misbehaviour with the lady passenger in Berth 7, the petitioner also alleged *mala fides* as well as failure, on the part of the IO and the DA, to afford an adequate opportunity to defend the case. It is hardly necessary for us to paraphrase the various grounds raised by the petitioner, which are evident from the paragraphs in the OA and in the impugned judgement, reproduced *supra*.

8. In the above background, we are constrained to observe that the impugned judgement of the Tribunal is completely non-speaking. It is not considered a single argument raised by the petitioner. It merely reproduces certain paragraphs from ***B.C. Chaturvedi***, ***P. Gunasekaran*** and ***Ranjit Thakur*** and, without examining any aspect of the matter, merely holds that, as the petitioner was granted an opportunity of hearing, and appeared before the IO, nothing further was required to be seen, insofar as the inquiry proceedings of the decision of the IO was concerned, and all that was required to be seen was whether the punishment was proportionate to the alleged misconduct. On this, the Tribunal has held – and, with this, we are in agreement with the Tribunal – that the allegation against the petitioner, once found to be proved, merited no punishment less than dismissal. We have no doubt in our mind, either, that misbehaviour with a lady passenger has to be visited with the maximum of



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punishments and, therefore, if the petitioner had, in fact, misbehaved with the lady passenger in Berth 7, no fault can be found with the respondents in deciding to dismiss him from service.

9. Before reaching there, however, the Tribunal had to negotiate the labyrinth of satisfying itself, in a manner known to law, that the allegation against the petitioner was in fact proved by following a procedure which was legally sustainable. For this, the Tribunal was required to satisfy itself on two aspects; firstly, whether the procedure followed by the IO was in accordance with the prescribed Rules and in compliance with the principles of natural justice and fair play and, secondly, whether the charge against the petitioner was supported by legally sustainable evidence. In examining the second aspect, no doubt, the Tribunal was not empowered to re-examine or re-appreciate the evidence, or come to a subjective conclusion of its own as to whether the evidence was sufficient to bring home the allegation against the petitioner. The aspect of sufficiency of evidence is, classically, no man's land, insofar as the Tribunal, or any Court, dealing with disciplinary proceedings, is concerned. That, however, did not absolve the Tribunal of the duty to examine whether there was, in fact, any legally sustainable evidence against the petitioner.

10. The petitioner's assertion, whether acceptable or not, was that the case against him was one of no evidence. It was also the petitioner's case that he had not been afforded a fair opportunity by the IO to defend his case. Among other aspects, the OA also alleged that documents, which the petitioner sought, to defend his case, were



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not provided to him.

11. None of these aspects has been considered by the Tribunal. Even on the aspect of whether fair procedure had been followed in the inquiry, the findings of the Tribunal appear to be somewhat laconic, and not informed by the actual facts of the inquiry proceedings or the manner in which they proceeded. There can be no compromise on the requirement of the IO adhering to fair procedure and, if such procedure is prescribed by Rules, adhering to such Rules, while conducting the inquiry. The principles of natural justice, while doing so, are also non-negotiable. Among the principles of natural justice which have to be followed are the requirement of providing the charged officer material which he seeks for his defence and affording him an opportunity to meet the case set up by the establishment through the Presenting Officer. If the charged officer seeks documents which are not relevant, it is the bounden duty of the IO to specifically so hold, and provide reasons for his decision that the documents are not relevant. Fairness in action is the very *raison d'être* of our – and, indeed, of any civilised legal system, and there can be no compromise on that score.

12. The Tribunal's order is completely non-speaking. All that the Tribunal has done, after recording the facts, is to refer to three judgments of the Supreme Court and hold that, as the inquiry was directed in compliance with the principles of natural justice, nothing further could be seen.



13. The understanding of law by the Tribunal is obviously faulty. While the scope of interference with the decision of the disciplinary proceeding may be limited, the charged officer has every right to question the procedure followed by the IO, as well as the merits of the findings of the inquiry officer and the Disciplinary Authority, and, if a challenge is launched in that regard, some finding thereon is required to be returned.

14. A Coordinate bench of this Court, when faced with a similar situation in which the Tribunal had adopted the view that its remit, when dealing with challenges to punishments awarded consequent on disciplinary proceedings, was restricted to examining whether fair procedure had been followed before the punishment was awarded, clearly held in the negative, in *Surinder Singh v GNCTD*¹², from which the following paragraphs merit reproduction:

“3. Perusal of the record of the Tribunal shows that the Tribunal has applied the ratio of the judgment of the Supreme Court in *K.L. Shinde v. State of Mysore*¹³, to hold that judicial review by the Tribunal in departmental enquiries is not permissible and power of judicial review is meant to ensure that individuals receive fair treatment.

4. Tribunal has decided the case only on the premise that principle of natural justice has been complied with in so far as the Petitioner is concerned and the power of judicial review is not to be exercised in case where principle of natural justice has been complied with.

5. Tribunal has not adverted to the merits of the case of the Petitioner or even considered the effect of an acquittal in criminal proceedings.

¹² 2022 SCC OnLine Del 3381

¹³ (1976) 3 SCC 76



8. Since the Tribunal has erred in ignoring the above aspects and has solely decided the case on the touchstone of the scope of judicial review, we are of the view that the impugned order is not sustainable and calls for a remit to the Tribunal for a fresh consideration of the Original Application filed by the Petitioner on merits.

