Director General Of Police vs Rajendra Kumar Dubey on 25 November, 2020

Equivalent citations: AIR 2021 SUPREME COURT 91, AIRONLINE 2020 SC 852

Author: Indu Malhotra

Bench: K. M. Joseph, Indu Malhotra, Dhananjaya Y. Chandrachud

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3820 OF 2020
(Arising out of SLP (Civil) No. 32580 of 2017)

DIRECTOR GENERAL OF POLICE,
RAILWAY PROTECTION FORCE AND ORS.

Versus

RAJENDRA KUMAR DUBEY

JUDGMENT

INDU MALHOTRA, J.

Leave granted.

1. The issue which has arisen for our consideration is the validity of the Judgment passed by the High Court in exercise of its writ jurisdiction to set aside the order of compulsory retirement passed by the statutory authorities against the respondent, and substituting it by an order of re-instatement with all consequential benefits, and 50% backwages.

2. The Respondent was appointed in 1984 as a Constable with the Railway Protection Force (R.P.F) in Jhansi. On 28.02.2006, he was posted as SIPF(Adhoc) Sub-Inspector at the Pulgaon Railway Station, Maharashtra (Outpost).

3. On 11.12.2006, the Respondent was placed under suspension with immediate effect pending enquiry. On 04.01.2007, a charge sheet was issued for major penalty under Rule 153 of the Railway Protection Force Rules, 1987 by the Sr. Divisional Security Commissioner R.P.F. The charges framed were:

Reason: " (1) GROSS NEGLECT OF DUTY in that you failed to prevent and detect with due promptitude and diligence: -

(a) The theft of 02 Nos. of Primary injections Kit Valued Rs.

28,000/- approx. from traction Sub-Station located at Km, No. 664/20-24 near Badnera Railway Station reported on 04.04.2006.

(b) The theft of 19 CST-9 Plates kept at Km. No. 678/13-15 between Railway Station Makhed-Timtala reported on 21.11.2006 and to submit the FIR and case diary related to the said case to office of Sr. DSC/RPF/Nagpur.

(c) The theft of one Coach Trolley of Lot No. 14-04-06-02-2281 kept at Km. No.672/32 between Railway Stations Timtala- Malkhed reported on 05.12.2006 (2) "ABUSE OF AUTHORITY" in that you used unnecessary Violence toward a passenger named Shaikh Ibrahim at the waiting room of Pulgaon Railway Station on 31.10.2006."

4. The Enquiry Officer (E.O) vide his Report dated 22.06.2007 exonerated the Respondent of charge 1(a) as the same was not proved, Charges 1(b), (c) and 2 were found to be proved.

5. On 12.07.2007, the Disciplinary Authority i.e. the Senior Divisional Security Commissioner, R.P.F. Nagpur, accepted the findings of the E.O. In view of the gravity of the charges of gross neglect of duty and abuse of authority, the Disciplinary Authority imposed the punishment of removal from service with immediate effect.

6. The Respondent preferred an Appeal before the DIG-cum- Additional Chief Security Commissioner, R.P.F Mumbai.

The Appellate Authority partially allowed the Appeal, upholding the findings with respect to charges 1(b) and 1(c). Charge 1(b) pertained to the theft of 19 CST-9 plates; on verification, it was found that the shortage was of 6 pairs of CST-9 plates. Charge 1(c) was a special report case pertaining to the theft of 1 coach trolley valued at Rs. 28,000 and was found to have been proved. However, the appellate authority held that these charges did not warrant the extreme punishment of removal from service as there was no imputation of connivance or corrupt practice against the Respondent.

