
(2007) 10 AP CK 0026
In the Andhra Pradesh High Court
Case No : WA No. 531 of 2007

Divisional Security Commissioner, RPF, South Central Railway and Others APPELLANT

Vs

B. Shiv Shankar RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Railway Services (Conduct) Rules, 1966 — Rule 3

Citation : (2008) 2 ALD 156

Hon'ble Judges : G.S. Singhvi, C.J.; C.V. Nagarjuna Reddy, J

Bench : Division Bench

Advocate : Gouri Shankar Sanghi, for the Appellant; Nandigam Krishna Rao, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, C.J.—This is an appeal for setting aside order dated 21.2.2007 passed by the learned Single Judge whereby he allowed the writ petition filed by the respondent - B. Shiv Shankar, indirectly set aside his dismissal from service and substituted the same with reinstatement without back wages.

2. The respondent joined as Constable in Railway Protection Force, South Central Railway in 1988. On July 10, 1995, a regular departmental enquiry was initiated against him on the following charges:

1. While working at BPQ (OP) involved in smuggling of liquor from BPQ to BPA and KZJ area directly are through some agents. Shri Gaddam Narayana, S/o Gattaiah resident of Vardannapet, Warangal, when caught by GRP/KZJ with 10 full B.P. liquor bottles at KZJ Station. On 27.5.1995, confessed that he was engaged by Constable - 366 for smuggling of liquor by Navjeevan Express. Thus, he violated Rule 3(iii) of Railways Service Conduct Rules, 1966.

2. He has misbehaved with ASIPF Shri K.V. Purushottam Nair of BPQ (OP) on

19.1.1995 and used unparliamentary language and he deserted seal checking duty point.

3. He absented from duty from 8.10.1994 to 19.10.1994 and 3.3.1995 to 27.3.1995. Though this absent period was regularised as LWP he was warned to be disciplined in future failing which action would be taken under DAR. Thus, despite the warning he did not improve his conduct.

3. The enquiry officer submitted report with the finding that the charges levelled against the delinquent have been proved. The disciplinary authority i.e. Divisional Security Commissioner, Railway Protection Force, South Central Railway accepted the enquiry report and issued notice to the petitioner and gave him opportunity to submit representation. The latter submitted explanation dated 10.9.1995. Thereafter, the disciplinary authority passed order dated 26.9.1995 and dismissed the respondent from service. The appeal and revision preferred by him were dismissed by Deputy Chief Commissioner, Railway Protection Force, South Central Railway, Secunderabad and Chief Security Commissioner, Railway Protection Force, South Central Railway, Secunderabad respectively.

4. The learned Single Judge adverted to the charges levelled against the respondent and virtually set aside the punishment of dismissal by recording the following observations:

The first charge deals with smuggling of liquor from Balharshah to Bellampalli and Kazipet through some agents i.e. Gaddam Narayana and others. During that period, of course, there was a prohibition in the State of Andhra Pradesh. If the petitioner was really involved, he could have been made one of the accused in the crime registered against the said Narayana or any overt acts are attributed to him. In fact, there was no complaint before the authority for forming the basis for taking up such an enquiry at all as the alleged incident arose outside the employment. Secondly, insofar as misbehaviour complained against A.S.I. -K.V. Purushotham Nair - was concerned, except Ravindran, Constable, nobody spoke anything about the incident. Even according to Ravindran, after the night duty, he was taking rest and when he heard the shouting, came out and found that the petitioner raised his voice against Purushotham Nair. Except this, no details were spoken to by Ravindran, particularly, as to what exactly the language used by the petitioner etc. Further, the third charge says that the petitioner's absence from duty from 8.10.1994 to 19.10.1994 and from 3.3.1995 to 27.3.1995 was regularised as leave without pay; however, he was warned to be disciplined in future; failing which, action would be taken under DAR and thus, despite the warning, he did not improve his conduct. This appears to be very surprising. The charge itself says that the period of absence from duty from 8.10.1994 to 19.10.1994 and from 3.3.1995 to 27.3.1995 was regularised. Therefore, there was no necessity to conduct any enquiry into such matter. May be, there is some hearsay evidence insofar as the second charge is concerned i.e., as to using of some unparliamentary language against Purushotham Nair, ASI. But, the allegations of transportation of liquor from Balharshah to Bellampalli and Kazipet

illegally and regularizing of absence period could not have been formed part of enquiry. As such, I am of the opinion that assuming that there is some charge against the petitioner, the punishment of removal from service is shockingly disproportionate to that of the misconduct alleged against the petitioner.

5. We have heard Shri Gouri Shankar Sanghi, learned Counsel for the appellants, Shri Nandigam Krishna Rao, learned Counsel for the respondent and scrutinized the record.

