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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 267 of 2012

1. Ravindra Singh Goutam S/o Shri Shailendra Singh Goutam, aged about 28 years, R/o. Village Rasauta, Tahsil Baloda, District Janjgir-Champa, Chhattisgarh

2. Govind Sahu, S/o Shri Harishankar Sahu, aged about 25 years, R/o Village and Post Bhatgaon Police Station- Bilaigarh, District Raipur Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh, Through: the Secretary, Home Department, D.K.S. Bhawan, Raipur, Chhattisgarh

2. The Director General of Police, Headquarter, Raipur, Raipur Range, Raipur, Chhattisgarh

3. The Inspector General of Police, Raipur Range, Shankar Nagar, Raipur, Chhattisgarh

4. The Superintendent of Police, Raipur, Chhattisgarh

----Respondents

For Petitioners : Mr. Shantam Awasthi, Advocate
For State : Mr. Mateen Siddiqui, Deputy A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

13/10/2020

1. The petitioners have filed the present writ petition being aggrieved of the impugned order Annexure P/1 dated 15.02.2011, whereby the appeal of the petitioner against the order of dismissal from service dated 13.01.2011 was rejected by the Appellate Authority.

2. The brief facts of the case in nutshell is that the two petitioners were working on the post of Constable under the respondents having been appointed in the year 2009. The petitioners were posted under the

respondent No.4 during the relevant period of time. It is alleged that on 11.04.2010, the petitioners were found under suspicious circumstances at Hotel Mayank, Raipur along with two girls. They had been staying in the said hotel along with the said two girls namely Sangeeta Chouhan and Priya Sharma in rooms which were booked in the name of the aforementioned girls. The petitioners were caught in the raid that was conducted by the respondent authorities on 11.04.2010. Initially they were arrested and subsequently released on bail. The petitioners were issued with a charge-sheet under the service Rules on 01.07.2010 to which the petitioners gave a reply on 25.03.2011. The reply of the petitioners not being satisfactory, they were subjected to a departmental inquiry and an inquiry report was submitted on 30.11.2010.

3. Based on the inquiry report, the disciplinary authority i.e. the Superintendent of Police, District Raipur vide order dated 13.01.2011 imposed the punishment of dismissal from service. The order of termination from service was thereafter immediately challenged by the petitioners by way of a departmental appeal, however vide the impugned order dated 15.02.2011 (Annexure P/7) the departmental appeal of the petitioners was also rejected. Thereafter, the petitioners made another attempt by filing a mercy appeal before the Director General of Police, who in turn rejected the mercy appeal also. The present writ petition thereafter has been filed assailing the action on the part of the respondents.

4. Assailing the impugned action, the learned counsel for the petitioners submits that it is a case where the petitioners have been inflicted with

the punishment of dismissal from service without there being strong cogent and reliable evidence on behalf of the prosecution witnesses in the inquiry. In the absence of sufficient evidence, the inquiry officer himself should have given a finding of the charges not to have been established. The Disciplinary Authority also should not have blindly accepted the view of the Inquiry officer without appreciating the evidence, which has come during the course of the inquiry and also without properly appreciating the explanation provided by the petitioners to the second show cause notice that was issued before the Disciplinary Authority had passed the punishment order.

5. It was further contented by the petitioners that the plain perusal of the allegations and charges leveled against the petitioners, it would not constitute any misconduct, nor does the alleged act on the part of the petitioners be termed to be unbecoming of a police personnel. Another contention which the learned counsel for the petitioners had contended was that from the evidence which has come on record, it is reflected that the two petitioners along with two girls were all found in one room and as such it cannot be said that they were found in an objectionable position or under suspicious circumstances. It was lastly contended by the petitioners that even if the entire evidence in its face value is accepted, even then it can be safely concluded that the punishment is highly disproportionate and under the circumstances, the punishment order deserves to be recalled.

6. According to the petitioners considering the alleged gravity of misconduct, the petitioners could not have been inflicted with the capital punishment of dismissal from service and the petitioners could

have been let of by a minor punishment. It was also contended by the petitioners that none of the witnesses examined on behalf of the prosecution have been able to substantiate the charges. On the contrary, the contention of the petitioners is that the petitioners in defense had examined 4 witnesses and all those witnesses examined on behalf of the petitioners in defense had emphatically stated before the Inquiry officer in respect of the petitioners being totally innocent and having been inflicted on account of preconceived notion without there being any basis and sufficient evidence available with the prosecution.

7. The State counsel on the other hand opposing the petition referred to the allegations made against the petitioners in the charge-sheet is sufficient to show the gravity and the seriousness of the misconduct, particularly taking note of the fact that the petitioners were members of the uniformed force working as Constable under the respondents. According to the State counsel, the evidence which has come on record on behalf of the prosecution would show that in fact the petitioners had got the booking of the room done projecting them as officers of the Criminal branch department of the State Government.

