Before M. M. Kumar & T.P.S., JJ.

OMBIR SINGH,—*Petitioner*

versus

UNION OF INDIA AND ANOTHER,—*Respondent*

CWP No. 3389/CAT of 2007

26th April, 2011

Constitution of India, 1950—Arts. 14, 16 & 226—Punjab Prisons State Service (Class-III) Executive Rules, 1963—S.15—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rl. 8—Punjab Jails Department Executive (Punishment and Appeal) Rules, 1948—Rl. 10—Acquittal of petitioner of criminal charges levelled against him—Reinstatement—Departmental Enquiry report holding all charges stood proved against petitioner—Removal from service—Petitioner failing to point out either any violation of principles of natural justice or any statutory rules warranting a conclusion that he has not been treated fairly—Once findings of fact are well based and procedural requirements contemplated by Rules have been complied with then quantum of punishment cannot be interfered with—Petition dismissed, orders passed by Tribunal dismissing application of petitioner upheld.

Held, that once no procedural lapse has been pointed out, the findings of the Enquiry Officer are based on evidence and the charges have been established then there cannot be any room either for this Court or the Tribunal to interfere in the order of removal from service dated 29th September, 2004. It is not a case of no evidence. The Tribunal or the Courts are not a Court of Appeal over and above the Enquiry Officer, Disciplinary Authority or the Appellate/Revisional Authority. As a concept of law the Courts cannot re-appreciate evidence to reach a conclusion different than the one recorded by the Enquiry Officer merely because another view is possible.

(Para 9)

Further held, that the applicant-petitioner has not been able to point out either any violation of the principles of natural justice nor any statutory rules warranting a conclusion that he has not been treated fairly.

Once the findings of the fact are well based and the procedural requirements contemplated by the Rules have been complied with then the quantum of punishment cannot be interfered with, as has been rightly held by the Tribunal.

(Para 10)

Raj Mohan Singh, *Advocate for the petitioner.*

Vikas Cuccria, Standing *Counsel for U.T. Chandigarh-respondents.*

M.M. KUMAR, J.

(1) The unsuccessful applicant-petitioner has filed the instant petition under Article 226 of the Constitution challenging order dated 13th December, 2006 (P-8), passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') dismissing the original application and upholding the order dated 29th September, 2004 removing him from service (P-5) and subsequent orders dated 4th March, 2005 (P-6) and 9th November, 2005 (P-7) rejecting his statutory appeal and revision. The applicant-petitioner has also sought quashing of inquiry report dated 31st March, 2004 (P-3) being violative of Articles 14, 16 and 311 of the Constitution.

(2) The applicant-petitioner was working as a Warder in the Model Jail, Burail, Chandigarh. On 28th August, 2000, an FIR No. 73, under Sections 124-A and 153-A IPC was registered against him at Police Station, Morinda, with the allegations that one Balwant Singh Raioana, an under-trial prisoner in the assassination case of Punjab's Chief Minister Late Shri Beant Singh, gave him a written note on a paper to fax it to outside India at Fax No. 0044-1162731588. On seeing the police party the applicant-petitioner is stated to have raised slogans "*Khalistan Zindabad*" (P-1). In the criminal trial he was acquitted of the charges levelled against him by the Additional Sessions Judge, Rupnagar,—*vide* judgment dated 1st February, 2002 (P-2).

(3) On 2nd March, 2002, the applicant-petitioner was reinstated in service. On 5th March, 2002, the Superintendent, Model Jail, Chandigarh, served upon him a charge-sheet under Section 15 of the Punjab Prisons

State Service (Class-III) Executive Rules, 1963 (for brevity, 'the 1963 Rules') read with the punishments enumerated under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for brevity, 'the 1970 Rules') and Rule 10 of the Punjab Jails Department Executive (Punishment and Appeal) Rules, 1948 (for brevity, 'the 1948 Rules'). A regular departmental inquiry was held against him.

(4) On 31st March, 2004, the Land Acquisition Officer-cum-Enquiry Officer, U.T. Chandigarh, submitted the inquiry report holding that all the charges framed against the applicant-petitioner stood proved (P-3). The applicant-petitioner was served with a copy of the inquiry report, who duly entered his reply dated 9th April, 2004 (P-4). After considering the reply, the Additional Inspector General of Prisons-cum-Superintendent Model Jail, Chandigarh-respondent No. 5 passed a detailed order dated 29th September, 2004, under Rule 6 of the 1970 read with the provisions of the 1948 Rules, imposing the penalty of removal from service with immediate effect against the applicant-petitioner (P-5). The statutory departmental appeal and revision against the order dated 29th September, 2004 were rejected on 4th March, 2005 and 9th November, 2005 respectively (P-6 & P-7). Thereafter the aforesaid orders were challenged before the Tribunal.

