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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19th December, 2011

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W.P.(C) No.3607/2003

STEPHEN GEORGE Petitioners

Through: Mr. Arvind K. Gupta, Adv. with
Mr. Rahul Mangla, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Preeti Dalal, Adv. with
Ms. Mithu Jain, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J (Oral)

1. The writ petitioner, Stephen George has assailed the judgment dated 15th November, 2002 passed in OA No.919/2002 by the Principal Bench, Central Administrative Tribunal rejecting his challenge to the order dated 15th September, 2000 of the Disciplinary Authority imposing the punishment of dismissal from service in respect of charges leveled against him. The Central Administrative Tribunal also rejected the petitioner's challenge to the order dated 26th March, 2001 passed by the Controller of Defence Accounts, his Appellate Authority and the order dated 8th

January, 2002 passed by the Deputy Controller General dismissing the revision petition filed by the petitioner.

2. The facts giving rise to the present petition are in narrow compass and to the extent necessary are discussed hereafter.

3. The petitioner was promoted as an Assistant Accounts Officer and was assigned the duties of Assistant Accounts Officer (AAO) in the M Section of the Controller of Defence Accounts with effect from 3rd May, 1994 to 16th May, 1995. It was alleged inter alia that 41 contingent bills were processed by the petitioner in violation of chapters VIII OM Part XII read in conjunction with chapters VI OM Part II Vol.1; without effecting verification of the specimen signatures as required in the prescribed procedure and without scrutinizing the fake signatures on the bills. The petitioner processed payments of 41 bills totaling a sum of ₹7.35 crores. It was further alleged that the petitioner had not obtained orders of the appropriate authority and that the processing of the bills was without following prescribed procedure causing loss to the Government. It was further contended that the petitioner failed to ensure that budget allotment was available for effecting the procurement. In this background, by an order dated 17th November, 1998, the respondent proposed to initiate disciplinary proceedings against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on five Articles of

charges. In support of the charges, having regard to the nature of transactions, it appears that the respondents relied only on documentary evidence and no oral evidence was led by the respondents. The petitioner did not lead any evidence in defence.

4. Our attention has been drawn to the statement of article of charges framed against the petitioner. The charge 1 alleges failure of the petitioner to discharge his duty effectively while posted in the M Section, as noted above, leading to authorization of payment against 41 fraudulent claims and, therefore, inter alia failure to maintain devotion to duty. Article 2 alleges that the petitioner failed to detect that the fraudulent claims had been floated against fake sanctions purported to have been issued by the Ministry of Defence and that contingent bills have not been preferred by the office of DGOS authorized to do so and that the effective procurement procedure relevant to the value of the stores procured has not been followed and, therefore, the petitioner had failed to maintain devotion to duty. Article 3 alleges that the petitioner had authorized payment of 41 bills in the M Section although expenditure as per the fake sanctions was debitable to the revenue head "Ordnance Store" contrary to the functions of M Section and therefore the petitioner inter alia failed to maintain devotion to duty. Article 5 alleges that the petitioner had authorized payments against the said 41 fraudulent claims with undue haste and without reasonable care and

caution. Article 3 and Article 5 refer to the same allegations.

5. Article 4 was found not proved by the inquiry officer while Articles 2, 3 & 5 were found partly proved. So far as the Article of charge no.1 was concerned, the inquiry officer found the same to be covered within the overall context of system failure at multiple points.

6. On a consideration of the material on record, the Inquiry Officer submitted a report dated 31st January, 2000 concluding that Article 1 was proved within the overall context of system failure at multiple points. The Inquiry Officer found Article of Charge Nos.2, 3 and 5 partially proved while Article 4 was found not proved.

7. The disciplinary Authority disagreed with the findings and recommendations of the Inquiry Officer in the report and the statement of disagreement was communicated to the petitioner inviting his comments. After considering the representation of the petitioner on the points of disagreement, by an order dated 15th September, 2000, the disciplinary authority found the petitioner guilty of all the charges and imposed the penalty of dismissal from service with effect from 19th September, 2000 (A/N).

