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**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 31ST DAY OF JANUARY 2022

PRESENT

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

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.110912 OF 2017(S-KAT)

BETWEEN:

SRI. M.S. KADKOL [illegible]

...PETITIONER

(BY SRI.V.M.SHEELVANT, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY ITS UNDER SECRETARY
GOVERNMENT OF KARNATAKA
PWD (SERVICE-C), M S BUILDING
DR AMBEDKAR VEEDHI, BANGALURU.

...RESPONDENT

(BY SRI.G.K.HIREGOUDAR., ADVOCATE)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING THIS HON'BLE COURT TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION AND QUASH THE ORDERS DATED 7.9.2004 AND 1.6.2016 PRODUCED AT ANNEXURE-F AND K AND TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENT TO REINSTATE THE PETITIONER WITH BACK WAGES AND WITH ALL CONSEQUENTIAL BENEFITS IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR 'PRONOUNCEMENT OF ORDERS', THIS DAY, **ANANT RAMANATH HEGDE J.,** MADE THE FOLLOWING:

ORDER

Rs.50 currency, which is said to have been found in the most unlikely place, i.e, in the socks worn by the petitioner, has landed the petitioner in the soup.

2. The trap laid, based on the complaint dated 16.01.1998, filed by Mr Chandrachari, the Assistant Executive Engineer, was aimed at trapping another employee in the same department where the petitioner was working. The trap aimed at nabbing another employee, DGO-1 (Delinquent Government Official -1) also caught the present petitioner in possession of Rs.50, the tainted money.

3. The complainant Mr Chandrachari, was transferred from Byadagi to Dharwad. DGO-1 who was supposed to dispatch the service records, sat on it,

expecting a bribe of Rs.150.00 for dispatching the service records.

4. Acting on the aforementioned complaint which was filed before Deputy Superintendent of Police Lokayukta, the case was registered in Crime No.2/1998 for the offence under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act 1988 and a raid was conducted. The petitioner who happened to be with the delinquent government official (DGO -1) at the time of the raid, was also found to have Rs.50.00 the tainted currency. This currency of Rs.50.00 is admittedly paid by DGO-1 to the petitioner. According to the contesting respondents, this currency of Rs.50.00 is part of Rs.150.00 paid to DGO-1 by the complainant.

5. Subsequently, the departmental enquiry is also initiated. A charge memo was issued to the petitioner as well as DGO-1. In the departmental enquiry, the accused in the original complaint dated 16.01.1998, is DGO-1 and the present petitioner is referred to as DGO-2. Petitioner

contested the matter. The enquiry officer submitted his report holding that charges against both the delinquent government officials are established. Pursuant to the report dated 14.08.2003, the disciplinary authority imposed a penalty of compulsory retirement vide order dated 07.09.2004. Said order is called in question by the petitioner. Karnataka Administrative Tribunal in terms of its order dated 01.06.2016 in application No.5791/2014, rejected the challenge.

6. The petitioner is before this court invoking Article 226 of the Constitution of India impugning the order passed by the disciplinary authority and the Administrative Tribunal. At the time of the trap, the petitioner was working as a Second Division Assistant in the Public Works Department, Byadagi.

7. Narrative in the petition can be summarized as under.

7.1 One H.R.Naikar, DGO -1 who was also working as Second Division Assistant in the

office where the petitioner was discharging duty, was assigned the task of dispatching the service records of complainant–Mr Chandrachari. The complainant alleged that Mr Chandragiri was repeatedly approaching DGO-1, requesting him to dispatch his service records. Despite repeated requests, the DGO-1 did not dispatch the service records. However, DGO-1 demanded Rs.150=00 for work to be done file.

7.2 Just before the trap, Rs.50/- was handed over to the petitioner by DGO-1 which according to the petitioner was the hand loan advanced by DGO -1.

7.3 The petitioner claims that he unsuspectingly received Rs.50/- as a hand loan from DGO -1, being unaware that the currency handed over to him was tainted.