With respect to charge No. 2, it was held that the said charge was not proved, since no witness in support of this charge had been examined. The E.O had relied upon the complaint registered by a passenger-Shaikh Ibrahim in the complaint book of the Pulgaon Railway Station, which was found to have been proved by the E.O., without holding a preliminary enquiry, or examining the complainant. The other evidence in support of this charge was a report submitted by the Inspector, R.P.F Wardha about the complaint lodged at the Pulgaon Railway Station of the incident. As per confidential information received, it was informed that the Respondent was beating people and collecting money at the Pulgaon Railway Station, which led to discontentment amongst the people, and led to a dharna and agitation for transfer of the Respondent from the Pulgaon Railway Station.

The Appellate Authority held that the said report had no evidentiary value in support of the charge. Consequently, charge 2 was held not to be proved.

The Appellate Authority vide Order dated 05.09.2007 reduced the punishment of removal from service to that of reversion in rank for a period of 6 months without future effect.

7. Review of DAR proceedings was sought by the Senior Divisional Security Commissioner/NGP vide letter dated 10.09.2007 addressed to the Chief Security Commissioner under Rule 219.4, since certain lacunae were pointed out in the order of the Appellate Authority. It was submitted that the image of R.P.F would deteriorate if the service of the Respondent was continued. It had also come to light that the delinquent employee while under suspension, had been arrested by the C.B.I, Nagpur in an Anti-Corruption case.

8. The Chief Security Commissioner/CR issued a show cause notice to the Respondent dated 23.10.2007 under Rule 219.4 of the Railway Protection Force Rules, 1987 proposing to impose the penalty of compulsory retirement from service.

After considering his reply, the Authority vide Order dated 05.12.2007 held that the charges levelled against the employee were very serious in nature and had been proved beyond doubt, which were damaging to the reputation of the force. In view of the gravity of charges, gross neglect of duty and abuse of authority, a major penalty was directed to be imposed. It was further noted that the delinquent employee had been arrested by the CBI, Nagpur in a trap case, under Section 7 and 13 (1)(d) of the Prevention of Corruption Act, 1988 for a major penalty of demanding illegal gratification. This had occurred while the respondent had been placed under suspension. Accordingly, the punishment of compulsory retirement from service with immediate effect was imposed.

It was concluded that the E.O. had conducted the Departmental Enquiry as per extant DAR Rules, after giving a reasonable opportunity to the delinquent employee to defend himself. There were no lapses or irregularities in the enquiry proceedings.

9. The Respondent filed an appeal before the Director-General, R.P.F Railway Board.

The Director General, R.P.F Railway Board vide Order dated 19/21.05.2008 rejected the appeal since no fresh material had been brought on record which would merit interference. The enquiry was found to be conducted in accordance with the procedure prescribed by the rules, wherein an adequate and reasonable opportunity had been granted to the employee to defend himself. The Director General affirmed the view of the appellate authority to enhance the punishment in accordance with the R.P.F Rules. The punishment was held to be commensurate with the gravity of the misconduct committed by the Respondent.

10. The Respondent filed Writ Petition No. 941 of 2009 before the High Court Judicature at Bombay, Nagpur Bench to quash and set aside the Orders dated 12.07.2007 and 05.12.2007of compulsory retirement from service.

The High Court vide the impugned Judgment and Order dated 03.07.2017 partly allowed the Writ Petition. The High Court observed that the findings with respect to charge 1 (b) pertained to the theft of 19 CST-9 Plates between Malkhed and Timtala Railway Stations. The theft was reported to the writ petitioner on 21.11.2006, who was in-charge of the R.P.F Chowki, Pulgaon. The delinquent employee attended the spot on 25.11.2006, and drew a Panchnama with a site map, recording that 9 bars of CST-9 plates costing Rs. 20,520 were found to be short. The F.I.R was prepared in the prescribed format. The allegation against the writ petitioner was that he failed to sign the F.I.R., and proceeded on leave without sanction from 03.12.2006 to 14.12.2006.

The High Court noted that the charge against the writ petitioner was that he did not submit the F.I.R. and the case diary to the office of the Senior Divisional Security Commissioner, Nagpur. The F.I.R. and the case diary were obtained by the Senior Divisional Commissioner, Nagpur/R.P.F in the absence of the writ petitioner.