8. The petitioner's appeal as noticed heretofore was rejected by an order dated 26th March, 2001 while the revision of the petitioner came to be rejected by an order dated 8th January, 2002.

9. Mr. Gupta, learned counsel for the petitioner has vehemently

contended that the findings and conclusions of the disciplinary, appellate and revisional authorities were based on no evidence at all for the reason that no oral evidence was led. It is vehemently urged that the failure to lead oral evidence was violation of rights of the petitioner and that the same was in gross violation of the principles of natural justice which had to be complied with by the respondents. In support of this contention, learned counsel for the petitioner has placed reliance on the pronouncements of the Supreme Court reported at **1999 (8) SCC 582** titled **Hardwari Lal vs. State of U.P. and Ors.** and **2009 (2) SCC 570** titled **Roop Singh Negi vs. Punjab National Bank and Ors.**

10. The other grounds of challenge to the orders by the authorities and the judgment of the Central Administrative Tribunal is premised on the plea that the petitioner was charged for commission of criminal offences on the same facts as those which were before the disciplinary authority and that the petitioner was discharged by the court concerned at the stage of framing of charges against the accused persons. It is submitted that the discharge of the petitioner from the criminal prosecution by itself establishes the innocence of the petitioner and that for this reason, no culpability could be found against the petitioner so far as the disciplinary proceedings were concerned.

11. The other limb of challenge to the punishment which has been

imposed, rests on the petitioner's contention that apart from him, 13 other persons which included the Auditors, other Assistant Accounts Officers and Senior Accounts Officers were also chargesheeted on identical allegations. These persons were also subjected to criminal prosecution. So far as the disciplinary proceedings against the 13 other persons are concerned, though they have been found guilty of charges identical as those of the petitioner, however, the punishment of only compulsory retirement from service; bearing cuts in the pension and gratuity/other financial benefits have been awarded. It is urged that in the given circumstances, the punishment of dismissal from service imposed upon the petitioner is unfair and wholly unwarranted.

12. Apart from resting the case of the petitioner on the plea that there was no evidence or material at all to support the findings of the petitioner's culpability, learned counsel has pointed out that having regard to the nature of allegations against the petitioner and the others who were implicated in an identical manner on identical grounds, the petitioner was entitled to parity of treatment and that even if the punishment against the petitioner was to be sustained, the penalty which could be imposed upon the petitioner could not be more severe than that which was imposed on the other officials to whom similar roles were attributed by the respondents. It is urged that the penalty orders are illegal, irrational and suffer from

procedural infirmity and therefore unsustainable. It is, further, urged that the respondents having filed an official list of witnesses, non-production thereof has an adverse impact on the allegations of the respondents and that the case therefore is that of no evidence. It is urged that the petitioner could not have been found guilty of the charges.

13. The last and main ground of challenge of the petitioner is premised on a grievance that even if the findings on the culpability of the petitioner are held to be justified, the punishment imposed on the petitioner is grossly disproportionate to the seriousness of the allegations against him. It is contended that not only the criminal court but also the inquiry officer have arrived at a conclusion that there was systemic failure in the organization. For this reason, the petitioner cannot be singled out of seventeen charged officials/employees and the extreme penalty of dismissal from service cannot be imposed only upon him.

14. On the other hand, Ms. Preeti Dalal appearing for the respondents has vehemently opposed the maintainability of the writ petition on the ground that the challenge led by the petitioner is beyond the scope of the permissible grounds of judicial review in a petition under Article 226 of the Constitution of India, where the challenge is laid not only to disciplinary proceedings as well as appellate and revisional orders emanating therefrom but also to the

order of the Central Administrative Tribunal which has rejected the challenge by the petitioner. It is further urged that having regard to the nature of the charges against the petitioner and the admitted position so far as the functioning of the respondents is concerned, there was no requirement of oral evidence inasmuch as the charges and the documents are concerned.

