



W.P. No.26609/2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.26609 OF 2010

K.Jagannathan

.. Petitioner

- Vs -

1. The Central Government Industrial Tribunal
-cum- Labour Court
Rep. By its Presiding Officer
1 Floor, B wing, No.26, Haddows Road
Shastri Bhavan, Chennai 600 006.

2. The General Manager
Indian Overseas Bank (PAD)
Central Office, 763, Anna Salai
Chennai 600 002.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the concerned records from the 1st respondent quash the award dated 16.7.2010 passed by the 1st respondent Tribunal in I.D. No.46 of 2007 and consequently direct the 2nd



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respondent to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr. Balan Haridas

For Respondents : Mr. K.Sreenivasamurthy for R-2

ORDER

Assailing the order of punishment imposed by the disciplinary authority and as confirmed by the appellate authority and affirmed by the Tribunal, imposing the punishment of dismissal from service on the petitioner, the present petition has been filed.

2. It is the case of the petitioner that he joined the services of the 2nd respondent as Clerk/Shroff/Godown Keeper on 10.4.1981 and his services were confirmed on 10.10.1981 and that during December, 1997, the petitioner was working in Suramangalam Branch, Salem during which time, the petitioner was suspended by an order dated 18.8.1999.



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3. It is the further case of the petitioner that a charge memo was issued on 2.9.2000 containing 13 charges relating to alleged acts of omission and commission during the period from 16.12.1997 to 30.6.1997 while the petitioner was working at Suramangalam Branch. The charges against the petitioner relate to misappropriation of amounts by acts of forgery and misutilising the cheques of the account holders, which were obtained clandestinely and the amounts in the account of the account holders were surreptitiously siphoned off to the account of the petitioner and his relatives and, thereby, causing wrongful loss to the Bank.

4. It is the further averment of the petitioner that upon receipt of the charge memo, the petitioner sought for time to give explanation and sought permission to peruse the documents, however, the said request was negatived and the petitioner was directed to give explanation on the basis of the information already available, which act of the 2nd respondent is a stark violation of principles of natural justice.



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5. It is the further averment of the petitioner that without giving opportunity to the petitioner to submit explanation to the charge memo, domestic enquiry was conducted, which was informed to the petitioner on 2.12.2001. Thereafter, the petitioner gave letter dated 19.12.2001 requesting permission to peruse the documents and since the co-employees of the petitioner were also being proceeded departmentally, the petitioner requested for a joint enquiry. However, all the request were rejected by the Bank. Thereafter, vide letter dated 4.2.2002, the petitioner sought for taking the assistance of an advocate, which was rejected and, therefore, the petitioner filed W.P. No.5969/2002 and this court permitted the petitioner to avail the services of an advocate and the appeal filed by the 2nd respondent against the said order was dismissed.

6. It is the further averment of the petitioner that enquiry was conducted and after hearing the witnesses, numbering four on behalf of the bank and documents being marked, enquiry was concluded resulting in filing of an enquiry report based on which the disciplinary authority issued notice proposing punishment of dismissal from service. Since no opportunity of hearing was given



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to the petitioner with regard to the enquiry report, the petitioner approached this Court by filing W.P. No.12402/2004, which was dismissed and upon dismissal of the said writ petition, the disciplinary authority passed the order dated 17.11.2004 imposing the punishment of dismissal from service on the petitioner. The appeal filed by the petitioner on 11.12.2004 against the said order of dismissal was rejected by the appellate authority. Aggrieved by the same, as the conciliation proceedings ended in failure, the dispute was referred to the 1st respondent for adjudication in I.D. No.46/2007.

7. Before the Tribunal, while the petitioner did not examine any witnesses, but marked Exs.W-1 to W-13, on behalf of the 2nd respondent, one witness was examined as M.W.1 and Exs.M-1 to M-184 were marked. On the basis of the oral and documentary evidence, the Tribunal concurred with the view and affirmed the punishment of dismissal from service imposed on the workman. Aggrieved by the same, the present petition has been preferred by the petitioner.

8. Learned counsel appearing for the petitioner submits that the Tribunal grossly erred in confirming the punishment though it was demonstrated before



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the Tribunal that the charges have not been proved. It is the further submission of the learned counsel that no legal evidence has been placed to prove the charges and none of the customers, whose accounts are claimed to have been misutilised and whose cheques have been misutilised have been examined to show that the petitioner had, in fact, misappropriated the money.

