State Of Rajasthan & Ors Vs Bhupendra Singh

Court: Supreme Court Of India

Date of Decision: Aug. 8, 2024

Acts Referred: Constitution of India, 1950 â€" Article 226, 311(2)
Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 â€" Rule 16

Hon'ble Judges: Hima Kohli, J; Ahsanuddin Amanullah, J

Bench: Division Bench

Advocate: Milind Kumar

Final Decision: Disposed Of

Judgement

Ahsanuddin Amanullah, J

1. Heard learned counsel for the parties.

2. Leave granted.

3. The present appeals are directed against the common Final Judgment and Order dated 28.01.2021 (hereinafter referred to as the Ã¢â‚¬Å“Impugned

JudgmentÃ¢â‚¬) passed by the Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench (hereinafter referred to as the Ã¢â‚¬Å“High

CourtÃ¢â‚¬â€‹) by which D.B. Special Appeal Writs No.1695/2008, 14/2009, 15/2009 and 65/2009 were dismissed.

BRIEF FACTUAL OVERVIEW:

4. The sole respondent was appointed as Inspector (Executive) in the year 1960 and later appointed as Assistant Registrar on 05.04.1973 on selection

by the Rajasthan Public Service Commission (hereinafter referred to as the Ã¢â‚¬Å“RPSCÃ¢â‚¬). On 29.04.1976, the respondent granted permission for

construction of godown of Sadulshahar Jamidara Co-op-erative Marketing Society Ltd. despite the Registrar having issued a dir-ection to consult the

Public Works Department to obtain a technical opinion. The respondent, further, appointed two persons on 04.01.1977, despite order to get the

permission from the Registrar. On 06.05.1977, the respondent was reverted to the post of Inspector and also directed to handover charge to Mr.

Amar Chand Dhaka but he did not comply with the same and allegedly obstructed the other person from duty.

5. On 18.05.1977, the respondent issued an order nominating him-self as Administrator of the Bharat Bus Transport Cooperative Society Limited

though he was reverted from that post and charge was taken over from him by another person. During such period, the respondent sold 9 shops

without adopting the procedure of auction at very low prices compared to the market value of the said shops. He is further said to have made irregular

payments on 30.05.1977. On 21.06.1977, he withdrew an amount of Rs.9,025/- (Rupees Nine Thousand Twenty-Five) from the account of the Bharat

Bus Transport Cooperative Society Limited as expenses incurred for purchase of stamps though the same were recovered from the shop-buyers and

thus, illegally kept by him. On 01.08.1977, the Collector of the district asked the respondent to hand over charge of Administrator of Hanumangarh

Society but he did not hand over the charge and cash balance etc. till 19.08.1977.

6. On 04.10.1979, he was placed under suspension in contempla-tion of departmental enquiry for having committed various irregularities. As per the

seniority list published on 05.10.1979, the respondent was at Sl. No.39 as on 01.07.1978. On 07.02.1980, Appeal No.361/79 was filed by the

respondent seeking promotion which was dismissed on the ground that there were adverse entries in his Annual Confidential Re-cords (hereinafter

referred to as Ã¢â‚¬Å“ACRsÃ¢â‚¬) for the years 1975-1976, 1976-1977 and 1977-1978. However, it was observed that if the said adverse entries were

expunged, the respondent would have a case for reconsideration.

7. On 03.10.1980, charge sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (herein-after referred

to as the Ã¢â‚¬Å“1958 RulesÃ¢â‚¬) was issued against the respond-ent levelling 16 charges including sub-charges. The preliminary state-ment of the

respondent was recorded on 23.05.1983 in connection with the said enquiry. Examination of witnesses took place on various dates. In the meantime,

on 28.11.1983, in Appeal No.237/82, adverse entries in the ACR were expunged. On 05.03.1984 and 04.06.1984, detailed statement of the respondent

was also recorded. Finally, the enquiry re-port was submitted on 19.04.1984. Thereafter, the Departmental Pro-motion Committee (hereinafter

referred to as the Ã¢â‚¬Å“DPCÃ¢â‚¬) in its meeting held on 21.11.1984 did not find the respondent fit for promotion as he was under suspension on that day.