15. It is further urged on behalf of the respondents that so far as the punishment is concerned, all 14 persons were charged with misconduct. Even though the charges were similar in nature, however there was material difference in the quantification of the amounts of bills which were illegally and fraudulently processed by the persons. The petitioner is stated to have processed 41 fraudulent claims amounting to Rs.7.35 crores in gross violation of prescribed procedure and without obtaining orders from the appropriate authority or verifying the specimen signature of the authorities thereon. It is contended that no persons was let off and that the order of the respondents imposing differential punishments is justified and warranted in the facts and circumstances of this case.

16. Before us, it is an admitted position that there is no error in the position noticed by the inquiry officer that other than placing a photocopy of some of the bills on record, there was no other material placed on record.

17. The only other ground on which the Tribunal has based its decision is on the petitioner's challenge to the order of appellate authority on the ground that there was no compliance of the principle of *audi alteram partem* and that the petitioner was denied a personal hearing despite the request of the same.

18. The impugned order dated 15th November, 2002 has noticed that so far as the disciplinary proceedings are concerned, the burden of proof which is required to be discharged is not to be proof of allegations beyond reasonable doubt as in a criminal trial but proof which rests on the preponderance of probabilities. The Central Administrative Tribunal has recorded that it has scrutinized the evidence which shows that there was material on record to enable the conclusion of guilt of the petitioner.

19. We find that the order dated 15th November, 2002 of the Tribunal has simply recorded that the material was available on record to come to such a conclusion without a closer scrutiny, or examining the objection of the petitioner.

20. A perusal of the judgment dated 8th July, 2005 of Shri Dinesh Dayal, Special Judge in the criminal prosecution on the same allegations shows that a close scrutiny by the learned Judge of the material which was available with the investigating agency and placed before the court. The present petitioner was arrayed as accused No.2 in the criminal prosecution before the court. The court

held that the CBI had failed to establish a criminal conspiracy against the accused persons. At the end, the learned Special Judge has concluded as follows:-

“39. It is also alleged against A.1 to A.6 that they did not compare the signatures of the sanctioning authority and the counter signing authority on the sanction orders from the record of specimen signatures maintained in M-Section. This in my view cannot be a ground to presume conspiracy on the part of A.1 to A.6. Each accused has dealt with separate bills. **They may have been negligent in their duty or it may not have been possible for them to make proper comparison with naked eye, but it definitely does not show any conspiracy in passing of the bills.**”

(Emphasis by us)

21. It is evident from the above that the criminal court has found that the accused persons had dealt with separate bills, and that whether they were negligent in their duty or it may not be possible for them to make a proper comparison with the naked eye, no criminal conspiracy was made out in passing of the bills. In this background, the court discharged the petitioner (accused No.2) inasmuch as the prosecution has laid the case of criminal conspiracy against the petitioner and the other co-accused.

22. Learned counsel for the petitioner has placed reliance on the pronouncement of the Supreme Court to urge that every negligence is not misconduct and that it is essential to arrive at a conclusion and finding that a person is guilty of misconduct before such serious punishment can be imposed on him. It is urged that the petitioner

had joined the office only on 3rd May, 1994. In support of this, learned counsel has drawn our attention to the pronouncement of the Supreme Court in **(2007) 4 SCC 566 Inspector Prem Chand Vs. Govt. of NCT of Delhi** and emphasized that error of judgment or negligence simplicitor is not misconduct and that in a given case what should have been done depends on the facts and circumstances of every case. In the instant case, Shri Dinesh Dayal, Special Judge had categorically ruled out criminality observing that there may have been negligence in performance of duties or that it may not have been possible for the person arrived before the court (which include the petitioner) to make a proper comparison with the naked eye.

23. Before this court, it is not contested that the petitioner had joined the department only on 3rd May, 1994. The petitioner has urged that he had been persuaded to follow the system which was already in place. The inquiry officer has found a systemic failure at multiple points. The learned Special Judge has also ruled out criminality, conspiracy or intention.

24. We may now examine the challenge of the petitioner on the ground that the respondents led no evidence in support of the charges and that only copies of some bills were placed before the inquiry which were also not proved. It is urged that in fact there was no material at all in the inquiry to hold against the petitioner.

