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Neutral Citation No. - 2024:AHC:188206-DB

Court No. - 29

Case :- SPECIAL APPEAL No. - 1012 of 2024

Appellant :- State Of Up And 2 Others
Respondent :- Prem Chandra Verma
Counsel for Appellant :- C.S.C.,Ratan Deep Mishra
Counsel for Respondent :- Ajay Kumar Singh Yadav

Hon'ble Vivek Kumar Birla,J.
Hon'ble Dr. Yogendra Kumar Srivastava,J.

[Per : Dr Yogendra Kumar Srivastava, J.]

1. Heard Sri Ratan Deep Mishra, learned Standing Counsel for the State-appellants and Sri Ajay Kumar Singh Yadav, learned counsel appearing for the petitioner-opposite party.

2. The present intra-court appeal is directed against the order dated 27.05.2024 passed by learned Single Judge of the Court in Writ – A No. - 5001 of 2024 [Prem Chandra Verma Vs. State of Uttar Pradesh and Others].

3. A perusal of the records of the case indicates that the writ petition had been instituted praying for a mandamus to be issued to the Joint Director, Technical Education, East Zone, Varanasi to implement the benefit of revised salary to the petitioner, in terms of *memoranda* dated 28.05.2022 and 07.07.2022 issued by the Director, Technical Education, U.P. and addressed to the Joint Director, Technical Education, East Zone, Varanasi, amongst others.

4. Before the writ court, it was contended that the

emoluments payable to the petitioner in his capacity as Principal of a Government Polytechnic College had been revised in terms of Government Order dated 03.05.2018 and the consequential orders dated 28.05.2022 and 07.07.2022 issued by the Director, Technical Education, U.P. Kanpur directing issuing directions to the Joint Director, Technical Education, Varanasi. It was urged that despite the aforesaid Government Order dated 03.05.2018 and the orders issued by the Director dated 28.05.2022 and 07.07.2022 fixing revised emoluments for Principals of Government Polytechnic Colleges, the Joint Director was not revising the petitioner's emoluments. Noticing the aforesaid contention, the writ court passed an order on 01.04.2024 directing filing of a personal affidavit by the Joint Director showing cause as to why the revised emoluments in terms of the orders passed by the Director, Technical Education had not been sanctioned and disbursed to the petitioner.

5. The Joint Director, Technical Education, in compliance of the aforesaid order filed his affidavit wherein it was stated that an order dated 04.04.2024 had been passed granting the petitioner the benefit of the revised emoluments as per the orders dated 28.05.2022 and 07.07.2022. The writ court, upon noticing that the order dated 04.04.2024 showed that while determination for different periods of time from 02.05.2018 to 02.01.2024 had been made, for the period when the petitioner was under suspension, i.e. 11.03.2019 to 04.01.2021, the petitioner's increments had not been granted, making it dependent on the outcome of the pending departmental proceedings against the petitioner, observed that mere pendency

of disciplinary enquiry would not disentitle the petitioner from earning his increment and accordingly a further personal affidavit of the Joint Director, was ordered to be filed. A further personal affidavit of the Joint Director was filed on 18.04.2024, wherein the stand taken that the orders regarding pay fixation and award of increment or the payments of subsistence allowance shall be taken after the disciplinary proceedings come to an end, was held to be unacceptable, and an order was passed directing the Principal Secretary, Department of Technical Education, Government of U.P., Lucknow, the Director of Technical Education, U.P. Kanpur and the Financial Controller, Technical Education, Kanpur, to ensure that a decision was taken on or before 02.05.2024. An Affidavit of Compliance was directed to be filed. Pursuant thereto, on 02.05.2024, an affidavit of the Principal Secretary, Department of Technical Education was filed, annexing therewith an order dated 29.04.2024 awarding a major penalty to the petitioner withholding two increments with cumulative effect besides directing recovery of a sum of Rs.77,150/-.