9. It is the further submission of the learned counsel that the order of the Tribunal is bereft of any reasoning and appreciation of materials and, therefore, the affirmation of the punishment is clearly on non-application of mind and, therefore, the said order is perverse and arbitrary and liable to be interfered with.

10. It is the further submission of the learned counsel that no reasons have been assigned by the Tribunal to substantiate the findings with regard to the guilt having been proved against the petitioner; rather the whole case of the Tribunal proceeds on surmises and conjectures and the findings are not based on legal evidence. It is the further submission of the learned counsel that no proper opportunity was given to the petitioner to submit his explanation and the same



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vitiate the enquiry and, therefore, the enquiry report deserves to be set aside for violation of principles of natural justice.

11. It is the further submission of the learned counsel that though there are not substantive materials to conclude that the guilt fastened on the petitioner has been proved, however, not appreciating the same, the Tribunal has not invoked its power u/s 11-A of the Industrial Disputes Act to bring down the punishment imposed on the petitioner and, therefore, the impugned order passed by the Tribunal deserves to be set aside.

12. Per contra, learned counsel appearing for the 2nd respondent submitted that the decision arrived at by the authorities to impose the punishment of dismissal from service on the petitioner is a concurrent finding and this Court sitting under Article 226 of the Constitution is merely reviewing the decision arrived at by the authorities and it cannot go into the intricacies of the evidence unless it is shown that the decision arrived at based on which punishment is inflicted is perverse.



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13. It is the further submission of the learned counsel that the evidence in a departmental enquiry is not akin to criminal trial, as the evidence in a departmental proceeding has to be appreciated on preponderance of probability and the strict rules of criminal trial by adverting to the Evidence Act is not necessary. The materials available on record, which have been properly appreciated by the authorities, have led to the probabilistic view that the petitioner is guilty of the alleged misconduct, which has resulted in the punishment and, therefore, merely reviewing the said decisions shall not interfere with the same unless it is shown to be perverse. Therefore, he prays for dismissal of the writ petition.

14. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

15. Contentions have been raised by the workman with regard to fairness of the enquiry and also procedural flaws in the conduct of the enquiry. Though it is the case of the petitioner that there is violation of principles of natural justice



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and that the petitioner has not been afforded opportunity to peruse the materials and submit his explanation, however, it is to be pointed out that all the materials were available before the Tribunal, which were placed at the time of the enquiry and, therefore, the Tribunal has went through all the materials before coming to a decision and further the petitioner has also had an opportunity to look into the materials and, therefore, it cannot be claimed that there is violation of principles of natural justice. Though the petitioner has raised concern with regard to procedural flaws and fairness of the enquiry, it is to be pointed out that disciplinary enquiry is not akin to criminal trial before a court of law and strict rules of evidence is not required to be followed, inasmuch as the enquiry has been conducted in a proper manner and there is no violation of principles of natural justice. As aforesaid, there is no infraction of principles of natural justice and, therefore, there could be no question with regard to the manner in which the enquiry has been conducted and the fairness in the enquiry, though there may have been certain procedural flaws, which would in no way term the enquiry to be biased or flawed.



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16. It is the settled legal position that insofar as departmental proceedings is concerned, the appreciation of evidence is based on preponderance of probability and not in the manner in which evidence is appraised during a criminal prosecution. The enquiry authority has satisfied himself with regard to the materials placed before it and the appellate authority as also the Tribunal have appreciated the enquiry report and accepted that the enquiry has been conducted in a fair and proper manner. In fact, the Tribunal has written an exhaustive order to confirm the findings recorded by the authorities, which has since been affirmed. The fact that the petitioner feels that there is no adequacy of evidence cannot be the basis to hold that there is no legal evidence which would render the decision erroneous and unsustainable.

17. In the above backdrop, it is to be pointed out that this Court, sitting under Article 226 of the Constitution in a matter of judicial review, cannot reappraise the evidence as a court of first instance or appellate authority. The duty of this Court is only to see as to whether the enquiry has been fair and proper and that the enquiry has been conducted in consonance with principles of natural justice.



