IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
17.03.2025	04.04.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 26586 OF 2010

T.C.Sekar .. Petitioner

- Vs –

1. Air India, rep. By its
Manager – HRD, Air India Unity Complex
GST Road, Pallavaram Cantonment
Chennai 600 043.

2. The Presiding Officer
Central Government Industrial Tribunal
-cum-Labour Court, First Floor
B-Wing, 26, Haddows Road
Shastri Bhavan, Chennai 600 006. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records from the 2nd respondent relating to its award dated 9.2.2010 in ID No.22 of 2008, quash the same and consequently hold that the action of the Management of Air

India (now NACIL) in dismissing the petitioner from the services with effect from 6.6.2003 pursuant to the order dated 25.03.2003 as illegal, direct the respondents to reinstate the petitioner in the services of Air India (now NACIL) with backwages, continuity of services, consequential and other attendant benefits.

For Petitioner : Mr. C.K.Chandrasekar, for M/s. A.Gopinath

For Respondents : Mr. N.G.R.Prasad for R-1

ORDER

Aggrieved by the award of the 2nd respondent in ID No.22/2008 in and by which the order of dismissal of the petitioner from the services of the 1st respondent was upheld, the present petition is directed against the said award.

2. The petitioner joined the services of the 1st respondent as Security Guard on 11.5.1983 and was thereafter awarded promotions and during the year 1999, the petitioner was functioning as Assistant Officer (Security). According to the petitioner, he has put in an unblemished service of 20 years. Whileso, on 12.12.2001, a show cause was issued making certain allegations against him in

terms of the Certified Standing Orders. Upon receipt of explanation and not being satisfied, enquiry was ordered and in the enquiry, the enquiry found him guilty of the charges. After providing a copy of the report, explanation was sought for, which was submitted and not being satisfied with the explanation, the Disciplinary Authority imposed the punishment of dismissal from service vide final order on 25.3.2003.

3. An approval petition was filed before the National Industrial Tribunal on 25.3.2003 due to certain disputes relating to service conditions of Airline employees and the approval petition was pending for three years and, thereafter, on the basis of the judgment of the High Court of Bombay dated 17.4.2007, the approval petition was disposed of in terms of the said order while granting liberty to the petitioner to raise an industrial dispute u/s 10 of the Industrial Disputes Act. On the basis of the liberty granted, the petitioner raised an industrial dispute, which fell for adjudication before the Tribunal.

4. The allegations levelled by the 1st respondent in the enquiry was that on the date in question, a passenger bound for flight, SQ-409, was apprehended by

the Intelligence Unit of the Customs for carrying contraband goods in the form of 440 Star Tortoises. Since the petitioner was also on duty along with others, a memo dated 16.7.2001 was issued on suspicion that the said baggage was cleared by the petitioner. Inspite of denial of the petitioner, enquiry was conducted leading to the filing of the report and the subsequent dismissal of the petitioner.

5. The approval petition filed was finally disposed of granting liberty to the petitioner to file an industrial dispute whereupon, the petitioner raised the industrial dispute, which was referred to the 1st respondent.

6. Before the Tribunal, while no ocular witnesses were examined on either side, on the side of the petitioner, Exs.W-1 to W-54 were marked and on the side of the 1st respondent herein, Exs.M-1 to M-34 were marked. The Tribunal, on the basis of the documentary evidence and the law relating to interference of the judicial forum in cases pertaining to disciplinary proceedings, dismissed the dispute holding that no interference is warranted with the punishment imposed

on the delinquent/petitioner. Aggrieved by the same, the present writ petition has been preferred by the petitioner.

7. Learned counsel appearing for the petitioner submitted that the whole sequence of events leading to the seizure of the contraband bristles with very many contradictions and discrepancies and the presence of the delinquent and other persons at the point of baggage check has not been properly established and appreciated.

8. It is the further submission of the learned counsel that the enquiry officer has not properly appreciated the narration of events and the timing when the contraband was seized, as exhibited through the documentary evidence and, therefore, the report of the enquiry officer cannot form the basis for dismissal of the delinquent. It is the further submission of the learned counsel that though other two persons, along with the petitioner was very much available at the material point of time at the baggage checking point and were also operating the x-ray machine, the said persons have not been implicated which clearly shows

that for reasons best known, the delinquent alone was singled out and fastened with the liability on the aforesaid allegation.

9. It is the further submission of the learned counsel that not implicating the other persons, who were also present at the material point of time along with the petitioner near the x-ray machine and were operating the x-ray machine is a clear discrimination, which hits at the substratum of the 1st respondent's case. However, the material aspect has not been properly appreciated by the Tribunal while confirming the order of dismissal and, therefore, the same requires to be interfered with.

10. It is the further submission of the learned counsel that even without admitting that the charges, which are held proved are liable to be sustained, still the punishment imposed on the petitioner for the said delinquency is grossly disproportionate to the charges framed against him and the same requires to be modified.

11. Learned counsel for the petitioner, in support of the above submissions, placed reliance on the following decisions :-

i) *Roop Singh Negi – Vs – Punjab National Bank & Ors. (2009 (2) SCC 570);*

ii) *United Bank of India – Vs – Biswanath Bhattacharjee (2022 (5) LLN 45 (SC));*

iii) *Dr.Gajendra Singh – Vs – Union of India & Ors. (2022 (7) SCR 1);*

iv) *Satyendra Singh – Vs – State of UP & Anr. (2024 INSC 873);*

v) *Amar Nath Chowdhary – Vs – Braithwaite & Co. Ltd. & Ors. (2002 (2) SCC 290);*

vi) *P.Venkatachalam & Ors. – Vs – The Special Tribunal for Co-operative Cases & Ors. (1996 (2) MLJ 69);*

vii) *Griffon Laboratories (Pvt.) Ltd. – Vs – Maharashtra Shramik Sena, Mumbai & Ors. (2002 (3) LLN 224 (Bom));*

viii) *State of Madras – Vs – Kandasamy (1972 (85) LW 221); and*

ix) *Ministry of Finance & anr. – Vs – S.B.Ramesh (1998 (3) SCC 227)*

12. Per contra, learned counsel for the 1st respondent, in his usual eloquence and inimitable style, submitted that the 1st respondent had clearly proved the delinquency of the petitioner in the departmental enquiry with regard to the charges framed against him and the petitioner was also given adequate

opportunity to put forth his case and mark all the documents. The petitioner neither had entered the witness box and deposed nor examined any witnesses to establish his case. The Tribunal on consideration of the documentary evidence, has held that the enquiry was fairly and properly conducted and that there was no violation of principles of natural justice and the enquiry officer had followed all the procedures of the departmental enquiry before rendering his findings. Based on the enquiry report the disciplinary authority, taking a lenient view, had imposed the punishment of compulsory retirement of the petitioner from service, which would result in the petitioner to receive his provident fund and without disqualifying him, considering his long and unblemished service. Therefore, the said punishment, by no stretch, could be termed to be disproportionate. All the above factors have been taken into consideration by the Tribunal before confirming the punishment of compulsory retirement and, therefore, no interference is warranted with the punishment.

13. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

i) *State of AP & Ors. – Vs – Chitra Venkata Rao (1975 (2) SCC 557);*

ii) *Kanhaiyalal Agrawal & Ors. – Vs – Factory Manager, Gwalior Sugar Co. Ltd. (2001 (II) LLJ 1239);*

iii) *Workmen of Balmadies Estates – Vs – Management, Balmadies Estates & Ors. (2008 (4) SCC 517); and*

iv) *Union of India & Ors. – Vs – P.Gunasekaran (2015 (2) SCC 610)*

14. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the parties and perused the materials available on record.

15. 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 of the order passed by the disciplinary authority, 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 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)*

16. The above view has been reiterated by the Hon'ble Supreme Court in ***Principal Secy. Govt. of A.P. - Vs - M. Adinarayana, (2004 (12) SCC 579)***, wherein, it has been held as under :-

> *"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he*

purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

17. 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 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 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.*

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 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 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;

(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)

18. 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.

