

GOVERNMENT OF TAMIL NADU AND ANR.

v.

A. RAJAPANDIAN

OCTOBER 24, 1994

[KULDIP SINGH AND B.P. JEEVAN REDDY, JJ.]

Service Law—Disciplinary Proceedings—Administrative Tribunal not empowered to re-appreciate evidence recorded by inquiring authority.

Respondent joined service as Sub Inspector Police. Disciplinary proceedings were held against him on three charges. The charges were found proved against the respondent and as a consequence he was dismissed from service. The order was challenged. The Administrative Tribunal set aside the dismissal order solely on re-appreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondent. This appeal by Special leave challenged the order of the Administrative Tribunal.

Allowing the appeal, this Court

HELD : The Administrative Tribunal fell into patent error in re-appreciating and going into the sufficiency of evidence. It has been authoritatively settled that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusions reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. The impugned order of the Administrative Tribunal is set aside. Order dismissing the respondent from the police service is upheld. [709-G-H, 710-A-B, 712-B, 713-B]

- A *Union of India v. Sardar Bahadur*, [1972] 2 SCR 218 and *Union of India v. Parma Nand*, [1989] 2 SCR 19, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6964 of 1994.

- B From the Judgment and Order dated 4.9.91 of the Tamil Nadu Administrative Tribunal, Madras in T.A. No. 1256 of 1989.

Mrs. Aruna Mathur for the Appellants.

S. Srinivasan for the Respondent.

- C The Judgment of the Court was delivered by

KULDIP SINGH, J. Delay condoned.

Special leave granted.

- D A. Rajapandian, respondent in the appeal herein, joined service as Sub Inspector Police in the State of Tamil Nadu. He was promoted to the post of Inspector in the year 1977. The Tribunal for Disciplinary Proceedings, Madras, held inquiry against him on three charges out of five framed against him. In the departmental inquiry the Tribunal found the three charges proved against the respondent and as a consequence he was dismissed from service by the order dated February 7, 1984. He challenged the order by way of writ petition before the Madras High Court. The writ petition was subsequently transferred to the Tamil Nadu Administrative Tribunal. The Administrative Tribunal by its order dated September 4, 1991 allowed the transfer petition and set aside the dismissal order. This appeal by the State of Tamil Nadu is against the order of the Administrative Tribunal.

- G The Administrative Tribunal set aside the order of dismissal solely on re-appreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondent. We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in re-appreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the administrative
- H Tribunal cannot sit as a Court of Appeal over a decision based on the

findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority.

The charges framed against the respondent were as under :—

"Charge I(i) :

The accused officer had failed to seize cash Rs. 578. 53 found on the person of Christopher, one of the accused in the above case and to treat the same as case property, but treated as personal cash.

Charge III :

That actuated by corrupt motive and in abuse of his position and authority when he was working as Sub-Inspector of Police (Crime) D-2 Anna Salai Police Station, Madras demanded and received an illegal gratification of Rs. 100 on 6-4-1974 at about 6 P.M. outside the D-2 Anna Salai Police Station, Madras-2 from Mr. K.R. Padmanabhan (mentioned under charge I) for arresting the absconding accused involved in Crime No. 427/74 under Section 420 IPC of D-2 Anna Salai Police Station, Madras-2 and also for investigation of the case.

Charge IV :

That actuated by corrupt motive and in abuse of his position and authority, when he (accused officer) was working as Sub-Inspector of Police (Crime) D-2 Police Station, Madras, he (accused officer) demanded an illegal gratification of Rs. 2,000 from Mr. K.R. Padmanabhan, witness mentioned under Charge I, when he came to D-2 Police Station after two days of registration of the case (Cr. No. 427/74) Section 420 IPC D-2 Anna Salai Police Station, Madras to find out the progress of his case, to go to

- A Tirunelveli and other places in search of the absconding accused concerned in Cr. No.427/74 of D-2 Police Station, and received Rs. 500 as illegal gratification from the said Padmanabhan in the front verandah of the D-2 Police Station, Madras-2 at about 5.30 P.M. on 12.4.1974 and at the same time also demanded another sum of Rs. 1,000 as illegal gratification stating that the amount of Rs. 500 given was inadequate to meet the expenses."
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- C During the inquiry apart from documentary evidence PW-1 K.R. Padmanabhan, PW-2 Dr. Hakeem Syed Karimullah Hussain Khadiri, PW-3 Isheq, PW-5 Azeez Ahmed and PW-6 Thirunavukkarasu were examined as witnesses. On the basis of the evidence produced before the inquiring authority, the charges were held to be proved against the respondent.

