SUPREME COURT OF INDIA

R.R.Parekh

Vs.

High Court of Gujarat & Anr.

C.A.No.6116-6117 of 2016

(T.S.Thakur,CJI., Dr.D.Y.Chandrachud,J.,)

12.07.2016

JUDGMENT

Dr D.Y.Chandrachud,J,
SLP (Civil) No.34674-34675 of 2012

1. Leave granted.

2. These proceedings arise from a judgment of the High Court of Gujarat dated 23 February 2012 in an application filed by the Appellant challenging the punishment of dismissal imposed upon him upon a disciplinary inquiry. The Division Bench of the Gujarat High Court found that the charges against the Appellant have been established in one (but not the second) of two disciplinary inquiries in respect of his conduct as a judicial officer in the district judiciary. In view of its findings, the High Court declined to interfere with the punishment of dismissal. That has given rise to these proceedings.

3. The Appellant was recruited as a Civil Judge (Junior Division) and Judicial Magistrate in 1981 in the judicial service of the State of Gujarat. He was promoted as a Civil Judge (Senior Division) in 1996. The charges which emanated against him from a chargesheet dated 31 August 2001 related to his work as a judicial officer when he was posted as Chief Judicial Magistrate at Bhuj from 6 May 1996 to 15 June 1998. Two criminal cases involving offences punishable under Section 135 of the Customs Act 1962 and the Imports & Exports (Control) Act 1947 were tried by him.

4. In Criminal Case 1293 of 1995, the Appellant delivered a judgment on 22 January 1997 convicting the accused, but awarded a sentence of imprisonment less than the minimum prescribed by Section 135. Moreover, the sentence of imprisonment was so structured that after allowing the benefit of a set-off, the accused was not required to remain in jail for a further period. In the second criminal case, Criminal Case 675 of 1994, the trial involved offences inter alia under Section 135 of the Customs Act 1962. Fourteen accused were alleged to be involved in the smuggling of 275 silver slabs of a value of ^ 5,86,50,620/-. The trial of two of the accused who are absconding was separated from the rest. By a judgment

dated 11 March 1997 the Appellant held the twelve accused who were brought to trial to be guilty of the charges. However, save and except for five of the accused persons, the Appellant awarded less than the minimum punishment prescribed under Section 135. All the accused were granted a set-off. Details of the sentences awarded are contained in the following table:

Sl.No.	Accused No.	Name of the accused	Period Of sentence	Amount of fine	In default of fine, further sentence	Set off is allowed
1	1	Surendra Gurudeepsinh	2 Years	10,000/-	1 Year	Yes
2	2	Bhupendra Pyarelal	2 Years	10,000/-	1 Year	Yes
3	4	Natha Samat	2 Years	10,000/-	1 Year	Yes
4	5	Jivan Devdan	2 Years	10,000/-	1 Year	Yes
5	13	Kana Mahadeva	2 Years	10,000/-	1 Year	Yes
6	3	Gulam Chisti	4 Years	15,000/-	1 Year	Yes
7	6	Iqbal Husain	4 Years	15,000/-	1 Year	Yes
8	7	Jakab Bava	4 Years	15,000/-	1 Year	Yes
9	10	Ismail Sale	3 Years	10,000/-	1 Year	Yes
10	11	Nurmamd Yakub	5Months	10,000/-	1 Month	Yes
11	14	Jivan Madeva	3Months	10,000/-	1 Month	Yes
12	12	Osman Amar	5 Years	25,000/-	1 Year	Yes

He has not remitted fine

5 This formed the subject matter of departmental Inquiry 15 of 2000 in which a chargesheet was issued on 31 August 2001. It was alleged that the Appellant who was a senior judicial officer was aware of the provisions of Section 135 which prescribe the award of at least a minimum sentence. The case involved smuggling of a huge quantity of contraband articles. The Appellant, it was alleged, was aware of judicial decisions mandating that a liberal view should not be taken in the award of sentences in such cases. Yet, with the intention of favouring the accused, the Appellant was alleged to have awarded less than the minimum sentence without recording special or adequate reasons. Moreover, it was alleged that:

> "Though, it was a case of a huge quantity of contraband articles i.e. 275 Silver Slabs worth Rs. 5,86,50,620/-, you awarded the sentence to each of the accused, keeping in mind, the period undergone by each of the accused as under trial prisoner and granted benefit of set off so that none of the accused had to remain in custody for any further period."