A second panchnama was thereafter prepared by Nirmal Toppo, who was Incharge of the R.P.F Thana, Wardha who visited the spot on 26.11.2006.

The High Court held that the writ petitioner could not be held guilty for not having detected the theft occurred on 21.11.2006, since the theft was detected by Nirmal Toppo on 26.11.2006. In the view of the High Court, the writ petitioner could not be held duty bound to report the theft to the Head Office at Nagpur, since he was incharge of Police Chowki, Pulgaon under R.P.F Thana, Wardha.

The High Court held that the order of the Senior Divisional Security Commissioner dated 05.09.2007 wherein it had been observed that such thefts are found to be common, and in the absence of any pecuniary loss being caused, would not warrant the extreme punishment of removal from service was the correct view, particularly since there was no imputation of connivance or corrupt practice. This according to the High Court had not been considered by the Chief Security Commissioner and the Director General of the Railway Protection Force.

The High Court observed that the arrest of the writ petitioner by the C.B.I., Nagpur in a major Charge Sheet, was an irrelevant consideration since it was a separate case, and no charge had been framed on this issue in the present case.

With respect to charge No.1(c) regarding the theft of 1 coach trolley valued at Rs.28,000 kept at Km 672/32 between Railway Station Timtala and Malkhed, the High Court held that the theft of the trolley was detected by another officer, hence the allegation of delay by the Respondent herein of not reporting the case loses its significance. In paragraph 25 of the Judgment, it was held that the finding recorded by the Senior Divisional Security Commissioner could not have been disturbed.

With respect to charge 2, the High Court held that the material witness was the passenger Shaikh Ibrahim, who had not been examined. Reliance was placed only on the complaint registered by the passenger, and the morcha carried out by the auto-ricksha walas. Hence, the said charge was unproved.

The High Court quashed the Order dated 12.07.2007 passed by the Senior Divisional Security Commissioner, as also the Order dated 18.02.2007 passed by the Chief Security Commissioner, ordering compulsory retirement, and the Order dated 19/21.05.2008 passed by the Director General Railway Protection Force confirming the said Order. The High Court restored the Order of the first appellate authority dated 05.09.2007 by the Senior Divisional Security Commissioner, Railway Protection Force. It was directed that the writ petitioner be re-instated in service, and would be entitled to all consequential benefits, including backwages to the extent of 50% on the remitted post, without future effect.

11. The Department has filed the present Civil Appeal to challenge the judgment of the High Court setting aside the Order of compulsory retirement, and directing the Railways Department to re-instate the Respondent with consequential benefits, and payment of 50% backwages.

This Court vide Order dated 17.11.2017 issued notice, and directed stay of the operation of the Judgment passed by the High Court.

12. Discussion and Analysis We have heard learned Counsel for the parties, and perused the record, and written submissions filed on their behalf.

12.1 We will first discuss the scope of interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings. It is well settled that the High Court must not act as an appellate authority, and re- appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In State of Andhra Pradesh v S.Sree Rama Rao, 1 a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

AIR 1963 SC 1723.

These principles were further reiterated in the State of Andhra Pradesh v Chitra Venkata Rao. 2 The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

In subsequent decisions of this Court, including Union of India v. G. Ganayutham 3,Director General RPF v. Ch. Sai Babu 4, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, 5 Union of India v. Manab Kumar Guha, 6 these principles have been consistently followed.

In a recent judgment delivered by this Court in the State of Rajasthan &Ors. v. Heem Singh 7 this Court has summed up the law in following words :

> "33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority.Nor does the judge wear the hat of an (1975) 2 SCC 557.
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> (1997) 7 SCC 463 (2003) 4 SCC 331 (2014) 4 SCC 108 (2011) 11 SCC 535 Judgment dated 29.10.2020 passed in C.A. No. 3340 of 2020 by a bench comprising of Justice D.Y Chandrachud and Justice Indira Banarjee.

employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is

an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain." In Union of India v. P. Gunasekaran, 8 this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of (2015) 2 SCC 610.

