

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.07.2014
% **Judgment delivered on: 21.08.2014**

+ **W.P. (C) No. 8089/2013 and C.M. No.2094/2014**

**COUNCIL FOR ADVANCEMENT OF PEOPLE'S ACTION AND
RURAL TECHNOLOGY (CAPART) & ANR. Petitioners**

**Through: Shri S.K. Rungta, Sr. Advocate with
Sh. Prashant Singh, Sh. Varun Gupta
and Ms. Heena Dua, Advocate.**

versus

ARUN SHAH

..... Respondent

**Through: Ms. Vibha Datta Makhija, Sr.
Advocate with Sh. Anuj Puri and Ms.
Archi Agnihotri, Advocate.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition under Article 226 of the Constitution of India has been preferred to assail the order dated 30.10.2013 passed in O.A. No. 3232/2011 by Central Administrative Tribunal, Principal Bench, Delhi (Tribunal), whereby the Tribunal has allowed the Original Application of the respondent.

2. The Petitioner No. 1 is a society registered under Societies Registration Act, 1860 under the aegis of Ministry of Rural Development, Govt. of India and is engaged in the work of rural development by providing

assistance to Voluntary Organizations for implementing rural development programmes as per its guidelines in this behalf. The Respondent was working as Member Convener and Dy. Director at Regional office of Petitioner No.1 (CAPART) society during March, 2001 to June 2003 at Patna.

3. During the said period, the respondent received a proposal from Baidyanath Mahile Sanskriti Manch, Sriniketan Machhauatoli, Patna (Voluntary Organisation). The proposal was submitted for construction of a fuel efficient crematorium for which CAPART had a scheme of funding.

4. The respondent, for the purpose of project, demanded certified copies of attested documents such as bank pass book of SB A/c No.9325 with PNB Patna, Audit reports and annual reports for three years, ITR submitted by the Voluntary Organization on 27.10.2002, list of Executive Committee and minutes of Gram Sabha meetings, etc. but later on accepted the unattested photostat copies of the said documents and proceed to recommend the case of the voluntary organization for release of funds.

5. On 18.12.2002, the said project was sanctioned in favour of the Voluntary Organisation and an amount of Rs.1,70,000/- was released to the Voluntary Organisation as the first installment in March, 2014. In August/September, 2005, an evaluation team found that hardly any work had been done by the Voluntary Organization. The records of the Voluntary Organization were found to be forged and fabricated. The physical verification, inter alia, found no trace of the crematorium at Bishanpur-Pharpur. It found that nearly Rs. 1.20 lakhs from out of the grant of Rs.1.70

lakhs had been embezzled. This resulted into registration of a case by CBI. The CBI also found the documents of the Voluntary Organization to be forged and fabricated. While registering a case against the officials of the Voluntary Organization and one Facilitator-cum-Evaluator of the CAPART, the CBI recommended initiation of major penalty proceedings against the respondent.

6. On the basis of the recommendation of CBI to the Department, departmental proceedings were initiated against the respondent for the aforementioned act. The article of charge and statement of imputation was given to the respondent vide Memorandum dated 07.03.2008, which was replied to by the respondent. The Disciplinary Authority appointed an Inquiry Authority to inquire into the charges against the respondent.

7. Broadly, the charge against the respondent in the articles of charge was that, while functioning as the then Member Convener in CAPART regional Committee, Patna during the period from March 2001 to June 2003 he failed to maintain absolute integrity, honesty and devotion to duty in as much, as, he accepted uncertified forged copies of mandatory documents submitted by the Voluntary Organization, and got the sanction of the project from the Regional Committee on the same day against the guidelines of CAPART, resulting in a loss of Rs. 1,70,000/-.