7.4 Petitioner never demanded money from Mr Chandrachari and never received money from him.

8. As narrated above, in the departmental enquiry, the charge against the petitioner is held to be proved and consequently, he is compulsorily retired from service. The challenge to the said order, before the Karnataka Administrative Tribunal, turned out to be futile. Hence the present petition.

9. Heard Sri.V.M.Sheelavant, learned counsel appearing for the petitioner and Sri. G.K.Hiregoudar, learned Government Advocate appearing for the respondents.

10. The question that needs to be answered in this petition is,

> *whether the petitioner has made out a case to interfere with the finding recorded by the Enquiry Officer, Disciplinary Authority and the Administrative Tribunal in this writ petition under Article 226 of the Constitution of India?*

11. Scope of enquiry under Article 226 of Constitution of India in a matter relating to the disciplinary enquiry, quantum of punishment imposed and scope of judicial review of the order passed by the Tribunals or appellate authorities before which the validity of finding of departmental enquiry is tested, is well settled. The Hon'ble Apex Court in a catena of decisions has held that the High Court shall not venture into re-appreciation of evidence. The Apex Court has held that the high court can only look into 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 a 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 fact 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.

12. The Hon'ble Apex Court has also gone to the extent of holding that the High Court shall not exercise its jurisdiction under Article 226 of the Constitution of India in a matter relating to the departmental enquiry to,

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted following the 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.

13. Keeping in mind the above said well-established principles, this court has considered the contentions raised at the bar.

14. There is no dispute over the fact that the enquiry officer has followed the procedure while conducting the departmental enquiry. Submission of Sri. Sheelavant, appearing for the petitioner mainly centered around the point that there is no demand for a bribe by the petitioner. Referring to the contents of the charge, it is urged that even according to the complainant, the bribe of Rs.150/- was demanded by DGO-1 and not the petitioner.

It is also forthcoming from the records that Rs.50/- was paid to the petitioner by DGO-1. According to the learned counsel for the petitioner, the demand by the petitioner for a bribe of Rs.50/- from the complainant cannot be inferred at all. Based on these submissions, it is urged that both the enquiry officer and the Tribunal failed to take note of these vital aspects.

15. The learned counsel for the petitioner would further urge that punishment of compulsory retirement imposed on the petitioner is disproportionate to the nature and gravity of the allegation against the petitioner. It is also urged that no work of the complainant was pending with the petitioner. Without a complaint against the petitioner and a demand made by the petitioner and in the absence of any illegal favour done or promised by the petitioner, he could not have been compulsorily retired from service, even if he is found with tainted money is the submission on behalf of the petitioner.

16. It is further submitted by Sri.V.M.Sheelvant that the petitioner is acquitted in the criminal trial and the benefit of finding in a criminal trial should be extended in this case also.

17. Sri. G.K.Hiregoudar learned Government Advocate defending the order of the disciplinary authority as well as the administrative tribunal would contend that the case on hand does not call for any interference by this Court considering the well-settled principles governing the scope of judicial review in a matter like this. Learned counsel would urge that the finding arrived at by the disciplinary authority was based on unimpeachable evidence. It is also submitted by the learned Government Advocate that acquittal in a criminal proceeding initiated against the delinquent employee is not a ground to set aside the finding of the departmental enquiry. He would submit the degree of proof required in a criminal proceeding under criminal law and departmental enquiry are entirely different and judgment in a criminal case in

favour of accused ipso facto does not lead to the conclusion that delinquent employee is not guilty. The learned counsel in support of his submission has placed reliance on the following judgments of the Hon'ble Apex Court.

17.1 Karnataka Power Transmission Power Corporation vs. C. Nagaraju and another (2019) 10 SCC 367

17.2 Praveenkumar vs. Union of India 2020 9 SCC 471

17.3 Deputy General Manager vs. Ajaykuar Srivatsav 2021 2 SCC 612

17.4 This court perused the records and considered the contentions raised at the bar.

18. The petitioner has taken a defence that he has received Rs.50/- from DGO-1 as a hand loan. Thus, possession of tainted currency with the petitioner is admitted. The explanation that the amount was paid as a hand loan does not appeal at all. No man of ordinary

prudence would believe that Rs.50 received as a hand loan should find its way to the socks worn by the loanee. In the normal and natural sequence of things, the Rs.50-00 note should have found the place either in the purse or pocket of the petitioner. Thus, the band loan theory is rightly rejected by the and the Tribunal.

