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THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.622/2001

Reserved on: 18.08.2011

Pronounced on: 25.11.2011

K.L. KADAMB

..... Petitioner

Through: Ms. Rekha Palli with Ms. Punam
Singh and Ms. Amrita Prakash,
Advocates

Versus

UOI & Ors

..... Respondents

Through: Ms. Barkha Babbar with Mr. Asit
Tiwari, Advocate for UOI.
Ms. Sonia Sharma with Mr.
Mirza Aslam Beg, Advocates for
R-2 and R-3.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be
allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported
in the Digest ? | Yes |

M.L. MEHTA, J.

1. The present petition under Article 226 and 227 of the
Constitution of India assails the order dated 21.12.1999 passed by

Principal Bench, New Delhi of Central Administrative Tribunal (CAT) whereby OA No.495 of 1995 of the petitioner herein was dismissed.

2. The petitioner was appointed as Labour Welfare Supervisor on 16.2.1965 in the Delhi Administration. On 21.02.1968, all the posts of Grade-I, II, III of different Departments of Delhi Administration were clubbed together and a new Cadre as Delhi Administration Subordinate Service (DASS) was formed and the petitioner was included in DASS Cadre as Grade-III (Executive). On 1.1.1970, the petitioner was promoted as Grade-II (Ex.) and on 1.1.1976 in Grade-I (Ex.). The next promotion avenue from DASS is Delhi Andaman Nicobar Islands Civil Services (DANICS). The appointing Authority of the Cadre DANICS is Ministry of Home Affairs, Government of India. In 1984, the petitioner's name was included in the list for entry in DANICS and sent to Central Government for approval along with other eligible officers. However, the Lt. Governor, who is the administrative authority had included his name under DANICS appointing several officers including the petitioner herein against duty post of DANICS in the post of Assistant Registrar, Cooperative Societies on ad hoc and emergent basis for a period of six months or till further orders whichever was earlier. This was done vide his order dated 31.5.1995. Admittedly, this appointment was not terminated on the expiry of period of six months, but was allowed to continue. While working on the post as Assistant Registrar of Cooperative Societies, Delhi in the Department, the petitioner was appointed Administrator of one Group Housing Society.

Later on, when he was posted as Sales Tax Officer, he handed over charge to a new Administrator on 6.2.1997 and while he was posted as Sales Tax Officer, he was charge-sheeted with regard to his acts as Administrator of the said Society on eight charges involving unauthorized utilization of funds, embezzlement of funds, obtaining forged and fabricated bills, misappropriation of funds, misuse of authority causing financial loss etc. Vide order dated 2.1.1991, he was placed under suspension. A departmental enquiry was conducted against him. The Inquiry Officer vide his report dated 28.2.1991 found three charges fully proved against the petitioner and one charge partly proved and three charges not proved against him. The petitioner submitted his representation against the enquiry report on 15.12.1991. Thereafter Lt. Governor vide his order dated 30.8.1993 imposed upon the petitioner penalty of removal from services. The petitioner filed an appeal before the President on 20.10.1993 which was rejected on 1.2.1996. Simultaneously, the petitioner approached the CAT vide OA No.1206/1994 which was, however, later on withdrawn by him with liberty granted to him to file fresh OA. Thereafter, he filed a fresh OA 495 of 1995 wherein the impugned order was passed by CAT. The said order has been assailed by the petitioner in the instant writ petition.

3. We have heard learned counsel for the petitioner as well as the respondent. The petitioner has assailed the impugned order mainly on the ground that because he was appointed against a duty post in DANICS cadre vide order dated 31.5.1985 on ad hoc basis for a period

of six months or till further orders and same was not revoked by the Competent Authority upon expiry of the period of six months, but continued as such for over eight years till 30.8.1993, it must be presumed that he had been appointed on regular basis in DANICS cadre and in which case admittedly the Lt. Governor was not to be the Disciplinary Authority. There was no dispute about the fact that the Disciplinary Authority in DANICS cadre officers was the Ministry of Home Affairs, Government of India and not the Lt. Governor of Delhi. There is also no dispute with regard to the fact that the name of the petitioner was sent to the Central Government under Rule 24 DANICS Rules, 1971 for approval in the year 1984. There is nothing on record to suggest that his name was approved by the Central Government before he was appointed against a duty post under DANICS cadre on ad hoc basis for a period of six months or till further orders whichever was earlier vide order dated 31.5.1985 of the Lt. Governor. In the absence of there being anything placed on record to show that the petitioner's name was approved prior to issue of the order dated 31.5.1985, the Disciplinary and Appointing Authority of the petitioner continued to be Lt. Governor. If the name of the petitioner had been approved by Central Government under DANICS Cadre, there would not have been any occasion for Lt. Governor to issue the order of his appointment on ad hoc basis on 31.5.1995. The order dated 31.5.1995 stated that he was being appointed to a duty post in DANICS cadre on emergent and ad hoc basis for a period of six months only, whichever was earlier. It also

further stated that such an appointment would not entitle him to claim any right for regular appointment, or for seniority, or for appointment to that or any equivalent post on that basis. Further, nothing has been shown to us to establish that he was subsequently regularized under DANICS before the enquiry proceedings were initiated against him and if that was so, the Disciplinary Authority of the petitioner continued to be the Lt. Governor even on the date of issuance of Memorandum of Charge-sheet on 20.2.1989 and also issuance of suspension order dated 2.1.1991. Thus, the argument that Lt. Governor was not the appointing authority in the case of petitioner is untenable and is liable to be rejected.

4. The next limb of argument of the learned counsel for the petitioner is that the alleged acts of commission and omission on the part of the petitioner as Administrator of the Society were at best irregularities committed by him inadvertently and therefore do not amount to alleged misconduct. It was submitted that the petitioner was charge-sheeted on eight counts and out of which he has been exonerated fully on four counts and partly on one count. He submitted that the charges on which the petitioner has been exonerated by the Enquiry Officer were more serious than those in which he has been held guilty. He submitted that the charges on which he has been held guilty by the Enquiry Officer are of very trivial nature and have not been properly proved inasmuch as the petitioner being Administrator of the Managing Committee, was empowered to carry on day-to-day affairs of the society

including withdrawing of the amount for the daily activities of the Society.

5. To appreciate these submissions of learned counsel for the petitioner, it may be relevant to refer to the Enquiry Report whereby three charges were held to be fully proved and one partly and other four charges were not proved against him. The charges which could not be substantiated or proved were (i) the alleged withdrawal of Rs.1,20,000/- from the funds of the Society and unauthorized utilization of the same; (ii) the alleged misappropriation of about Rs.11,861/- which were withdrawn for purchase of printing of stationery by forged and fabricated bills; (iii) the alleged payment of Rs.3,000/- to the Chartered Accountant of the Society; (iv) the alleged unauthorized payment of Rs.2,000/- to the Chartered Accountant of the Society.

6. The charges which stood proved against the petitioner were (i) withdrawal of Rs.15,000/- and unauthorized payment to himself as rent of his house let out to the Society; (ii) withdrawal of Rs.4,000/- from the Society by cheque, but entry made in this regard of Rs.500/- only in the counter-file; (iii) having withdrawn Rs.5,00/- from the account of the Society, but spending only Rs.192.50 for purchase of heater and not refunding the balance. The charge which was partly proved against the petitioner was his having withdrawn Rs.5073/-, but having failed to submit the account thereof.

7. The plea raised by the petitioner was accepted by the Enquiry Officer that the petitioner had spent this amount, but could not submit the bills thereof and so this amount could not be misappropriated by the petitioner. The petitioner ultimately deposited this amount with the Society.

8. The learned counsel for the petitioner submitted that from the charges leveled and not proved and those which were proved, it would be seen that the charges which were proved or partly proved were of very trivial nature as against those which were not proved. Based on this premise, the learned counsel for the petitioner submitted that the punishment of removal imposed upon the petitioner was quite disproportionate to his alleged acts of commission and omission. He relied upon the case of ***Ramanuj Pandey v State of Madhya Pradesh & Ors.*** [(2009) 7) SCC 248] wherein it was held:

*“11. While considering the power to interfere with the order of punishment, this Court in ***Rangaswami v State of TN*** [1989 Supp(1) SCC 686] held that this Court while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty. Accordingly, the punishment of the appellant of dismissal from services as imposed by the disciplinary authority is substituted to one of compulsory retirement from the date of his dismissal from service i.e. 7.5.1992.”*

9. Learned counsel for the petitioner also relied upon the case of ***Ex. H.C. Rajender Singh v Union of India and Ors.*** [143 (2007) DLT 197

(DB)] wherein a Division Bench of this Court with regard to the proportionality of the punishment, discussed the law on the point and held as under:

“5 We have given our careful consideration to the submissions made at the Bar and perused the record. The quantum of punishment to be awarded to a delinquent employee is a matter that rests primarily with the Disciplinary Authority. A Writ Court may not interfere with the punishment imposed by the Disciplinary Authority or an authority higher to it if the Court finds that the punishment awarded suit the offender and the offence. The Court would not, however, hesitate to step in if it finds that the punishment is so disproportionate, excessive or harsh as to constitute evidence of bias or patent arbitrariness on the part of the Authority making the order. The Supreme Court has in this regard evolved what has come to be known as the ‘Doctrine of Proportionality of punishment’. A long line of decisions that have touched this aspect permit interference with punishment imposed by the Disciplinary Authority in cases where the same is found to be so disproportionate as to shock the conscience of the Court. We may refer in this regard to some of the decision to bring out this aspect more articulately.

6. In Bhagat Ram v State of Himachal Pradesh and others, 1983(2) SCC 442, Their Lordships of the Supreme Court held that the penalty imposed on a delinquent employed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the

gravity of the misconduct is violative of Article 14 of the Constitution. That position was reiterated by the Court in Ranjit Thakur v. Union of India & Others, 1987(4) SCC 611 wherein the Court emphasized that all powers have a legal limit and that while the question of the choice and quantum of punishment is within the jurisdiction and discretion of the Disciplinary Authority the sentence has to be such as to suit the offence and the offender. The Court relied upon the decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service, (1984) 3 ALL ER 935 while holding that 'Doctrine of Proportionality' as a part of judicial review was recognized in the Administrative Law. Applying the said doctrine, the recognized in the Administrative Law. Applying the said doctrine, the Court held that if in a given case the quantum of punishment appears to be an outrageous defiance of logic, then the sentence would not be immune from correction. The following passage of the decision succinctly sums up the legal position:

“Judicial review generally speaking, is not directed against a decision, but is directed against the ‘decision-making process,. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of

the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of juridical review.”

7. *To the same effect, are the decisions in UOI v. K.G. Soni, VI (2006) SLT 651=2006(6) SCC 794. The Commission of Police v. Syed Hussain, II (2006) SLT 257-2006(3) SCC 173, and Madhya Pradesh Electricity Board v. Jagdish Chandra Sharma, III (2005) SLT 15 = 2005(3) SCC 401.*

8. *The decision Mahinder Singh’s case (supra) relied upon by the petitioner is a reiteration of the very same principle. Mahinder Singh, the petitioner in the said case, had been dismissed for remaining absent from duty for 5½ months without sanctioned leave or prior intimation. That was considered by the Court to be reprehensible conduct on the part of any member of the disciplined force. Even so, since the petitioner had put in more than 23 years of service, the Court directed the authorities to consider his request for converting the order of dismissal into an order of compulsory retirement, if a representation to that effect was made. The Court observed:*

“Counsel appearing for the respondent submitted that the order of dismissal may be converted into an order of compulsory retirement from service as the respondent has already put in more than 23 years of service. Counsel appearing for the appellants after taking instructions states that the case of the respondent would be considered sympathetically by the authorities if he moves an application for converting his order of dismissal

into an order of compulsory retirement. Impugned orders are set aside. The authorities however shall be at liberty to pass an appropriate order on the representation, if any, filed by the respondent for converting the order of dismissal into an order of compulsory retirement.”

10. Keeping in view the allegations leveled against the petitioner and proved against him in the backdrop of law as laid down in the aforementioned judgments, we proceed to record that the enquiry was conducted against the petitioner when he was not working as an Administrator in the Society and after he had handed over the charge to the new incumbent. It was recorded by the Enquiry Officer and was taken note of by CAT that the records of the Society, particularly the cashbook, account books were not produced during the Enquiry proceedings. The petitioner's stand has been that had the said record been produced, he would have been able to explain the withdrawal and the expenditure he had incurred while working as Administrator in the Society. With regard to the charge of his having given his own premises on rent and withdrawn Rs.15,000/-, the case of the petitioner was that the same was taken for keeping the record of the Society with the approval of Registrar of Societies. Admittedly, there was no written approval obtained by him from the Registrar of Cooperative Societies, but in one of the notes submitted to the Registrar of the Cooperative Societies, it was mentioned that the ledger and cash books etc of the Society were being kept and maintained at his residence.

11. With regard to the allegation of his having written Rs.500/- on the counter-file of cheque of Rs.4,000/-, the petitioner had denied this and maintained that he had not written Rs.500/- on the counter-file. The Enquiry Officer had recorded that the cash book etc had not been brought on record by the Department, but nothing would have prevented the petitioner to bring these documents on record. As noted above, admittedly the record was in the possession of the society and not within the reach of the petitioner. In view of the categorical assertion made by the petitioner in this regard, the same could have been summoned by the Enquiry Officer from the records of the Society. Non production of the said record seems to have caused grave prejudice to the petitioner on this count. The charges regarding his having withdrawn Rs.500/- and spending only Rs.192.50 for purchase of a heater and having misappropriated the balance, the petitioner had stated that the balance amount was utilized on account of miscellaneous expenses pertaining to purchase of bulbs, tubes, lights etc. Similar was the reasoning given by the Enquiry Officer with regard to this charge also that the same could have been proved by the petitioner that he had spent the balance amount for purchase of tubes, bulbs etc. For the same reason, as noted above, the petitioner could be said to have been prejudiced for non-production of the record by the Society. The charge which was partly proved was the petitioner's inability to produce the bills of expenditure of Rs.5073/- . The Enquiry Officer had recorded that the petitioner was not able to

submit the necessary bills of expenditure and since he had deposited this amount, he could not be said to have misappropriated this amount.

12. Having discussed the charges proved against the petitioner and the one which was partly proved, it would be seen that the entire evidence on which the enquiry report was based was shaky and it was primarily on account of inability of the petitioner to prove and explain the expenditure incurred. Hiring of his premises on rent for the Society without any written approval of the Registrar of Societies and the other charges to the extent they were proved, would not amount to serious misconduct on the part of the petitioner, but only acts of carelessness and irregularity.

13. At the time of incident, the petitioner undisputedly was on the verge of his retirement having put in unblemished service of about 29 years. His entire unblemished service of about 29 years came to an end and he got deprived of valuable right of receiving pensions and other benefits for the rest of his life. The petitioner is now aged around 72 years. Since the petitioner had already attained the age of superannuation and was not entitled to be reinstated, we are of the considered view that the ends of justice would be met if the punishment of removal of service is modified to compulsory retirement.

14. The Disciplinary Authority as well as the Appellate Authority did not appear to have kept this aspect in mind while directing his removal from service. The removal from service of a person, who has not yet

earned pension, may not be so harsh as in the case of removal of one, who has earned such a right after having put in about 29 years of service. What makes the punishment so harsh and disproportionate is forfeiting the rights which he had acquired by tendering his long service. In a case like this, the denial to him and his family members' sustenance for the rest of their lives would be the more serious facet of order of his removal from service. We are, therefore, of the considered view that the punishment by way of removal of the petitioner from service in the instant case was totally disproportionate to the gravity of the acts committed by him.

15. The only question remained for our consideration is as to whether we ought to modify the punishment ourselves or remand the matter back to the Competent Authority for doing the needful. We are conscious that the normal rule is to remand the matter back to Competent Authority to pass appropriate orders. However, we need to appreciate that the enquiry relates to the acts of misconduct of the year 1986-87 and he was removed from service way back in 1993 and has in due course superannuated many years before. He is now aged about 71 years. We, therefore, think it appropriate to cut short the unavoidable delay and procrastination for settlement of the case. Thus, we don't intend to remand the matter back to the competent authority, but instead take it to ourselves to pass an appropriate order. In the entire factual matrix, as discussed above, we are of the view that the ends of justice would be met in modifying the order of punishment from removal to compulsory

retirement. In arriving at this conclusion, we are also persuaded with the observations made by the Supreme Court in the case of ***B.C. Chaturvedi v Union of India*** [1 (1995) 6 SCC 749] wherein it was held:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a 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 or 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.”

16. In view of the foregoing facts and circumstances, we set aside the impugned order dated 21.12.1999 passed by Principal Bench, New Delhi of Central Administrative Tribunal (CAT) whereby OA No.495 of 1995 was dismissed. The writ petition stands disposed of in the manner indicated above. The respondents are directed to give effect to this order

within a period of three months from today and release the accrued benefits to the petitioner.

**M.L. MEHTA
(JUDGE)**

ACTING CHIEF JUSTICE

November 25, 2011

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