8. The State counsel further contended that it is a case where the disciplinary action has been initiated and an order passed after conducting a detailed departmental enquiry wherein the petitioners also were granted ample, fair and reasonable opportunity of defense and as such it cannot be said that the respondents had shown any haste in concluding the proceedings or were proceeding with malafides against the petitioners. The State counsel drawing the

attention of the Chhattisgarh Civil Services Conduct Rules submitted that, under Rule 3(1)(iii), the act on the part of the petitioners definitely would fall with the ambit of an act unbecoming of a government servant. In the instant case apart from the fact that the petitioners were government servant, they were members of the disciplined force, which otherwise requires a greater element of discipline while discharging the duties of a police personnel and also even after the duty hours.

9. The State counsel further emphasized on the scope of interference permissible to this Court under the powers of judicial review under Article 226 of the Constitution of India. According to the State counsel from the plain perusal of the evidence of the independent witnesses examined in the course of the departmental enquiry and the inquiry report submitted by the Inquiry officer and the order of punishment based upon the evidence of record, it cannot be said that the action on the part of the respondents were either arbitrary or malafides in any manner, nor can the action be said to be contrary to the evidence which has come on record. Moreover, there is no averment or contention of the finding of the Inquiry officer as also the Disciplinary Authority to be in any manner perverse or in excess of jurisdiction. Thus, for all the aforesaid reasons the State counsel prayed that the writ petition be dismissed/rejected.

10. Having heard the contentions put forth on either side and on perusal of record, some of the admitted factual position as it stands is that the two petitioners herein were working under the respondents as Constable. On 11.04.2010 they were both found under suspicious

circumstances with two girls from district Korba in a hotel at Raipur known as 'Mayank Hotel'. The petitioners had got two rooms booked in the said hotel. The petitioners were served a charge-sheet on 01.07.2010 to which they had submitted a reply, thereafter an inquiry was conducted. Inquiry report was submitted on 30.11.2010. They were issued with a second show cause notice and subsequently terminated from service on 13.01.2011.

11. From the afore-given admitted factual matrix what is also undisputed and which cannot be lost sight of is that the petitioners belonged to an uniformed force i.e. the police Department and where discipline is one of the paramount requirement. The term 'discipline' does not mean being disciplined during the working hours, particularly when they belongs to a uniformed force. The conduct of a member of a uniformed force or for that matter a police personnel also has to be disciplined even when he is not on duty hours. The society expects from the police personnel or personal from the uniformed force ensuring that the public order is maintained in the highest and that is expected of them even when they are not discharging their official duties.

12. What is also required at this juncture to be considered is that as has been stated earlier, the punishment order inflicted upon the petitioners were after conducting a detailed departmental enquiry, where the two petitioners had fully participated and a fair and reasonable opportunity of hearing and defense was provided to them and which they had also availed of.

13. Given the said facts, now what is also required to be considered is, (i) whether there is a challenge to the inquiry proceedings on the ground of denial of principles of natural justice, (ii) whether the inquiry has been conducted by competent officer or not, (iii) whether the disciplinary order has been issued by the Disciplinary Authority or not, and (iv) whether there was any malafides on the part of the respondents against the petitioners in the course of being implicated in the disciplinary proceedings at the first instance and thereafter being inflicted with the punishment of dismissal from service.

14. The plain perusal of the pleadings to the writ petition as also the contention which the petitioners have raised, this Court does not find any ground made out by the petitioners to reach to the conclusion that the petitioners were deprived of the principles of natural justice. There was also no sufficient materials and grounds to hold that the inquiry was not conducted by a competent person or that the disciplinary order being issued by a person otherwise incompetent under the service rules. The plain perusal of the inquiry proceedings would reflect that the petitioners have fully participated in the inquiry proceedings and were granted full opportunity to lead evidence in their support and which too they have availed by adducing some witnesses of their behalf and it is only thereafter that the inquiry report was submitted.

15. Given the aforesaid facts, this Court has no hesitation in reaching to the conclusion that the departmental enquiry conducted against the petitioners were strictly in accordance with services rules and regulations governing the field and also ensuring that the petitioners

are provided with all ample, fair and reasonable opportunity of defense. Thus, the inquiry does not warrant to be vitiated and it is found to be conducted properly and is accordingly legal and justified.

16. Now comes the next question as to the scope of interference by the High Court while entertaining a petition dealing with disciplinary proceedings. It is a settled position of law that the High Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India has got very minimal powers to interfere with a disciplinary proceeding particularly when it has been after a full-fledged departmental enquiry. The High Court cannot substitute itself as an Appellate Authority to a disciplinary proceeding, nor can the High Court threadbare go into the entire evidence and re-appreciate the same and reach to another conclusion. When the inquiry report is based on the evidences which have been adduced by the parties during the inquiry proceedings. Under such circumstances the High Court cannot further go into adequacy of evidence or the reliability of the evidence.

