Before M.M.Kumar & Gurdev Singh, JJ.

NACHHATAR SINGH,—*Appellant*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

LPA 1020 of 2011

3rd June, 2011

Constitution of India, - Art. 14, 311 & 226 - Absence from duty - Dismissal from service - Quantum of punishment - Principles of natural justice religiously complied with - Wednesbury Principle not attracted - Findings of fact well based and procedural requirement contemplated by Rules complied with - Then quantum of punishment cannot be interfered with - Writ dismissed.

Held, That 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. 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.

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 principles of natural justice have been religiously complied with. Therefore, the impugned orders passed by the punishing and appellate authorities would not require any intervention.

(Paras 7 & 10)

Manu K. Bhandari, Advocate, *for the appellant.*

M.M. KUMAR, J.

(1) The instant appeal filed under Clause X of the Letters Patent is directed against the judgment dated 23.11.2010 rendered by the learned Single Judge dismissing the writ petition filed by the petitioner-appellant.

(2) The petitioner-appellant has approached this Court by filing CWP No. 20614 of 2002 challenging order of his termination dated 28.2.1999 (P-11), passed by the Chief Engineer, Punjab, as well as order dated 6.6.2002 (P-16) passed by the Appellate Authority dismissing the appeal preferred by the petitionerappellant. It has remained undisputed that he was working as a Sectional Officer in the Department of Public Works (Buildings and Roads) Patiala. He was sanctioned 55 days earned leave from 5.3.1994 to 31.5.1994 enabling him to visit Canada to meet his daughter and arranging her marriage. He applied for extension of leave, which was rejected vide order dated 29.11.1994 (P-3). His subsequent request for extension of leave was also rejected vide order dated 3.2.1995 (P-4).

(3) On 23.9.1996, a charge sheet was issued to the petitioner-appellant for willful absence and not joining the duty. After lapse of 11 months, he submitted reply to the charge sheet on 19.8.1997 stating that his wife met with an accident on 31.5.1995 and he could not re-join his duty because his wife was undergoing treatment. An inquiry was conducted against him in which the Enquiry Officer exonerated him (P-8). On 18.12.1998 (P-9), the Chief Engineer, PWD (B&R), Patiala, issued a show cause notice to the petitioner-appellant wherein a dissenting note to the following effect was also recorded for not agreeing with the findings recorded by the Enquiry Officer:-

> "Shri Nachhattar Singh, Junior Engineer remained abroad from 7.3.1994 to 6.1.1998 i.e. 46 months whereas leave was granted to him only for a period of two months. According to the Memo No. 354/Establishment Branch No. 2 dated 24.04.1992 of this office, while issuing you No Objection Certificate for getting the passport made it was made clear that if you do not come back after the expiry of leave your services can be terminated. The Junior Engineer also did not give his address of Canada."

(4) On 1.1.1999 (P-10) the petitioner-appellant furnished reply to the said show cause notice, which was not found satisfactory and by an order dated 28.2.1999, the disciplinary authority terminated the services of the petitioner-appellant (P-11). The petitioner-appellant challenged the said order by filing CWP No. 16027 of 1999, which was dismissed as

withdrawn with liberty to avail the remedy of statutory appeal, vide order dated 18.11.1999. Later on he filed an appeal, which was eventually rejected by the Appellate Authority vide order dated 6.6.2002 (P-16).

(5) The primary argument raised by the petitioner-appellant before the learned Single Judge was that the respondents have not taken into account 26 years of service rendered by him while terminating his service, which according to him entitles him right of grant of pension. The submission, thus, made was that instead of terminating his services, he ought to have been retired compulsorily. The other contention urged was that the disciplinary authority has not taken into account the explanation furnished by him. However, the learned Single Judge dismissed the writ petition by observing as under:-

> "In the present case, the petitioner had left for Canada on the pretext that his daughter was to be married. He left India on 5th March, 1994. His leave commenced from 7th March, 1994 and came to an end on 31st May, 1994. His request for extension of leave was declined on 29th November, 1994 and subsequently, on 3rd February, 1995. In reply (Annexure P-6) to the chargesheet (Annexure P-5), the petitioner stated that his wife met with an accident on 31st May, 1995, i.e. one year after the expiry of the period of leave. Reply to the chargesheet was sent on August 19, 1997 and it was stated therein that he may rejoin his duty in the last week of December 1997. The Enquiry Officer was informed that the petitioner only joined his duty on 6th January, 1998. Thus, the punishing authority was right in holding that the petitioner had stayed abroad for 46 months, i.e. from 7th March, 1994 to 6th January, 1998, whereas he was granted leave for only two months. The explanation furnished by the petitioner has rightly been rejected, as the same was not convincing.
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> Therefore, following the mandate of law laid down by Hon'ble the Apex Court that the High Court while exercising the power of judicial review shall not normally substitute its own conclusion, qua the quantum of penalty, this Court is of the opinion that no interference is warranted in the present writ petition and the same is hereby dismissed."

(6) Having heard learned counsel for the petitionerappellant and perusing the paper book we are of the considered view that the instant appeal is devoid of merit and does not deserve admission. There is no legal infirmity in the view taken by the learned Single Judge warranting interference in the Letters Patent Appeal. We are of the considered view that in the present case principles of natural justice have been complied with. Once no procedural lapse has been committed and the charge is established then there cannot be any room for this Court to interfere in the order of termination dated 28.2.1999 (P-11).

(7) Moreover, 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 Inquiry 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 (1).** Learned counsel for the petitioner-appellant 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 procedural requirements contemplated by the Rules have been complied with then the quantum of punishment cannot be interfered with. 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 (2).** 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

(1) 2006 (7) SCC 212
(2) 2007 (1) RSJ 45

judgment of Hon'ble the Supreme Court in the case of **Rameshwar Prasad (VI) *versus* Union of India (3).** 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 is 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)

(8) Hon'ble the Supreme Court has also referred the "Wednesbury Principles" in the case of **Om KumaOm Kumar *versus* Union of India (4).** The views of Lord Greene in the case of **Associated Provincial Picture Houses *versus* Wednesbury Corporation (5),** 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 Greene 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 v. Minister of Civil Service, (1983) 1 AC 768, (called the GCHQ case) summarised the principles of judicial review of administrative action as based

(3) 2006 (2) SCC 1
(4) 2001 (2) SCC 386
(5) 1947 (2) All England Reports 680

upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

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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 in such a context. The court while reviewing punishment 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."

(9) A Constitution Bench had another opportunity to succinctly state these principles in the case of Rameshwar PrasRameshwar Prasad (VI) (supra). In para 242, their Lordships' have issued the guidelines for correct understanding of Wednesbury Principles, which have already been extracted above.

(10) 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 (suprRameshwar supra) would not be attracted because principles of natural justice have been religiously complied with. Therefore, the impugned orders passed by the punishing and appellate authorities would not require any intervention.

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

V. Suri