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

+ **W.P.(C) 8074/2012**

% *judgment dated 7th September, 2015*

S. P. DHIR

..... Petitioner

Through : Mr. Rajeev Sharma,
Ms. Radhalakshmi R. and
Ms. Priyanka Raj, Advocates.

Versus

UNION OF INDIA AND ANR.

..... Respondents

Through : Mr. Manish Mohan, CGSC with
Ms. Sidhi Arora and Mr. Shivam
Chanana, Advocates for respondent no.1.
Mr. R. K. Singh and Ms. Deepa Rai,
Advocates for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. A perusal of the order sheets shows that notice in the present petition has not yet been issued, although counsel for the respondents have already entered appearance and even filed their written submissions. Notice. Counsel for respondent no.1 and 2 accepts notice.
2. With the consent of the counsel for the parties, the writ petition is taken up for final hearing and disposal.
3. The petitioner, a former Under Secretary, National Council for Educational Research & Training (for short "NCERT"), is aggrieved by the order of the Central Administrative Tribunal (CAT) dated 31.08.2010 in O.A. 961/2007. He approached the CAT, feeling aggrieved by the orders issued by the disciplinary authority and the appellate authority,

dismissing him from service on the ground of misappropriation of Council's funds and submission of false accounts and forged vouchers pertaining to expenses incurred for organising Department of Education in Non-Formal and Alternative Schooling (for short "DENFAS") Training Programme organised at Coimbatore. The Tribunal has dismissed the aforesaid O.A. and consequently the petitioner has filed the present writ petition to challenge the order passed by the Tribunal.

4. In order to adjudicate the present writ petition, it is necessary to give the factual background of the case. The petitioner, Shri S. P. Dhir, being Assistant Project Coordinator, was entrusted with the responsibilities of organising the DENFAS Training Programme. The petitioner was handed a sum of Rs. 1,58,290/- for disbursement of TA/DA and other claims to attendants/experts who participated in the Training Programme. He was assigned with the responsibilities to oversee and regulate the financial expenditure of the programme and to render true and proper accounts of expenditure incurred in conducting the training Programme. Also, one Sh. Gopi Ram (working as PA, NCERT) was assigned the job of the PA for the programme. Thereafter, on conclusion of programme, the petitioner deposited Rs. 60,000/- as balance amount of the programme by means of draft and for the remaining part of the expenditure the petitioner handed over the vouchers, account statement of expenditure to Sh. Gopi Ram. Later on, it was found that the accounts submitted by the petitioner and Sh. Gopi Ram, contained many false entries and forged vouchers showing payments which were never actually made. The petitioner submitted false vouchers for more than Rs. 28,000/- against statement of expenditure of Rs. 98,290/-.
5. Mr. Rajeev Sharma, learned counsel for the petitioner submitted that the order passed by the Central Administrative Tribunal is unjust, illegal,

arbitrary and against the principles of natural justice. It is further submitted that the Tribunal has failed to appreciate that the inquiry proceedings and the consequent orders suffered gravely from the procedural and legal infirmities; in the light of the above submission the impugned order is bad in law.

6. Learned Counsel for the petitioner further submitted that removal of the petitioner from service is illegal and the order of removal is disproportionate to the gravity of charges proved against the petitioner, in any case, the present was a case of no evidence, and that it was merely a conjecture and surmise on the part of the authorities to conclude that it was a case of misappropriation.
7. Last of all, it was contended by the learned counsel for the petitioner that the petitioner was deprived of the opportunity of inspecting the original documents and the nomination of an officer to authenticate the alleged signature. The counsel further contended that the contentions of the petitioner was not fully dealt with in impugned order which could be summarised as under:
 - (i) Are the findings recorded in the departmental inquiry perverse?
 - (ii) Are they based on no evidence?
 - (iii) Does the inquiry suffer from the infirmity of non-application of mind?
 - (iv) Has the petitioner been prejudiced by some act or omission which caused the entire proceedings to be vitiated?
8. Mr. R. K. Singh, learned counsel for the respondent urged that no infirmity can be found with the initiation and conduct of departmental proceedings. The charges alleged against the petitioner were established on the face of the record and the inquiry proceedings were conducted in accordance with law and that there was no violation of the principles of natural justice. The counsel further submitted that no malafides or

illegality in the proceeding could be found; the said findings of Enquiry officer are findings of fact and cannot be re-opened before this Court. In these circumstances, the learned Tribunal acted correctly in not interfering with the decision of the respondent in issuing the dismissal order.