Consequently, the allegations against the Appellant were that:

> "Thus, the manner and mode in which you awarded the sentence in Crl. Case Nos. 675/94 & 1293/95, clearly show that the accused had managed with you for showing favour in awarding sentence and accordingly, you awarded the punishment fixing the term of sentence in such a way that the accused need not have to remain in custody for any longer period and thereby:
>
> (a) You are guilty of indulging in Corrupt-practice.
>
> (b) You are guilty of dereliction in discharging your judicial functions.
>
> (c) You acted in a manner unbecoming of a Judicial Officer.
>
> These acts of yours, would amount to acts of grave misconduct and tantamount to conduct unbecoming of a Judicial Officer, violating the provisions contained in Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971."

6. The Appellant denied the charges in his reply to the chargesheet. An Inquiry Officer was appointed. During the course of the inquiry, witnesses were examined in support of the charges, among them being the Special government prosecutor and Superintendent of Customs. The Inquiry Officer in his report dated 28 January 2004 came to the conclusion that there was no independent evidence to establish that the Appellant had engaged in a corrupt practice. The charges were held not to have been established. The report of the Inquiry Officer was placed before a Disciplinary Committee of the High Court consisting of two judges. The Disciplinary Committee did not agree with the reasons adduced by the Inquiry Officer but nonetheless was of the view that the Appellant should be exonerated. In the view of the Committee, a huge quantity of contraband was involved and the Appellant ought not to have taken a lenient view, contrary to settled principles of law. The Disciplinary Committee held that though there was an absence of sufficient evidence to establish an oblique motive or an allegation of corruption, an element of doubt existed from the manner in which the Appellant had sentenced each of the accused, bearing in mind the period of custody as under-trial prisoners. The Committee was of the view that the acts of the Appellant were not totally bona fide and proposed that this should be considered when the case of the Appellant for promotion arose in future.

7. The report of the Disciplinary Committee was considered at a Chamber meeting of the Full Court on 26 September 2005 when it was resolved to remand the matter to the same

Disciplinary Committee for reconsideration. The Disciplinary Committee considered the matter again. The Disciplinary Committee took a fresh decision on 4 April 2006 to the effect that there being no evidence about corruption, the finding of the inquiry officer was correct. The Committee, however, reiterated that the conduct of the Appellant should be borne in mind when his case for promotion came up for consideration. When the report of the Disciplinary Committee came up before the Full Court at a Chamber meeting held on 5 March 2007, a reconstituted Disciplinary Committee was called upon to look into the matter again and to issue a notice to show cause to the Appellant. Upon the resolution of the Full Court, the Disciplinary Committee recorded tentative reasons to disagree with the report of the Inquiry Officer and called upon the Appellant to show cause why he should not be held guilty of the charges levelled and be dismissed from the service. The Appellant responded to the notice to show cause and was granted a personal hearing. The Disciplinary Committee arrived at a decision on 1 July 2009 holding the Appellant guilty of the charges of misconduct. The Committee held that as a seasoned judicial officer who was in service since 1981, the Appellant would be aware about the basic principles of sentencing. The Committee rejected the explanation of the Appellant that even if an error was committed by him in awarding less than the prescribed sentence, this was of a bona fide nature. In the view of the Committee, the Appellant ought to have seen the provisions of the Customs Act 1962, and having held the accused guilty, he ought to have considered the provisions for punishment laid down in the statute. The Committee found it difficult to accept that as a judicial officer, the Appellant had passed an order of conviction and sentence without looking at the provisions. The Committee held that an inference could be drawn on the basis of material with regard to the existence of an oblique motive since neither a sufficient nor reasonable explanation was provided by the Appellant. Alternatively, the Committee held that even assuming that there was no oblique motive, the established facts reflected gross negligence and a dereliction of duty on the part of the Appellant. The Committee found the charge of misconduct was established and came to the conclusion that the Appellant should be dismissed from service under Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules 1971. The report of the Disciplinary Committee was adopted by the Full Court. The State Government by a notification dated 14 July 2009 dismissed the Appellant from service.