(5) The Tribunal dismissed the original application,—*vide* order dated 13th December, 2006, noticing that the grounds taken by the applicant-petitioner are general in nature. The Tribunal also found that apart from the charge of creating animosity between religious communities and of sedition, there was specific charge of absent from duty against the applicant-petitioner which stood proved. The act done by him was also in violation of the provisions of the Conduct Rules of 1963 and Punishment and Appeal Rules, 1970. The applicant-petitioner also raised an objection with regard to appearance of the then Jail Superintendent as prosecution witness in the inquiry alleging that the same authority has passed the punishment order. Dealing with this objection the Tribunal in para 6 of the order has observed as under :

> "6. .....Examination of the discussion of evidence in the enquiry report with Annexure A-1 and the order at A-3, indicates that Shri D.S. Rana was the then Supdt. Jail when the occurrence

took place. He has however, not passed the order atA-3 which has been in fact passed by the disciplinary authority who was one Shri Preetdev Singh Shergill,Additional IG of Prisons-cum-Superintendent, Model Jail, Chandigarh. The grounds taken by the applicant are thus found to be factually incorrect. When somebody else is exercising or acting as disciplinary authority there is no legal bar in appearance of Shri D.S. Rana as a PW."

(6) The Tribunal also rejected the contention of the applicant-petitioner that he was not allowed assistance of an Advocate/Legal Practitioner to defend himself before the Inquiry Officer. The Tribunal has held that the inquiry proceedings would not be bad only for the reason that assistance of an advocate was not provided. In that regard the Tribunal has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of **Bharat Petroleum Corporation Ltd.** *versus* **Maharashtra General Kamgar Union, (1)** and **M/s Cipla Limited** *versus* **Ripudaman Bhanot, (2)** wherein it has been held that a delinquent employee has no right to be represented by an advocate in departmental proceedings unless the relevant rules itself provide for otherwise.

(7) The applicant-petitioner also challenged the competency of the Superintendent, Model Jail, Chandigarh, to issue a charge sheet to him in para 4(iv) of the original application. The Tribunal, however, rejected this plea on the ground that the applicant-petitioner has made contradictory averments. In para 4(vii) of the original application he has himself stated that the Superintendent Model Jail is his disciplinary authority. The Tribunal has further opined that charge sheet can always be issued by a superior authority to the charged official. In that regard the Tribunal has also placed reliance on the judgments rendered in the cases of **Transport Commissioner, Madras** *versus* **A. Radha Krishnamurti, (3) P.V. Srinivasa Sastry** *versus* **Comptroller and Auditor General, (4)** and **Inspector General of Police** *versus* **Thavasiappan (5).**

(1) (1999) 1 S.C.C. 626
(2) 1999 (2) S.L.R. 727
(3) (1995) 1 S.C.C. 332
(4) (1993) 1 S.C.C. 419
(5) (1996) 2 S.C.C. 145

(8) The Tribunal also rejected the other pleas of the applicant-petitioner with regard to non-supply of documents mentioned in the charge sheet and that the punishment is very harsh. The Tribunal has found that during the course of the departmental inquiry the applicant-petitioner never objected to the proceedings urging the ground that he was never supplied the documents. On the question of quantum of punishment, the Tribunal has come to the conclusion that the punishment imposed upon him cannot be treated as harsh or disproportionate to the acts of misconduct. It has been specifically observed that the Courts or the Tribunal has no power to interfere with the punishment awarded by the competent authority on the ground that the penalty is excessive to the misconduct, if the punishment is based on evidence and is not arbitrary, *mala fide* or perverse. In that regard the Tribunal has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of **Union of India** *versus* **Parma Nand, (6) ; State Bank of India** *versus* **Samarendra Kishore Endow, (7) ; Union of India** *versus* **G. Ganayutham, (8).**

(9) We have heard learned counsel for the parties at a considerable length and are of the view that once no procedural lapse has been pointed out, the findings of the Enquiry Officer are based on evidence and the charges have been established then there cannot be any room either for this Court or the Tribunal to interfere in the order of removal from service, dated 29th September, 2004 (P-5). It is not a case of no evidence. The Tribunal or the Courts are not a Court of Appeal over and above the Enquiry Officer, Disciplinary Authority or the Appellate/Revisional Authority. As a concept of law the Courts cannot re-appreciate evidence to reach a conclusion different than the one recorded by the Enquiry Officer merely because another view is possible. In that regard reliance may be placed on the observations made by Hon'ble the Supreme Court in the case of **State Bank of India** *versus* **Ramesh Dinkar Punde (9).**

(10) We are not impressed with the argument that since the applicant-petitioner had been acquitted in the criminal case there was no legal warrant to hold the departmental proceedings against him. On the aforesaid issue