19. It is also relevant to note that the charge framed in the enquiry against the present petitioner is that he has received Rs.50/- from a delinquent government official No.1 Mr H.R.Naikar out of Rs.150/- which was received by Mr Naikar as a bribe from the complainant and thereby petitioner failed to maintain absolute integrity which makes the petitioner unbecoming of a government servant and on account of such misconduct petitioner contravened Rule 3(1) (i) and (iii) r/w Rule 16(4) of KCS(Conduct) Rules, 1966 which is punishable under Rule 8 of KCS(CCA) Rules, 1957". The enquiry officer has returned the finding of guilty based on supporting evidence on record. The enquiry officer by following all the

procedures, affording ample opportunity to the petitioner to defend his case has returned a verdict of guilty against the petitioner. The departmental enquiry in question does not suffer from any of the infirmities to call for interference by the High Court in the exercise of its power under Articles 226 of the Constitution of India.

20. The Karnataka Administrative Tribunal has considered all the contentions in the application filed by the petitioner and has not found reason to interfere with the finding in the departmental enquiry. Since the finding of guilty returned by the enquiry officer does not call for any interference viewed from the parameters set by the Hon'ble Apex court.

21. Based on the finding in the departmental enquiry the appointing authority has decided to impose a penalty of compulsory retirement. Then the question is, to what extent the High Court can interfere in the decision taken by the appointing authority in punishing the delinquent employee? Law in this regard is more than well

settled is an understatement. The ratio laid down in the case of Union of India and Others vs.P.Gunasekaran reported in (2015) 2 SCC 610 and the ratio laid down in the judgments cited by the learned Government Advocate for the respondents, needs to be borne in mind while considering the legality of punishment imposed.

22. In terms of the ratio laid down in the judgments referred above, the High Court can interfere with the quantum of punishment imposed only in a situation where the punishment shocks the conscience of the Court or if it is disproportionate to the offence committed.

23. The disciplinary authority while punishing the petitioner has exercised the powers vested under Rule 8 of the Karnataka Civil Services (C.C.A.) Rules, 1957. The said Rule would read as under:

> *"8. Nature of penalties.- One or more of the following penalties for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely.-*
>
> *(i) Fine in the case of Government servants belonging to State Civil Services, Group-D;*

(ii) Censure;

(iii) "Withholding of increments;

(iii-a) Withholding of promotion"

(iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the State Government or the Central Government, any other State Government, any person, body or authority, to whom the service of the Officer had been lent;

(iv-a) Reduction to a lower stage in the time scale of pay for a period with a specific direction as to whether or not the Government servant will earn increments of pay during the period of such reduction with reference to the reduced pay or whether the pay shall remain constant and with a further direction whether on the expiry of the period of penalty the reduction will or will not have the effect of postponing the future increments of his pay;

(v) "Reduction to a lower time scale of pay, grade, post or service which shall, unless otherwise directed, be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding:-

(a) Seniority and pay in the scale of pay, grade, post or service to which the Government servant is reduced;

(b) Conditions of restoration to the scale of pay grade or post of service from which the Government servant was reduced and his seniority and pay on such restoration to that scale of pay, grade, post or service;

(vi) Compulsory retirement;

(vii) Removal from service which shall not be a disqualification for future employment;

(viii) Dismissal from service which shall ordinarily be a disqualification for future employment:

[Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the order of the disciplinary authority, no penalty other than those specified in clauses (vi) to (viii) shall be imposed for an established charge of corruption.]

[Explanation 1.-For purposes of this proviso the expression "corruption" shall have the meaning assigned to the expression "Criminal misconduct by a public servant" in section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).]