The respondent had moved the High Court in Single Bench Civil Writ Petition No.590/1983, wherein suspension order dated 04.10.1979 against the

respondent was pro-spectively stayed by the learned Single Judge. The respondent filed Ap-peal No.358/85 for consideration of his promotion to the

posts of Deputy Registrar with effect from 23.02.1979 and Joint Registrar with effect from 06.04.1985.

8. After completion of the enquiry and the charges having been proved, the respondent was removed from service by order dated 25.09.1985. Appeal

No.358/85 preferred by the Respondent was par-tially allowed, by order dated 21.08.1991, directing the appellant to con-vene the DPC for the

vacancies of the year 1984-1985 and review the case of the respondent for promotion to the post of Deputy Registrar. The respondent had also

moved against his order of removal before the High Court in Single Bench Civil Writ Petition No.793/1986 wherein vide order dated 18.12.1991, the

order of removal was quashed grant-ing liberty to the appellants to conduct enquiry and proceed after giving the respondent a copy of the enquiry

report and the opinion of the RPSC. Compliance of the said order was made on 07.04.1992. The re-spondent submitted written representations on

25.05.1992 and 10.06.1992 denying all the charges levelled against him. On 11.09.1992, the DPC found the respondent suitable for 1980-81 but not for

1979-80 for which the recommendation was kept in a sealed cover in view of pendency of the departmental enquiry. In the challenge to the decision

of the DPC by the respondent in Contempt Petition No.358/1985, by order dated 08.04.1993, the High Court upheld the de-cision of the DPC. On

28.09.1993, after affording an opportunity of hearing to the respondent, an order for his removal was passed. Being aggrieved, the respondent

preferred a contempt petition in the High Court which was dismissed and the D.B. Special Appeal No.36/94 filed against the same was also rejected

on 04.04.1994.

9. The respondent then filed four writ petitions being SBCWP Nos.6486/1993; 5651/1994; 5752/1994, and; 846/1995 in the High Court which were

decided by a common judgment dated 22.02.2008, wherein SBCWP Nos.6486/1993 and 5651/1994 were allowed, while SBCWP Nos.5752/1994 and

846/1995 were partly allowed, and direc-tions were issued to reconsider the respondentÃ¢â‚¬â„¢s case for promotion. Aggrieved thereby, the appellants

preferred D.B. Special Appeal Writs No.1695/2008, 14/2009, 15/2009 and 65/2009 whereas the respondent also filed D.B. Special Appeal Writ

No.24/2009. The appeal filed by the respondent was related to his claim for costs. Vide common Final Judg-ment and Order dated 28.01.2021, all

these writ appeals were dismissed, which has given rise to the present four appeals at the instance of the appellants.

SUBMISSIONS BY THE APPELLANTS:

10. Learned counsel for the appellants submitted that the respond-ent had a chequered history and proved himself unfit for being retained in service. It

was submitted that even during probation, the respondent was found unsuitable and was reverted/asked to handover charge to Mr. Amar Chand

Dhaka by order dated 06.05.1977 but he disobeyed and obstructed him from assuming charge of his office. It was submit-ted that even earlier, when

the Registrar had issued directions to the re-spondent to consult the PWD for technical opinion with regard to per-mission for construction of godown

of Sadulshahar Jamidara Co-oper-ative Marketing Society Ltd., without doing so, he himself had given such permission and had even appointed Mr.