25. We find that in the pronouncement reported at **2009 (2) SCC 570 Roop Singh Negi vs. Punjab National Bank and Ors.** it has been held as follows:-

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.”

26. It is necessary to notice the facts which led to the pronouncement in **Roop Singh Negi**. In this case, it was alleged that the delinquent employee had stolen bank drafts causing financial loss to the bank. In the Disciplinary proceedings, reliance was made on the documents supplied by the police on which factual foundation was assumed. In this background, the failure of the prosecution to lead any evidence before the Disciplinary Authority in the inquiry proceedings was found to be illegal and it was held that there was no material before the disciplinary authority for finding Roop Singh Negi guilty of the charges leveled against him.

27. In the instant case, the charge against the petitioner related to

not detecting fake bills and failure to follow the prescribed procedure, when the procedure is not disputed. The defence which has been urged is that the petitioner had followed the procedure which was a continuing the past practice.

28. We find that in *Roop Singh Negi*, the Court has also placed reliance on the observations of the Supreme Court in the pronouncement reported at **AIR 1964 SC 364** titled **Union of India vs. H.C. Goel** (para 23) wherein the court laid down the parameters of the inquiry by this Court in exercise of jurisdiction under Article 226 of the Constitution of India in the following terms:-

“In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent ? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.”

29. The question which the High Court would be required to pose has been considered in **2006 (4) SCC 713** titled **Narinder Mohan Arya vs. United India Insurance Co. Ltd.** in the following terms:-

“26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court

did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam and Anr. v. Mahendra Kumar Das and Ors. [1971] 1 SCR 87] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand v. Union of India and Ors. (1963) 1 LLJ 665 SC and State of Uttar Pradesh v. Om Prakash Gupta AIR 1970 SC 679]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L. Tripathi v. State of Bank of India and Ors. (1984) 1 LLJ 2 SC]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See Sawai Singh v. State of Rajasthan (1986) 11 LLJ 390 SC] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors. 1987 (2) Cal. LJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. v. Prakash Chand Jain (1969) 11 LLJ 377SC , Kuldeep Singh v. Commissioner of Police and Ors. (1999) 1 LLJ 604 SC].

30. The petitioner has contended that the bills which were the

subject matter of the disciplinary proceedings had been seized by the CBI. We find that as Annexure-III to the charge sheet. The respondent have enumerated the list of documents on which the charges were sustained. It is not disputed that only copies of the bills were placed before the Inquiry Officer. The original bills were never produced before the inquiry officer.

31. In the memorandum dated 17th November, 1998 served upon the petitioner, the respondents had stated that copies of the documents listed in Annexure-III were enclosed and that in case the petitioner desired to inspect the documents, he could contact the Special Cell (of the CBI) and inspect the documents within 15 days of the receipt of the office memorandum and submit his written statement of defence within 10 days thereafter.

32. Learned counsel for the petitioner has submitted that the inspection was carried out by the petitioner on 26th February, 1999 when only 15 contingent bills out of 41 mentioned at Serial No.1 to Annexure III of the charge sheet and documents at Serial Nos.2 and 3 could be verified as the other documents were held by the CBI.

33. In consultation with the CBI, inspection of documents was fixed on 9th April, 1999 at the CBI Office, CGO Complex, New Delhi when the petitioner inspected the balance 26 contingent bills as per the certificate dated 9th April, 1999. The inquiry report has noted that the petitioner failed to submit any document despite repeated

opportunities and was finally required to appear before the Inquiry Officer. The petitioner appeared only on 29th October, 1999 when he stated that he was not interested in seeing/inspecting any additional document.

34. It is an admitted position that the originals of the 41 bills which were the subject matter of the inquiry, were never placed as part of the proceedings before the inquiry. So far as the photocopies are concerned, the respondents did not produce any witnesses who stated before the inquiry officer that the same were true and correct photocopies of the originals. Such bills were merely filed on record.

35. We find that the inquiry officer had noted in the report that no evidence was on record to show that the bills had not been submitted to the correct sections or processed by a wrong section as was alleged. He also notes that no complaint was made by any person in the hierarchy of positives.