8. The Inquiry officer bifurcated this Article of charge into two parts as follows:-

- i. *Acceptance of uncertified copies of mandatory documents i.e. bank pass book of SB A/c no.9325 with PNB Patna, Audit*

reports and annual reports for three years, ITR, List of Executive committee and minutes of meetings etc. by C.O. which is against the guidelines of CAPART and;

- ii. Doubt was there in the mind of Shri Arun Shah about the genuineness of the documents but he did not exercise enough caution for the same and got the Project sanctioned by placing it before the regional Committee with his recommendations which resulted in loss of Rs.1.70 lakh to the CAPART.*

9. The Inquiry Authority found the said article of charge to be partly proved. However, the disciplinary authority, after granting an opportunity to the respondent-by providing him a copy of the Enquiry Report on 30.03.2010 and, putting him to notice of his disagreement note, and also enquiring of him on 04.08.2010 as to why he had not utilized the services of the three Research Officers posted under him to make enquiries about the Voluntary Organization, imposed the penalty of Compulsory Retirement on the respondent, while observing as follows:-

“WHEREAS a copy of the report of Inquiring Authority was sent to Shri Arun Shah vide CAPART Memorandum No. 14-16/2007-Vig dated 30.03.2010 and he was given an opportunity to submit his representation on the report. Shri Arun Shah made his submission on 15.04.2010 with reference to the above letter, Shri Arun Shah was given another opportunity vide CAPART’s letter No. 14-16/2007-Vig dated 04.08.2010 to explain the reasons for not utilizing the services of three Research Officers posted under him. Shri Arun Shah submitted his reply on 11.08.2010 with reference to the above letter.

AND WHEREAS the report of Inquiry and the submissions made by Shri Arun Shah have been considered by the undersigned along with the facts and records of the case and having regard to the same it is observed that Shri Arun Shah accepted unattested copies of documents from the VO inspite of

the fact that Shri Arun Shah himself initially asked the VO to submit certified copies of documents from Gazetted Officer/Notary but he did not care to ensure it and later compromised with the VO. As corroborated by the facts, Shri Arun Shah preferred to utilize the services of a Young Professional (YP) for the processing of project who is only a trainee at CAPART, not the three Research officers who were regular employees posted under him.

WHEREAS the undersigned also observed that Shri Arun Shah failed to maintain absolute integrity and devotion to duty and functioned in a manner unbecoming of a CAPART employee by accepting unattested copies of documents from the VO in contravention of CAPART guideline which were also found to be forged and fabricated by the CBI and recommending sanction of the project without exercising enough caution which finally resulted into loss to CAPART to the tune of Rs. 1,70,000/- and damaged the reputation of CAPART as well.

NOW THEREFORE taking into consideration all the above relevant facts and records, the undersigned is satisfied that good and sufficient reasons exist for imposing on Shri Arun Shah, Deputy Director, the penalty of compulsory retirement with effect from 24.11.2010 (Afternoon) in accordance with the provisions relating to his superannuation or retirement.”

10. The Disciplinary Authority had also sought the advice of the CVC, and accepted the second stage advice of CVC for imposing suitable major penalty.

11. Thereafter, the respondent preferred an appeal against the said order and during the pendency of the appeal, he filed O.A. No. 11/2011, which was disposed off vide order dated 02.05.2011 as pre-mature, and with the direction to the appellate authority to decide the pending appeal of the respondent within a period of six weeks. Subsequently, the Appellate

Authority viz. Minister for Rural Development, vide order dated 28.07.2011 decided the appeal against the respondent.

12. Aggrieved by the aforesaid penalty, the respondent filed O.A. No.3232/2011 challenging the order dated 24.11.2010 of the Disciplinary Authority, as well as the order of the Appellate Authority dated 28.07.2011.

13. The said O.A. was allowed vide impugned order dated 30.10.2013 on the ground that the punishment imposed was disproportionate, by referring to a decision of the Executive Committee, and the matter was remanded back to the disciplinary authority for considering appropriate quantum of penalty. In view of the above, the petitioner has preferred the present petition.