[Explanation 2.-The following shall not amount to a penalty within the meaning of this rule:-

(i) Withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the Service or post or the terms of his appointment;

(ii) Stoppage of a Government servant at the efficiency bar in the time scale on the ground of his unfitness to cross the bar;

(iii) Non-promotion, whether in a substantive or officiating capacity, of a Government servant, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

(iv) Reversion to a lower Service, grade or post of a Government servant officiating in a higher Service, grade or post on the ground that he is considered, after trial to be unsuitable for such higher Service, grade or post or on administrative grounds unconnected with his conduct (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer and the like);

(v) Reversion to his permanent Service, grade or post of a Government servant appointed on probation to another Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation:

> *(vi) Compulsory retirement of a Government servant in accordance with the provision relating to his superannuation or retirement;*
>
> *(vii) Termination of services:-*
>
> *(a) Of a person employed under an agreement, in accordance with the terms of such agreement; or*
>
> *(b) Of a Government servant appointed in probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or*
>
> *(c) Of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Karnataka State Civil Services (Temporary Services) Rules, 1967."*

24. The expression '*One or more of the following penalties for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely'* on plain reading seems to suggest that the power on the disciplinary authority is very wide. However, it is to be borne in mind that every wide power has its own inherent or inbuilt limitations. The limitations may be either express or implied. When it comes to provisions dealing with the power to impose a penalty conferring power to impose any one or more of the wide range of penalties provided in the provisions, as found in Rule 8

referred above, then the limitation on the exercise of such power is to be read into the provisions keeping in the mind the doctrine of proportionality of punishment. Merely because statute invests the authority with the power to choose any of the several prescribed punishments, it cannot be said that the authority has the unfettered power to impose any of the prescribed punishments. When the statute confers a wide range of choices while imposing punishment, the authority imposing punishment should exercise discretion with utmost caution. While the authority is deciding on the punishment, the doctrine of proportionality should be the background score till the exercise is completed. If punishment imposed is disproportionate to the offence alleged, then it violates the right guaranteed under Article 21 of the Constitution of India.

25. The expression '*good and sufficient reasons*' found in rule 8 referred to above, is an express limitation imposed on the power that unerringly leads to the

conclusion that the punishment imposed necessariiy has to be, proportionate to the offence committed, logical and convincing.

26. From the records, it is apparent that delinquent government official No.1 in the departmental enquiry paid Rs.50/- to the petitioner. Admittedly, the demand of Rs.150/- for dispatching the file of Mr Chandragiri was made by delinquent No.1. The complainant has not paid any amount to the petitioner. Admittedly, the petitioner did not demand money from the complainant. From the finding arrived at by the enquiry officer, it is apparent that the role of the petitioner was passive. It is only delinquent No.1 who played an active role in demanding the bribe. It is also not forthcoming from the evidence that the petitioner demanded the bribe from delinquent No.1. It is not even alleged by the complainant that the petitioner demanded the money. Moreover, it is borne out from the record that no work of the complainant was pending with the petitioner. It is also

an admitted fact that the complaint is not lodged against the petitioner. The PW1-the complainant in his evidence has not stated anything against the petitioner. No word is uttered by the complainant about the role of the present petitioner. The entire evidence of the complainant was against DGO-1 H.R.Naikar. Nevertheless, the fact that the petitioner has received Rs.50/- from DGO No.1 is admitted by the petitioner. The circumstances under which the money is received as stated earlier, facts that the money was traced in the socks worn by the petitioner by themselves speak a few things which can be easily termed as misconduct. And this misconduct cannot escape punishment. What would be the appropriate punishment for this misconduct? Though it is not for the high court to decide on the quantum of punishment, the high court can nevertheless review the quantum on the doctrine of proportionality. If punishment imposed is disproportionate to the misconduct or if it shocks the conscience of the Court same can be interdicted as held in the case of ***Ranjit Thakur v/s. Union of India. (1987) 4 SCC 611***

27. Does the punishment of compulsory retirement imposed on the petitioner pass the test of doctrine of proportionality is the question? As noted above, the complaint was against DGO-1. The trap laid was intended to catch DGO-1. Petitioner was found with part of the tainted money in the circumstances already discussed supra. Both delinquent employees are found guilty and have been retired compulsorily. However, what is strikingly evident is role and involvement of both differed significantly. Under these circumstances, the question is whether the punishment to both the employees should be the same or should it differ? The main accused against whom the complaint is filed has met with the punishment of compulsory retirement. When the present petitioner whose role appears to be extremely passive in the entire episode and more particularly in a situation where there is no complaint against the petitioner, he could not have been saddled with the same punishment imposed on another delinquent employee against whom there was a

complaint regarding the demand for illegal gratification of Rs.150/-.