36. Even with regard to the procedures which were prescribed or were being followed in the concerned sections are concerned, so far as the petitioner (who was the AAO) is concerned, the inquiry officer has noted that *"the prosecution has not provided any evidence or basis as to how the AAO could have been aware about the pattern of genuine sanctions. It has also not provided any evidence that the AAO was briefed/trained about the correct pattern of sanctions emanating from MOD after he joined the duty in 'M' Section or in*

CDA (HQrs). It may be mentioned that the CO joined duty in 'M' Section on 3RD May, 1994 and a number of sanctions in question pertained to April/May, 1994. The prosecution has also not stated whether any training was provided to the CO before or during his tenure in 'M' Section to distinguish fake sanctions from genuine sanctions given by MOD. It has also not stated the reason as to why and how it believes that the CO could have been able to detect that the sanctions in question were not on the pattern or in consonance with genuine sanction. Similarly, the prosecution has not stated the reason as to why it believes that the CO should have been aware of disbandment of the office of DCDA in-charge Pay & Accounts Office in 1981 to which a copy of the sanction has been marked".

37. It was the respondents' contention that bills have been processed in undue haste. Other than placing the photocopy of the bills on record, there was no evidence placed before the inquiry officer as to the period within which bills were normally processed in the Section or what was exceptional about the manner in which the petitioner acted. Therefore, so far as the processing of the bills in "undue haste" is concerned, there was no material for comparison before the inquiry officer to arrive at a conclusion that the petitioner was hasting in processing the bills.

38. The respondents had also failed to place any material as per the inquiry report dated 31st January, 2000 as to the manner in

which sanctions were processed. So far as the responsibility for authorizing payments of 41 fraudulent claims by the petitioner who was working as Accounts Officer (AO) is concerned, the inquiry officer has observed that as per the prescribed procedure, the bills scrutinized by the AAO have to be cleared by the AO and it is only after clearance by the AO that the bills would be deemed to have been authorized for payments. The inquiry officer has, thus, concluded that though the petitioner was one in the chain of officers from whose hands the bills passed, the authorization for effecting the payment was only effected by the clearance of the AO. The inquiry officer has also observed that the respondents had not produced any evidence that large number of bills had been received earlier and had been kept pending for long. It was, therefore, concluded that the evidence produced by the prosecution was inadequate to establish the charge.

39. The respondents had clearly admitted to alleging a case of conspiracy between their employees including the petitioner with alleged private suppliers. Such an allegation was also not supported by any documentary evidence and could have been proved only by leading oral evidence. Upon the failure of the respondents to lead oral evidence, the inquiry officer had concluded that in the absence of clinching evidence, the conclusion of the prosecution that the CO obtained technical approval for Ex.P/1/15 and performance

certificate for Exhibit P/1/10 from the suppliers is at best an inference.

40. The above narration would show that the charges leveled against the petitioner were not such as could be decided simply on the basis of a scrutiny of the 41 bills. Certainly, evidence in support of the failure to follow the prescribed procedure as well as the fraud in the claims was required. A simple allegation in the charge coupled with a copy of the bill is not sufficient to support the contention that the signatures of the officers on the bills which were processed, were forged. In this background, there appears to be force in the petitioner's contention that evidence was necessary to prove the charges.

41. The petitioner's prime grievance that in any case he was not the only one in the chain of command and that he cannot be singled out for the punishment which has been imposed upon him, has to be examined in this factual background.

42. It has been pointed out that 17 persons in all were charge-sheeted including the petitioner on similar charges. The petitioner is the only person who has been singled out for imposition of the punishment of dismissal from service with regard to processing of bills whereas other persons have been either largely compulsorily retired or a few of the persons have been removed from service or suffered reduction in the monthly pension or mere reduction to a

lower stage in the pay scale with cumulative effect which was imposed by the order dated 15th September, 2000.

43. In the judgment reported at **(2008) 2 SCC 74 Akhilesh Kumar Singh Vs. State of Jharkhand & Ors.**, it was held as follows:-

“15. It is true that delinquent officers similarly situated should be dealt with similarly and, thus if the charges against the employees are identical, it is desirable that they be dealt with similarly.

16. Quantum of punishment imposed on a delinquent employee by the appointing authority, however, depends upon several factors. Conduct of the delinquent officers as also the nature of the charges play a vital role in this behalf. xxx “

44. In **(2010) 5 SCC 783 State of Uttar Pradesh & Ors. Vs. Raj Pal Singh**, it was held as follows:-

“4. It is contended on behalf of the appellants that once the charges have been held to be established, it was not appropriate for the High Court to interfere with the quantum of punishment and judged from this standpoint, the order of the High Court cannot be sustained. In support of the said contention, reliance is placed on the decision of this Court in B.C. Chaturvedi Vs. Union of India and Secy. To Govt., Home Deptt. V. Srivaikundathan.

5. Though, on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the five employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same. It was not

open for the disciplinary authority to impose different punishments for different delinquents. The reasoning given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.”

The court has thus reiterated the principle that when charges are the same and identical in relation to one and the same instance, to deal with delinquent differently in the word of punishment would be discriminatory.

45. On the same issue in **(1998) 2 SCC 407 Director General of Police & Ors. Vs. G. Dasayan**, the court held that though the charges against the delinquents were identical while the respondent had been dismissed; co-delinquents had been let off while one head constable only compulsorily retired. It was held that the punishment which had been imposed upon the petitioner being discriminatory could not be sustained and that imposition of punishment of compulsory retirement imposed on the respondent as well would meet the ends of justice.

46. Learned counsel for the respondents during the course of a submission, has been unable to point out any point of real distinction between 17 other officers and the petitioner who has been charged in the instant case. It was urged that so far as the petitioner was concerned, the total value of the bills which he processed came to Rs.7.35 crores whereas the bills which have been processed by the other charged persons were not of this value.

47. It needs no elaboration that the question of quantum of punishment in disciplinary matters is primarily for the Disciplinary Authority to decide. The jurisdiction of this Court in judicial review under Article 226 of the Constitution of India is limited and confined to the applicability of one or the other of the well known Wednesbury Principles. In the pronouncement of the Apex Court reported in **2000 (7) SCALE 524 Om Kumar & Ors. v. Union of India**, the Supreme Court discussed the narrow scope of the court's jurisdiction in several cases. On the aspect of proportionality of punishment, the principles which were laid down in this pronouncement deserve to be considered *in extenso* and read as follows:

"28. By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are however given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary"

under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and in such extreme or rare cases can the court substitute its own view as to the quantum of punishment.”

48. Ms. Preeti Dalal, learned counsel for the respondents has drawn our attention to the pronouncement of the Supreme Court reported at **(1995) 6 SCC 749 B.C. Chaturvedi Vs. Union of India & Ors.** We find that in para 18, the Supreme Court had held thus:-

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and imposed some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in

support thereof.”

49. Learned counsel for the respondent has also placed reliance on ***AIR 2007 SC 705 Government of India Vs. George Philip***

wherein in para 6, it has been held as follows:-

“6. Shri Raju Ramachandran, learned senior counsel for the respondent, has submitted that the respondent had joined for a Ph.D. degree in a University in Canada and as he had not been able to complete the work required for the said degree, he had no option but to stay there even after expiry of leave. Learned Counsel has submitted that it was a case of helplessness of a scientist who was keen to do research work and to get a Ph.D. degree and if the respondent had obtained the said degree, it would have been of immense value to Bhabha Atomic Research Centre as well. Learned Counsel has thus submitted that the requirement of discipline will be satisfied by the order passed by the High Court, whereby the penalty of compulsory retirement has been set aside and the respondent has been directed to be reinstated but without any back wages.”

50. Placing reliance on the enunciation of the applicable principles in several judgments of the Supreme Court, a division bench of this court of which one of us (Gita Mittal, J) was a member, had passed a judgment dated ***27th January, 2010*** in ***WP (C) No.12952/2009*** entitled ***Ram Gopal Vs. Union of India & Ors.*** noted the statement of law as follows:-

“The judgment of the Supreme Court in ***(1995) 6 SCC 749 B.C. Chaturvedi Vs. Union of India & Ors.*** is an authority with regard to the principles which apply. In para 18 of the judgment, the Supreme Court laid down the law as follows:-

“18. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

19. In **(2000) II LLJ 648 SC Union of India & Anr. Vs. G. Ganayutham (Dead) by LRs.**, the court summed up the legal position in para 31 which reads as follows:-

“31. In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B. C. Chaturvedi's case AIR 1995 SCW 4374 that the Court might, - to shorten litigation - think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B. C. Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different).

51. Learned counsel for the petitioner has vehemently urged that error of judgment, negligent simplicitor cannot be treated as

misconduct which would justify a levy of such a major penalty more so when persons similarly placed have been let off with much lesser sentence. In support of this submission, reliance is placed on the pronouncement of the Supreme Court reported at **(2007) 4 SCC 566 Inspector Prem Chand Vs. Govt. of NCT of Delhi & Ors.** This pronouncement was based on the principle that it was necessary for the disciplinary authority to arrive at a finding of fact that the charged personnel was guilty of unlawful behaviour in relation to charge of his duties in service which was willful. In the instant case, no material has been placed before any of the authorities and no such finding could have been arrived at. The respondents were bound to place evidence to the effect that the petitioner had not faithfully discharged his duties in service.

52. We find that before this Court, it is not the petitioner's case that there was no requirement under the prescribed procedure for scrutinizing or verification of the specimen signatures but the petitioner has urged that the petitioner had followed the general practice followed in the Section 'M' of the Central Defence Accounts (CDA). It is further urged that the petitioner had been posted in the Accounts Section only on 3rd May, 1994 and for this reason, he could not have been found guilty of the charges. The petitioner has urged that not only the criminal court but even the inquiry officer had found systematic system failure and for this reason, no individual

responsibility could be fastened upon the petitioner more so when he was one in a chain of authorities through whom the bills were processed. The petitioner has urged that the bills were passed by the Auditor before they came to him and were put up to the Senior Accounts Officer after they had been processed by him.

53. Mr. Gupta, learned counsel for the petitioner, has drawn our attention to the tabulation placed by the respondent on record. It is urged that Shri P.R. Suman, ex senior auditor is alleged to have processed payment of 11 fraudulent bills amounting to Rs.4.135 crores against fake sanctions and failed to detect that they were fake. Mr. P.R. Suman has been merely dismissed from service w.e.f. 31st December, 2001.

54. Our attention is also drawn to Shri R.K. Bajpai, Senior AO (Retd.) who authorized payment against 11 fraudulent claims amounting to Rs.5.30 crores. In regard to verification of specimen signatures, he failed to ensure budget allotment availability and caused pecuniary loss to the Government. Shri Bajpai was also found guilty of the charges leveled against him and a penalty of 20% cut in pension for a period of five years and 10% cut in gratuity was ordered by an order passed on 10th April, 2002.

55. Shri S.B. Sharma, Senior Auditor processed 44 fraudulent claims amounting to Rs.41.59 lakhs and failed to detect that the sanctions were fake and only the punishment of compulsory

retirement from service w.e.f. 31st October, 2002 was imposed upon him. It is pointed out that Stephen George, the petitioner was working as Assistant Accounts Officer who is alleged to have authorized payment against 41 fraudulent claims amounting to Rs.7.35 crores without obtaining orders of the appropriate authority and without following the procedure prescribed by law. The disciplinary authority disagreed with the observations and findings of the inquiry officer and held all the charges to have been proved. The petitioner has been dismissed from service w.e.f. 19th September, 2000.

56. Shri T.P. Venugopalan, Senior Accounts Officer (Retd.) was also tried on the same charges. It was observed that he had authorized payments against 10 fraudulent claims to the tune of Rs.2.23 crore and had failed to detect that the claims have been fraudulently floated against the fake bills. Shri Venugopalan was found guilty and the punishment of penalty of 50% cut in monthly pension on permanent basis and 50% cut in the gratuity was imposed on him.