B.C.Chaturvedi v Union of India, (1995) 6 SCC 749;

Union of India v G.Ganayutham, (1997) 7 SCC 463;

Om Kumar v Union of India (2001) 2 SCC 386;

Coimbatore District Central Co-op Bank v Employees Association, (2007) 4 SCC 669; Coal India Ltd. v Mukul Kumar Choudhuri, (2009) 15 SCC 620; Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali Babu, (2014) 4 SCC 108.

India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

In paragraph 13 of the judgment, the Court held that :

> "13.Under Articles 226 / 227 of the Constitution of India, the High Court shall not :
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> (i) re-appreciate the evidence;
> (ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based;
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

12.2 In the present case, there is no allegation of malafides against the

disciplinary authority i.e. Chief Security Commissioner, or lack of competence of the disciplinary authority in passing the order of compulsory retirement, or of a breach of the principles of natural justice, or that the findings were based on no evidence.

12.3 We find from the record of this case that the Charges under 1 (b) and 1

(c) have been concurrently found to have been proved by the Disciplinary Authority, Appellate Authority - the Chief Security Commissioner, R.P.F. and the Director General of the R.P.F. Railway Board.

The issue under charge 1(b) was the non-registration of an F.I.R pertaining to a theft case of CST-9 plates of the Railways. The finding was that even though the Respondent had prepared the F.I.R. after conducting investigation, he did not sign the F.I.R., and thereafter proceeded on leave without sanction. As a consequence, the F.I.R. was not registered, and the investigation got thwarted right at the threshold. After some delay, a second panchnama was prepared by Nirmal Toppo, who was the in-charge of R.P.F Thana, who visited the spot, and then registered the F.I.R.

It is relevant to note that the High Court has not disturbed the finding with respect to charge 1(b).

12.4 With respect to charge 1(c), this charge was a case of a Special Report, which are covered by Rule 229 of the Railway Protection Rules which reads as under:

"229. Special Reports. - In cases of theft at the post involving loss of booked consignment or railway material exceeding the value fixed by the Director General from time to time, the Divisional Security Commissioner shall submit special report to the Director General with copy to the Chief Security Commissioner and to the concerned officer as may be specified through the Directives." Charge 1 (c) pertained to the theft of one coach trolley of the Railways which was to be sold as scrap and had been valued at Rs.28,000. The allegation was that the Respondent had taken sick leave, so as to avoid being present at the time of handing over the trolley on 04.12.2006.

This charge was found to have been proved by the Disciplinary Authority, the Appellate Authority, and the Director General of Police-R.P.F. Railway Board.

With respect to this charge, the High Court has given a contradictory finding. In para 24 of the Judgment, the Court held that the theft of the trolley was detected by another officer prior to the writ petitioner proceeding on leave. Hence, the question of delay in reporting the theft by the writ petitioner was held to have lost its significance. In para 25, the High Court however took a contrary view by holding that it concurred with the view taken by the Senior Divisional Security Commissioner in the Order dated 05.09.2007, wherein the charge was held to be proved. The High Court concluded by holding that the charge was not so serious so as to warrant the extreme punishment of removal from service, as there was no imputation of connivance or corrupt practices.

In our view, the aforesaid findings are erroneous, since the Respondent has not been awarded the punishment of removal from service, but compulsory retirement from service vide Order dated 05.12.2007.