(6) (1989) 2 S.C.C. 177
(7) (1994) 2 S.C.C. 537
(8) (1997) 7 S.C.C. 463
(9) (2006) 7 S.C.C. 212

law is well settled that inquiry proceedings and criminal proceedings could be even conducted simultaneously. The standard of proof in both the proceedings is entirely different. There is no dearth of authorities for the proposition that unless the facts are complicated and some legal acumen is required there is no bar for continuation of disciplinary as well as criminal proceedings. In **NOIDA Enterprises Association** *versus* **NOIDA, (10),** it has been held that standard of proof required in departmental proceedings is not the same as required to prove a criminal charge. Even if there is an acquittal in criminal proceedings, the same does not bar the departmental proceedings. In the said case, the decision of the Government in deciding not to continue with the departmental proceedings after acquittal in the criminal charge was held untenable and quashed. The conceptual difference between departmental proceedings and the criminal proceedings has been highlighted by Hon'ble the Supreme Court in several cases which were also referred to in the case of NOIDA Enterprises *(supra)* and in this regard reference was made to **Kendriya Vidyalaya Sangathan** *versus* **T. Srinivas, (11) ; Hindustan Petroleum Corporation Ltd.** *versus* **Sarvesh Berry, (12)** and **Uttaranchal Road Transport Corpn.** *versus* **Mansaram Nainwal, (13).** The position in law relating to acquittal in criminal case, its effect on the departmental proceedings and reinstatement in service has been dealt with by Hon'ble the Supreme Court in **Union of India versus Bihari Lal Sidhana, (14).** In **Capt. M. Paul Anthony** *versus* **Bharat Gold Mines Limted, (15),** it is again stated that the effect of the acquittal in a criminal case on the departmental proceedings would depend upon the fact situation in each case. In the present case there is nothing on the record to suggest that there were such facts which were so complicated so as to require long drawn proceedings. Therefore, we reject the aforesaid submission made by the learned counsel. Learned counsel for the applicant-petitioner has not been able to point out either any violation of the principles of natural justice nor any statutory rules warranting a conclusion that he has not been treated fairly. Once the findings of fact are well based and the

(10) 2007 (2) R.S.J. 504
(11) (2004) 7 S.C.C. 442
(12) (2005) 10 S.C.C. 471
(13) (2006) 6 S.C.C. 366
(14) (1997) 4 S.C.C. 385
(15) (1999) 2 S.C.T. 660

procedural requirements contemplated by the Rules have been complied with then the quantum of punishment cannot be interfered with, as has been rightly held by the Tribunal.

(11) There is another aspect of the matter. Learned counsel for the applicant-petitioner has not been able to point out either any violation of the principles of natural justice nor any statutory rules warranting a conclusion that the applicant-petitioner has not been treated fairly. Once the findings of fact are well based and the procedural requirements contemplated by the Rules have been complied with then the quantum of punishment cannot be interfered with, as has been rightly held by the Tribunal. Moreover, it is equally well settled that if the Enquiry Officer, Punishing Authority or the Appellate Authority has proceeded on the basis of wholly irrelevant material or wholly irrelevant consideration or in violation of principles of natural justice only then the Courts are empowered to interfere with the quantum of punishment. In that regard reliance may be placed on the Division Bench judgment of this Court rendered in the case of **Gurdev singh** *versus* **State of Haryana (16).** In that case a Division Bench of this Court (of which one of us, M.M. Kumar, J. was a member) has considered the application of Wednesbury Principles by referring to para 242 of a Constitution Bench judgment of Hon'ble the Supreme Court in the case of **Rameshwar Prasad (VI)** *versus* **Union of India (17).** The aforesaid para 242 reads as under :—

> "242. The Wednesbury principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it." (Emphasis added)

(16) 2007 (1) R.S.J. 45
(17) (2006) 2 S.C.C. 1

(12) Hon'ble the Supreme Court has also referred the "Wednesbury Principles" in the case of **Om Kumar** *versus* **Union of India (18).** The views of Lord Green in the case of **Associated Provincial Picture Houses** *versus* **Wednesbury Corporation (19),** have been relied upon by Hon'ble the Supreme Court in para No. 26 and the conclusion has been recorded in para 71. The aforementioned paras read as under :—

> "26. Lord Green said in 1948 in the Wednesbury case, (1947) 2 All ER 680 (CA), that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered ; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union *versus* Minister of Civil Service, (1983) 1 AC 768, (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following *viz.*, illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".
>
> XXX XXX XXX XXX XXX
>
> XXX XXX XXX XXX XXX
>
> 71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies is such a context. The court while reviewing punishment

(18) (2001) 2 S.C.C. 386
(19) (1947) 2 All England Reports 680

and if it is satisfied that wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

(13) A Constitution Bench had another opportunity to succinctly state these principles in the case of **Rameshwar Prasad (VI)** *(supra)*. In para 242, their Lordships' have issued the guidelines for correct understanding of Wednesbury Principles, which have already been extracted in preceding para No. 11 above.

(14) When the principles laid down in the aforementioned judgments are applied to the facts of the present case, we find that the Wednesbury principles, as per the guidelines given in **Rameshwar Prasad's case** *(supra)* would not be attracted because principle not just have been religiously complied with. Therefore, the impugned orders passed by the punishing, appellate and revisional authorities as well as the Tribunal would not require any intervention.

(15) For the reasons aforementioned, we find no merit in the instant petition. Accordingly, the same is dismissed.

R.N.R.