57. There is no dispute at all that the allegations against the charged officers were identical and that the respondents did not lead any evidence in the inquiry proceedings other than copies of some of the bills. The above narration would show that the petitioner was occupying a position midway between the auditor and

the senior accounts officer. The payments could not have been made but with their concurrence.

58. Be that as it may, as noticed above, the respondents have conducted disciplinary proceedings against every person who was in the hierarchy of processing of the bills and after the disciplinary proceedings, imposed punishments and penalties upon them. Therefore, the contention of the petitioner that he was merely one in the hierarchy of officials processing the bills would have bearing on the punishment which would be merited.

59. The instant case manifests that the petitioner had admittedly joined the concerned section only on 3rd May, 1994. The charges relate to the very date on which the petitioner joined the M Section. There is no dispute at all that the petitioner was in the middle of hierarchy of persons who have processed the bill. The petitioner got bills which have been scrutinized and endorsed by the auditor and put them up to the senior accounts officer. The petitioner's position that he was informed that this was the standard practice for processing the bills remains unchallenged. The respondents have consciously not produced any evidence at all to support the charges. We find that on a careful consideration of the evidence which was placed by the Central Bureau of Investigation before the learned Special Judge, the Sessions Judge has concluded that at best, the petitioner and his colleagues may have been negligent in their duty

or it may not have been possible to call them to make proper authorization. This position remains unchallenged.

60. The distinction in the punishment premised on value of the bills sought to be drawn by learned counsel for the respondent is also not correct and that some of these officers have processed bills running between and over Rupees 3 to 5 crores. These persons have been vested with the punishment of mere denial of increment or minor punishments. The differential in the value of the bills cannot be read in isolation. The other important factors inter alia as the petitioner having joined the section on the 3rd of May; that his having followed the prevalent practice; the findings of the Special Judge that it may not have been possible for the officials to make proper comparison with a naked eye and that no conspiracy was made out. The findings of the Inquiry Officer of systemic failure are all material and require to be borne in mind while awarding punishment.

61. The distinction sought to be placed in the case of the petitioner premised on the value of the bills processed does not take into consideration the other important circumstances. In this background, differential punishment meted out to the petitioner on identical allegations is not certainly sustainable. Given the circumstance that others identically placed were given a lesser punishment, the punishment imposed upon the petitioner shocks the conscience of this court. It has to be held that the punishment

imposed upon the petitioner was unfair, unjustified and completely arbitrary. In this background, on principles of parity of treatment, given the identity of charges against all the charged officers, we are of the view that the punishment of dismissal from service upon the petitioner is unsustainable. The petitioner was charge-sheeted on 17th November, 1998 on allegations with regard to his work between 3rd May, 1994 to 16th September, 1995. The disciplinary authority passed the impugned orders on 15th September, 2000. The petitioner's appeal and revision were rejected on 26th March, 2001 and 8th January, 2002 respectively. The writ petition has remained pending in this court since 2003.

62. Having regard to the long period of time which has elapsed since the petitioner was charged and the proceedings initiated against him, on application of the principles laid down by the Supreme Court as noted in ***Ram Gopal vs. Union of India & Ors. (supra)*** it is in the interest of justice if the sentence imposed upon the petitioner is substituted in the present proceedings itself. We are taking this view having regard to the important circumstance that punishment has been imposed on similarly placed persons. In this background, the order dated 15th November, 2002 of the Central Administrative Tribunal to the extent that it sustains the punishment which was imposed on the petitioner, is hereby set aside and quashed and shall stand substituted by the punishment of

compulsory retirement with 10% cut in pension for five years and 10% cut in gratuity which has been imposed on these two persons. The other prayers in the writ petition are hereby rejected.

63. The respondents shall proceed in the matter in accordance with law and process the petitioner's case for payment for any dues which he may be entitled to in the light of the judgment passed by us today within a further period of five months from today.

This writ petition is allowed to the above extent.

There shall be no order as to costs.

GITA MITTAL, J

J.R. MIDHA, J

DECEMBER 19, 2011
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