REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. /2014
[Arising out of S.L.P. (Civil) No. 23631 of 2008]

Union of India and others ... Appellant (s)

Versus

P. Gunasekaran ... Respondent (s)

J U D G M E N T

KURIAN, J.:

Leave granted.

2. Respondent, while working as Deputy Office Superintendent, Central Excise Third Division, Coimbatore was arrested by Police in a criminal case involving cheating and extortion of money. The police registered a criminal case under Sections 143, 319 and 420 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC') against the respondent. Separate departmental proceedings were also initiated against him under Central Civil Services (Classification, Control and Appeal) Rules, 1965.

3. Following are the three articles of charge:

"ARTICLE-I

That the said Shri P. Gunasekaran, Deputy Office Superintendent (Level-II) (under suspension of Central Excise, Headquarters Office, Coimbatore while working in the Valuation Cell, Hqrs. Office, Coimbatore came to the office on 23.11.1992, in the morning and signed the attendance register, in token of having come to the office and left office without permission and came to the office the next day, i.e., on the morning of 24.11.1992, and affixed his initials in the departure column against the dated 23.11.1992 and willfully falsified the official register. He has thereby committed gross misconduct and failed to maintain absolute integrity and devotion to duty and has behaved in a manner unbecoming of a Government servant, in contravention of the provisions of Rule 3(1)(i), 3(1)(ii), 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri P. Gunasekaran, being a ministerial Officer impersonated himself as a Central Excise Executive Officer and on 23.11.1992 about 2.30 p.m. unauthorizedly conducted passenger checks in a public transport bus at Ukkadam Bus Stand, by usurping the powers of Executive Officer and thereby committed gross misconduct and failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Government servant in contravention of the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

> That the said Shri P. Gunasekaran, on 23.11.1992 at about 2.30 P.M., abused his position unauthorisedly conducted passenger check, by usurping the powers of Executive Officer, threatened a passenger bound for Kerala and thereby committed gross misconduct and failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Government servant in contravention of the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

4. In the disciplinary inquiry, all the charges were proved and, on due procedure, the respondent was dismissed from service by order dated 10.06.1997. The said order of dismissal dated 10.06.1997 was challenged before the Central Administrative Tribunal, Chennai Bench in O.A. No. 805 of 1997. During the pendency of the original application before the Central Administrative Tribunal, in criminal appeal, the First Additional District and Sessions Judge, Coimbatore acquitted the respondent.

5. The Central Administrative Tribunal, vide order dated 27.10.1999, took the view that the respondent having been acquitted on identical set of charges, he could not be proceeded against in respect of second and third articles of charge in the disciplinary proceedings. However, on the first Charge, the Tribunal held as follows:

> "11. ... There is one another charge on which, the applicant has been punished by the disciplinary authority, i.e., Article I which has been extracted above. It cannot be said this charge is also part of the criminal prosecution. On the evidence adduced, the inquiring authority has come to the conclusion that Article I has been proved taking note of the applicant's letter dated 11.11.1992 addressed to the Collector of Central Excise when he was kept under remand. This finding given by the enquiry officer has been accepted by the disciplinary authority. Considering all the three charges as proved, the order of dismissal has been passed, but since we have arrived at a conclusion that charges 2 and 3 cannot stand in view of the acquittal by the criminal court, in our view, the quantum of punishment has to be considered by the disciplinary authority. ... ... So the impugned order is set aside, the matter is remitted back to the disciplinary authority to consider the quantum punishment taking note of our conclusions and observations made above. The disciplinary authority shall consider the quantum of punishment and pass orders within a period of 8 weeks from the date of receipt of a copy of this order. ..."

6. The appellants herein challenged the order of the Administrative Tribunal in Writ Petition No. 355 of 2000 before the Madras High Court. The said writ petition was disposed of by judgment dated 12.01.2000. The High Court declined to interfere with the order passed by the Administrative Tribunal. However, in respect of Articles of Charge no.I which does not have any relation to the criminal case, it was held at paragraph-6 as follows:

> "6. … Charge No. 1 relates to the unauthorized absence of the respondent from the office. The tribunal was of the view that dismissal from service was not warranted for the said charge. We do not think that the view taken by the Tribunal either unreasonable or irrational which could be interfered with by this court under Article 226 and 227 of the Constitution of India. …"

