IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

WRIT PETITION No. 8513 of 2016

SHRINARAYAN OJHA

Versus

UNION OF INDIA THROUGH MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES AND OTHERS

Appearance:

Shri L. C. Patne, learned counsel for the petitioner.

Shri Himanshu Joshi, learned counsel for the respondent No.1.

Reserved on 27.02.2025

Pronounced on 25.03.2025

ORDER

Per: Justice Gajendra Singh

This writ petition under Article 226 of the Constitution of India is preferred challenging the order dated 15.04.2015 in O.A.No.798/2012 by Central Administrative Tribunal, Jabalpur, Camp Indore seeking following reliefs:

7. (a) to call for the relevant records of the case from the respondents;

(b) to quash the impugned order dated 15.04.2015

(Annexure P/18) passed by the learned Central Administrative Tribunal in OA No.798/2012 preferred by the petitioner by a writ of certiorari or any other appropriate writ, direction or order;

(c) allow this petition with costs;

(d) pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case to grant relief to the petitioner.

2. Facts in brief are that petitioner was initially appointed on the post of skilled worker-I on 15.07.1994 and discharged his duties sincerely, diligently and to best of his abilities on the post of Technician-I. While he was on leave from 26.07.2010 to 02.08.2010, a false and frivolous complaint was made by one Alok Sharma on 21.07.2010 which came to be received in the office of the respondent no.3 on 29.07.2010 along with another complaint made on similar line by one Ashok Kumar Sharma, brother of said Alok Sharma alleging that certain ex-students of Indo German Tool Room i.e. Dinesh Choudhary, Gautam Rajwar and Santosh Paswan were demanding a sum of Rs.40,000/- from them under duress and threat administered to them. Upon this complaint, a preliminary enquiry was conducted by a committee constituted by respondent no.3 which submitted its report on 30.07.2010. The enquiry was conducted behind the back of the petitioner. On 05.08.2010 the

respondent no.3 summoned the petitioner through one R.K.Sharma in his office and coerced and forced the petitioner to tender an apology under the threat of facing dire consequences. However, soon after recovering from the threat and the coercion administered to him at the hands of respondent no.3 and said R.K.Sharma, the petitioner immediately submitted a representation dated 09.08.2010 addressed to respondent no.3 narrating the entire circumstances under which he was forced to sign the aforesaid apology letter without there being any fault on his part. Upon this representation again a preliminary enquiry was conducted by a committee constituted by respondent no.3 and the committee in its report dated 26.08.2010 found the apology of the petitioner to be obtained by the respondent no.3 and said R.K.Sharma under duress. The petitioner was issued a show cause notice dated 09.09.2010 calling upon him to offer his explanation with regard to the aforesaid incident and the petitioner in his detailed and exhaustive reply dated 15.09.2010 again narrated the entire circumstances and pleaded his innocence in the matter. The reply of the petitioner did not find favour of the respondent no.3, who in turn has issued the petitioner a charge sheet dated 29.09.2010 leveling false and frivolous charges of demand illegal gratification of Rs.40,000/- from one Dinesh Choudhary through Gautam Rajwar in the presence of Santosh Paswan on 17.07.2010 and turning hostile after submitting his apology on 05.08.2010 and denying the same by subsequent representation dated 09.08.2010 thereby

violating the provisions of Indo German Tool Room Model (Conduct) Rules, 1993.

3. The petitioner submitted his tentative reply to the aforesaid charge sheet on 19.10.2010 inasmuch as the petitioner was not supplied the requisite documents along with the charge sheet, even the charge sheet was not containing any imputation of misconduct, list of documents on the basis of which the charge leveled against the petitioner were proposed to be proved, list of witnesses whose deposition was to be considered in the departmental enquiry. Thus, the entire vague and incomplete charge sheet was issued to the petitioner without having its essential limbs. During the course of departmental enquiry, the petitioner was placed under suspension by an order dated 22.10.2010 and he remain as such till conclusion of the departmental enquiry. On the advice of enquiry officer, a list of defence/additional documents was handed over to him on 21.04.2011, the date on which enquiry was fixed. Later on vide his letter dated 25.04.2011 the enquiry officer confirmed that the aforesaid list of document has already been taken on record. Most of the 16 requisite documents contained in the list of documents were closely connected with the case of the petitioner. These documents have ever been used by the Presiding Officer or referred during the course of enquiry proceedings but instead of supplying these documents, the petitioner was forced to cross examine 3 management witnesses and thereafter the enquiry officer had declared enquiry to be concluded in a

great hot haste denying the petitioner reasonable opportunity to defend himself, violating the principles of natural justice and fair play and causing serious prejudice to the petitioner in the matter of his defence. The enquiry was conducted against the petitioner in flagrant violation of principles of natural justice and fair play wherein the witnesses from both the sides were appeared and deposed, behind the back of the petitioner. None of the prosecution witnesses has supported the case of the department. Even the eye witness to the transaction Santosh Paswan categorically denied the alleged transaction to be taken place in his presence. The enquiry officer on his own whims and caprice has not called independent witnesses for cross examination and collected evidence by travelling beyond the scope of charge sheet and recorded his *ipse dixit* in the enquiry report prepared by him on 10.05.2011 relying on 3 management witnesses only, out of which one was not made available for cross examination and remaining two were not cross examined by the petitioner for want of documents.

4. On the aforesaid infirm departmental enquiry, the respondent no.3 has issued the petitioner a show cause notice along with copy of the enquiry report calling upon the petitioner to offer his explanation over the findings of guilt recorded by the enquiry officer against him, to which the petitioner submitted his detailed and exhaustive reply dated 20.05.2011 highlighting the several infirmities and illegalities committed by the enquiry officer during the course of departmental enquiry. To the

utter surprise of the petitioner, without appreciating the contentions so raised by the petitioner in his representation, the respondent no.3 has issued illegal, arbitrary and merciless punishment of removal from service upon the petitioner dated 14.06.2011. Being aggrieved by the punishment order, the petitioner has preferred an appeal dated 23.06.2011 before the respondent no.2, but the aforesaid appeal has been dismissed by the respondent no.2 by passing an order dated 02.07.2012.

5. Being aggrieved by the injustice done to him, the petitioner has approached the Central Administrative Tribunal, Jabalpur, Camp at Indore by filing OA No.798/2012 and by reason of the impugned order dated 15.04.2015 passed by the Central Administrative Tribunal, the aforesaid OA came to be dismissed without considering the several contentions raised by the petitioner. The impugned action on the part of the respondents is manifestly illegal, highly unreasonable, unfair, unconstitutional, unprincipled and in violation of the petitioner's fundamental rights guaranteed by Articles 14 & 16 of the Constitution of India.

6. Petitioner has filed this petition on the ground that the petitioner is innocent and he has not committed any misconduct in the discharge of his duties warranting initiation of departmental enquiry and imposition of disproportionate and merciless punishment of removal from service. The petitioner has been discharging his duties sincerely, diligently and to best of his abilities and has absolutely unblemished

service record of more than 15 years with the respondent no.3. The Central Administrative Tribunal miserably failed to appreciate that the charge sheet issued to the petitioner was not having its vital limbs viz. imputation of misconduct in support of article of charge, list of documents and list of witnesses by whom the articles of charges framed against the petitioner were proposed to be proved. As a result of the aforesaid omission, while issuing the charge sheet to the petitioner, the respondent no.3 as a disciplinary authority has miserably failed to supply the petitioner necessary documents and the statements of witnesses on the basis of which the departmental enquiry was initiated against the petitioner which caused serious prejudice to the petitioner while submitting his reply to the charge sheet which ultimately culminated into initiation of regular departmental enquiry and in the end, removal from service. In absence of supply of documents to the petitioner, he has been denied a reasonable opportunity of hearing and to defend himself as envisaged under the provisions of Article 311 of the Constitution of India, in view of the law laid down by the Hon'ble Apex Court in the case of **State of U.P vs. Shatrugan Lal (AIR 1998 SC 3038), Government of Andhra Pradesh and others vs. A.Venkata Rayudu (2007) 1 SCC (L&S) 254, State Bank of India vs. D.C Agrawal (1993) SCC (L&S) 109), Kashinath Dikshita vs. Union of India and others (AIR 1986 SC 2118), State of UP vs. Saroj Kumar Sinha (2010 AIR SCW 1077).** The factum of non-supply of essential documents is further

evident from the fact that some of the documents were handed over by the Presenting Officer to the enquiry officer only on 21.04.2011 as per directives of the enquiry officer and letter dated 19.03.2011 also confirms non supply of requisite documents. The original documents were not all exhibited in the departmental enquiry and were merely tendered without proof of the same, therefore, in view of the law laid down by the Hon'ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank and others (2009) 1 SCC (L&S) 398,** the impugned punishment order upon such infirm departmental enquiry deserves to be quashed in the interest of justice. The Central Administrative Tribunal also miserably failed to appreciate that a list of witnesses was provided to the petitioner only on 14.10.2010 vide letter dated 14.10.2010 but 5 witnesses beyond the aforesaid list viz. Vineet Garg, Rajendra Banger, Santosh Paswan, Ashutosh Kumar and Pintu Kumar were summoned for oral evidence out of which statements of first 3 persons were recorded but remaining 2 persons were not called upon to attend the enquiry. The Central Administrative Tribunal also failed to appreciate that the statements of Alok Sharma and Gautam Rajwar were taken behind the back of the petitioner without intimating him. Similarly, Dinesh Choudhary has tendered his evidence before the enquiry officer on 17.02.2011 and surprisingly on the very same day he was subjected to cross examination at the hands of the Presenting Officer without affording the petitioner right of cross examination and

the enquiry officer allowed such illegal and arbitrary practice to flourish during the course of entire departmental enquiry. Similarly, statement of R.K Sharma, A.KBarick, Ashok Kumar were recorded by the enquiry officer on 04.12.2010 and 31.12.2010 respectively that too behind the petitioner's back and, therefore, such deposition recorded behind the back of the petitioner cannot at all have been relied upon by the enquiry officer in absence of any challenge by the petitioner by exercising his valuable right of cross examination, which is one of the facets of principles of natural justice and fair play.

7. The Central Administrative Tribunal also miserably failed to appreciate that the petitioner has submitted a representation dated 01.11.2010 making a request for allowing defence assistance during the course of the departmental enquiry. However, the enquiry officer on his own by letter dated 08.11.2010 has turned down the petitioner's request followed by the order dated 13.11.2010 by the respondent no.3 knowing fully well that the petitioner is only a layman and is ignorant about the procedure and provisions of disciplinary proceedings which as per the dictums of the Hon'ble Apex Court has given a status of quasi judicial enquiry. His lack of knowledge of English was also coming in his way in defending himself in the departmental enquiry which by that time was being conducted in English language. Such an illegal and arbitrary act on behalf of the respondents caused serious prejudice to the petitioner in the matter of his defence. The Central Administrative Tribunal also erred in

law in not appreciating the fact that the petitioner and his defence assistant which was allowed to him at the verge of completion of the departmental enquiry, were not allowed to cross examine the important witnesses and the respondents have been insisted for cross examination of 3 of the officers of Indo German Tool Room, without providing relevant documents. Moreover, 6 prosecution witnesses were never summoned or subjected to cross examination at the hands of the petitioner out of total 9 witnesses, who deposed before the enquiry officer. Thus, the petitioner could not exercise his valuable legal and circumstantial right of cross examination of the prosecution witnesses in order to bring the truth on surface.

8. The Central Administrative Tribunal also erred in law in not appreciating the fact that the enquiry officer has conducted the entire enquiry with a biased attitude. Despite command of the disciplinary authority as contained in the letter dated 19.03.2011 neither the documents were made available to the petitioner during the course of the departmental enquiry necessitating for establishing his innocence in the matter, but also those documents were never exhibited during the course of the departmental enquiry. As regards the first charge, the enquiry officer erred in holding the charge levelled against the petitioner is proved, whereas the sole alleged eye witness to the aforesaid transaction of demand of bribe by the petitioner viz. Santosh Paswan, has categorically denied in his deposition recorded by the enquiry officer on

23.12.2010 that no such incident has ever happened in his presence. Thus, in view of the law laid down by the Hon'ble Apex Court raising the standard of proof in the case of departmental enquiry from that of preponderance of probability to that of proof beyond reasonable doubt as required for proving a charge in criminal cases, the charge no.1 as held to be proved against the petitioner by enquiry officer cannot at all be substantiated and is a mere eyewash in view of the law laid down by the Hon'ble Apex Court in the case of Union of India and others vs. Gyanchand Chatar (2009) 12 SCC 78. The petitioner has made a request at the earliest available opportunity for the change of enquiry officer by submitting his representation dated 19.04.2011 addressed to the respondent no.3 citing instances of biased attitude of enquiry officer towards him during the course of departmental enquiry. But such request made by the petitioner has been illegally and arbitrarily turned down vide order dated 25.04.2011. Consequently, the petitioner has submitted review petition dated 30.04.2011 against the aforesaid order which was refused to accept personally by respondent no.3, as such the petitioner was compelled to send it through speed post on 02.05.2011. However, such exercise proved to be futile as is evident from the copies of documents. The appellate authority also passed the impugned appellate order without appreciating the several contentions raised by the petitioner in his appeal highlighting infirmities of the departmental enquiry. The impugned action on the part of the respondents is

manifestly illegal, highly unreasonable, unfair, unconstitutional, unprincipled and in violation of the petitioner's fundamental rights guaranteed by Article 14 & 16 of the Constitution of India.

