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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER 2024

PRESENT

THE HON'BLE MR. JUSTICE S. G. PANDIT

AND

THE HON'BLE MR. JUSTICE C.M.POONACHA

WRIT PETITION NO.1647/2020 (S-KSAT)

BETWEEN:

1. STATE OF KARNATAKA
   REP. BY ITS SECRETARY
   FINANCE DEPARTMENT
   VIDHANASOUDHA
   BANGALORE-560001.

2. COMMISSIONER OF COMMERCIAL
   TAXES IN KARNATAKA
   "VANIJYA TERIGE BHAVANA"
   GANDHINAGAR
   BANGALORE-560009.

3. JOINT COMMISSIONER OF COMMERCIAL
   TAXED (ENFORCEMENT)
   MYSORE ZONE, NO.487
   BIDARAM KRISHNAPPA ROAD
   DEVARAJ MOHALLA
   MYSORE-570101.

... PETITIONERS

(BY SRI. M RAJKUMAR, AGA)

AND:

SMT. H.S. KANTHI
AGED ABOUT 62 YEARS
W/O K.H. YOGESH
FORMERLY WORKING AS TYPIST
OFFICE OF THE JCCT (ENFORCEMENT)
BIDARAM KRISHNAPPA ROAD
DEVARAJ MOHALLA
MYSORE-570101.

…RESPONDENT

(BY SRI N.S.SRIRAJ GOWDA, ADV. FOR
SMT. VANDANA N., ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS PERTAINING TO ORDER DATED 04.01.2018 PASSED IN APPLICATION NO.6122/2014 OF THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BANGALORE AT ANNX-A AND PERUSE THE SAME AND QUASH THE ORDER DATED 04.01.2018 PASSED IN APPLICATION NO.6122/2014 OF THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BANGALORE, AT ANNX-A.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON **19.09.2024** COMING ON THIS DAY, ***S.G.PANDIT J.,*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
and
HON'BLE MR JUSTICE C.M. POONACHA

CAV ORDER

(PER: HON'BLE MR JUSTICE S.G.PANDIT)

The State and its authorities are before this Court under Article 226 of the Constitution of India, questioning the correctness and legality of order dated 04.01.2018 in Application No.6122/2014 on the file of the Karnataka State Administrative Tribunal, at Bengaluru (for short "Tribunal") by which, penalty of dismissal is substituted by penalty of compulsory retirement.

2. The brief facts leading to the filing of this writ petition are that:

The respondent was working as Typist in the third petitioner office and Articles of charge dated 11.01.2010 was issued against one Sri.Sampath Rao S.Bommannavar, Commercial Tax Officer as well as against the respondent alleging demand and acceptance of Rs.2,000/- and Rs.300/- respectively

from the complainant Sri.Ganesh Shetty and there by failed to maintain absolute integrity and devotion to duty which would be unbecoming of a Government servant and thereby committed misconduct under Rule 3(1)(i) to (iii) read with Rule 16 of Karnataka Civil Service (Conduct) Rules 1966 (for short "1966 Rules"). After detailed enquiry, the charges against the respondent as well as another were held proved. The first petitioner-Government issued second show-cause notice dated 04.02.2014 enclosing enquiry report as well as recommendation of Upa Lokayukta. The respondent under Annexure-A6 dated 22.02.2014 submitted her reply. The first petitioner-Government, by its order dated 24.07.2014 (Annexure-A7) imposed punishment of dismissal of respondent in exercise of its power under Rule 8(viii) of the Karnataka Civil Service (Classification, Control and Appeals) Rules, 1957 (for short "CCA Rules"). Challenging the said

order of dismissal, the respondent was before the Tribunal in Application No.6122/2014. The Tribunal, under impugned order allowed the application and substituted penalty of dismissal by penalty of compulsory retirement. The Tribunal, while substituting punishment, following the judgment of ***UNION OF INDIA AND OTHERS v/s GYAN CHAND CHATTAR*** reported in ***(2009) 12 SCC 78*** opined that a lenient view is to be taken insofar as the order of punishment is concerned and by observing that applicant/petitioner being a lady having put in only 11 years and 8 months of service, if the dismissal order were to be up held, she would be put to great hardship and inconvenience, substituted the punishment of compulsory retirement. Challenging the said order of the Tribunal, the State authorities are before this Court in this writ petition.