19. It has been further held in the said decisions that so long as the enquiry is not defective the Court has to only see whether there was a *prima facie* case for dismissal and whether the employer had come to the *bona fide* conclusion

that the employee was guilty of misconduct. What is further to be seen is that the conclusion arrived at by the employer is *bona fide* as to the guilt of the employee and that there was no unfair labour practice or victimization involved and to satisfy itself with regard to the punishment imposed. However, if the enquiry is found to be defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified.

20. In the above backdrop of the legal position, the main contentions advanced on behalf of the petitioner borders on the manner in which the evidence of the witnesses have been looked at by the enquiry officer and the act of the enquiry officer in not properly taking into account the time factor. It is also contended on behalf of the petitioner that persons, who were also present at the scene of occurrence and were also operating the x-ray machine were not proceeded against, which is a clear discrimination which necessitates interference with the order of punishment.

21. The Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case (supra),* following the ratio laid down in *Gunasekaran's case* has held that the High Court, sitting under Article 226 of the Constitution, while determining its scope of interference in a departmental proceedings is only bound to 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.*

22. It is to be stressed that the Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The 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. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceeding is not on the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, 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. If the enquiry is properly held within the four boundaries of legal necessities, then 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. 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. 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 and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

23. The words of eminent jurist V.R.Krishna Iyer, J., resonates loud, where His Lordship (as he then was), had stated that *"The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny".*

24. Looking at the contentions advanced on behalf of the petitioner and applying the ratio laid down in the aforesaid decisions, it clearly reveals that the petitioner has not attacked the manner in which the enquiry was conducted and no violation of principles of natural justice has been alleged against the enquiry officer. In fact, no bias has also been attributed to the enquiry officer. When

there is no attack on the manner in which the enquiry has been conducted and the right of the petitioner to present evidence has not been precluded, thereby, there being no violation of principles of natural justice, necessarily, this Court cannot find any fault with the enquiry and, therefore, the reasonableness in the conduct of the enquiry is not in issue.

25. The ground on which the petitioner attacks the punishment is on account of two of the other personnel, who were available on that day were not proceeded against, but action has been taken only against the petitioner. It is to be pointed out that the Disciplinary Authority is the sole judge to find out the persons against whom action should be taken. A careful perusal of the order of the Tribunal reveals that the enquiry officer has based his findings on the documents, which have been placed before him. The petitioner has not taken any steps to call the persons, who were available with him on the said date to vouch for his acts, but for reasons best known, the petitioner has not taken any steps to have them examined as witnesses on his side. Merely because no action has been taken against the said officer cannot be said to be a biased act on the part of the disciplinary authority, as the materials on record probabilises the act

of the petitioner as the person, who had scanned the baggage, which were later seized and were found to contain the contraband. There is no proper explanation for the same from the petitioner. The documents have been taken in aid by the enquiry officer as well as the Tribunal to come to the conclusions that though there are no direct evidence as against the petitioner to establish his guilt, definitely there are circumstantial evidence pointing to the fact that the petitioner has been guilty in allowing the passage of the star tortoises through the x-ray machine, thereby aiding and abetting the commission of smuggling of contraband.

26. Both the authorities, viz., the enquiry officer and the Tribunal have held that the finger of suspicion points to the petitioner and there are sufficient circumstantial evidence which pinpoints the petitioner to have aided and abetted the smuggling of the contraband. The finding of fact rendered by the aforesaid authorities cannot be said to be perverse, even on a bare perusal of the documents, which have been placed before the Tribunal.

27. As laid down by the Apex Court, the degree of proof required in a domestic enquiry is not akin to criminal trial, as it is only on the preponderance of probability, the evidence has to be analysed and acted upon to arrive at a conclusion with regard to the delinquency of the petitioner. The circumstantial evidence on which the conclusion has been arrived at is consistent and the manner of appreciation of evidence by the enquiry officer and the Tribunal cannot be found fault with. The conclusion as to the guilt of the petitioner is based on logical reasoning and the same cannot be said to have been done in an *ipse dixit* manner.