17. A departmental enquiry proceeds applying the principles/ doctrine of preponderance of probability. Thus, even if there was another view possible even then the High Court exercising the power of judicial review under Article 226 would not be justified in interfering with the findings given by the Inquiry Officer, which has been accepted by the Disciplinary Authority, when the findings and the acceptance was on the basis of the evidence, which has come on record. As has been earlier held, since there is no challenge to the disciplinary proceedings of it being inconsistence with the rules of natural justice

or for that matter being in any violation of the statutory rules prescribing the mode of inquiry, the scope of interference gets further reduced.

18. At this juncture, it would be relevant to refer to the legal position at it stands so far as the scope of interference in a departmental enquiry is concerned. It is by now well settled proposition of law that the scope of judicial review in matters pertaining to disciplinary proceedings is limited to the extent of the finding being erroneous and is manifestly arbitrary or the finding is such which is not based on facts and materials produced before the enquiry officer.

19. Supreme Court in this regard in the case of S. R. Tewari Vs. Union of India, (2013) 6 SCC 602 in paragraph 19, 20 & 21 have held as under:-

"19. In the case of CIT v. Mahindra & Mahindra Ltd., AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held:

> **"11. ….It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same."**

"20.The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may

> **lead to unbudgeted expenditure. (Vide: Tata Cellular v. Union of India, AIR 1996 SC 11; People's Union for Civil Liberties & Anr. v. Union of India & Ors., AIR 2004 SC 456; and State of N.C.T. of Delhi & Anr. v. Sanjeev alias Bittoo, AIR 2005 SC 2080)."**
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> **"21. In Air India Ltd. v. Cochin International Airport Ltd., AIR (2000) SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not."**

20. A similar view has also been taken by the Supreme Court in the case of **Sanjay Kumar Singh Vs. Union of India & Ors., AIR 2012 SC 1783** and also in the case of **Union of India & Others Vs. Bodupalli Gopalaswami, (2011) 13 SCC 553,** wherein the Supreme Court has in a very categorical terms held that in departmental enquiry proceedings the scope of Court's are very limited. It has been reiterated by the Supreme Court that in a disciplinary proceeding matters the Courts cannot substitute its own finding by replacing the finding arrived at by the authority that too after detailed appreciation of the evidence brought on record. It has been repeatedly held by the Supreme Court that under Article 226 of Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority as also the appellate authority. It has also been repeatedly held by the Supreme Court that the High Court under Article 226 would not reappreciate the entire evidence and come to a different and independent finding.

21. A similar view also has been taken by the Supreme Court in the case of **Union of India & Others Vs. P. Gunasekaran, (2015) 2 SCC 610,** For ready reference paragraph 12 & 13 of the said judgment reproduced hereinunder:-

> **"12. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in**

exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

The High Court can only see whether:

a. the enquiry is held by a 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 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."

"13. Under Articles 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."

22. Once when the law is settled that in disciplinary proceedings unless there is a ground of perversity or the finding being contrary to the evidence on record or there being technical flaw in the conducting of the departmental enquiry, the Court should be slow in interfering with such findings which are based on evidence which has come on record..

23. The Hon'ble Supreme Court dealing with the same issue in the case of **"State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya" reported in 2011 (4) SCC 584** in paragraph No.7 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 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 -Versus- Union of India – 1995 (6) SCC 749, Union of India vs. G. Gunayuthan – 1997 (7) SCC 463, and Bank of India -Versus- Degala Suryanarayana – 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil– 2001 (1) SCC 416)."**

24. Now coming to the facts of the case and from the evidence which has come on record, the prosecution witnesses have evidently shown that when the Police team had raided the hotel they found two girls and two male members sitting on one bed in a hotel room i.e. in Hotel Mayank at Raipur. Further, from the examination and from the cross-examination of the prosecution witnesses including the petitioners, it would clearly reflect that there were conflicting and contradictory statements being given by the petitioners when compared to the statements given by the two girls who were found along with them in the hotel room.

25. Given the said admitted factual position from the statements that have come on record in the course of recording of the statements of the witnesses, the action on the part of the Disciplinary Authority in

subjecting the petitioners to disciplinary action cannot be firstly found fault with. Police personals under the given circumstances, who were staying in the Police Line at Raipur found under suspicious circumstances at odd hours at a hotel room in the city of Raipur itself establishes a conduct which is unbecoming of a government servant under Rule 3 of the Chhattisgarh Civil Services Conduct Rules.

26. For all the aforesaid reasons and the legal position as it stands, this Court does not find any strong case made out by the petitioners calling for an interference to the Disciplinary Authority's order so also to the Appellate Authority's order. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved