HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.11552 OF 2001

ORDER:

The petitioner filed this petition seeking a direction against the respondents 1 to 3 for payment of salary for the period from 20.10.1997 to 27.10.1998 and from 27.07.1999 to 21.04.2000 treating the same as 'on duty', release two annual grade increments and declare the action of the respondents in the Order No.PERS/AM/P/SA- 23736/88, dated 17.04.2000 as illegal and arbitrary.

02. The petitioner, while working as Assistant Manager (F/A), at Regional Manager Office, A.E., Ananthapur, was placed under suspension vide proceedings dated 20.10.1997 on the basis of certain irregularities committed in the year 1993 to 1996 in the office of the Regional Manager (AC), Kurnool. Initially he was relieved from deputation on 20.11.1996. On 24.02.1997 a regular transfer order was issued. After 11 months of transfer from Kurnool, the petitioner was placed under suspension.

03. On the basis of preliminary/ fact finding report, a charge memo was issued framing two charges for exhibiting negligence in discharging duties, thereby caused loss to the Corporation and for suppression of information which caused loss to the Corporation. On receipt of the charge memo dated 31.12.1997, a detailed explanation dated 19.01.1998 was submitted denying the charges. The respondents by order dated 22.10.1997 appointed Sri G. Vidya Sagar, Manager (Enquiries) as Enquiry Officer to conduct enquiry about the irregularities and submit report, having dissatisfied with the explanation, against the petitioner and 5 others. However, during enquiry, he was not permitted to take assistance of Sri B. Eshwar Reddy, Co-Employee (Senior Accountant) to examine the witnesses. Thus the Enquiry Officer did not afford opportunity to defend himself in

the enquiry and even no reasonable opportunity was afforded to file written statement. However, the petitioner filed written statement on 15.10.1998. After completion of enquiry, the petitioner was reinstated into service on 20.10.1998, posted to work as Assistant Manager (Finance) in the Head Office at Hyderabad. About seven months after his reinstatement, a show cause notice dated 06.05.1999 was issued as to why imposition of punishment of termination from service should not be ordered, on the basis of Enquiry Report. Immediately, the petitioner submitted his written objections on 15.07.1999, while requesting to drop further proceedings, but without considering the explanation, final order of termination dated 27.07.1999 was issued.

04. Aggrieved by the termination order, the petitioner preferred an appeal to the Board of Directors (through proper channel) on 22.09.1999 raising various contentions in support of his innocence. The Appellate Authority permitted the petitioner to defend him personally and accordingly the Board of Directors in a meeting held on 22.03.2000 after hearing the petitioner in person, by order No.Pers/AMCP/SA/23736/88, dated 17.04.2000, revoked the termination order, but awarded punishment of stoppage of two annual grade increments with cumulative effect and the period of absence from duty shall not qualify for pay and allowance. In pursuance of the order of the appellate authority referred to above, the petitioner was reinstated and posted to work under the control of Manager (A.E.). Later, the petitioner submitted the second appeal to the Chairman and Director of Board on 18.05.2000 seeking waiver of punishment, the same is pending. Despite request made by the petitioner dated 18.08.2000, 21.10.2000 and 28.02.2001, no orders were passed on the second appeal.

05. The main contention of the petitioner is that he was reinstated, revoking the suspension initially, during the pendency of the enquiry and in such case he is entitled to claim the monetary

benefits for the period of suspension and that the enquiry was conducted in violation of principles of natural justice. It is further contended that imposing of punishment of stoppage of two annual grade increments with cumulative effect is disproportionate to the misconduct attributed and not proved against the petitioner and that for the interregnum period of suspension and reinstatement by virtue of the order of the Appellate Authority, the petitioner cannot be denied salary and other monetary benefits like increment, but without considering the attending circumstances, the petitioner cannot be made a scapegoat, entitled to all financial benefits, including salary for the said period and other monetary benefits and prayed to quash the order No.Pers/AM/P/SA-23736/88, dated 17.04.2000.