28. The Tribunal, in extenso, has considered all the materials placed before it and also analysed the enquiry report and had come to the categorical conclusion that the petitioner had committed the act of delinquency. Therefore, the findings as to the guilt of the petitioner do not require any interference at the hands of this Court.

29. The only issue that is left open and which requires the consideration of this Court is to the proportionality of the punishment imposed on the petitioner.

30. It is to be noted that the allegation levelled against the petitioner relates to security breach at the airport. The petitioner, who is entrusted with the task of handling the security highest standards of probity is expected of the said individual. However, without adhering and maintaining the highest standards of probity, the petitioner had indulged in acts, which were prejudicial to the interest of the nation and the laws of the land and had breached the security cover. Persons employed for the purposes of security should exhibit highest standards of honesty and integrity, else the trust reposed on the said individuals by the institution would diminish in the eyes of the general public.

31. In the case on hand, the petitioner had acted prejudicial to the interest of the nation, which had given him his livelihood, but without the scantiest regard for the same, the petitioner had indulged in acts, which had directly affected the

interest of the public, which had resulted in the 1st respondent compulsorily retiring the petitioner.

32. In the light of the view expressed by this Court, the proportionality of the punishment inflicted on the delinquent requires consideration. The Apex Court in ***V.S.P. – Vs - Goparaju Sri Prabhakara Hari Babu (2008 (5) SCC 569)***, had occasion to consider the proportionality of the punishment vis-a-vis the delinquency committed and in the said context 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."

33. 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 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)

34. 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.

35. In the present case, though there is no direct evidence, through which the delinquency has been proved, however, through circumstantial evidence, the delinquency has been proved. The allegation relates to security lapse for which the petitioner has aided and abetted. However, it is to be noted that this is the first instance of breach committed by the petitioner and considering the fact that the petitioner has put in more than 20 years of service without any blemish, the disciplinary authority has thought it fit to impose the punishment of compulsory retirement on the petitioner, in and by which the petitioner would be entitled to almost all the retiral benefits.

36. Further, it should also be lost sight of as to what weighed in the mind of the disciplinary authority while imposing the punishment of compulsory retirement. The disciplinary authority has to balance the delinquency with the service rendered by the workman coupled with the position held by the workman. When the workman holding position of trust commits an offence,

which acts results in forfeiture of that trust, the continuance of the workman in service would not only cause embarrassment and inconvenience to the employer, but would also act in detriment to the discipline of the other security personnel in the establishment.

37. Considering the length of service put in by the workman and also the delinquency committed by the workman, the disciplinary had thought it fit not continue the workman in service, as it would not only cause embarrassment and inconvenience to the 1st respondent, but would also send a wrong signal to the other work force employed leading to indiscipline and security breach and, therefore, weighing that the punishment of dismissal from service would definitely be disproportionate to the workman considering his unblemished service till then, the authority had compulsorily retired the petitioner from service, which would not affect the petitioner much, as the monetary benefits that would enure to him subsequent to the said punishment would help in the sustenance of the family. The reasoning and the analysis that had gone in the mind of the disciplinary authority while inflicting the punishment, tested from any scale clearly shows that the disciplinary authority has properly considered the

issue while imposing the punishment and in such a backdrop, this Court is of the view that no interference is warranted with the punishment imposed on the petitioner by the disciplinary authority.

38. In such view of the matter and for the reasons aforesaid, this Court is of the considered view that the punishment imposed on the petitioner cannot be said to be disproportionate or harsh; rather considering all the circumstances, the disciplinary authority has imposed the punishment, which is just and reasonable and proportionate to the delinquency committed by the petitioner and, therefore, this writ petition deserves to be dismissed.

39. Accordingly, this writ petition is dismissed confirming the impugned order dated 9.2.2010 in ID No.22 of 2008 passed by the 2nd respondent. There shall be no order as to costs.

04.04.2025

Index : Yes / No

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To

The Presiding Officer
Central Government Industrial Tribunal
-cum-Labour Court, First Floor
B-Wing, 26, Haddows Road
Shastri Bhavan, Chennai 600 006.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO. 26586 OF 2010

Pronounced on
04.04.2025