

(1995) 12 AP CK 0039
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1605 of 1995

The District and Sessions Judge and Another	APPELLANT
Vs	
T. Madhava Rao	RESPONDENT

Date of Decision : 01-12-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 1 ALT 195

Hon'ble Judges : P.S. Mishra, C.J.;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; A. Anasuya, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—Heard: Writ petitioner-respondent was subjected to a disciplinary enquiry, served with the memo of charges, called upon to participate in the enquiry and after a full-dressed enquiry punished by an order of compulsory retirement from service. He has moved this Court and invoked its jurisdiction under Article 226 of the Constitution. The learned Single Judge has found no fault either with the enquiry or the findings in respect of the charges, but has held that punishment is disproportionate to the alleged misconduct and substituted the punishment of compulsory retirement by an order withholding increments.

2. We do not think it necessary in this case to narrate in our order how at the first instance the writ petition was ordered by substituting the punishment of compulsory retirement by the punishment of reduction in rank and how on an application for review of the judgment and order the petition was restored for a fresh hearing and after a hearing again the above order has been passed for in our view there is an error apparent on the face of the record in the Court entering into the area of discretion of disciplinary authority to decide about the sufficiency or otherwise of the punishment which has been imposed by the

disciplinary authority. The scope of judicial review of a quasi-judicial order is well known and well established. Judicial review of an order is not an appeal from a decision but a review of the manner in which the decision was made. The Supreme Court has explained this power of judicial review in the case of *H. B. Gandhi v. Gopi Nath and Sons* to mean a proceeding 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 authorised by law to decide for itself, a conclusion which is correct in the eyes of the Court. It has been pointed out in a number of decisions that the High Court is not constituted for 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 of the Constitution, 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 consideration 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 would 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 the 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. In a series of judgments, the leading one being the Constitution Bench Judgment of the Supreme Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, , it is pointed out

"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 enquiry 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 some but not all the findings are 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 enquiry 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."

The above has been reiterated in several judgments of the Supreme Court, the latest being in *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, . It is not as if the Court has completely ruled out judicial review even in respect of the imposition of punishment. When it has spoken of the jurisdiction, it has clearly indicated that the Court in exercise of its power under Article 226 of the Constitution shall not act as a Court of appeal; but has to limit itself to the well known norms and principles of judicial review. A punishment which is shockingly disproportionate to the proved guilt or misconduct will be obviously arbitrary and discriminatory so as to attract Article 14 of the Constitution of India. That, however, will present a different situation and the Court may call upon in such a situation the competent authority to re-consider in the light of its own findings whether the imposition of punishment was unreasonable. In a case in which the Court in the proceeding under Article 226 of the Constitution would find, however, that the punishment imposed is unreasonably harsh, it can interfere; but it shall not substitute itself as the Court of appeal to decide what may be the adequate punishment.

3. Learned Single Judge has committed exactly that mistake which the Courts have always opined it should not do, i.e., he has almost entered into the merits to decide the adequacy of the punishment and substituted his order for the order of the disciplinary authority. While such a thing as pointed out above can be done by the appellate authority, it cannot be done in a proceeding for judicial review of an order imposing punishment which is passed in a disciplinary proceeding in accordance with law. Learned Counsel for the respondent has however, urged before us that the writ petitioner-respondent, when found that another person similarly charged, and according to her of no serious misdemeanour than the charge against the writ petitioner-respondent, has been reinstated in service, the writ petitioner thought this to be a ground to move the Court on its judicial side and invoke its jurisdiction under Article 226 of the Constitution. If at all such a ground is available to the writ petitioner-respondent he could have taken the matter in appeal against the order of the disciplinary authority. In view of the principles above stated, it could not be taken as a ground for judicial review of the order of punishment which is passed in a departmental proceeding. Since we have found that the learned Single Judge has committed an obvious error of law, we have no hesitation in interfering with the impugned order.

4. In the result the appeal is allowed and the impugned order is set aside. It shall, however, be open to the writ petitioner-respondent to file appeal against the order of the disciplinary authority, if so advised.