2020 INSC 188

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8071 OF 2014

THE STATE OF KARNATAKA & ANR. .....APPELLANT(S)

VERSUS

N. GANGARAJ .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The State is in appeal aggrieved against an order passed by the High Court of Karnataka on 25th August, 2011 whereby the challenge to an order passed by the Karnataka Administrative Tribunal[1] on 12th March, 2009 setting aside the punishment of dismissal from the service imposed upon the respondent remained unsuccessful.

2. The respondent was working as a Police Inspector at Mysore from 31st July, 1997 to 31st October, 1998. On the complaint of one Nirmala, the Lokayukta Police had laid a trap. On the basis of a criminal complaint lodged, Crime No. 15/1998 was registered against respondent in Mysore Lokayukta Police Station under

1 for short, 'Tribunal'

Section 7, 13(1)(d) read with Section 13(2) under the Prevention of Corruption Act, 1998. A charge sheet against the respondent was filed in the Court of Special Judge, Mysore for the offences punishable under the Prevention of Corruption Act, 1988. The said criminal trial resulted in the acquittal of the respondent.

3. In addition to the criminal trial, the respondent was also proceeded against for the misconduct in departmental proceedings. The respondent was served with a charge sheet. The respondent faced departmental proceedings on the following two charges:

> "1. You, the Accused Police Officer, Sri. N. Gangaraj, while working as Police Inspector in City Crime Record Bureau of the office of the Commissioner of Police, Mysore City from 31/07/97 to 31/10/98, one Miss. Chandrika resident of Nandanavana, Ulsoor, Bangalore City, has lodged a complaint dated 08/08/98 with Sri. Kempaiah, Commissioner of Police, Mysore City, against one Mr. Mahendra of Indiranagar, Bangalore, stating that he promised to marry her and taken her in car No. KA-05-9795 along with his friends and raped her. She has requested therein to take action against Mr. Mahendra and his friends. The Commissioner of Police, Mysore City has sent the said petition to Police Inspector, City Crime Branch, Mysore for enquiry and to send the report. You being a responsible Police Officer, shown utter misconduct in managing to obtain a Xerox copy of the said petition through illegal means and contacting the wife of the Driver of above said vehicle demanded illegal gratification of Rs.40,000/- and negotiating the deal for Rs.20,000/- with instructions to the party to pay the amount on 27/08/98 at your residence.
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> 2. Even though the petition of Miss. Chandrika, lodged with the Commissioner of Police, Mysore City was not at all concerned to you, you managed to get it's copy with ulterior motto through illegal means and contacted Mrs. B.J. Nirmala wife of Mr. Sampathkumar, Driver of car No. KA-05-9795 by sending Mr. Puttaraju CHC 141 and Mr.

> Shivakumar CPC 22 to Bangalore and also contacted the above parties over telephone and demanded Rs.40,000/- as illegal gratification for not including the car in the case. When the parties were not agreed to pay, you negotiated the amount to Rs.20,000/-. Being a responsible Police Officer and knowing fully well that accepting illegal gratification is against to Rule 7, 13(1) (d) and 13(2) of P.C. Act, you behaved in a way to bring down the prestige of the department, showing dereliction of duty, utter misconduct and an at of unbecoming of a Police Officer as well as a Government Servant."

4. The respondent denied the charges. The Deputy Superintendent of Police, West Circle, Mangalore was appointed as the Inquiry Officer (IO). The IO returned a finding that the charges levelled against the respondent have been proved. Thereafter, a second show-cause notice was issued to the respondent. Considering the contentions of the respondent, the Director General and the Inspector General of Police passed an order of dismissal of the respondent from service on 30th September, 2005. The period of suspension was ordered to be treated as the period of suspension only. The respondent filed an appeal before the Government which came to be dismissed on 8th September, 2006.