8. The conduct of the Appellant as a judicial officer formed the subject matter of another disciplinary inquiry (Inquiry 6 of 2001) in which a chargesheet was issued on 5 November 2001. The charges against the Appellant were that despite his transfer on 23 April 1993, the Appellant had with an oblique motive requested the Chief Judicial Magistrate, Mehsana to transfer 26 out of several part-heard cases selectively, pertaining to offences under the Prevention of Food Adulteration Act. The allegation was that these cases were indicated as being part-heard though no material evidence had been recorded. The second charge was that in 68 cases involving offences punishable under the Factories Act 1948 the Appellant had imposed negligible punishments of fine ranging from ^ 100 to ^ 500, contrary to the decisions of the High Court and had indulged in a corrupt practice. The Appellant was charged with a dereliction of duty and of acting in a manner unbecoming of a judicial officer. The Inquiry Officer exonerated the Appellant.

9. The Disciplinary Committee of the High Court came to the conclusion that there was insufficient evidence to hold the Appellant guilty of an oblique motive or corrupt practice. At its Chamber meeting on 26 September 2005, the Full Court remanded the proceedings to the Disciplinary Committee. The Disciplinary Committee took a fresh decision and reiterated its earlier view. When a Full Court considered the view of the Disciplinary Committee on 5 March 2007 a fresh Disciplinary Committee was assigned to relook into the matter and to issue a show cause notice to the Appellant. The Disciplinary Committee recorded its tentative disagreement with the report of the Inquiry Officer and issue a notice to the show cause to the Appellant. Upon considering the reply submitted by the Appellant the Disciplinary Committee in its decision rendered on 1 July 2009 held the charges to be proved and took the view that the Appellant was liable to be dismissed from service. The Full Court of the High Court resolved that the charges against the Appellant were proved and decided to dismiss the Appellant from service. The State Government acting on the decision of the High Court issue an order of dismissal on 14 July 2009.

10. The Appellant initiated proceedings under Article 226 of the Constitution in order to assail the findings which were arrived at in the disciplinary proceedings and the punishment of dismissal. By its judgment and order dated 23 February 2012 the Division Bench held that the charge of misconduct in Disciplinary Inquiry 6 of 2001 was not established. The High Court, after adverting to the report of the Disciplinary Committee noted that there was no evidence in regard to which cases under the Prevention of Food Adulteration Act were part-heard before the Appellant. This conclusion of the Disciplinary Committee was held to belie the charge that the Appellant was being selective about retaining part-heard cases. On the second charge, the Division Bench observed that the Disciplinary Committee had expressly concluded that there was insufficient evidence to hold the Appellant guilty of an oblique motive or corrupt practice in the award of punishments in the cases under the Factories Act 1948. Yet, the final conclusion of the Committee was that all the charges including the charge of corrupt practice stood proved. The High Court noted that this was a clear error. The Disciplinary Committee having come to the conclusion of the absence of an oblique motive or corrupt practice, the High Court held that it was not open to convert the charge into one of gross negligence. For these reasons, the findings and conclusion of the Disciplinary Committee in Inquiry 6 of 2001 were held not to be sustainable.

11. The High Court, however, held that the charge of misconduct in Disciplinary Inquiry 15 of 2000 was based on evidence and it could not be held that the conclusions of the Disciplinary Committee, which were adopted by the Full Court, were based on no evidence. The High Court noted that the Appellant was a judicial officer since 1982, and had worked for nearly fourteen years as a Judge. While dealing with offences under the Customs Act 1962, he was expected to refer to the penal provisions under which punishment was being handed down after recording a conviction. The High Court noted that the stand of the Appellant appeared to be that he awarded the sentence without being aware of the statutory provisions. The High Court observed that the criminal case with which the Appellant was dealing was not the first case involving an offence under Section 135. The High Court noted that despite the minimum punishment prescribed under Section 135, the Appellant awarded less than the minimum in the case of several accused. No reasons appeared from the

judgment for the grant of differential treatment to some of the accused. More significantly, the punishments awarded to all the accused were structured in such a manner that none of the accused would have to serve any further sentence, after accounting for the set-off for the period spent in jail as under- trial prisoner. The High Court noted that since the value of the goods in the case exceeded rupees one lakh, Section 135 provided for imprisonment for a term which may extend to seven years and with fine. Moreover, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the imprisonment was not to be for less than three years. Section 135 (3) also specifies what shall not be considered as special and adequate reasons. The High Court upheld the view of the Disciplinary Committee (which were accepted by the Full Court) that an inference of oblique motive would have to be drawn from the record, having due regard to the fact that (i) the Appellant had recorded no special or adequate reasons for awarding less than the minimum sentence; and (ii) the sentences which were awarded to the accused were such that none of them would have to undergo any further term of imprisonment after taking into account the period undergone as an under-trial. In the view of the High Court, the conclusions of the Committee which were accepted by the Full Court cannot be held to have been based on no evidence; there were strong circumstances indicating that the Appellant imposed punishments in serious offences under the Customs Act 1962 contrary to statutory mandate; his explanation that he was not aware of the statutory provision (having been recently promoted as CJM) was not acceptable; there were glaring discrepancies in the award of punishments to various accused; and, most significantly, the sentence imposed on each accused was such that none of them would remain in jail any longer. The High Court held that the punishment of dismissal was not disproportionate to the charge of misconduct which has been found to be established.