9. We have heard learned counsel for the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the Central Administrative Tribunal dated 31.08.2010. It is the case of the petitioner that the inquiry was jointly held against the petitioner and his Personal Assistant, Sh. Gopi Ram. The petitioner alleged that the findings of the disciplinary authority appears to be discriminatory as the co-delinquent Sh. Gopi Ram who had been simultaneously proceeded with the petitioner and was charged with identical allegations and misconduct, had been awarded the punishment of compulsory retirement. However, the petitioner was dismissed from services. The short point which comes up for consideration before this Court is as to whether the enquiry and the disciplinary proceedings have been conducted as per the prescribed procedure and whether the petitioner has been given adequate opportunity for his defence in the process. It would be useful to reproduce para 9 of the judgment of the Central Administrative Tribunal, which reads as under:

“The inquiry has been conducted as per the prescribed procedure. The inquiry officer’s report does not suffer from any shortcomings in as much as the inquiry officer has considered and answered all the arguments raised by the applicant in his defence statement. The orders of the disciplinary and appellate authorities have also taken into account the pleas of the applicant. The argument that the co-delinquent has only been awarded the punishment of compulsory retirement whereas the applicant has been dismissed, thereby discriminating against him has no force. As aptly noted by the appellate authority, the applicant had higher responsibility as compared to Gopi Ram by virtue of holding a higher post. The

applicant has committed grave misconduct of misappropriation of the NCERT's money and the punishment meted out to him is appropriate. In view of this, no interference is called for in the impugned orders. The O.A. is dismissed. No costs."

10. We have also carefully considered the submissions made by learned counsel for the petitioner that the findings of the disciplinary authority are discriminatory as the co-delinquent, Sh.Gopi Nath, who was charged with identical allegations, has been awarded the punishment of compulsory retirement. We find no force in this submission of counsel for the petitioner for the reason that the Tribunal has extensively relied upon the report of the Enquiry Officer to compare the role played by the petitioner and the co-delinquent that was his Personal Assistant, Sh.Gopi Nath. In the order passed by the CAT, paragraphs of enquiry report have been quoted and in view thereof, we find no grounds to disagree with the view taken by the CAT.
11. In order to analyze the gravity of the submissions made on behalf of the petitioner, it is necessary to refer to the decisions of Hon'ble Supreme Court as below:
 - i. The Hon'ble Supreme Court in ***Secretary to Government, Home Department and Ors. v. Srivaikundathan, 1998 (9) SCC 553***, has observed that the quantum of punishment imposed is matter to be considered by the disciplinary authority and the scope of judicial review regarding reducing of quantum of punishment was held impermissible.
 - ii. In ***Bank of India and Anr. v. Degala Suryanarayana, (1999) IILLJ 682 SC*** the Hon'ble Supreme Court held as under:

"The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the

departmental enquiry proceedings excepting in a case of malafides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained”

- iii. The Hon'ble Supreme Court in ***Regional Manager U.P. SRTC, Etawah and Ors. v. Hoti Lal and Anr.*** 2003 (3) SCC 605, has held that the scope of judicial review in respect of penalty/punishment is very limited and restricted and the Court must give reasons for holding the punishment to be not commensurate with the charges.
- iv. The Hon'ble Supreme Court in ***Damoh Panna Sagar Rural Regional Bank and Anr. v. Munna Lal Jain*** 2005 (10) SCC 84, has held that the Court's interference with the punishment is called for only when it is so disproportionate as to shock the judicial conscience.
- v. In ***V. Ramana v. A.P. SRTC and Ors.*** 2005 (7) SCC 338, the Hon'ble Supreme Court has held as under:

“Case-law shows that the Court should not interfere with the administrator's decision unless it was illogical or suffered from procedural impropriety or was shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards. The Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. (paragraph-11)

To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the

conscience of the Court/Tribunal, there is no scope for interference. Further, to shorten litigation, it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.(paragraph-12)”

- vi. In ***Government of A.P. and Ors. v. Mohd. Nasrullah Khan*** 2006 (2) SCC 373, the Hon'ble Supreme Court has observed that in exercise of powers of judicial review under Article 226 of the Constitution, the High Court cannot act as an Appellate Authority in respect of the findings of the disciplinary authority confirmed by the Appellate Authority. The relevant paragraph of Nasrullah Khan (supra) is reproduced as below:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But the finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the

evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

- vii. In ***Divisional Controller, N.E.K.R.T.C Vs. H. Amaresh (2006) III LJ 232 SC***, the Apex Court, after taking into account the earlier decisions, held in para 18 as under:

“In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.”

- viii. In ***A.P. SRTC v. Raghuda Siva Sankar Prasad 2007 (1) SCC 222***, the Hon'ble Supreme Court has observed that the High Court can modify the punishment in exercise of its powers under Article 226 only when it finds that punishment is shockingly disproportionate to the charges proved.

- ix. In view of the decision of *Hon'ble Supreme Court in U.P. State Road Transport Corporation v. Vinod Kumar 2008 (1) SCC 115*, the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. There is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. There is no place for generosity or misplaced sympathy on the part of the judicial forums in interfering with the quantum of punishment.
- x. The Hon'ble Supreme Court has further observed in *State of Meghalaya v. Mecken Singh N. Marak 2008 (7) SCC 580*, that while considering proportionality of punishment, the Court should also take into consideration, the mental set-up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision-making process. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands. By fettering discretion of appellate authority to impose punishment which should be short of removal from service, the High Court misdirected itself while exercising its power under Article 226.
- xi. The Hon'ble Supreme Court in *Noharlal Verma v. District Co-operative Central Bank Ltd. 2008 (14) SCC 445*, has observed that writ Court normally does not substitute its own decision for the decision of the disciplinary authority unless the decision of the disciplinary authority shocks conscience of the Court, or no

"reasonable man" would impose such punishment, or the decision-maker while making the decision.

xii. The Hon'ble Supreme Court has held in *Praveen Bhatia v. Union of India* (2009) 4 SCC 225, that the scope of judicial review is limited and the powers of the Court to interfere with the quantum of punishment is extremely restricted. The Court can direct only when relevant factors have not been considered. In very rare cases, Court may also indicate punishment which ought to be imposed.

12. Keeping in view the above guidelines laid down by the Supreme Court, we are satisfied that the charges in question were established by the presence of overwhelming evidence and that the Enquiry Officer acted reasonably and with the objectivity by holding those charges as proved. We discern no malafides or perversity at any stage of the proceedings. The learned Tribunal thus, with respect, rightly found no ground to interfere.
13. With regard to the grievance of the petitioner that the learned Tribunal failed to deal with the contentions raised by him. We find that neither any finding can be characterised as perverse nor biased or based on no legal evidence. The Enquiry Officer peeped into the evidence, sifted it, analysed it and then only returned his findings. The inquiry report, thus, cannot be condemned on the non-existent infirmity or non application of mind. The inquiry report of the petitioner shows that ample opportunity was granted to him to cross examine which opportunity was fully utilised by him.
14. In view of the settled position as indicated above, this Court cannot sit as an appellate authority over the finding of the disciplinary authority as well as Appellate Authority. Keeping in view the gravity of the charges

against the petitioner, the report of Enquiry officer affirmed by disciplinary authority as well as the Appellate Authority, the said punishment of removal of petitioner from service does not shock the conscience of this Court. Therefore, in our considered view, this Court is not inclined to interfere in the order dated 11.10.2001 as well as 18.08.2006. The writ petition being devoid of merits is therefore, liable to be dismissed.

C.M. No. 12012/2014 (STAY)

15. Since the writ petition stands dismissed, the above application becomes infructuous. Accordingly, the same is dismissed as infructuous.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 07, 2015

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