06. Respondent 1 to 3 have filed counter affidavit denying the material allegations while admitting that the finding the petitioner guilty initially by the Enquiry Officer and his termination from service, placing him under suspension, during Enquiry for the period from 20.10.1997 to 20.10.1998 and later in the appeal, modification of the penalty converting the punishment of termination into stoppage of two annual grade increments with cumulative effect while disqualifying to claim salary and other monetary benefits for the period of absence.

07. The petitioner is governed by the special Rules of the Corporation and that reinstatement of the petitioner during Enquiry was only to meet the administrative expediency and not otherwise. In the order of reinstatement during pendency of enquiry with a condition that his reinstatement into service is only subjected to the domestic enquiry pending against him and to pass appropriate orders as may deem fit and treatment of suspension period will be decided in accordance with the decision of competent authority, on receipt of Enquiry Report. Administrative Manual of the Corporation specified as to how the period of suspension is to be treated. Clause 8.7 of the Administrative Manual deals with treatment of suspension period, which reads as

follows:

> ***"Where, after completion of disciplinary proceedings against the employee under suspension, the Competent Authority finds that the suspension of the employee was unjustified or not wholly justified, he shall pass an order restoring to the employee and his full pay and allowance for the period of suspension less the subsistence allowance already drawn provided the employee is honorably acquitted. If, however, he is found to be guilty of the charges either fully or in part for which a penalty is imposed, the period of suspension shall not be treated as duty and therefore the employee shall not be entitled to full pay and allowances for the period. It shall be open to the employee to ask for sanction of leave to which he is eligible to cover the period of suspension and pay and allowances shall be regulated, after adjusting the subsistence allowance already drawn. Any final order passed in this regard will not, however, have the effect of compelling the employee to refund subsistence allowance already drawn either in full or part. There will no need to regulate the period of suspension as above in cases resulting in dismissal employees."***

08. In view of the Administrative Manual governing the treatment of suspension period, the petitioner was denied payment of salary as he was found guilty. Therefore, denial of monetary benefits, including salary and annual grade increment during the period of suspension is in accordance with the Rules contained in Administrative Manual for treatment of suspension period and that the petitioner did not ask the respondents for sanction of leave to which he is eligible for the suspension period and to pay and allowances etc. In the absence of any such application, there is no justification in granting monetary benefits for the suspended period.

09. It is further contended that the competent authority after examining the explanation to the show cause notice, confirmed punishment of termination by final order No.Pers/AM(P)/SA/ 23736/88 dated 17.07.1999 and treated the period of suspension from 20.10.1997 to 30.10.1998 as *dies non*. The petitioner has drawn the subsistence allowance equal to half of his pay and allowances admissible.

10. On appeal, the Board of Directors considered the punishment

and reduced the same to stoppage of two annual grade increments with cumulative effect while setting aside the termination order from service holding that the petitioner was not qualified any monetary benefits for the period of absence. When the termination order was revoked, denial of pay and allowances period from 27.07.1999 to 22.04.2000 is not illegal and arbitrary as it is a part of punishment.

11. The respondents denied the allegation that the petitioner is not guilty of any misconduct and that he was not afforded an opportunity to take the assistance of co-employee etc., while contending that the enquiry was conducted in accordance with the Administrative Manual and therefore prayed to dismiss the writ petition.

12. The petitioner filed reply to the counter affidavit almost reiterating the allegations made in the writ petition and denying each and every allegation, attributing malafidies to the respondents. Therefore, I need not repeat the allegations made in the reply to the counter affidavit.

13. During hearing, Sri D.V. Nagarjuna Babu, learned counsel for the petitioner, contended that when the petitioner was reinstated and the period of suspension was without any justification. He has to be paid salary for the said period extending other financial benefits, if he is able to prove that he was not employed anywhere during the period of suspension, apart from that the period from the date of termination till reinstatement. Consequent upon the order passed by the Appellate Authority, the financial benefits, including salary and benefits cannot be denied and placed reliance on the Judgment of the Apex Court reported in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (Died) and others**[1] **a**nd prayed to set aside the order dated 17.04.2000.