12.5 It is further relevant to note that charges 1(b) and 1(c) fall under Rule 146.2 of the Railway Protection Force Rules, 1987 which provide:

"146.2 Neglect of duty:

No member of the Force without good and sufficient cause shall -

i) neglect or omit to attend to or fail to carry out with due promptitude and diligence anything which is his duty as a member of the Force to attend to or carry out; or

ii) fail to work his beat in accordance with orders or leave the place of duty to which he has been ordered or having left his place of duty for a bonafide purpose fail to return thereto without undue delay: or

iii) be absent without leave or be late for any duty: or

iv) fail properly to account for, or to make a prompt and true return of any money or property received by him in the course of his duty." The various allegations made against the Respondent arise out of gross neglect of duty with respect to theft of railway property. The findings of gross neglect of duty under charges 1(b) and (c) have been concurrently upheld. The findings of the E.O. and the Disciplinary Authority are based on materials on record. The High Court was not justified in re-appraising the entire evidence threadbare as a court of first appeal, and substituting the Order of punishment, by a lesser punishment, without justifiable reason.

12.6 Section 11 of the Railway Protection Force Act, 1957 provides that it shall be the duty of every superior officer and member of the force to protect and safeguard railway property and passengers. The primary object of constituting the Railway Protection Force is to secure better "protection and

security of the railway property." The restricted power of arrest and search conferred on members of this Force is incidental to the efficient discharge of their primary duty to protect and safeguard railway property, and to uphold the law.

A police officer in the Railway Protection Force is required to maintain a high standard of integrity in the discharge of his official functions. In this case, the charges proved against the Respondent "were of neglect of duty" which resulted in pecuniary loss to the Railways. The Respondent was a Sub- Inspector in the Railway Police discharging an office of trust and confidence which required absolute integrity. The High Court was therefore not justified in setting aside the order of compulsory retirement, and directing re-instatement with consequential benefits, and payment of backwages to the extent of 50%.

12.7 With respect to the registration of a criminal case by the C.B.I Nagpur, the High Court held that it was an irrelevant consideration taken note of by the Senior Divisional Security Commissioner.

On this issue, we were informed during the course of hearing that the Respondent had been convicted by the Special Judge, Wardha vide Judgment and Order dated 02.08.2017 for offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo R.I for one year with Fine.

The Counsel for the Respondent informed the Court, that an Appeal has been filed against the said judgment, which is pending consideration.

We have therefore considered it appropriate not to advert to the findings in the C.B.I case, lest it prejudices the case of the Respondent which is pending in Appeal against the order of conviction.

We have decided the issue of the validity of the order of compulsory retirement on the basis of the material in the enquiry proceedings, and the orders passed by the statutory authorities in this regard. 12.8 The Respondent was compulsorily retired pursuant to the Order dated 05.12.2007 passed by the Chief Security Commissioner. The order of compulsory retirement took effect on 05.12.2007. The Respondent is being paid pension after he has been compulsorily retired.

The direction of the High Court for payment of backwages was consequent upon the re-instatement of the Respondent-employee. Since we are upholding the order of compulsory retirement dated 05.12.2007 passed by the Chief Security Commissioner, there is no question of granting backwages. In any case the Respondent is being paid pension after his compulsory retirement.

13. We order and direct that:

> (a) The appeal is allowed, and the Judgment of the High Court is set aside for the reasons mentioned hereinabove, and the Order of compulsory retirement passed on 05.12.2007 by the Chief Security Commissioner, as affirmed by the Director General, R.P.F. vide Order dated 19/21.05.2008 is restored.

(b) The Respondent has stated in his written submissions that the Gratuity which was payable to him, has not been released by the Department so far.

We direct the Appellant-Department to release Gratuity, if due and payable to the Respondent from 05.12.2007, within a period of six weeks from today, alongwith interest as provided by Section 7(3A) of the Payment of Gratuity Act, 1972 read with the applicable Office Memorandum / Notification issued by the Government of India.

The Appeal is accordingly allowed in the above terms, with no order as to costs.

Pending applications, if any are disposed of accordingly.

.....J. [Dr. Dhananjaya Y. Chandrachud] .....J. [Indu Malhotra] .....J [K. M. Joseph] New Delhi November 25, 2020.