The Administrative Tribunal, while reversing the enquiring authority, discussed the evidence pertaining to charge No. III in the following words:

- D "According to PW-1 when the amount of Rs. 100 was handed over, PW-2 and PW-5 were also present nearby and they knew about the same. PW-2 in his evidence is emphatic that the amount of Rs. 100 was handed over to the applicant by PW-1 in his presence which was also witnessed by PWs 3 and 5. PW-3 is equally emphatic that he did not see the amount of Rs. 100 passing over to the applicant. PW-5 is not an independent witness and by his own admission he follows whatever PW-2 says. PW-5 says that there are four divisions in the D-2 Police Station and it is crowded police station. The contradiction in the evidence is that while PW-1 says that PWs 2 and 5 were present when the amount was handed over to the applicant and PW-2 says that himself along with PWs 3 and 5 have witnessed the amount being handed over to the applicant whereas PW-3 categorically denies to have seen the amount being paid to the applicant. When pointed out, the Tribunal brushed it aside, merely with the observation that the Tribunal does not see any material contradiction in the facts of the case, and there is no reason to disbelieve the version of the prosecution witnesses 1, 2, 3 and 5."
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- H Similarly, regarding charge No. IV relating to demand of illegal gratification of Rs. 2,000, the Administrative Tribunal observed as under :

"The prosecution has cited five witnesses in support of the charge but they have dispensed with the evidence of Fathima Bi wife of PW-2. She is a more important witness to prove this charge because she is the person who has obtained a loan of Rs. 750 by pledging some jewels in the Janopakara Nidhi, Triplicane. According to PW-4, the accountant of the said Nidhi, one Fathima Bi claiming to be the wife of Syed Karimulla pledged some gold jewels on 11.4.1974 and obtained a loan of Rs. 750. Unless the said Fathima Bi is examined, one cannot be sure whether Fathima Bi referred to by PW-4 is the wife of PW-2 or not. PW-4 has categorically stated that the husband's name and address were given by the mortgagee and he has no personal knowledge. She has affixed her thumb impression in the register of the Janopakara Nidhi at the time of the pledging of the jewels and according to PW-4 only those mortgagees who are not literate are asked to affix their thumb impression. While Fathima Bi has affixed her thumb impression in the register of the said Nidhi, she has signed in the statement before the Inspector of Vigilance when she was enquired. Therefore, it is obvious that when she is a literate there is no reason why she has affixed her thumb impression while pledging the jewels. The prosecution has not let in any evidence to show that subsequent to the pledging of the jewels Fathima Bi wife of PW-2 has learnt to sign. Therefore, in view of the conduct of the prosecution in dispensing with the evidence of Fathima Bi, there is considerable suspicion about their case."

Regarding Charge No.I, the Administrative Tribunal held as under:

"It can at best be described as a lapse on the part of the applicant in the investigation and it will not constitute a corrupt practice and therefore, would not fall within the scope of reference to the Tribunal for Disciplinary Proceedings. The police officers are governed by the Police Standing Orders and by the Criminal Procedure Code and in the matter of seizure of cash, from the person of the accused. Considering the circumstances, it is well within their rights to treat the cash as personal property and there is nothing in doing the same."

We have quoted above three paragraphs from the impugned order

- A of the Administrative Tribunal to show that the Tribunal re-appreciated the evidence recorded before the inquiring authority. The Administrative Tribunal reached different conclusions from the inquiring authority on its own evaluation of the evidence. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. It is not necessary for us to go into the merits of appreciation of evidence by the two authorities because we are of the view that the Administrative Tribunal has no jurisdiction to sit as an appellate authority over the findings of the inquiring authority.
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This Court in *Union of India v. Sardar Bahadur*, [1972] 2 SCR 218 held as under :

- C "A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Art. 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."
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- F In *Union of India v. Parma Nand*, [1989] 2 SCR 19 this Court observed as under :

- G "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punish-
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ment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority." A

We, therefore, allow the appeal, set aside the impugned order of the Administrative Tribunal and uphold the order dismissing the respondent from the police service. No costs. B

A.G.

Appeal allowed.