12. The first submission which has been urged on behalf of the Appellant is that there was no warrant for the Full Court to require a reconsideration of the decision initially taken by the Disciplinary Committee on 27 October 2004. The submission is that once the Disciplinary Committee concluded that the Appellant should be exonerated by accepting the report of the Inquiry Officer, the Full Court in the Chamber meeting had no jurisdiction to revisit that decision.

13. The submission suffers from a fundamental fallacy. Under Article 235 of the Constitution, the High Court exercises control over the district judiciary. The exercise of disciplinary control is a manifestation of that power. Exercise of disciplinary control over the district judiciary is vested in the High Court in pursuance of the provisions of Article 235. The High Court, in order to streamline the process governing the exercise of its disciplinary jurisdiction, may make - as High Courts in fact do make - procedural provisions regulating its exercise. The High Court of Gujarat in a meeting of a Full Court held on 2 March 2004 resolved that matters listed in annexure 'A' to the resolution should be dealt with and decided by the High Court as a whole. Action to be taken against judicial officers in the exercise of disciplinary jurisdiction was one of those matters. However, having due regard to the multitude of administrative matters over which the Full Court exercises jurisdiction, the High Court assigns and distributes its administrative functions to constituent committees.

This is imperative for the efficient exercise of the control of the High Court over the district judiciary under Article 235. Distribution of work to a Committee of the High Court does not efface the jurisdiction that vests in the High Court. By a resolution that was passed in a Chamber meeting of the High Court held on 26 December 1998 a detailed procedure was enunciated for the conduct of disciplinary inquiries against judicial officers of the district judiciary. The procedure envisages that after an Inquiry Officer submits a report, the report together with underlying material on the record would be examined by a Disciplinary Committee consisting of two judges. The Disciplinary Committee would submit its provisional conclusions in a report which would laid before the High Court and this would become a decision of the Court after a stipulated period. The second stage for the Disciplinary Committee to prepare and submit its report would be after issuing a notice to show cause to the officer and granting him a personal hearing after which the Disciplinary Committee would prepare a report containing its reasoned conclusions regarding the punishment. Once again the report would be tabled before High Court and would become a decision of the Court after passage of a stipulated period. The recommendation which is submitted by the Disciplinary Committee on whether or not to accept the Report of an Inquiry Officer is not binding on the High Court. The Full Court has an obligation to apply its mind to a report which has been submitted by the Disciplinary Committee and to determine whether it should or should not be accepted. Hence, there is no merit in the submission that the Full Court was bound by the decision of its Disciplinary Committee.

14. The second submission relates to the merits of the charges against the Appellant which have been found to be established. The submission of the Appellant is that his judgment at the conclusion of the trial involving offences inter alia under Section 135 of the Customs Act 1962 was a judicial decision. The basis of the decision is contained in the reasons adduced by the Appellant. Even if the Appellant had erred in the matter of awarding the sentence under Section 135, that - it was urged - cannot form the subject of a disciplinary inquiry. Moreover, on the basis of the decision rendered by the Appellant in the two criminal cases, it was sought to be urged that the Appellant had indicated reasons for arriving at a finding of the guilt and on the award of the sentence.

15. The issue of whether a judicial officer has been actuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn. Cases involving misdemeanours of a judicial officer have to be dealt with sensitivity and care. A robust common sense must guide the disciplinary authority. At one end of the spectrum are those cases where direct evidence of a misdemeanour is available. Evidence in regard to the existence of an incriminating trail must be carefully scrutinized to determine whether an act of misconduct is established on the basis of legally acceptable evidence. Yet in other cases, direct evidence of a decision being actuated by a corrupt motive may not be available. The

issue which arises in such cases is whether there are circumstances from which an inference that extraneous considerations have actuated a judicial officer can legitimately be drawn. Such an inference cannot obviously be drawn merely from a hypothesis that a decision is erroneous. A wrong decision can yet be a bona fide error of judgment. Inadvertence is consistent with an honest error of judgment. A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. The legality of a judicial determination is subject to such remedies as are provided in law for testing the correctness of the determination. It is not the correctness of the verdict but the conduct of the officer which is in question. The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which forms the basis of the charge of misconduct was not an honest exercise of judicial power. The circumstances let into evidence to establish misconduct have to be sifted and evaluated with caution. The threat of disciplinary proceedings must not demotivate the honest and independent officer. Yet on the other hand, there is a vital element of accountability to society involved in dealing with cases of misconduct. There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice.