18. The Hon'ble Supreme Court, in ***B.C. Chaturvedi – Vs - Union of India, (1995 (6) SCC 749)***, while dealing with the issue pertaining to the power of the Court relating to judicial review, held as under :

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the



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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 canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

(Emphasis Supplied)

19. In **Director General of Police, RPF & Ors. - Vs – Rajendra Kumar Dubey**

(C.A. No.3820/2020 dated 25.11.20), the Hon'ble Supreme Court, adverting to



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the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's case (supra)*, held as under :-

“12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

*In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant*



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considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

*These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.*



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In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.

In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The



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first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the



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exercise of robust common sense without which the judges' craft is in vain."

*In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the 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 which are 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; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.*

In paragraph 13 of the judgment, the Court held that :

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

(i) re-appreciate the evidence;



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(ii) interfere with the conclusions in the enquiry, in the 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.”

(Emphasis Supplied)

20. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authority and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authority on the basis of the evidence before it, which has since been confirmed by the Tribunal and not proceed with the case as if it is an appeal against the order of punishment.



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21. The Tribunal, on dissection of the evidence tendered before it as also before the enquiry officer, which formed the basis of the report, had accepted the findings of guilt recorded against the workman and this Court, sitting in judicial review, is not inclined to interfere with the said finding, so long as it is not perverse and it is in consonance with the principles of natural justice.

22. Now the only question that requires the determination of this Court is whether the modification of punishment, as espoused by the petitioner is required in the present case.

23. A careful perusal of the order passed by the disciplinary authority, which has been affirmed by the appellate authority as also the court below reveals that appreciating the findings, considering the gravity of the offence, which is of enormous proportion and which directly affects the credibility of the bank and hits at the honesty of the petitioner, the disciplinary authority has thought it fit to impose the punishment of dismissal from service on the petitioner.



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24. The proportionality of the punishment inflicted on the delinquent had been considered by the Apex Court in **V.S.P. – Vs - Goparaju Sri Prabhakara Hari Babu (2008 (5) SCC 569)**, and it was held as under:-

“12. While answering the aforesaid question/issue, the decision of this Court in the case of Goparaju Sri Prabhakara Hari Babu (supra), on the judicial review and the limited jurisdiction of the High Court on the proportionality of the order of departmental authority is required to be referred to. In the said decision, after referring to a catena of judgments of this Court, it is observed and held by this Court that the jurisdiction of the High Court on the proportionality of the order of departmental authority is limited. It is observed that it cannot set aside a well-reasoned order only on grounds of sympathy and sentiments. It is further observed and held that once it is found that all the procedural requirements had been complied with, courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. It is further observed that the superior courts, only in some cases may invoke the doctrine of proportionality, however if the decision of an employer is found to be within the legal parameters, the doctrine would ordinarily not be invoked when the misconduct stands proved.”



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25. The precedents on the issue of interference with the punishment imposed has been oft considered by the Courts and it has been the consistent view of the Courts that it is always within the domain of the disciplinary authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Article 226. In ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, the Supreme Court held as under :-

“20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the



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delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

26. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

27. There could be no quarrel with the fact that the petitioner being in public employment is supposed to exhibit utmost sincerity and honesty as it



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involves public money. When the petitioner is alleged to have misappropriated huge sums of money by siphoning it off from the account of the customers by fraudulently obtaining cheque leaves on behalf of the customers and moving the funds to his account/accounts of his relatives, the said act of the petitioner is of alarming proportion, which not only erodes public confidence in the 2nd respondent bank, but also affects the day to-day life of the general public, who have deposited money in the bank. When cases of this nature come before the Courts, which involves misappropriation of public money, never any leniency is showed to the delinquent. Showing of leniency to the delinquent, that too when the allegations are too grave, which have been held to have been proved, lenient act in favour of the delinquent would be nothing but misplaced sympathy at the hands of this Court. Rightly appreciating the aforesaid materials, the Tribunal had refrained from interfering with the punishment imposed on the petitioner.

28. A careful perusal of the punishment imposed in relation to the gravity of the charges levelled, which are found to be proved, the punishment could not be held to be disproportionate to the charges levelled or could be termed to be



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shocking the conscience of the Court and, therefore, no interference is warranted with the same.

29. For the reasons aforesaid, this Court is in agreement with the punishment of dismissal from service imposed on the petitioner by the disciplinary authority as confirmed by the appellate authority as also the Tribunal and the said orders does not warrant any interference at the hands of this court. Accordingly, the writ petition fails and the same is dismissed. There shall be no order as to costs.

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The Presiding Officer
Central Government Industrial Tribunal
-cum- Labour Court
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