3. Heard learned Additional Government Advocate Sri.M.Rajkumar for petitioners and learned counsel Sri.N.S.Sriraj Gowda for Smt.Vandana N., learned counsel for the respondent. Perused the writ petition papers.

4. Learned AGA would submit that the Tribunal committed an error in substituting the punishment of dismissal by compulsory retirement for proved misconduct of accepting illegal gratification. It is submitted that for proved misconduct of accepting illegal gratification or bribe, the appropriate punishment would be dismissal or removal from service. Learned AGA would point out that the Tribunal without recording a finding that the punishment imposed is excessive when compared to the nature and gravity of charge, could not have substituted the punishment of dismissal by compulsory retirement. It is also contended that the

Tribunal could not act as Appellate Authority. To impose proper punishment taking note of the gravity and nature of charge, vests with the Disciplinary Authority and not with the Tribunal or Court. Further, it is submitted that the Tribunal, only on the ground of sympathy, could not exercise its power to substitute punishment imposed by the Disciplinary Authority on the proved misconduct. Learned AGA would contend that the respondent was acquitted of the charges in criminal proceedings i.e., in Spl.Case No.70/2007 by judgment dated 02.12.2011 only on the ground that there is no demand by the respondent and the amount recovered was paid at the instance of DGO No.1. But, it is submitted that the amount is recovered from the vanity bag of the respondent and the respondent has not denied receiving Rs.300/- from the complainant. Thus, learned AGA would pray

for allowing the writ petition and to set aside the impugned order of the Tribunal.

5. Per contra, learned counsel Sri.Sriraj Gowda for respondent supports the order passed by the Tribunal and submits that since the respondent is acquitted of the charges in Spl.Case No.70/2007, the Tribunal is justified in substituting the punishment of dismissal to that of compulsory retirement. Learned counsel would submit that the allegation of demand and acceptance against the respondent is not proved. Moreover, he submits that in criminal case the respondent is acquitted. Hence, she was entitled for a lenient view on the punishment. Thus, learned counsel prays for dismissal of the writ petition.

6. Having heard the learned counsel for the parties and on perusal of the writ petition papers, the only point which falls for consideration is, in the facts and circumstances of the case, whether the Tribunal is

justified in substituting the punishment of dismissal to that of compulsory retirement.

7. Answer to the above point would be in the negative and the Tribunal could not have substituted the punishment of dismissal by compulsory retirement for the following reasons:

It is settled position of law that this Court under Article 226 of the Constitution of India or the Tribunal, would not act as Appellate Authority in the process of judicial review. The power to impose punishment vests with the Disciplinary Authority depending on the gravity and seriousness of proved charge/misconduct.

8. The charge against the petitioner is that she demanded and accepted Rs.300/- from one Sri.Ganesh Shetty thereby failed to maintain utmost integrity and devotion to duty which would be unbecoming of a government servant, thereby committed misconduct under Rule 3(1)()i) to (iii) read

with Section 16 of Conduct Rules. The Enquiry officer in his report has categorically recorded that respondent in her defense statement and much earlier to defense statement in her first explanation soon after the trap, admitted that she received money tendered by the complainant and she pleaded execuse by admitting guilt. From the material on record, it is seen that respondent-DGO No.2 did not demand money, but she had accepted money tendered by the complainant with the knowledge that the complainant's work was due with her and with DGO No.1. In terms of Rule 16(4) of 1966 Rules, receiving money without authority or without there being any order would be misconduct. In the instant case, though the respondent has not demanded, but accepted money from complainant when his work was pending with her would amount to grave misconduct.