16. In the present case, it must be emphasised that the charges against the Appellant involved rendering of decisions actuated by corrupt practice or by oblique motives. The two criminal cases which were tried by the Appellant involved offences under Section 135 of the Customs Act, 1962. Section 135 is as follows:

> "Section 135-
>
> (1) Without prejudice to any action that may be taken under this Act, if any person¬
> a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or
>
> b) acquires possession of or is in any way concerned in carrying, removing depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reasons to believe are liable to confiscation under Section 111, he shall be punishable, -
>
> c) in the case of an offence relating to any of the goods to which Section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for term which may extend to seven years and with fine : Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than three years;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2)**********

(3) For the purpose of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year, namely,

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceedings under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject-matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission to the offence;

(iv) the age of the accused."

17. It is not in dispute that the cases in question related to goods to which Section 123 applied and the market price whereof exceeded rupees one lakh. The offences were punishable with imprisonment for a term which may extend to seven years and with fine. The proviso spells out that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than three years. Sub-section 3 of Section 123 provides what would not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year. The Appellant was evaluating, in Criminal Case 675 of 1994, a situation involving the smuggling of 275 silver slabs worth ^.5,86,50,620/-. The explanation of the Appellant that he was recently promoted to the cadre of CJM and was not aware of the provisions of Section 135 was not accepted by the Disciplinary Committee (or by the Full Court). As a judicial officer who was in service for over fourteen years, the Appellant could not have been unmindful of and was duty bound to have read the governing provisions of the statute under which the offence was sought to be established. It is inconceivable that a judicial officer would do so in two successive trials without apprising himself of the law or the punishment provided by the legislature. The Appellant awarded sentences ranging from three months to five years of imprisonment to different accused. No reasons appear from the record of the judgment, for awarding less than the minimum sentence prescribed.

18. We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of

Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct.

19. A disciplinary inquiry, it is well settled, is not governed by the strict rules of evidence which govern a criminal trial. A charge of misconduct in a disciplinary proceeding has to be established on a preponderance of probabilities. The High Court while exercising its power of judicial review under Article 226 has to determine as to whether the charge of misconduct stands established with reference to some legally acceptable evidence. The High Court would not interfere unless the findings are found to be perverse. Unless it is a case of no evidence, the High Court would not exercise its jurisdiction under Article 226. If there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of the evidence would not fall for re-appreciation or re-evaluation before the High Court. Applying these tests, it is not possible to fault the decision of the Division Bench of the Gujarat High Court on the charge of misconduct. The charge of misconduct was established in disciplinary Inquiry 15 of 2000.

20. That leads us to the issue of the punishment which has been imposed on the Appellant. The Appellant has been dismissed from service. The submission of the Appellant is that having regard to the fact that he has an unblemished record of service, the imposition of the punishment of dismissal would be disproportionate to the misconduct which has been found to be established. Rule 6 of the Gujarat Civil Services (Discipline and Appeals) Rules 1971 enunciates disciplinary penalties. Among them is (i) compulsory retirement; (ii) removal from service which shall not be a disqualification for future employment under Government; (iii) dismissal from service which shall ordinarily be a disqualification for future employment under Government. The punishment must be proportionate to the misconduct established. Having due regard to the nature of the misconduct which has been found to be established and the totality of circumstances we are of the view that the punishment of dismissal should stand substituted by an order of compulsory retirement. The Appellant has attained the age of superannuation and would be entitled to his retirement benefits on that basis.

21. We accordingly allow the Appeals in part. We confirm the judgment of the High Court in so far as it rejects the challenge by the Appellant to the finding of misconduct. However, for the reasons which we have indicated above we direct that the order of dismissal from service shall stand substituted with an order of compulsory retirement which shall take effect from 14 July 2009, the date on which the final order of penalty was imposed upon the Appellant.

22. The Civil Appeals are disposed of accordingly. No costs.