14. Before we proceed to deal with the submissions of the parties, we consider it appropriate to analyse the impugned order. The findings returned by the Tribunal, which have not been questioned by the respondent, are that the disciplinary proceedings were not vitiated because the original papers/files were not shown to the respondent. The respondent had, at no point of time, questioned the veracity of the documents relied upon by the petitioner during the course of inquiry and no prejudice had been claimed to have been caused because of the reason that such original documents were not produced. On the issue whether the CAPART guidelines for advancement of rural technology scheme had been produced during the course of inquiry, which was relied upon by the petitioner to submit that photocopies of documents were required to be attested by a Gazetted Officer/ Notary, the Tribunal returned the finding that, it is not clear whether the CAPART

guidelines existed at the relevant time. The Tribunal also finds discrepancy on the issue whether the CAPART guidelines form part of the listed documents. At the same time, the Tribunal returned the finding: *“However, we notice that in the ultimate analysis both the DA and AA have stressed on the fact that the applicant having once asked for attested copies of certain documents failed to ensure compliance of his own direction before placing them for the approval of the Regional Committee”*. In this respect, the Tribunal extracted the following observations from the report of the inquiry authority.

“the version of P.O. appears to be logical when he states that C.O. had the doubt about genuineness of Documents because otherwise there was no reason for calling the authenticated/attested copies of Documents submitted by the V.O. when it is not prescribed so in the guidelines of Capart. Moreover if C.O. had asked for these un-called for Documents in the interest of transparency, then it was all the more necessary for him to ensure that they are received/perused by him & is satisfied about the positive information before recommending the Project to R.C. Patna which he never did.”

15. The Tribunal goes on to observe as follows:

“Hence, the allegation with regard to failure of the applicant in ensuring compliance to his own direction would not get obliterated or diluted even if the CAPART guidelines was mentioned in the list of documents.”

16. The Tribunal also held in favour of the respondent that the inquiry authority had split the charge into two which vitiated the disciplinary proceedings. The Tribunal held that the petitioner had not established breach of a mandatory procedure since the CAPART guidelines as they existed in 2002 had not been proved on record.

17. At the same time, the Tribunal rejected the respondent's submission that the Young Professional (YP) was responsible to scrutinize the documents and that since the YP had scrutinized and submitted the proposal stating that everything was in order, the respondent was not expected to once again get the entire scrutiny done by him. The Tribunal, while rejecting this argument, held as follows:

“This argument does not hold water as it was applicant himself who had asked vide letter dated 24.08.2002 for alleged copies of certain documents and it was expected of him that once the proposal was resubmitted, he would verify whether his instructions had been carried out. Even otherwise being a supervisory officer he cannot escape his responsibility for any lapse in the scrutiny of the proposal, especially when the person putting up the proposal is a contract employee and not even a regular employee.

20. *The applicant has claimed that there was no financial loss to the CAPART. The claim does not appear to be convincing in the face of the fact that a fictitious organization succeeded in getting Rs.1,70,000/- released by the Regional Office at Patna but the Project objectives were never achieved.”*

18. The submission of the respondent that the disciplinary authority, by issuing the letter dated 04.08.2010 – inquiring from the respondent as to why the services of the three Research Officers, who were regular employees and posted under the respondent, had not been utilized, vitiated the disciplinary proceedings, was also rejected. The Tribunal held that by issuing the said communication, the disciplinary authority had given the respondent an opportunity to explain his conduct and, therefore, the principles of natural justice were complied with. The allegations of *mala*

fide leveled by the respondent against the Chief Vigilance Officer were also rejected by the Tribunal.

19. A perusal of the impugned order shows that the Tribunal was impressed by the minutes recorded by the Executive Committee of CAPART in its 51st meeting held on 25.01.2010, which, *inter alia*, recorded as follows:

“After a detailed discussion on the findings of the Inquiry Officer, the disciplinary authority, the appellate authority and the review petition, the Committee came to the conclusion that the penalty was disproportionately on the higher side and recommended that a minor penalty for Censure would adequately meet the ends of justice. The Committee further opined that expenditure, if any, incurred beyond the Powers delegated to the authority of RR&MC the same be recovered from the officer....” was approved by the Executive Committee.”