6. Counsel for the petitioner was permitted to amend the petition by formally adding a prayer challenging the order dated 29.04.2024, on behalf of the petitioner. In response, a supplementary affidavit was filed on behalf of the State-respondents. The writ petition was finally heard on 27.05.2024, and the learned Single Judge on the basis of the affidavits which were on record concluded that the salutary principle regarding holding of a valid departmental enquiry in a matter where a major penalty was to be imposed, had not been followed.

Accordingly, the writ petition was allowed and the order dated 29.04.2024 passed by the Principal Secretary, was quashed. The operative portion of the judgment of the learned Single Judge is being extracted below:

> "19. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 29.04.2024 passed by the Principal Secretary, Department of Technical Education, Government of U.P., Lucknow is hereby **quashed**. The respondents shall be free to take fresh proceedings, bearing in mind the remarks in this judgment against the petitioner, if they so elect from the stage of charge-sheet or a modified charge-sheet. In the event, the respondents elect to pursue fresh proceedings, they will not impose a penalty higher than that imposed by the orders impugned and quashed by this judgment today."
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> (emphasis supplied)

7. Counsel for the State-appellants, after drawing attention of the Court to the factual aspects of the case, has fairly stated that the appeal is confined against the direction issued by the learned Single Judge in the operative portion of the judgment wherein, on the one hand the respondents have been left free to take fresh proceedings if they so elect from the stage of charge-sheet or a modified charge-sheet, it has been observed that in the event the respondents elect to pursue fresh proceedings they would not impose a penalty higher than that imposed by the orders impugned and which had been quashed in terms of the judgment which was being passed.

8. It is argued that the disciplinary proceedings and the imposition of punishment if any is to be done as per the provisions of the U.P. Government Servants (Discipline and Appeals) Rules, 1999 and imposition of any restriction with regard to the penalty which may be imposed upon conclusion of the disciplinary proceedings, amounts to curtailing the powers

of the disciplinary authority under the relevant statutory rules, which would not be legally permissible. It has been urged that the Court could certainly issue directions for proceeding with the enquiry from the stage of the charge-sheet or a modified charge-sheet, however imposition of any restriction on the discretion on the disciplinary authority was uncalled for.

9. Counsel appearing for the opposite party-petitioner has tried to support the order passed by the learned Single Judge by pointing out that the impugned order dated 29.04.2024 imposing major penalty having been passed without following the due procedure for holding departmental inquiry, the inquiry was vitiated and the learned Single Judge quashed the same and issued directions for holding fresh proceedings. On the question as to whether any restrictions could have been imposed on the discretion of the disciplinary authority in the matter relating to the penalty that may be imposed upon conclusion of the disciplinary proceedings, learned counsel appearing for the petitioner-opposite party could not point out any ground to support the directions issued in the judgment under appeal.

10. The procedure with regard to holding of disciplinary proceedings and imposition of penalties on government servants, is determined as per the provisions contained under the U.P. Government Servant (Discipline and Appeal) Rules, 1999. The appointment of the disciplinary authority is to be as per Rule 6 of the Rules 1999. The procedure for imposition of major penalty is prescribed under Rule 7. The submission of enquiry report and action on enquiry report by the disciplinary authority are to be as per Rules 8 and 9, respectively. For ease of

reference Rules 6, 7, 8 and 9 of the Rules 1999, are being reproduced below:

> **"6. Disciplinary authority–-**The appointing authority of a Government servant shall be his disciplinary authority, who, subject to the provisions of these rules, may impose any of the penalties specified in Rule 3 on him:
>
> Provided that no person shall be dismissed or removed by an authority subordinate to that by which he was actually appointed:
>
> Provided further that the Head of Department notified under the Uttar Pradesh Class II Services (Imposition of Minor Punishment) Rules, 1973, subject to the provisions of these rules, shall be empowered to impose minor penalties mentioned in Rule 3 of these rules:
>
> Provided also that in case of a Government servant belonging to Group 'C' and 'D' posts, the Government, by a notified order, may delegate the power to impose any penalty, except dismissal or removal from service under these rules, to any authority subordinate to the appointing authority and subject to such conditions as may be prescribed therein.
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> **7. Procedure for imposing major penalties –** Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner–
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> (i) The disciplinary authority may himself inquire into the charges or appoint an authority subordinate to him as Inquiry Officer to inquire into the charges.
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> (ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority:
>
> Provided that where the appointing authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary; as the case may be, of the concerned department.
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> (iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.
>
> (iv) The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of

charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records. In case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation :

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex

parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi) The disciplinary authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits :

Provided that this rule shall not apply in following cases :

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules.