Dharam Chand and Mr. Birbal on 04.01.1977 on his own, without permission from the Registrar. Further, it was submitted that on 18.05.1977, the

respondent had is-sued Order No.995-98 nominating himself as the Administrator of the Bharat Bus Transport Cooperative Society Ltd. while he was

reverted from that post and charge was taken from him by Mr. Amar Chand Dhaka. It was contended that during the said period, the respondent sold

9 shops at a much lower price than the market price without follow-ing the due prescribed procedure. He submitted that on 30.05.1977 also, the

respondent made irregular payments and on 21.06.1977, he embezzled Rs.9025/- by withdrawing the said amount from the account of the society on

the head of expenses of stamps which were recovered from shopkeepers and the amount was illegally kept with him.

11. Further, it was argued by learned counsel for the appellants that on 05.07.1977, the respondent prepared a bill of Rs.4,600/- against rent without

obtaining clearance of the Collector and on 06.05.1977, he re-sumed the post from which he was reverted without authority of law. Even the said

amount of Rs.4,600/- was not paid by the respondent to the landlord. He submitted that on 21.07.1977, the respondent em-bezzled Rs.4,000/- by

making fake entry of returning deposit of the said amount to Smt. Ganga Bai in the Cash Book, but kept the amount without any authority. Similarly, it

was submitted that on 25.07.1977, he received Rs.7,766.83/- and kept it with him, which he returned only at the time of inspection under compulsion.

Further, on 30.07.1977, learned counsel submitted that the respondent made irregular and doubtful entries relating to payments made by him during the

period for which he stood demoted to the post of Inspector. It was submitted that another glaring example of the respondent committing

insubordination was that despite the order of the Collector, Sh. Ganganagar dated 01.08.1977, directing the respondent to handover charge of Adminis-

trator, Hanumangarh Society, he did not handover the cash balance and other charge till 19.08.1977.

12. Further contention was that the respondent temporarily em-bezzled an amount of Rs.4,764.36/- of the Bharat Bus Transport Co-operative Society

Ltd. and the amount was returned only after the re-spondent got transferred to Bhilwara. It was submitted that even the said amount which was due

on 18.08.1977 itself was sent by the re-spondent in the shape of Demand Drafts of Rs.3,000/- on 07.02.1979, Rs. 764.36/- on 09.02.1979 and

Rs.1,000/- on 20.02.1979 i.e., after one and a half years. He submitted that on 04.10.1978, the respondent took advance of Rs.2,000/- to purchase

material for godown while working as Administrator of Ravla Sale-purchase Co-operative Society Ltd. but did not deposit the same and in the

meantime, he was transferred to Bhilwara and upon repeated reminders and correspondence he sent the amount under Demand Draft No.738095 on

20.03.1979. Another ir-regularity pointed out was that the respondent did not take any steps for new appointment on 28% posts reserved for

Scheduled Castes/Sched-uled Tribes candidates on the one hand, while on the other hand he ap-pointed one Rajkumar against reserved post on

07.10.1978 as a junior clerk in violation of the order.

13. Learned counsel submitted that in the background of such con-duct, the respondent was placed under suspension in contemplation of departmental

enquiry by order dated 04.10.1979.

14. Learned counsel submitted that on 03.10.1980, a Charge Sheet under Rule 16 of the 1958 Rules was issued levelling 16 charges against the

respondent, inclusive of sub-charges. During the enquiry, 10 witnesses were examined, who deposed against the respondent, whereafter, on

05.03.1984 and 04.06.1984, detailed statement(s) of the respondent was also recorded. The enquiry report was finally submitted on 19.04.1984. It was

contended that, rightly, the DPC in its meeting held on 21.11.1984 did not find the respondent suitable, on the ground that he was under suspension at

that time. It was submitted that though on 22.02.1985 the learned Single Judge of the High Court in SBCWP No.590/1983 stayed the operation of the

order of suspension dated 04.10.1979 against the appellant, but the same was with prospective effect and Appeal No.358/85 filed by the respondent

for considering his promotion to the post of Deputy Registrar w.e.f. 23.02.1979 and Joint Registrar w.e.f. 06.04.1985, was partly allowed with the

direction to convene the DPC for the vacancies for the year 1984-85 to review the case of the respondent for promotion to the post of Deputy

Registrar. In the meantime, during the departmental proceeding against the re-spondent, charges were proved and by order dated 25.09.1985, he was

removed from service.