14. Whereas Sri B. Thrinath, learned counsel for the respondents contended that when the Appellate Authority passed an order denying

monetary benefits for the period of absence, includes the period of suspension and the period from the date of termination till reinstatement and it is a part of punishment passed by the Appellate Authority while setting aside the order of termination from service. When it is a part of punishment or penalty, such order cannot be quashed by exercising power of Judicial Review under Article 226 of the Constitution of India. He further contended that it is for the petitioner to plead and prove before the competent authority that he was not employed anywhere during the period of suspension i.e. from the date of termination till his reinstatement, in pursuance of the order by Appellate Authority. Both in the appeal before the Appellate Authority and in the alleged second appeal, no such plea was raised and even if such plea was raised, he failed to establish the same. In the absence of proof that he was not employed during the period of absence, he is disentitled to claim any monetary benefit and drawn the attention of this Court to several guidelines laid down by the Apex Court referred in paragraph 38 in **Deepali Gundu Surwase**[1] referred to supra and prayed to dismiss the writ petition.

15. Considering rival contentions, perusing the material available on record, the point that arise for consideration is,

> ***Whether the order passed by the Appellate Authority dated 17.04.2000 is against the Administrative Manual of the Corporation and denial of monetary benefits during the period of absence is violation of any Statutory Rules or Statutory Provision? If so, the petitioner is entitled to monetary benefit for the period of absence, including the release of two annual grade increments, setting aside the order of punishment?***

POINT:

16. It is not in dispute that the petitioner was under suspension from 20.10.1997 to 27.10.1998 and reinstated subject to action to be taken on the final report of the Enquiry Officer on the ground that he committed financial irregularities by his negligent conduct. However,

after enquiry he was terminated from service by order dated 27.07.1999. On appeal, the punishment was modified setting aside the order of termination from service, converting the punishment into stoppage of two annual grade increments with cumulative effect, while denying the monetary benefits for the period of absence; and filing of second appeal before the Chairman of the Corporation.

17. The jurisdiction of this Court in exercising the power of judicial review under Article 226 of the Constitution of India is limited and if there is any violation of statutory provision or rule, this Court may interfere with the orders of the Tribunal or Subordinate Courts. The jurisdiction to issue a writ of *certiorari* is a supervisory one and in exercising it, the Court is not entitled to act as a Court of Appeal. That necessarily means that the findings of fact arrived at by the inferior Court or the Tribunal are binding. An error of law apparent on the face of the record could, however be corrected by a writ of *certiorari*, but not an error of fact. Thus, a writ of *certiorari* could also be issued if it is shown that in recording a finding of fact, admissible and material evidence has not been admitted, or inadmissible evidence affecting the impugned finding has been admitted but finding of fact could not be challenged in such proceedings on the ground that the relevant material evidence was insufficient to sustain the finding as held by the Apex Court in ***Syed Yakoob Vs. K.S. Radhakrishnan and others***[2].

18. In ***Syed Yakoob***[2], the order refusing to grant permission under the Motor Vehicles Act, 1939 was challenged. However, in view of the law declared by the Apex Court, the jurisdiction of this Court to issue a writ of *certiorari* is limited and the Court while exercising power of judicial review under Article 226 to issue a writ of *certiorari* cannot interfere with the fact findings.