7. The disciplinary authority, accordingly, passed order dated 28.02.2000 which reads as follows:

> "Whereas on consideration of the facts and records of the case with regard to Article-I of the disciplinary proceedings against Shri P. Gunasekaran and the observation made in Hon'ble Tribunal's order, the undersigned is satisfied that good and sufficient reason exists for imposing upon him the penalty herein after specified, in modification of penalty of 'dismissal from service' ordered vide C.No.II/10A/92-Vig. Dated 10.6.97.
>
> Now, therefore, I order under clause (vii) of Rule 11 of Central Civil Services (CCA) Rules, 1965 that Shri P. Gunasekaran, dismissed as Deputy Office Superintendent, be compulsorily retired from the date from which he was dismissed from service."

8. Respondent challenged the order dated 28.02.2000 whereby he was compulsorily retired from service from the original date of dismissal in O.A. No. 521 of 2001 before the Central Administrative Tribunal, Chennai Bench. Dismissing the O.A., it was held as follows:

> "10. ... It is for the disciplinary authority to decide in what way the punishment is to be imposed and this Tribunal cannot act as an appellate court in such cases. With this in mind, if we read the Article-I of the charge extracted above, it is clear that the applicant does not deserve any sympathy because he manipulated the records. It is not a case of unauthorized absence. The applicant after signing the attendance register left the office and yet he made attempts to show that he was present in the office for the whole day. It amounts to falsification of the records and the conduct of the applicant shows that he was dishonest or he has not maintained the integrity as a government officer. Falsification of records is a criminal offence. Taking into consideration the gravity of charges, we hold that the punishment imposed on the applicant is proper and the same is not outrageous nor it shocks our conscience. The O.A. is dismissed. ..."

9. The said order dated 08.02.2001 was challenged by the respondent before the High Court of Judicature at Madras which has lead to the impugned judgment dated 18.09.2007 in Writ Petition No. 29757 of 2002.

10. The High Court set aside the order of the Central Administrative Tribunal, interfered with even the finding of the enquiry officer, set aside the punishment and directed reinstatement with backwages and all service benefits. To quote:

> "2. We have gone through the materials placed on record and also gone through the letter of the petitioner dated 11.12.1992 on which the enquiry officer has

given his findings whereby he brought to the notice of the Collector what was transpired on 23.11.1992, and there is no admission made by the petitioner. Therefore, we hold that the enquiry officer has not considered the letter in the proper perspective to arrive at the right conclusion. Therefore, the letter dated 11.12.1992 cannot be taken as the basis, on which, the punishment was imposed and therefore the impugned order is liable to be set aside. Further, as rightly contended by the learned Senior Counsel appearing for the petitioner while modifying the order, the respondents should have fixed the date of compulsory retirement from the date of issue of the order, instead of fixing the compulsory retirement from the date of order of dismissal. Further, after going through the contents of the letter, it seems the petitioner has not admitted the charge. Therefore, as rightly contended by the learned Senior Counsel appearing for the petitioner except the letter of the petitioner, there is no other evidence and whatever evidence is required with regard to charges 2 and 3, which were framed on the basis of the registration of the criminal case against the petitioner, which ultimately ended in acquittal, the punishment imposed on the basis of the above said criminal case has to go. Therefore, the disciplinary authority has not properly understood the order passed by the tribunal to reconsider the punishment as per the charge memo. The enquiry officer's report is not based on any evidence except based on the letter by the petitioner, which the petitioner has not admitted of the charges. The petitioner was acquitted from the charges 2 and 3. Therefore, the only charge, which we find is not based on any material or evidence. Therefore, the punishment of compulsory retirement imposed on the petitioner is unsustainable and the petitioner is to be reinstated. It is brought to the notice of this court that the petitioner has attained the age of superannuation. Therefore, the salary payable to the petitioner from the date of his compulsory retirement till the date of his superannuation has to be treated the reinstatement with all backwages and monetary benefits which shall be calculated and paid to him. The terminal benefits

and pension as applicable under the Rules shall be calculated and paid to the petitioner."

11. Thus aggrieved, the Union of India and others are before this Court.

12. Heard Shri Ranjit Kumar, learned Solicitor General appearing for the appellants and Shri Sumeer Kumar Shrivastava, learned counsel appearing for the respondent.

13. 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, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. 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 Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

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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;

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

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

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Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate 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.

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14. In one of the earliest decisions in **State of Andhra Pradesh and others v. S. Sree Rama Rao[1],** many of the above principles have been discussed and it has been concluded thus:_

[1] AIR 1963 SC 1723

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their 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 proceeding for a writ under Article 226 of the Constitution."

15. In **State of Andhra Pradesh and others v. Chitra Venkata Rao**[2]**,** the principles have been further discussed at paragraph-21 to 24, which read as follows:

> "**21.** The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of A.P.* v. *S. Sree Rama Rao*. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and

[2] (1975) 2 SCC 557

capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their 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 proceeding for a writ under Article 226.

22. Again, this Court in *Railway Board, representing the Union of India, New Delhi* v. *Niranjan Singh* said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh case* this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion..

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said

finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and 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. See *Syed Yakoob* v. *K.S. Radhakrishnan*.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in **State of Haryana and another v. Rattan Singh**[3]. To quote the unparalled and inimitable expressions:

[3] (1977) 2 SCC 491

> "**4.** .... 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. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

16. In all the subsequent decisions of this Court upto the latest in **Chennai Water Supply and Sewarage Board v. T. T. Murali Babu**[4], these principles have been consistently followed adding practically nothing more or altering anything.

17. On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

> "Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P.

[4] (2014) 4 SCC 108

> Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ...”

18. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is “moral

uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values.

20. The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed at quite length by this Court in several decisions including **B.C. Chaturvedi v. Union of India and others**[5], **Union of India and another v. G. Ganayutham**[6], **Om Kumar and others v. Union of India**[7], **Coimbatore District Central Cooperative Bank v. Coimbatore District Central**

[5] (1995) 6 SCC 749
[6] (1997) 7 SCC 463
[7] (2001) 2 SCC 386

Cooperative Bank Employees Association and another[8], **Chairman-cum-Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others**[9] and the recent one in **Chennai Metropolitan Water Supply** (supra).

21. All that apart, on the facts of the present case, it has to be seen that in the first round of litigation before the Central Administrative Tribunal in order dated 27.10.1999 in O.A. No. 805 of 1997, the Tribunal had entered a finding that "on the evidence adduced, the inquiring authority has come to the conclusion that Article I has been proved taking note of the appellant's letter dated 11.11.92 addressed to the Collector of Central Excise when he was kept under remand. This finding given by the inquiry officer has been accepted by the disciplinary authority".

22. That order of the Central Administrative Tribunal was challenged by the respondent in Writ Petition No. 226 of 2000 which was disposed of by judgment dated 12.01.2000 wherein the High Court had also endorsed the said finding which we have already referred to herein before.

[8] (2007) 4 SCC 669
[9] (2009) 15 SCC 620

23. Thus, the finding on Charge no. I has attained finality. It is the punishment of dismissal on Charge no. I which was directed to be reconsidered by the Central Administrative Tribunal and which view was endorsed by the High Court. On that basis only, the dismissal was converted to compulsory retirement. Such findings cannot be reopened in the subsequent round of litigation at the instance of the respondent. It was only the punishment aspect that was opened to challenge.

24. The Central Administrative Tribunal, in the order dated 01.02.2001 in O.A. No. 521 of 2000, after elaborately discussing the factual as well as the legal position, has come to the conclusion that the punishment of compulsory retirement is not outrageous or shocking to its conscience, it was not open to the High Court to interfere with the disciplinary proceedings from stage one and direct reinstatement of the respondent with backwages.

25. The last contention is with regard to date of effect of the punishment. According to the respondent, even assuming that compulsory retirement is to be imposed, it could be only with effect from the date of order, viz., 28.02.2000. We are unable to appreciate the contention. The respondent stood dismissed from

service as per order dated 10.06.1997. It was that punishment which was directed to be reconsidered. Consequent thereon only, the punishment was altered/substituted to compulsory retirement. Necessarily, it has to be from the date of dismissal from service, viz., 10.06.1997.

26. The impugned judgment of the High Court is set aside. The order dated 28.02.2000 passed by the disciplinary authority and confirmed by the Central Administrative Tribunal, Chennai Bench vide order dated 01.02.2001 in O.A. No. 521 of 2000 is restored.

27. The appeal is allowed as above. No costs.

.....J.
(ANIL R. DAVE)

.....J.
(KURIAN JOSEPH)

New Delhi;
November 19, 2014.

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