15. It was submitted that though the High Court by order dated 18. 12.1991 in Single Bench Civil Writ Petition No.793/1986 quashed the removal

order against the respondent, liberty was granted to the ap-pellants to conduct an enquiry after giving him a copy of the enquiry re-port and the opinion

of the RPSC. In compliance of the said order, in the departmental proceedings, the respondent submitted his written representation denying all charges

and was also heard on his repres-entation. However, learned counsel submitted that on 11.09.1992, the DPC found him suitable for 1980-1981 but not

for 1979-1980, with the recommendation kept under sealed cover in view of the pending de-partmental enquiry. It was submitted that in Contempt

Petition No.358/1985, preferred by the respondent, by order dated 08.04.1993, the decision of the DPC was found to be proper.

16. Learned counsel submitted that after following all due procedure under the law and after affording the respondent full opportunity of be-ing heard,

the removal order was passed on 28.09.1993, holding that in light of the serious nature of the charges and partly/fully five charges having been found

to be proved by the enquiry officer, there were suffi-cient grounds for punishment. The Contempt Petition filed by the re-spondent was dismissed and

Special Appeal No.36/94 before the Divi-sion Bench was also rejected.

17. It was submitted that in this background, when the respondent filed four writ petitions challenging the removal order dated 28.09.1993, the High

Court quashed the removal order on the ground of violation of principles of natural justice observing that though there was a reference to the

representation filed by the respondent but there was no discus-sion in the order. Further, as a consequence, the suspension order was also quashed

holding the respondent entitled for the remaining salary from the date of his suspension till the date of fresh removal and stating that the entire period

will also be counted for the purpose of pension. Moreover, the respondent having been found fit for promotion in 1980-1981 but denied the same on

the ground of pendency of departmental enquiry by keeping the result in a sealed cover, the suspension as well as the removal order having been

quashed, the respondent was held entitled for consideration for promotion to the post of Deputy Registrar in the year 1979-1980 and 1980-1981 and all

consequential benefits, in the event he was so promoted.

18. Learned counsel for the appellants submitted that there has been gross miscarriage of justice since despite five charges having been proved

documentarily, still, on hyper-technicality, the High Court interfered. Further, it was contended that the view taken by the authorit-ies cannot be said to

be perverse as it was also a plausible view. It was urged that in such matters, the settled law is that where two views are possible, the one taken by

the authorities ought not to be interfered with, only because there can be another view. Learned counsel submit-ted that the act of the respondent

stood admitted with regard to his con-duct of financial irregularity(ies) and insubordination by not obeying orders relating to his transfer, other

directions given for permission of con-struction granted to a Cooperative society as also acting beyond juris-diction of assuming power, both in

appointing persons as well as ap-pointing himself as an Administrator of a Co-operative Society. It was submitted that the Division Bench totally erred

in not appreciating the points, both legal and factual, raised by the appellants. It was further submitted that the Division Bench erroneously held that

the enquiry pro-ceedings were vitiated as they were based on no evidence and were perverse, which finding, learned counsel contended, was itself

per-verse, as there were documents to prove the charges, which the re-spondent had not challenged as being forged and/or fabricated. Hence, it was

prayed that these appeals may be allowed.

SUBMISSIONS BY THE RESPONDENT:

19. Per contra, learned counsel for the respondent submitted that both the learned Single Judge and the Division Bench have concur-rently held that

the enquiry was vitiated, and it was a case of no evidence. Thus, this Court may also not interfere in the matter. It was sub-mitted that both the

learned Single Judge and the Division Bench found that the charge relating to temporary embezzlement is illegal as the same was not proved but still

he has been found guilty. Moreover, it was pointed out that though Charge 1-GA is with regard to embezzle-ment of Rs.9,025/- of the sale of shops,

the Appellate Authority had ex-onerated the respondent and the Enquiry Officer did not find the re-spondent guilty of the said charge of

embezzlement, but found sale of those shops irregular which was not even the charge.