20. The Tribunal observes that the appellate authority of CAPART is the Chairman of the Executive Committee and the disciplinary authority as well as the appellate authority while passing the impugned orders had not taken into account the recommendations of the Executive Committee. The Tribunal relied upon the order passed in TA No.1446/2009 dated 06.05.2011. In this order, the Tribunal had reproduced the order passed by the disciplinary authority, i.e. the Director General of CAPART. The Director General of CAPART, acting as the disciplinary authority, had referred to the consideration of the case by the Executive Committee of CAPART. On this basis, the Tribunal questioned as to why the observations of the Executive Committee were not considered before rejecting the same in the present case. The Tribunal in its impugned order observed as follows:

“26. From the foregoing discussion it emerges that IO’s finding that the charge was partly proved was rightly based on the fact that there was no document to prove that attestation of certain documents was mandatory under the CAPART guidelines. The reason given by the DA for disagreeing with this finding of the IA does not address the main issue. The violation of CAPART guidelines was never proved. In our view there was a violation of the principles of the natural justice to the extent a copy of the CAPART guidelines applicable at the time of the sanctioning of the project was not made available to enable him to prepare his defence but that portion of charge was taken as proved by the DA. [Kumaon Mandal Vikas Nigam, Sher Bahadur and O.P. Sharma (supra)] What is also irreconcilable is that the written midterm evaluation of the work at site was done by two teams. One team gave satisfactory report and the other termed it as not upto the mark. The respondents have not given any reason for discarding the first report and ordering the second evaluation.

27. There is also no explanation as to why no action was taken against the YP who cannot be absolved of the responsibility of not complying with the objection of the applicant for getting attested documents and not pointing out this deficiency in the final note. In S.R. Tewari’s case (supra) in the context of an appointment recommended by a Board of officers but disciplinary action being taken against the Chairman, the Hon’ble Supreme Court observed thus:

“the matter was considered by a Board consisting of several officers and the appellant could not have been selectively targeted for disciplinary action.”

In this case also there were persons other than the applicant in the entire decision making process but respondents made no effort to probe their culpability.

28. The charge that has been established is the fact that having once asked for certified copies of certain documents on his own, the applicant failed to ensure compliance to his own

direction. We are of the view that even if the charge as stated in the charge-memo is taken as established, the failure on the part of the applicant is procedural. Nowhere, it has been alleged that there was any nexus between the applicant and the VO or any evidence of collusion. Considered in this perspective the penalty imposed on the applicant appears to be disproportionately high and falls in the category where it shocks the judicial conscience [B.C. Chaturvedi (supra)]. Our conclusion in this regard is in consonance with the recommendations of the Executive Committee on the quantum of punishment to the extent that the punishment imposed on the applicant is disproportionate. We are of the considered view that intervention of this Tribunal in the present case is justified and warranted [Pritam Singh and Mahesh Kumar Mishra (supra)].

29. Considering the entire conspectus of this case, we hereby quash and set aside the orders dated 29.07.2011 and dated 21.11.2010 passed by the AA & DA respectively and remand the matter back to the DA for considering appropriate quantum of penalty taking into account our observations and the recommendations of the Executive Committee. The applicant will be reinstated from the date he was compulsorily retired and will be entitled to back wages and other consequential benefits as per the rules which will be further subject to the final order passed by the DA with regard to the quantum of penalty under the aforesaid directions. The order shall be implemented within four weeks from the date of receipt of this order. The OA is allowed accordingly. No costs."