28. In the backdrop of these facts and discussions referred above on the scope and ambit of rule 8 of Karnataka Civil Services (C.C.A.) Rules, 1957 referred above, this Court finds that the punishment of compulsory retirement imposed on the petitioner is disproportionate to the nature and gravity of the offence. The said punishment treats the offence committed by the present petitioner on par with the offence committed by DGO-1 despite circumstances that are glaringly different.

29. The Hon'ble Apex Court in the matter of ***Rajendra Yadav vs. State of Madhya Pradesh, (2013) 3 SCC 73***, has held that if the role of a person in the commission of an offence is less and passive in comparison with another playing an active role in its commission, then the person playing lesser role should not be imposed higher penalty than the one imposed on a person whose role and involvement is active. The logical corollary of the

said ratio would mean punishment should be imposed considering the involvement of the accused in the commission of the offence. Applying the said ratio, the petitioner whose involvement in the commission of the offence is extremely passive, awarding the same punishment as awarded on delinquent government official No.1 who is the main accused, does not stand to reason. The involvement of the petitioner in the commission of the offence in comparison to the involvement of DGO-1 is significantly less. Thus, two un equals have been treated equally by imposing the same penalty. This violates the protection guaranteed under Article 14 of the Constitution of India. If the administrative action of punishment imposed, violates rights guaranteed under Article 14 of the constitution of India and the court finds it discriminatory and irrational then the order of punishment needs to be set aside in exercise of jurisdiction under Article 226. It is also borne out from the record that the petitioner was having 15 years of service as on the date of compulsory retirement. Thus this Court is of the view that

the punishment is shockingly disproportionate. This Court has come to this conclusion keeping in mind the involvement of the petitioner in the entire episode discussed supra. Since the punishment imposed violates, the fundamental right guaranteed to the petitioner, this Court would step in and exercise its discretionary jurisdiction under Articles 226 and set aside the order of penalty of compulsory retirement.

30. It is the well-settled proposition of law that the Court cannot decide on the quantum of punishment to be awarded. This power exclusively lies with the appointing authority. The court can only say whether the punishment is disproportionate to the offence committed. If it is shockingly disproportionate then the Court can only remit the matter back to the disciplinary authority to enable it to impose appropriate punishment which necessarily has to be less than the punishment imposed earlier which is interdicted by this Court.

31. It is not the case of the respondents that the petitioner's service record is tainted. As already observed the petitioner's right under Article 14 of the Constitution of India is violated. By setting aside the penalty of compulsory retirement, the matter is remitted to the disciplinary authority to decide on the quantum of punishment to be imposed on the petitioner. The remaining portion of the impugned orders is upheld.

32. Accordingly, the writ petition is allowed in part. Order dated 01.06.2016 in Application No.5791/2004 passed by the Karnataka Administrative Tribunal is set aside. The finding dated 14.08.2003 returned by the enquiry officer on the charges on the petitioner is confirmed. The punishment of compulsory retirement imposed on the petitioner under order bearing No.ಲೋಇ 231 ಸೇಇವಿ 2001, ಬೆಂಗಳೂರು dated 07.09.2004 is set aside and the matter is remitted to the disciplinary authority to pass appropriate order of punishment on the petitioner, which necessarily has to be lesser than the punishment

imposed in terms of order dated 07.09.2004 in the light of what is discussed above.

33. Since the disciplinary enquiry was initiated in the year 2002, the disciplinary authority shall pass the appropriate order of punishment within two months from the date of receipt of the copy of the order.

No order as to cost.

SD/-
JUDGE

SD/-
JUDGE

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