20. Similarly, it was pointed out that the learned Single Judge on the issue of competence of the respondent to sell the shop at a lower price held that

despite the finding of the Enquiry Officer that no loss was proved, still the charge has been found proved, which is improper and there cannot be any

dispute on this account. He submitted that the or-der of the learned Single Judge, which has been upheld by the Division Bench, does not require

interference. He, therefore, impressed upon us that the appeals deserved dismissal.

ANALYSIS, REASONING AND CONCLUSION:

21. Having considered the matter, the Court finds that the Impugned Judgment cannot be sustained. On a prefatory note, we would begin by quoting

what the Division Bench has noted on page No.7:

Ã¢â‚¬Ëœ It is well settled preposition (sic) of law that courts will not act as an Appellate Court and re-assess the evidence led in domestic enquiry, nor interfere on the

ground that another view was possible on the material on record. If the enquiry has been fairly and properly held and findings are based on evidence, the

question of adequacy of evidence or reliable nature of the evidence will be no ground for interfering with the finding in departmental enquiry. However, when the

finding of fact recorded in departmental enquiry is based on no evidence or where it is clearly perverse then it will invite the intervention of the court.Ã¢â‚¬â„¢

22. The learned Single Judge held that the findings returned in the enquiry were without evidence, contrary to the record, and as the Removal Order

based on the same was not reasoned, proceeded to quash the same. This course of action adopted by the learned Single Judge has been affirmed by

the Division Bench. Surprisingly, despite noticing the aforesaid position in law relating to non-interference by the Appellate Court to re-assess the

evidence led in an enquiry or to interfere on the ground that another view was possible on the material on record, the Division Bench went on to

record that the learned Single Judge had rightly held that the enquiry proceedings were vitiated as they were based on no evidence and were perverse,

without giving any reasons of its own as to how the learned Single Judge had arrived at such a conclusion, namely, that the enquiry was based on no

evidence and the findings rendered therein were perverse. Upon detailed assistance from both sides on the factual prism, coupled with the materials

on record, we are of the considered opinion that the judgments delivered by the learned Single Judge and the Division Bench are unsustainable.

23. The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the Ã¢â‚¬ÌœConstitutionÃ¢â‚¬â„¢) in a

case of the present nature, is no longer res integra. In State of Andhra Pradesh v S Sree Rama Rao, AIR 1963 SC 1723, a 3-Judge Bench stated:

Ã¢â‚¬Ìœ7. Ã¢â‚¬Â¦ The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a

departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according

to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted

with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is

not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The

High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the

rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair

decision by some considerations extraneous to the evidence and the merits of the case or by allowing 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, or on

similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on

which their 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

proceeding for a writ under Article 226 of the Constitution.Ã¢â‚¬â„¢

(emphasis supplied)

24 The above was reiterated by a Bench of equal strength in State Bank of India v Ram Lal Bhaskar, (2011) 10 SCC 249. Three learned Judges of

this Court stated as under in State of Andhra Pradesh v Chitra Venkata Rao, (1975) 2 SCC 557:

Ã¢â‚¬Ëœ21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of

A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723: (1964) 3 SCR 25: (1964) 2 LLJ 150]. First, there is no warrant for the view that in considering whether a public

officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond

reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under

Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of

appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine

whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural

justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence

may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to

arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the

delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities

have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing 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. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal

evidence on which their 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 proceeding for a writ under Article 226.