8. Submission of Inquiry Report—When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the disciplinary authority alongwith all the records of the inquiry. The inquiry report shall contain a sufficient record of brief facts, the evidence and statement of the findings on each charge and the reasons thereof. The Inquiry Officer shall not make any recommendation about the penalty.

9. Action on Inquiry Report—(1) The disciplinary authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the disciplinary authority, according to the provisions of Rule 7.

(2) The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government servant shall be exonerated by the disciplinary authority of the charges and inform him accordingly.

> (4) If the disciplinary authority having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant."

11. Rule 6, aforementioned, confers on the disciplinary authority discretion to impose any of the penalties specified in Rule 3, which covers both the minor penalties as well as the major penalties. Rule 7 provides that before imposing any major penalty on a government servant, an enquiry shall be held in the manner prescribed. Clause (1) of Rule 7 confers discretion on the disciplinary authority to himself inquire into the charges or to appoint an authority subordinate to him as an Inquiry Officer to inquire into the charges. As per Rule 8, upon the enquiry being completed the Inquiry Officer is to submit its report to the disciplinary authority along with all the records of the enquiry. The enquiry report is to contain sufficient record of proof, facts, evidence and the statement of findings on each charge and reasons thereof. It is specifically provided that the Inquiry Officer while submitting the enquiry report shall not make any recommendation about the penalty. Rule 9 which relates to action on enquiry report confers a fairly wide discretion on the disciplinary authority. Rule 9(1) provides that the disciplinary authority, may, for reasons to be recorded in writing remit the case for re-enquiry to the same or any other Inquiry Officer, whereupon an Inquiry Officer shall proceed to hold an inquiry

from the stage as directed by the disciplinary authority. The disciplinary authority, if it disagrees with the findings of the Inquiry Officer on any charge is empowered under Rule 9(2), to record its own findings thereon for reasons to be recorded. In case the charges are not proved, it is the disciplinary authority which shall exonerate the charged government servant of the charges as per Rule 9(3). Rule 9(4) confers further discretion on the disciplinary authority by providing that if the disciplinary authority having regard to its findings on all or any of the charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the inquiry report and its findings recorded under sub-rule (2) to the charged government servant and require him to submit his representation if he so desires within a reasonable specified time. The disciplinary authority, shall, having regard to all the relevant records relating to the enquiry and representation of the charged government servant, if any, and subject to the provisions of Rule 16 of these rules, where consultation with the Uttar Pradesh Public Service Commission may be required, is to pass a reasoned order imposing one or more penalties mentioned in Rule (3) and communicate the same to the charged government servant.

12. The aforesaid provisions as contained in Rules 1999 relating to the procedure to be followed in regard to a disciplinary enquiry and the imposition of penalties against the government servant would go to show that in terms of the relevant rules, a wide discretion is conferred on the disciplinary authority at the stage of initiation of the disciplinary

proceedings, the disciplinary authority is conferred with a discretion either to inquire into the charges himself or to appoint an authority subordinate to him as Inquiry Officer for the purpose. At the stage of submission of the inquiry report which shall contain a sufficient record of the brief facts or the evidence and the statement of findings of each charge and the reasons thereof, shall not make any recommendation about the penalty. After submission of the inquiry report, the disciplinary authority can exercise varied options; (i) it may for reasons recorded in writing may remit the same to the same or any other Inquiry Officer, whereupon the Inquiry Officer is to proceed to hold the enquiry from the stage as directed by the disciplinary authority; (ii) in case the disciplinary authority disagrees with the findings of the Inquiry Officer on any charge, it shall record its own findings thereon for reasons to be recorded; (iii) where the charges are not proved it is the disciplinary authority which is empowered to exonerate the charged government servant of the charges and inform him accordingly; (iv) finally, if the disciplinary authority having regard to its findings on all or any of the charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the inquiry report and its findings to the charged government servant requiring him to submit his representation within a reasonable specified time, and thereafter having regard to all the relevant records relating to the inquiry and the representation of the charged government servant pass a reasoned order imposing one or more penalties under Rule 3 and communicate the same to the charged government servant.