21. The submission of Mr. Rungta, learned senior counsel for the petitioner is that the approach of the Tribunal in the present case is completely flawed. He submits that the present was a clear case of, to say the least, gross negligence on the part of the respondent in processing the case of the Voluntary Organisation. The respondent was working as the Member Convenor and the Deputy Director at Regional Office of the

petitioner society at the relevant time. The respondent, on his own, asked the Voluntary Organisation to provide certified copies of attested documents such as, the bank passbook of their PNB account, audit reports and annual reports for the last three years, Income Tax Returns submitted by the Voluntary Organisation, list of Executive Committee members, minutes of Gram Sabha meetings, etc. However, without any reason or explanation, the respondent waived the said condition. Not only this, even though the respondent had three Research Officers working under him, he had not utilized their services for verification of the antecedents of the Voluntary Organisation and the documents produced by it. Instead, he utilized the services of the trainees, i.e. the YP, who are not regular employees of the CAPART and are, therefore, not accountable. Mr. Rungta submits that the misconduct of the respondent did not stop on this. The respondent had got the case of the Voluntary Organisation cleared from the Regional Committee on 18.12.2002 i.e. on the same day.

22. Mr. Rungta submits that even though the Tribunal took note of the decision of the Supreme Court in ***B.C. Chaturvedi Vs. Union of India***, (1995) 6 SCC 749, wherein the Supreme Court had held that the High Court/Tribunal in exercise of its jurisdiction of judicial review cannot normally interfere with the punishment imposed by the disciplinary authority/appellate authority, except where it shocks the judicial conscience, the Tribunal has proceeded to interfere with the punishment of compulsory retirement imposed upon the respondent.

23. The decision of the Tribunal falls foul of the judgment of the Supreme Court in ***Ranjit Thakur Vs. Union of India & Others***, (1988) 1 SCR 512.

The Supreme Court has held in this case that the question of choice and quantum of punishment is within the jurisdiction and discretion of the disciplinary authority, 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 Supreme Court invoked the doctrine of proportionality as a part of concept of judicial review to ensure that even on the aspect of penalty/ punishment – which is otherwise within the exclusive province of the disciplinary authority, the Court in judicial review may correct the penalty/ sentence if the same “*is an outrageous defiance of logic*”. The Supreme Court held that irrationality and perversity are recognized grounds of judicial review.

24. Mr. Rungta submits that in the facts of the present case, when the petitioner had suffered a monetary loss of Rs. 1.7 lakhs on account of the Voluntary Organisation playing a fraud on the petitioner due to, at least, gross negligence on the part of the respondent, the penalty of compulsory retirement could not be said to be shockingly disproportionate to the misconduct of the respondent.

25. On the other hand, learned senior counsel for the respondent has supported the decision of the Tribunal by urging that the petitioner had not been able to establish that it was mandatory for the respondent to accept only certified copies of the aforesaid documents, namely the bank passbook, audit reports and annual reports, Income Tax Returns, list of Executive Committee members, etc. Learned counsel submits that the petitioner had not produced the CAPART guidelines, which have been relied upon in the

impugned order dated 24.11.2010 passed by the disciplinary authority while imposing the penalty of compulsory retirement upon the respondent. She has also sought to place reliance on *Union of India and Others Vs. Gyan Chand Chattar*, (2009) 12 SCC 78; *M/s Ashiana Cargo Services Vs. Commissioner of Customs (I&G)* in Cus. AA No.24/2012 dated 14.03.2014 reported as MANU/DE/0682/2014, apart from the judgment in *Ranjit Thakur* (supra) to submit that the punishment imposed was grossly disproportionate to the minor infraction of procedure attributed to the respondent.

26. Having heard learned senior counsel for the parties, perused the entire record and the impugned order, we are of the considered opinion that the impugned order is laconic and cannot be sustained. The approach of the Tribunal in dealing with the present case, in our view, is flawed. The Tribunal, as aforesaid, has itself found that the respondent had not explained as to why he proceeded to accept mere photocopies of documents, of which he had earlier desired submission of attested copies by the Voluntary Organisation. Whether, or not, the CAPART guidelines were produced and whether, or not, the said guidelines, as applicable, require the submission of attested copies of documents, in our view, is not of much relevance. This is for the reason that the respondent was working as the Principal Convenor and the Deputy Director at the Regional Office of the petitioner society and the proposals of the Voluntary Organisations, which sought funding from the petitioner for execution of welfare projects, came to the respondent. It was the respondent's responsibility and duty to ensure that the requisite steps were taken and caution exercised in the matter of scrutiny with regard

to the genuineness of the Voluntary Organisations, seeking funding from the petitioner. The respondent, it appears, initially acted with prudence and caution expected of him, i.e. by requiring the submission of attested copies of the requisite documents in respect of the Voluntary Organisation. However, for reasons best known to him, the respondent subsequently accepted unattested copies of documents which turned out to be forged and fabricated.