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23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact

reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is

apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by

a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or

had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be

regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the

relevant and 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. See Syed Yakoob v. K.S. Radhakrishnan [AIR

1964 SC 477: (1964) 5 SCR 64].

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the

aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which

was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the

Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no

reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no

evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

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26. For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and reassessing the evidence. The appeal

is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.Ã¢â‚¬â„¢

(emphasis supplied)

25. In State Bank of India v S K Sharma, (1996) 3 SCC 364, two learned Judges of this Court held:

Ã¢â‚¬Ëœ28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v.

Duke of Norfolk [(1949) 1 All ER 109: 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the

context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405: (1978) 2 SCR 272]) The objective

is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected.

(See A.K. Roy v. Union of India [(1982) 1 SCC 271: 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664].) As pointed out by

this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] , the dividing line between quasi-judicial function and administrative function (affecting the

rights of a party) has become quite thin and almost indistinguishable Ã¢â‚¬" a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister

for the Civil Service [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as

synonymous. Whichever the case, it is from the standpoint of fair hearing Ã¢â‚¬" applying the test of prejudice, as it may be called Ã¢â‚¬" that any and every complaint

of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing

may defeat the very proceeding Ã¢â‚¬" which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a

sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases

where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem

altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular

action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the

principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be

made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is

between Ã¢â‚¬Å“no noticeÃ¢â‚¬/Ã¢â‚¬Å“no hearingÃ¢â‚¬ and Ã¢â‚¬Å“no adequate hearingÃ¢â‚¬ or to put it in different words, Ã¢â‚¬Å“no opportunityÃ¢â‚¬ and Ã¢â‚¬Å“no adequate

opportunityÃ¢â‚¬. To illustrate Ã¢â‚¬" take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [1964 AC 40:

(1963) 2 All ER 66: (1963) 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid Ã¢â‚¬" or void, if one chooses

to use that expression (Calvin v. Carr [1980 AC 574: (1979) 2 All ER 440: (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without

supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704])

or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the

latter category Ã¢â‚¬" violation of a facet of the said rule of natural justice Ã¢â‚¬" in which case, the validity of the order has to be tested on the touchstone of

prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct Ã¢â‚¬" in the light of the above decisions to say

that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside

without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]

should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper

hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the

touchstone of prejudice as aforesaid.Ã¢â‚¬â„¢

26. In Union of India v K G Soni, (2006) 6 SCC 794, it was opined:

Ã¢â‚¬Ëœ14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or

suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what

has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] the court

would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator.

The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there

is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in

support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the

Appellate Authority to reconsider the penalty imposed.Ã¢â‚¬â„¢

(emphasis supplied)

27. The legal position was restated by two learned Judges in State of Uttar Pradesh v Man Mohan Nath Sinha, (2009) 8 SCC 310:

Ã¢â‚¬Ëœ15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The

court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer

and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave

error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our

thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the

High Court.Ã¢â‚¬â„¢

28. Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to

re-appreciate the evidence, which the above-enumerated authorities caution against. The present coram, in Bharti Airtel Limited v A S Raghavendra,

(2024) 6 SCC 418, has laid down:

Ã¢â‚¬Ëœ29. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of

the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to

justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of

his contentions, would not apply in the facts at hand.Ã¢â‚¬â„¢

(emphasis supplied)

29. Evidently, while reappraisal of facts and evidence is not impermissible by the High Court, the infirmity in the underlying order has to be greater

than ordinary. It is not the respondentÃ¢â‚¬â„¢s case that due to omissions by the appellants in substantive and/or procedural compliances, prejudice has

ensued to him. Let us examine the aspect independently too. The facts reveal that an earlier removal order was quashed, and a copy of the Enquiry

Report alongwith the RPSCÃ¢â‚¬â„¢s opinion was supplied to the respondent. The respondent, thereafter, received an opportunity to submit a written

representation, which he availed of. Further, he was afforded an opportunity of hearing as well. In this view, we are unable to find any violation of the

principles of natural justice.