6. In our opinion, the order under challenge is liable to be set aside because the approach adopted by the learned Single Judge while scrutinizing the findings recorded by the enquiring/ disciplinary authority is contrary to settled legal position. In *State of Orissa Vs. Bidyabhushan Mohapatra*, , the Supreme Court considered the question whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice.

7. In *State of Andhra Pradesh Vs. Sree Rama Rao*, , the Supreme Court indirectly reiterated the proposition laid down in *Bidyabhushan Mohapatra* 's case (*supra*) and held:

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 inquiry against a public servant; it is concerned to determine whether the inquiry 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 inquiry 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 inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be 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 proceeding under Article 226 of the Constitution.

8. In *The State of Madras Vs. G. Sundaram*, , the Constitution Bench of the Supreme Court laid down the following proposition:

High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge.

9. In *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, , a three Judges Bench of the Supreme Court held as under:

In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic Tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a Court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the

enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal.

(emphasis supplied)

10. In *B.C. Chaturvedi Vs. Union of India and others*, , the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

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. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before, the Court/Tribunal. 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 disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate 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 that case.

11. In *Apparel Export Promotion Council Vs. A.K. Chopra*, , the Supreme Court

again considered the High Court's power to interfere with the disciplinary proceedings and held:

It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/ and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/ or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

12. In our opinion, charge No. I levelled against the respondent cannot be treated as "not proved" simply because the competent authority did not lodge a criminal case against him. In respect of other two charges, the learned Single Judge has gone into the realm of sufficiency and adequacy of evidence and indirectly held that the charges cannot be treated as "proved". With respect, the

approach adopted by the learned Single Judge cannot be commended because it is contrary to the law laid down by the Supreme Court in various judgments to which reference has been made hereinabove.

13. The view taken by the learned Single Judge on the quantum of punishment is also contrary to the well-recognized rule that the High Court will not sit in appeal over the discretion exercised by the employer in the matter of award of punishment. It seems to us that attention of the learned Single Judge was not drawn to the parameters and guidelines laid down by the Supreme Court for applying the "doctrine of proportionality" in such matters. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Supreme Court applied the "doctrine of proportionality" and interfered with the discretion exercised by the employer to punish delinquent employee. Some of the observations made in that judgment are extracted below:

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

13.1 In *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, , the doctrine of proportionality was considered along with *Wednesbury Rule* and the following propositions were laid down:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury Test* is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the *Wednesbury Test*.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative

Law in future is not ruled out. These are the CCSU Principles.

(3)(a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU Principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

13.2 In *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, *State of U.P. and others Vs. Ashok Kumar Singh and another*, *State of U.P. and others Vs. Nand Kishore Shukla and another*, *State of Punjab and others Vs. Bakhshish Singh*, *U.P. State Road Transport Corpn. and Others Vs. A.K. Parul*, *Union of India (UOI) Vs. J.R. Dhiman*, the Supreme Court disapproved invoking of the "doctrine of proportionality" by the High Courts.

13.3 In *Om Kumar v. Union of India* (2001) 2 SCC 386, the Supreme Court considered the applicability of the "doctrine of proportionality" in the context of Article 14 of the Constitution, referred to the judgments in *Ranjit Thakur v. Union of India* (supra), *B. C. Chaturvedi v. Union of India* (supra) and held:

(1) In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of India* (supra), this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India* (supra), this Court stated that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court

could award an alternative penalty. It was also so stated in Ganayutham "s case (supra)."

(2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the Court is confined to Wednesbury Principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury Principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.

13.4 In Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

The Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional.

(underlining is mine)

13.5 In Director General R.P.F. and Others Vs. Ch. Sai Babu, , the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or

shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.

13.6 The views expressed in the above noted cases have been reiterated in the recent judgments - Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, , The Commissioner of Police and Others Vs. Syed Hussain, , and State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, .

14. Learned Counsel for the respondent, realizing that he may not be able to support the order under challenge in view of the legal propositions laid down in the aforementioned judgments of the Supreme Court, came up with a suggestion that the Court may remand the matter for fresh decision by the disciplinary authority and a direction be issued to the concerned officer to pass fresh order keeping in view the observations made by the learned Single Judge on the merits of the charges levelled against his client.

15. Shri Gouri Shankar Sanghi partly agreed with the learned Counsel for the respondent, but submitted that the Court may not put any constraint on the disciplinary authority in the matter of reconsideration of the action taken against the respondent.

16. We are in complete agreement with Shri Sanghi and have no hesitation to reject the second part of the suggestion made by Shri N. Krishna Rao that the disciplinary authority should be asked to reconsider the matter in the light of the observations made by the learned Single Judge, which, as mentioned above, are end-product of an approach, which is contrary to the settled legal proposition.

17. In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the matter is remitted to the disciplinary authority for reconsideration. The disciplinary authority shall hear the respondent, consider the record of enquiry including the findings recorded by the enquiry officer and the representation made by the respondent and pass reasoned order within a period of four months.