9. We may also refer to the decision of the Constitution Bench of the Supreme Court in *L. Chandra Kumar v. Union of India*¹⁴, wherein the Hon'ble Supreme Court has observed that, '*We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted*'. It is also relevant to note that in the same judgment, the Constitution Bench has further observed that '*the High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.*' It is thus advisable that the Tribunal ordinarily should endeavour to examine the case on merits, rather than dismissing the same on technicalities.

10. In view of the above, impugned order dated 03.01.2019 is set aside. The Original Application is restored on the record of the Tribunal with a direction that Tribunal shall consider the same afresh in accordance with law and on merits."

(Italics in original; underscoring supplied)

15. In fact, the necessity of the Tribunal to have gone into the evidence against the petitioner, and the aspect of whether the charge against him was approved by the said evidence, even while stopping short of re-appreciating the evidence or arriving at a different conclusion based on its own subjective assessment of the evidence, stands underscored even by para 12 of the decision in *Gunasekaran*:

"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

¹⁴ (1997) 3 SCC 261

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before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central 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 reappraisal of the evidence. The High Court can only see whether:

- (i) the enquiry is held by a competent authority;
- (ii) *the enquiry is held according to the procedure prescribed in that behalf;*
- (iii) *there is violation of the principles of natural justice in conducting the proceedings;*
- (iv) *the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (v) *the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (vi) *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;*
- (vii) *the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (viii) *the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (ix) *the finding of fact is based on no evidence."*

Factors (d) to (i), enumerated by the Supreme Court in para 12 of its decision in ***Gunsekaran***, clearly elucidated the parameters and peripheries of examination, in judicial review of the procedure followed in the disciplinary proceeding, and of the sustainability of the findings against the charged officer, if adverse, on merits. It is apparent that a clear responsibility stands cast on the Court to address the merits of the charges against the charged officer and the merits of



the findings of the IO, within the parameters drawn by para 12 of *Gunasekaran*. No Court or Tribunal can, therefore, faced with a challenge to disciplinary proceedings and their outcome, shrug its shoulders, once it finds that some semblance of fair procedure has been followed. The Court, or Tribunal has, additionally, to scrutinise the applicable Rules and examine whether they have been complied with and, independent thereof, whether the principles of natural justice and fair play have been followed. Once it is satisfied on this score, the Court has to address itself to the evidence relied upon by the IO or the DA in arriving at a decision adverse to the employee, and satisfy itself that the appreciation of evidence is not so imperilled as to justify interference in judicial review.

16. The Tribunal appears to have concentrated on para 13 of the judgement in *Gunasekaran*, which followed para 12, and read thus:

“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;



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

17. It is true that, in para 13, *Gunasekaran* advocates a certain degree of restraint by the Court or Tribunal, faced with a challenge to disciplinary proceedings and their outcome. These restraints, however, cannot be seen in isolation – as the Tribunal seems, with respect, to have done in the impugned judgement – but have to be harmonised with para 12. The Court or Tribunal has, in such cases, to do some delicate tight rope walking. Without using any expression other than those used by the Supreme Court itself, the position that emerges, insofar as the jurisdiction of the Court, in examining the sustainability of the findings of the IO or the DA on merits, is concerned, is that the Court has to satisfy itself that :

- (i) no consideration, extraneous to the evidence and merits of the case, has been taken into account,
- (ii) no irrelevant consideration has been taken into account,
- (iii) the conclusion is not wholly arbitrary or capricious,
- (iv) the conclusion is not one at which no reasonable person could have arrived at,
- (v) no admissible or material evidence has been eschewed from consideration,
- (vi) no inadmissible evidence has been admitted into consideration, or has influence the outcome of the proceedings,
- (vii) the case is not one of no evidence, and
- (viii) there is some legal evidence to sustain the findings, even while ensuring that it does not :



- (a) re-appreciate the evidence,
- (b) examine the adequacy of the evidence,
- (c) examine the reliability of the evidence, or
- (d) correct errors of fact.

18. The exercise is more formidable than it appears; however, it is the duty of every Court or Tribunal, seized with a challenge to disciplinary proceedings and their outcome, to scrupulously undertake it. The Court or Tribunal cannot, as the impugned judgement as, refused to enter into these aspects, contenting itself with the observation that due procedure had been followed.

19. The impugned judgement, dated 22 December 2016, of the Tribunal, which does not examine these aspects cannot, therefore, sustain.

20. It is accordingly quashed and set aside.

21. OA 3894/2013 stands restored to the file of the Tribunal for consideration afresh, in accordance with law.

22. As the case against the petitioner dates back to 2013, we direct the parties to appear before the Tribunal on 8 January 2025.

23. While considering the matter afresh, the Tribunal would also consider all the submissions of the petitioner noted *supra*. The Tribunal would ensure that no adjournment is permitted to either of



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the parties on the said date and would ensure to pass fresh orders as expeditiously as possible, and preferably within a period of four weeks from the date of hearing.

24. The petition stands allowed to the aforesaid extent, without any order as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

DECEMBER 19, 2024/dsn

Click here to check corrigendum, if any