30. Before the Enquiry Officer, 13 witnesses and 75 documents were exhibited on behalf of the Authority. 3 witnesses deposed in defence of the

delinquent employee-respondent. Considering the evidence on record, the Enquiry Officer by his report held certain charges levelled against the

respondent to have been proved in full/part. Subsequently, a fresh Removal Order was passed, agreeing with the conclusions drawn by the enquiry

officer. This Removal Order cannot be said to be based on Ã¢â‚¬Ëœno evidenceÃ¢â‚¬â„¢. On perusal thereof, we find that the Removal Order is reasoned as

on the aspects where the Disciplinary Authority disagreed with the Enquiry OfficerÃ¢â‚¬â„¢s report, reasons therefor have been assigned. On the areas

of agreement, the Removal Order bears discussion on the relevant evidence.

31. It is well-settled that if the Disciplinary Authority accepts findings recorded by the Enquiry Officer and proceeds to impose punishment basis the

same, no elaborate reasons are required, as explained by three learned Judges of this Court vide Boloram Bordoloi v Lakhimi Gaolia Bank, (2021)

3 SCC 806:

Ã¢â‚¬Ëœ11. ... Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons

are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no

further elaborate reasons are required to be given by the disciplinary authority. Ã¢â‚¬Â¦Ã¢â‚¬â„¢

32. The Removal Order makes it clear that the Disciplinary Authority has considered the whole material before it and was satisfied to impose

punishment on the respondent.

33. The observation on page 7 by the Division Bench makes it apparent that it was conscious of the proposition of law but still tried to make a

distinction, which we do not find just and proper. It runs contrary to the record. Though arguments have been addressed by the appellants with regard

to each and every charge, we would not go individually into the same as we are not re-appreciating the evidence. Suffice it would be to say that

broadly, the charges were proved based on the factual position, which, in turn, was based on official documentation, which at no point of time, the

respondent has controverted or denied. The respondent has not alleged that the documents were non-existent/false/fabricated.

34. The learned Single Judge had also reasoned that there was no difference between the earlier order of removal and the Removal Order passed

subsequently. The learned Single Judge was of the view that simple reference to the respondentÃ¢â‚¬â„¢s representation had been made, but without

discussion thereon, as such, the Removal Order was passed mechanically and without reasons. Even though this ground has not been taken by the

respondent qua the Impugned Judgment, we deem it fit to deal therewith. Upon a comparative overview of both the orders of removal, the similarities

between the two are inescapable.

35. Having said so, we may point out that the respondent-employeeÃ¢â‚¬â„¢s representation has been considered in the fresh Removal Order, albeit not in

as many words. Going forward, wherever and whenever the Disciplinary Authorities concerned impose a major punishment, it will be appropriate for

their orders to better engage with the representations/submissions of the delinquent employees concerned. However, in the instant case, in view of the

evidentiary material and the process by which a fair opportunity was given to the respondent to present his version, we are dissuaded from upholding

the Impugned Judgment on account of minor deficiency/ies in the process. As noted hereinbefore, the same have not caused prejudice to the

respondent to the extent warranting judicial interdiction.

36. At this juncture, it would be relevant to point out that on a specific query to the learned counsel for the respondent apropos the charges pertaining

to non-handing over of full charge at the relevant point of time; appointing persons without permission from the Collector/Registrar; as also, returning

the money after one and a half years by the respondent, learned counsel could not controvert the factual position and only relied upon the judgment

rendered by the learned Single Judge and the Impugned Judgment. Moreover, looking to the respondentÃ¢â‚¬â„¢s conduct, we do not find any

arbitrariness or perversity in the punishment awarded to him.

37. Accordingly, for the reasons recorded above, the Impugned Judgment is quashed and set aside, and the Removal Order dated 28. 09.1993 passed

by the Disciplinary Authority is restored. Consequences in law to follow. However, by way of extraordinary indulgence, keeping in mind the fact that

the respondent has retired and is aged, payments, if any, already made to him in the interregnum, shall not be recovered by the appellants. The appeals

are disposed of in the above terms. No order as to costs.