13. A conjoint reading of Rules 6, 7, 8 and 9, as above, is indicative of the discretion conferred on the disciplinary authority at each stage of the disciplinary proceeding – the stage of its inception that is to say the appointment of Inquiry Officer, the stage of submission of inquiry report and finally at the stage of action on the inquiry report.

14. The powers conferred on the disciplinary authority at the final stage of imposition of penalty give ample discretion to the authority to either exonerate the government servant of the charges or to impose one or more penalties (minor or major) mentioned in Rule 3, after requiring him to submit his representation and taking into account all the relevant records relating to inquiry and the representation. The disciplinary authority can also exercise the option of remitting the case for re-inquiry to the same or any other Inquiry Officer for reasons to be recorded in writing.

15. The foregoing provisions are clearly indicative of the wide discretion that has been conferred on the disciplinary authority in matters relating to holding of the disciplinary proceedings and imposition of the penalties. This is of course subject to the condition of procedural fairness being followed and reasoned orders in writing being passed at each stage where the discretion under the rules is exercised.

16. The scope of judicial review in matters relating to the quantum of penalty to be imposed upon a delinquent employee consequent to the disciplinary proceedings, has been held to be limited. Only in a case where the penalty appears to be

shockingly disproportionate to the nature of misconduct courts may interfere, and even in such cases after setting aside the penalty order, it should be left to the discretion of the disciplinary/appellate authority to pass a fresh order, and it would not be for the court to prescribe the nature or the quantum of penalty which may be imposed. It would only be in a rare and exceptional case where the court, in order to shorten the litigation, may after recording reasons deem it appropriate to substitute its own view in regard to the quantum of penalty.

17. The nature, object and scope of judicial review in matters relating to departmental enquiry was considered in **B.C. Chaturvedi Vs. Union of India and Others**[1], and it was held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power is to be exercised to ensure that the individual concerned receives fair treatment and not to ensure that the conclusion which the authority may reach is necessarily correct in the view of the Court. It was also held that in exercise of review power courts would not normally interfere with the punishment imposed by the disciplinary/appellate authority, except where it shocks the judicial conscience in which case it can mould the relief either by directing the authority to reconsider the punishment/penalty imposed or in exceptional cases by itself imposing appropriate punishment recording cogent reasons. The observations made in this regard in the judgment are as follows:

> "**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

1 (1995) 6 SCC 749

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.

… … …

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive

> power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

18. The limited scope of judicial review in matters relating to the quantum of punishment was reiterated in the decision rendered in the case of **Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh**[2], and it was observed that the courts cannot assume the function of disciplinary/departmental authorities to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority. The principles of law in this regard were summarized in the judgment as follows:

> "**19.1**. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.
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> **19.2**. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.
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> **19.3**. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.
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> **19.4.** Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority

2 (2013) 12 SCC 372

> or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.
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> **19.5.** The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

19. The scope of interference in punishment or penalty imposed by disciplinary authority or the appellate authority again came up for consideration in **Regional Manager & Disciplinary Authority, State Bank of India, Hyderabad and Another Vs. S. Mohammed Gaffar**[3], and it was observed that the discretion vested with the disciplinary authority to impose punishment of its choice to suitably meet the requirement of the case could not be either denied, curtailed or interfered with in exercise of jurisdiction under Article 226 of the Constitution of India. It was stated thus:

> "**9.** …. … the discretion vested with the disciplinary authority to impose the punishment of its choice to suitably meet the requirements of the case could not be either denied to it or curtailed and interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.
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> **10.** The High Court seems to have overlooked the settled position that in departmental proceedings, insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally interfere with the same or substitute its own

3 (2002) 7 SCC 168

> opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. It is for this reason we cannot accord our approval to the view taken by the High Court in disregard of this settled principle. Consequently, the appeal is allowed, the judgment of the Division Bench is set aside and that of the learned Single Judge shall stand restored. No costs."