5. Aggrieved against the order of punishment, the respondent invoked the jurisdiction of the Tribunal. The Tribunal set aside the order of punishment by holding that the criminal court on the same set of facts has not placed reliance on the deposition of the witnesses, therefore, it was not proper on the part of the Disciplinary Authority to rely upon such evidence to come to the conclusion that the respondent has demanded an amount of

Rs.40,000/- and he settled for Rs.20,000/-. The Tribunal further did not agree with the findings of the IO or the Disciplinary Authority that the charges have been proved as there is no charge on record of receipt of Rs.20,000/-. The Tribunal further held that the water in which the hands of the respondent were washed, turned pink due to the ink of the pen, as deposed by PW-3 Balaraju in his statement. The High Court found that similar evidence has not been accepted in criminal trial and that there are discrepancies in the evidence of the witnesses which make it unreliable. The High Court recorded the following four discrepancies in the departmental proceedings:

> "(i) In the complaint Smt. Nirmala says that on 26.08.1998 for the first time she met the applicant in his house at Mysore but in the deposition, she states that she went to the house of the applicant on 27.08.1998 for the first time along with panch witness Saroja and the money was offered;
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> (ii) If the evidence of PW.4 Puttaraju CHC 141 is to be believed, he and PW.5 Shivakumar CPC 22 went to the house of complainant Nirmala on 13.08.1998, whereas the evidence of PW.5 shows that both of them went to the house of the complainant on 14.08.1998. According to the complaint both of them had gone to the complainant's house on 24.08.1998 and not earlier;
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> (iii) According to the complainant she had given complaint in the first instance in English Written by her and later the present complaint, marked in the inquiry was got typed; the original complaint given in English has been suppressed.
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> (iv) The complaint was registered on 27.08.1998 whereas the evidence shows that panch witness had been informed to come on 26.08.1998. The complaint does not say anywhere that she had gone to the office of the Lokayukta Police on 26.08.1998."

6. The Disciplinary Authority has taken into consideration the evidence led before the IO to return a finding that the charges levelled against the respondent stand proved.

7. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

8. In ***State of Andhra Pradesh & Ors.*** v. ***S. Sree Rama Rao***[2], a three Judge Bench of this Court has held that the High Court is not 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. The Court held as under:

> "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

2 AIR 1963 SC 1723

> 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.…"

9. In ***B.C. Chaturvedi*** v. ***Union of India & Ors.***[3], again, a three Judge Bench of this Court has held that power of 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 eyes of the court. The Court/Tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under:

> "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 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

3 (1995) 6 SCC 749

> 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.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive 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 781], this Court held at page 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."

10. In ***High Court of Judicature at Bombay through its Registrar*** v. ***Shashikant S. Patil & Anr.***[4], this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under:

4 (2000) 1 SCC 416

> "16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

11. In ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya***[5], this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in

5 (2011) 4 SCC 584

the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi vs. Union of India - 1995 (6) SCC 749, Union of India vs. G. Gunayuthan - 1997 (7) SCC 463, and Bank of India vs. Degala Suryanarayana - 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil - 2001 (1) SCC416).

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12. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.”

13. In another judgement reported as ***Union of India*** v. ***P. Gunasekaran***[6], this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings:

> "13. Under Article 226/227 of the Constitution of India, the High Court shall not:
> (i) re-appreciate 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."

14. On the other hand learned counsel for the respondent relies upon the judgment reported as ***Allahabad Bank*** v. ***Krishna Narayan Tewari***[7], wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the Writ Court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary

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6 (2015) 2 SCC 610
7 2017 2 SCC 308

authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the Courts are the Appellate Authority. We may notice that the said judgment has not noticed larger bench judgments in ***S. Sree Rama Rao*** and ***B.C. Chaturvedi*** as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law. Accordingly, appeal is allowed and orders passed by the Tribunal and the High Court are set aside and the order of punishment imposed is restored.

.....J.
(S. ABDUL NAZEER)

.....J.
(HEMANT GUPTA)

NEW DELHI;
FEBRUARY 14, 2020.