9. In criminal proceedings, the respondent was acquitted of the charges only on the ground that demand and acceptance is not proved, but the Criminal Court found that DGO No.2 i.e., respondent herein received an amount of Rs.300/- from the complainant and kept it in her vanity bag. The amount was recovered from respondent DGO No.2. Hence, the acquittal of respondent is not honourable acquittal.

10. The vital question in the present writ petition is whether the Tribunal is justified in substituting punishment of dismissal by compulsory retirement for a proved misconduct of accepting illegal gratification or bribe. The Hon'ble Apex Court in ***MUNICIPAL COMMITTEE, BAHADURGARH v/s KRISHNAN BEHARI*** reported in ***(1996) 2 SCC 714*** has held that in cases involving corruption, there cannot be any other punishment than dismissal. Further, it observed that

any sympathy shown in such cases is totally uncalled for and opposed to public interest. It also observed that the amount misappropriated may be small or large, it is the act of misappropriation that is relevant. Relevant paragraph 4 of the said judgment reads as follows:

> *"4. It is obvious that the respondent has been convicted of a serious crime and it is a clear case attracting under proviso (a) to Article 311(2) of the Constitution. In a case of such nature – indeed, in cases involving corruption – there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriate that is relevant. The Director had interfered with the punishment under a total misapprehension of the relevant factors to be borne in mind in such a case."*

11. As observed above, imposing punishment on proved charge vests with the Disciplinary Authority taking note of the nature and seriousness of the

charge. It is for the Disciplinary Authority to impose appropriate punishment. In the instant case, since the charge of receiving illegal gratification/bribe is proved, the Disciplinary Authority was justified in imposing punishment of dismissal.

12. The Tribunal is not justified in substituting punishment of dismissal to that of compulsory retirement by observing that lenient view is to be taken, following the judgment in ***GYAN CHAND CHATTAR*** (***supra***) and also observing that the applicant being a Lady having put in only 11 years and 8 months of service, she would put to great hardship and inconvenience. In ***GYAN CHAND CHATTAR*** case, the Hon'ble Apex Court at paragraph 21 held that a serious charge of corruption requires to be proved beyond any shadow of doubt and to the hilt and it cannot be proved on mere probabilities. But subsequently, the Hon'ble Apex Court in ***STATE OF***

KARNATKA AND ANOTHER v/s UMESH reported in ***(2022) 6 SCC 563*** has clarified that observations in paragraph 21 of ***GYAN CHAND CHATTAR*** case are not the *ratio decidendi* of the case and those observations were made while discussing the judgment of the High Court. Paragraphs 16, 18 and 19 in ***UMESH*** case reads as follows:

> *"16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established*

on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

17. xxxxxxxxxx

18. In the course of the submissions, the respondents placed reliance on the decision in Union of India v. Gyan Chand Chattar [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78 : (2010) 1 SCC (L&S) 129] . In that case, six charges were framed against the respondent. One of the charges was that he demanded a commission of 1% for paying the railway staff. The enquiry officer found all the six charges proved. The disciplinary authority agreed with those findings and imposed the punishment of reversion to a lower rank. Allowing the petition under Article 226 of the Constitution, the High Court observed that there was no evidence to hold that he was guilty of the charge of bribery since the witnesses only said that the motive/reason for not making the payment could be the

expectation of a commission amount. The respondent placed reliance on the following passages from the decision : (SCC pp. 85 & 87, paras 21 & 31)

> *"21. Such a serious charge of corruption requires to be proved to the hilt as it brings both civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond the shadow of doubt and to the hilt. It cannot be proved on mere probabilities.*
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> ***
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> *31. … wherein it has been held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must always be dealt with keeping in mind that it has both civil and criminal consequences."*