19. In **Municipal Corporation, Faridabad v. Siri Niwas**[3], the Apex Court held as follows:

> ***"16. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational."***

20. In **Municipal Council, Sujanpur v. Surinder Kumar**[4] , the Apex Court held as follows:

> ***"8. The High Court's jurisdiction to issue a writ of certiorari though is limited, a writ of certiorari can be issued if there is an error of law apparent on the face of the record. What would constitute an error of law is well known. In the Judicial Review of Administrative Action, IV Edition page136, S.A De Smith has summed up the position-***
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> ***"(5). The concept of error of law includes the giving of reasons that are bad in law or (if there is a duty to give reasons) inconsistent, intelligible or, it would seem, substantially inadequate. It includes also the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence."***
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> ***9. The Labour Court and the High Court also proceeded wrongly on the premise that the burden of proof to establish non-completion of 240 days of work within a period of twelve months preceding the termination, was on the management. The burden was on the workman. Equally well settled is the principle that the burden of proof, having regard to the principles analogues to Section 106 of the Evidence Act that he was not gainfully employed, was on the workman. It is also a trite law that only because some documents have not been produced by the management, an adverse inference would be drawn against the management."***

21. Similarly, in **Nagendra Nath Bora and another v. The Commissioner of Hills Division and Appeals, Assam and others**[5], the constitutional Bench of the Apex Court reiterated the same principle and held that issue of certiorari on findings that the impugned order had been vitiated by errors of fact and not of law apparent on the face of the record is erroneous since the power of interference may extend to quashing of impugned order on ground of mistake apparent on face of records but under Article 227 power of

interference is limited to see that the Tribunal functions within limits of its authority. Therefore, interference by this Court either under Article 226 or under Article 227 is not justified.

22. The learned Standing Counsel appearing for the Corporation drawn the attention of this Court directly to a case pertaining to an Award passed by the second respondent - Tribunal which went up to Supreme Court in ***Parry and Company Limited v. P.C. Pal, Judge of the Industrial Tribunal-II, Calcutta and others***[6], wherein the Full Bench of the Apex Court reiterated the same principle.

23. In view of the principles laid down by the Apex Court, the jurisdiction of this Court to issue a writ of *certiorari* under Article 226 is limited and this Court cannot interfere with the fact findings recorded by the Tribunal.

24. Keeping in mind the principles laid down by the Apex Court in various judgments, the fact finding recorded by the Enquiry Officer and accepted by the Appellate Authority as per Administrative Manual of the Corporation cannot be gone into, unless it is shown that the finding of the Enquiry Officer and Appellate Authority are not based on any evidence or against the evidence available on record. But the petitioner did not draw the attention of this Court about such non consideration of any evidence available on record to find him not guilty or the finding him guilty without any evidence. In the absence of establishing those two requirements, this court cannot interfere with the fact finding recorded by the Enquiry Officer and confirmed by the Appellate Authority vide proceedings dated 27.07.1999 and 17.04.2000 respectively. Therefore, I myself refrain to disturb the fact finding recorded by both authorities.

25. The petitioner challenged the punishment on the ground that it is disproportionate to the gravity of the misconduct. According to the petitioner and the material on record, the petitioner was having control

over the financial affairs of the Corporation dealing with the business of Agro products and committed several financial irregularities by his negligence and such conduct was proved in the enquiry and the same was accepted by the appellate authority, the finding of the appellate authority attained finality. The total financial irregularity was to an extent of 45.64 lakhs, suppression of sundry debtors and he also failed to account for the stock of fertilizers, pesticides and the sales value of the stocks sold to an extent of 80.17 lakhs approximately till December 1996, and failed to maintain the record of accounts, for subsidy and non-subsidy transactions. As per the order dated 20.10.1997 he was placed under suspension, while ordering payment of subsistence allowance. Even as per the report of the Enquiry Officer, the petitioner was found guilty for both charges and the Enquiry Officer held that the petitioner was playing vital role in maintaining the accounts and failed to reconcile the subsidy for the period 1993-94 to 1995-96 on account of it, the subsidy and non subsidy values cannot be identified. No reconciliation of APGST was done which resulted in imposing penalty by the sales tax authorities and the commission amounting Rs.4.14 lakhs and thus caused financial irregularity in lakhs to be recovered from AVSK, adjusting to the debtors etc. Similarly, the Enquiry Officer found guilty for the second charge for passing order of payment of commission to AVSK to a tune of Rs.4.14 lakhs without notice to Head Office. Thus, the total financial irregularity committed by the petitioner was in lakhs under two charges. Though the petitioner submitted written comments/ explanation to the Enquiry Report dated 15.07.1999 disputing his liability without raising any contention that he was not engaged in employment during the period of suspension. But the written comments/ explanation was not accepted and passed order of termination. Later, the petitioner filed the appeal before the appellate authority, who modified the order of termination as stated above in the earlier paragraphs. However, the fact finding recorded by the Enquiry Officer about financial irregularities to a tune of Rs.4.14 lakhs was confirmed, while modifying the order of punishment by order dated 17.04.2000. Even in the appeal before the appellate authority, the petitioner did not raise any contention that he was not engaged in any other employment during his absence i.e. from the date of termination till reinstatement. In the absence of any contention that he was not employed anywhere during the period of absence before the appellate authority and in the absence of any specific contention in the writ petition, the petitioner is not entitled to claim monetary benefits for the said period.