20. We may refer to a similar view taken in an earlier judgment rendered in **State of A.P. And Others Vs. S. Sree Rama Rao**[4], wherein it was 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, and that under its writ jurisdiction, it is not the function of the court to review the evidence and arrive at an independent finding on evidence. The observations made in the judgment in this regard are as follows:

> **"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

4 AIR 1963 SC 1723

> 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."

21. The principles relating to the scope of judicial review in regard to disciplinary enquiries were reiterated in the decision in the case of **State of Rajasthan v. Heem Singh**[5], and it was held that re-appreciation of evidentiary findings in a disciplinary enquiry or substitution of more appropriate view in judicial review, was not permissible. It was observed as follows:

> "**37.** 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

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5 (2021) 12 SCC 569

> 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 recognised 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 reappreciate 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."

22. While examining the scope of interference in the disciplinary proceedings, in the case of **Union of India v. P. Gunasekaran**[6], it was observed that the High Court in exercise of its powers under Article 226 cannot go into the proportionality of punishment unless it shocks the conscience of the Court, and that interference was permissible only in a case of perversity. The observations made in the judgment in this regard are as follows:

> "**12.** Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the Inquiry Officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see

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6 (2015) 2 SCC 610

whether:

(a) the enquiry is held by a 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 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.

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

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

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

23. The limited scope of interference with the quantum of punishment by the disciplinary authority while exercising jurisdiction under Article 226 of the Constitution of India was against emphasized in **Union of India v. Ram Karan**[7], and it

7 (2022) 1 SCC 373

was held that the discretion vests with disciplinary authority to impose punishment commensurate with nature of offence proved and that the same cannot be usurped by Court. It was stated that even when punishment imposed by the disciplinary authority is found shocking to the conscience of the Court normally the disciplinary/appellate authority should be directed to reconsider the quantum of penalty. It was observed as follows:

> "**23.** The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.
>
> **24.** Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."

24. The line of decisions, referred to above, would go to show that in exercise of judicial review in disciplinary matters the general rule is one of restraint and that the discretion in matters relating to imposition of penalty is within the domain of the disciplinary authority. A consistent view has been taken that courts should not assume the mantle of the disciplinary

authority and issue directions prescribing the mode and manner in which their discretion is to be exercised.

25. It may be stated as a fairly well settled principle of law that it is the disciplinary authority or the appellate authority in appeal, which is to decide the nature of penalty to be imposed on a delinquent employee, keeping in view the seriousness of the misconduct, and even in cases where the punishment awarded is found to be shocking to the conscience of the court normally a direction is issued to the disciplinary authority to reconsider the question relating to the quantum of punishment.

26. While exercising the powers of judicial review, the Courts would not assume the function of a disciplinary/departmental authority to decide the quantum of punishment or the nature of penalty to be awarded as this function is exclusively within the jurisdiction of the competent authority. The discretion vested with the disciplinary authority to impose punishment of its choice to suitably meet the requirement of the case is not to be either denied, curtailed or interfered with in exercise of powers of judicial review.

27. The powers of judicial review may be exercised in a case where the departmental authorities have held proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the relevant statutory rules prescribing the mode of inquiry or the decision is found to be based on considerations which are extraneous to the evidence and the merits of the case or is otherwise based on irrelevant considerations or where the conclusion on the very face of it, is

wholly arbitrary and unreasonable. However, if the inquiry is otherwise properly held, the departmental authorities are the sole judges of facts and re-appreciation of evidentiary findings recorded by the departmental authorities or the substitution of what may be seen to be a more appropriate view, in exercise of powers of judicial review, would not be permissible. The discretion to impose punishment commensurate with the nature of offence vests with the disciplinary authority and the same is to be exercised unfettered subject to general principles of fairness being followed.