9. Heard.

10. Counsel for the respondents supported the order dated 15.04.2015 of the Central Administrative Tribunal and submitted that no interference is required in the petition.

11. Perused the record.

12. The Supreme Court has laid down the scope, extent and parameters of judicial review in disciplinary action. Supreme Court in **Railways v. Rajendra Kumar Dubey, (2021) 14 SCC 735** has held as under:

> "21.1. 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 reappreciate 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.
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> 21.2. In State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] , 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.

21.3. These principles were further reiterated in State of A.P. v. Chitra Venkata Rao, (1975) 2 SCC 557. 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.

21.4. In subsequent decisions of this Court, including Union of India v. G. Ganayutham , (1997) 7 SCC 463, RPF v. Sai Babu , (2003) 4 SCC 331, Chennai Metropolitan Water Supply & Sewerage Board v. T.T. MuraliBabu, (2014) 4 SCC 108, Union of India v. Manab Kumar Guha , (2011) 11 SCC 535, these principles have been consistently followed.

21.5. In a recent judgment delivered by this Court in State of Rajasthan v. Heem Singh , (2021) 12 SCC 569 this Court has summed up the law in following words:

> 37. 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 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 recognised 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 reappreciate 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."

13. The Supreme Court in **Railways v. Rajendra Kumar Dubey - (2021) 14 SCC 735** after referring to various decisions has laid down principles which can be summarised as follows:

> i. the jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction;
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> ii. 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;
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> iii. 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;
>
> iv. High Court may interfere with the proceedings:

(a) where principles of natural justice has not been complied with,

(b) where the findings are based on no evidence, which may reasonably support the conclusion of guilt, or

(c) there is violation of the statutory rules prescribing the mode of enquiry, or

(d) the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or

(e) allowed themselves to be influenced by irrelevant considerations, or

(f) 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.;

v. if, 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;

vi. findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings; and

vii. 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.

14. The Supreme Court relying upon **State of Rajasthan v. Heem Singh -AIRONLINE 2020 SC 795** held that 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.

15. The rule of restraint constricts the ambit of judicial review for the reason that 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 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. Though Disciplinary Enquiries have to abide by the rules of natural justice, they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities.

16. The Supreme Court further held that 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.

17. If the above principles are applied to the facts of the present case, we may note that in the present case following charges were levelled against the petitioner.

> (a) that you Shri Ojha, Technician Gr.I, while discharging the responsibilities was found involved in receiving bribe, a sum of Rs.40,000.00 (Rupees Forty Thousand Only) from Shri Dinesh Choudhery through Shri Gautam Rajwar in the presence of Shri Santosh Paswan on 17th July, 2010. This act was against your duty and discipline which damaged the reputation of the organization & breach of Rule -31.4.1(i),(ii) & (iii) & 31.28-(v), (vi) & (ix) of IGTR Employees (Conduct) Rules, 1993.
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> (b) that receiving bribe of Rs.40,000.00 (Rupees Forty Thousand Only) was admitted by you in your apology dated 05.08.2010 & subsequently denied by submitting an another letter dated 09.08.2010 & also in the reply of the show cause notice. This act was a serious misconduct & breach of Rule -31.4.1(i), (ii) & (iii) & 31.28 -(v), (vi) & (ix) of IGTR Employees (Conduct) Rules, 1993.

18. No one of the above witnesses i.e Shri Dinesh Choudhary, Shri Gautam Rajwar and Shri Santosh Paswan were examined before the enquiry officer. The enquiry is based on the testimony of R.K.Sharma, A.K.Barick and Ashok Kumar. Against R.K.Sharma there were

allegations by the petitioner, hence this is a case in which the findings are based on no evidence which may reasonably support the conclusion of guilt and falls within the ground in which judicial review is permissible and the order of the Central Administrative Tribunal in O.A.No.798/2012 cannot be sustained. Accordingly, this writ petition is allowed and the order dated 15.04.2015 in O.A.No.798/2012 by the Central Administrative Tribunal, Jabalpur Bench (Annexure P/8) is quashed. The respondents are directed to reinstate the petitioner in service without backwages.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE

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