27. Not only this, he also did not avail of the services of the three employees of the petitioner, namely the Research Officers for the purpose of verification of the antecedents of the Voluntary Organisation and the authenticity of the documents produced by it. Instead, he utilized the services of Young Professional, who was merely a trainee and a contractual employee. The respondent was also responsible for getting the proposal cleared from the Regional Committee on the same day, i.e. 18.12.2002.

28. The aforesaid facts & circumstances having been established, in our view, the other factors which swayed with the Tribunal were wholly irrelevant. The Executive Committee of CAPART had no role to play in the matter of enforcing discipline vis-à-vis the respondent. The Executive Committee was neither the disciplinary authority, nor the appellate authority of the respondent. Merely because the Executive Committee may have passed the resolution of which the Appellate Authority was also the Chairman, was no reason to conclude that the decision of the Executive Committee should have prevailed. Neither the disciplinary authority nor the appellate authority were obliged to take cognizance of the resolution passed by the Executive Committee, since the said resolution had been passed when

the Executive Committee had no role to play in the matter. Merely because in another case, the disciplinary authority had referred to the fact that the Executive Committee was of the same view, is no reason to assume that in every such case either the disciplinary authority, or the appellate authority, is bound to consider and take into account the view of the Executive Committee.

29. Action was taken against the respondent since he was the Member Convenor and Deputy Director at the Regional Office where the Voluntary Organisation had submitted its proposal and the same had been processed under the supervision of the respondent. Whether, or not, similar action should have been taken against others is hardly a reason to doubt the action taken against the respondent. The action taken against the respondent has to be viewed in the context of the conduct of the respondent alone. The concept of equality cannot be invoked negatively by claiming that others had been let off and, therefore, the respondent too should have been let off. In this regard, reference may be made to ***Ram Sagar Singh Vs. State of U.P. and Ors.***, 2011 (4) ADJ 726; ***Gursharan Singh v. New Delhi Municipal Committee***, (1996 SCC (2) 459); ***Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore v. President, Indore Development Authority***, (2006) 2 SCC 604, and; ***Directorate of Film Festivals v. Gaurav Ashwin Jain***, (2007) 4 SCC 737.

30. The penalty of compulsory retirement imposed upon the respondent merely resulted in cessation of the respondent's service prematurely. The same has not adversely affected his right to receive retiral benefits. The conduct of the respondent, to say the least, was negligent which enabled the

Voluntary Organisation to play a fraud upon the petitioner leading to loss of Rs.1.7 Lakhs. The Evaluation Team found that hardly any work had been done by the Voluntary Organisation and that there was no address of the Crematorium claimed to have been constructed by the Voluntary Organisation at Bishanpur-Pharpur. In these circumstances, it certainly cannot be said that the penalty of voluntary retirement imposed upon the respondent was such as to shock the conscience of any Court or Tribunal.

31. In the light of the aforesaid discussion, reliance placed by the respondent on *Gyan Chand Chattar* (supra) and *M/s Ashiana Cargo Services* (supra) is of no avail. The decision in *Ranjit Thakur* (supra), in fact, supports the case of the petitioner more than it supports the case of the respondent since we are of the view that the punishment imposed upon the respondent was such as to shock the conscience of the Tribunal or of this Court.

32. Accordingly, we allow the present petition and set aside the impugned order while restoring the order passed by the disciplinary authority as well as the appellate authority compulsorily retiring the respondent from service. The parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

AUGUST 21, 2014