28. In the case at hand the writ court, upon hearing the parties and examining the case on the basis of affidavits which were on record, having concluded that the salutary principle regarding holding of a valid departmental enquiry in a matter where major penalty could be imposed, had not been followed, set aside the order in terms of which a major penalty had been awarded against the petitioner. The respondent authorities were set free to initiate fresh proceedings, if so warranted, from the stage of the charge sheet or a modified charge sheet.

29. To this extent, we are of the view that the learned Single Judge, having come to a conclusion based on the material on record that due procedure with regard to holding of a departmental enquriy had not been followed, and that the order imposing major penalty stood vitiated on that ground, rightly set aside the said order and remitted the case to the respondent authorities with liberty to take fresh proceedings from the stage of the charge sheet or modified charge sheet, if so required. However, the condition which has been imposed by providing

that in the event the respondent authorities choose to initiate fresh proceedings they would not impose a penalty higher than that imposed by the orders impugned in the writ petition, in our view, goes beyond the settled principle of the rule of restraint in exercising judicial review in matters relating to disciplinary proceedings.

30. The rule of restraint that constricts the ambit of judicial review in disciplinary matters, has been held to be founded on principles of 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.

31. The court would have jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. The courts may also interfere with the finding or the penalty where it is disproportionate to the weight of the evidence or the misconduct. This stage would, however, arise only when the disciplinary authority is permitted to exercise its unfettered discretion on the basis of the facts and the evidence available on record, and to pass a suitable order either exonerating or holding the delinquent guilty and awarding penalty commensurate with the gravity of the misconduct. The court, while exercising its power of judicial review, may at this stage, decide to interfere with the punishment imposed by the disciplinary authority, in those 'rare and exceptional cases', where the penalty is found to be disproportionate and shocking to the conscience of the court. Even in such a case, where the court views the penalty as being

shockingly disproportionate to the nature of misconduct, the appropriate and the accepted course of action would be to remit the matter to the disciplinary authority with liberty to pass a fresh order on the question of penalty and it would not be for the Court to mandate as to what should be the penalty in such a case.

32. This would be more so in a case where the Court is of the view that the procedure for holding a departmental enquiry has not been followed, and the order of penalty passed by the disciplinary authority is vitiated for procedural reasons, and the matter is being remitted with liberty to the authority concerned to initiate fresh proceedings from the stage of charge sheet. In such case the outcome of the disciplinary proceeding, at that stage, would be wide open, and it would be treading in the realm of conjecture to hazard a guess as to what view would possibly be taken by the disciplinary authority, and what would be the proposed penalty, if any, at the stage of the conclusion of the proceedings. The writ court, in our opinion, has overstepped the 'limited scope of judicial review', in a matter relating to the disciplinary proceedings, by pre-empting the outcome of the proceedings which are to be initiated from the stage of the charge sheet, and whose outcome, for the present, can only be described as being 'hazy'.

33. The judgment of the learned Single Judge, to the extent it restricts the discretion of the disciplinary authority in regard to the penalty that may be proposed as a possible outcome of the disciplinary proceedings which are to commence from the stage of the charge sheet, is therefore held to be legally unsustainable.

34. Accordingly, we are of the view that the judgment of the learned Single Judge to the extent it relates to quashment of the order dated 29.4.2024, awarding major penalty to the petitioner, and leaving it open to the respondent-authorities to take fresh proceedings, if they so elect, from the stage of charge-sheet or modified charge-sheet, requires no interference. However, the latter part of the operative portion of the judgment under appeal is modified by providing that in the event, the respondent-authorities elect to initiate fresh proceedings, they would be entitled to exercise their unfettered discretion in regard to the same. The respondent-authorities, would be expected to adhere to the procedure prescribed under the relevant Rules of 1999, and to act in a manner, which is fair and just.

35. The Special Appeal is **allowed to the extent indicated above**.

Order Date :- 29.11.2024
Arun K. Singh/RKK

[Dr. Y.K. Srivastava, J.] [V.K. Birla, J.]

Digitally signed by :-
RAJ KUMAR KANNAUJIA
High Court of Judicature at Allahabad