19. The observations in para 21 of Gyan Chand Chattar case [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78 : (2010) 1 SCC (L&S) 129] are not the ratio decidendi of the case. These observations were made while discussing the judgment [Union of India v. Gyan Chand Chattar, 2002 SCC OnLine

Guj 548] of the High Court. The ratio of the judgment emerges in the subsequent passages of the judgment, where the test of relevant material and compliance with natural justice as laid down in Rattan Singh [State of Haryana v. Rattan Singh, (1977) 2 SCC 491: 1977 SCC (L&S) 298:(1977)1 SLR 750] was reiterated : (Gyan Chand Chattar case [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78:(2010) 1 SCC (L&S) 129], SCC p. 88, paras 35-36)

> *"35. … an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.*
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> *36. In fact, initiation of the enquiry against the respondent appears to be*

> *the outcome of anguish of superior officers as there had been an agitation by the railway staff demanding the payment of pay and allowances and they detained the train illegally and there has been too much hue and cry for several hours on the railway station. The enquiry officer has taken into consideration the non-existing material and failed to consider the relevant material and finding of all facts recorded by him cannot be sustained in the eye of the law."*
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> *(emphasis supplied)*

On the charge of corruption, the Court observed in the above decision that there was no relevant material to sustain the conviction of the respondent since there was only hearsay evidence where the witnesses assumed that the motive for not paying the railway staff "could be" corruption. Therefore, the standard that was applied by the Court for determining the validity of the departmental proceedings was whether (i) there was relevant material for arriving at the finding; and (ii) the principles of natural justice were complied with."

13. The Hon'ble Apex Court in ***(2008) 5 SCC 569*** in the case of ***CHAIRMAN & MANAGING DIRECTOR, V.S.P. AND OTHERS v/s GOPURAJU SRI***

PRABHAKARA HARI BABU, the Hon'ble Apex Court has held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment over-turn a legal order. Relevant paragraphs 20, 21 and 22 of the above judgment reads as follows:

> *20. The jurisdiction of the High court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. (See Maruti Udyog Ltd. v. Ram Lal, State of Bihar v. Amrendra Kumar Mishra; SBI v. Mahatma Mishra; State of Karnataka v. Amreerbi; State of M.P. v. Sanjay Kumar Pathak and Urrar Haryana Bijli Vitram Nigam Ltd., v. Surji Devi.).*
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> *21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only*

> *in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See sangfroid Remedies Ltd., v. U ion of India).*
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> *22. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.*

14. The Hon'ble Apex Court in the matter of proportionaility of punishment in ***CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD AND OTHERS v/s T.T.MURALI BABU*** reported in ***(2014) 4 SCC 108*** has observed that proportionality or substitution of punishment would come into play, if the Court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the Disciplinary Authority or Appellate Authority shocks the conscience of the Court.

15. In the instant case, the Tribunal has not found and come to the conclusion that the charges are not proved against the respondent in the departmental enquiry. The Tribunal having observed that demanding and receiving bribe is a serious social morality and it needs to dealt with firmly, could not have substituted the punishment of dismissal with that of compulsory retirement. Further, as held by the Hon'ble Apex Court, the Tribunal without recording as to whether the punishment of dismissal for proved charge of accepting bribe is disproportionate or whether it shocks the conscience of the Court, could not have substituted the punishment. In other words, unless the Court records that the punishment imposed is disproportionate to the gravity of charge, which shocks the conscience of the Court, the Court would not get jurisdiction to substitute the punishment.

16. For the reasons recorded above, we have no other option but to set aside the order passed by the Tribunal. Hence, the following order:

(i) The writ petition is allowed.

(ii) The impugned order dated 04.01.2018 passed in Application No.6122/2014 on the file of the Karnataka State Administrative Tribunal, Bengaluru is set aside.

(iii) Application No.6122/2014 is rejected.

SD/-
(S.G.PANDIT)
JUDGE

SD/-
(C.M. POONACHA)
JUDGE

MPK
CT: bms