

(2018) 01 MP CK 0133
In the Madhya Pradesh High Court
Case No : 4598 of 2007

Smt. Madhu Shrivastava

APPELLANT

Vs

M.P.State Consumers Dispute Redressal Forum

RESPONDENT

Date of Decision : 24-01-2018

Acts Referred:

[Madhya Pradesh Civil Services \(Conduct\) Rules, 1965](#), Rule 3, Rule 3(1)(a), Rule 3(a)(c)

Citation : (2018) 01 MP CK 0133

Hon'ble Judges : Prakash Shrivastava

Bench : Single Bench

Advocate : A.K.Sethi, Rishabh Sethi, Piyush Shrivastava

Final Decision : Dismissed

Judgement

1. By this writ petition, the petitioner has challenged the order of removal from service dated 23/6/2007 after the departmental enquiry.

2. The case of the petitioner is that during the relevant point of time she was working as UDC (Assistant Grade II) and was suspended vide order

dated 30th May, 2006 and was served upon the charge sheet on the same day along with the statement of allegation, list of witnesses and

documents. The petitioner had filed the reply and had denied the charges, thereafter the enquiry officer and presenting officer were appointed and

the departmental enquiry took place. The enquiry officer had submitted the enquiry report dated 2/4/2007, a copy of the enquiry report along with

the covering letter was supplied to the petitioner requiring her to file the reply. The reply was filed by the petitioner on 4/5/2007 and thereafter the

impugned order or removal from service was passed.

3. The respondent has filed the reply supporting the impugned order.

4. The impugned order has been challenged by the petitioner mainly and substantially on the ground that there was no evidence to prove the charge and the petitioner was not permitted to properly cross examine the witnesses and petitioner's defence has not been considered and additional

witnesses not mentioned in the list of witnesses supplied along with the charge sheet have been examined.

5. Against the order of removal, though the petitioner has remedy of filing the appeal, but no such appeal has been preferred and instead of seeking

liberty from this court for preferring the appeal it has been argued by learned counsel for petitioner that the writ petition has been admitted,

therefore, in view of the judgment of the supreme court in the matter of L. Hriday Narain Vs. Income Tax Officer, Bareilly AIR 1971 SC 33 this

court should decide the petition on merit.

6. On the perusal of the record, it is noticed that in the departmental enquiry there were three charges against the petitioner. Firstly for taking bribe

for facilitating appointment as clerk in the District Forum, Jhabua and secondly, for obtaining the loan from HDFC by fabricating the document of

guarantee in the name of the Superintendent of the Court and thirdly habitually remaining absent without intimation and ignoring the orders of the

superiors.

7. The procedure prescribed in the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 has been followed while conducting the

departmental enquiry. The statements of the witnesses have been recorded and in the course of enquiry, the petitioner has been given opportunity

to cross examine the witnesses.

8. So far as the additional witnesses are concerned, a request was made by the Presiding Officer seeking permission to adduce them and they

were examined only after the permission was granted by the enquiry officer.

9. The report of the enquiry officer dated 2/4/2007 reveals that so far as the charge No.1 is concerned, it is proved that the petitioner had taken

the bribe of Rs.25,000/- for getting complainant appointed as Clerk in the District Forum, Jhabua. So far as charge No.2 is concerned, it has been

found that though the Superintendent of the Court Deepak Sharma was not the guarantor, but the petitioner by fabricating the documents and

showing him as guarantor had obtained loan from HDFC Bank, hence the charge

No.2 has also been proved. Charge No.3 has not been proved.

The conduct of the petitioner has been found to be in violation of Rule 3(1)(a), Rule 3, Rule 3(a)(c) of the M.P. Civil Services (Conduct) Rules,

1965. After the departmental enquiry, the petitioner was given due notice dated 13/4/2007 supplying a copy of the enquiry report and requiring

him to file reply to the same. The petitioner had filed the reply and after following the due procedure the impugned order dated 23/6/2007 has been passed.

10. Supreme Court in the matter of Apparel Export Promotion Council Vs. A.K. Chopra reported in (1999) 1 SCC 759 while considering the

scope of judicial review and taking note of the earlier judgment on the point has held as under:-

16. ""The High Court appears to have over-looked the 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. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the 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. Lord Haltom in *Chief Constable of the North Wales Police v. Evans*, (1982) 3 All ER 141, observed : The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court.

17. 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.

18. It is useful to note the following observations of this Court in *Union of India v. Sardar Bahadur*, (1972) 4 SCC 618 :

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

19. After a detailed review of the law on the subject, this Court while dealing with the jurisdiction of the High Court or Tribunal to interfere with the disciplinary matters and punishment in *Union of India v. Parmanand*, (1989) 2

SCC 177, opined :

We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an

appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where they are not arbitrary or

utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority

either by an Act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the

rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter of exclusively within the

jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power

to substitute its own discretion for that of the authority.

20. In *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, this Court opined :

The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate

them evidence or the nature of punishment. In a Disciplinary Enquiry, 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.

Further it was held :

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.

21. Again in *Government of Tamil Nadu and another v. A. Rajapandian*, 1995(1) SCC 216, this Court opined :

It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a court of appeal over a

decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary

authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the

Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this

case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by reappreciating the evidence and

reaching a finding different than that of the inquiring authority.

11. In the present case also, due opportunity was given to the petitioner during the departmental enquiry and findings have been recorded by the

enquiry officer on proper appreciation of the evidence. Considering the gravity of the misconduct proved in the departmental enquiry no error has

been committed by the disciplinary authority in imposing the punishment of dismissal from service. The punishment is neither disproportionate to the

gravity of misconduct nor it is excessive. Hence, in the aforesaid circumstances, no case for interference in the impugned order is made out.

12. The writ petition is accordingly dismissed.