26. On 18.05.2000 he preferred second appeal before the Chairman without raising any specific contentions that he was not employed anywhere, but contended that the suspension period from the date and termination till reinstatement was not on account of his latches and contended specifically in paragraph 3 that as per the orders of the Regional Manager dated 09.02.1998, from 21.02.1998 he signed regularly in the attendance register opened separately for separate staff and worked/ attended the important pending finalization of accounts for the year 1995-96, signing in the attendance register normally signifies the employee was attending to office and treatment of the period of suspension is not in accordance with the Administrative Manual and so also the period of date of termination till reinstatement, but this appeal was not considered, since no second appeal is provided in the Administrative Manual.

27. As seen from the material on record, the petitioner did not produce any evidence like attendance register specially opened for the suspended employees to substantiate his contention that he attended duty during the period of suspension as per the Regional Manager letter. Even the letter was also not filed for perusal of this Court, to accept his contention that he worked in the first respondent Corporation during the period of suspension. In the absence of any proof that he worked in the first respondent Corporation or not

employed anywhere during the period of suspension, he is disentitled to any benefits. Similarly during the period from the date of termination till the date of reinstatement, the petitioner did not disclose anything about his unemployment in the entire affidavit and also in the second appeal before the Chairman. He heavily relied on the judgment of the Apex Court reported in **Deepali Gundu Surwase**[1] referred to supra, wherein the Apex Court after reviewing the entire law regarding the treatment of period of absence or suspension during the pendency of enquiry, while holding that the burden is upon the petitioner/ employee to plead and prove that he was not employed anywhere during the period of suspension or absence, in view of Section 106 of the Indian Evidence Act, 1872, in the absence of plea and proof, the employee is not entitled to monetary benefits during the period. However, laid down certain guidelines in paragraph 38 as follows:

> ***"38. The propositions which can be culled out from the aforementioned judgments are:***
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> ***38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
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> ***38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.***
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> ***38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.***
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> ***38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held***

against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches, referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

28. In view of the guidelines or the proposition laid down by the Apex Court, it is for the employee to establish that he was not employed anywhere and that during the period of suspension and

period from termination to reinstatement. But here the petitioner did not plead and prove the requirement that he was not employed anywhere during the period of suspension and from the date of termination till the date of reinstatement. In any view of the matter, denial of monetary benefits for the period of absence is a part of punishment and the petitioner was reinstated during the pendency of the enquiry only to meet the urgent work pending in the office and to meet the expediency, subject to the out come of the enquiry reserving the right to take necessary action against the petitioner, if he is found guilty. Therefore, he was not reinstated for any other reason except to meet the management expediency. However the treatment of the suspension period was contemplated in the Administrative Manual which I referred in the earlier paragraphs. Here the period of suspension is justified and nothing is brought to the notice to establish his suspension was unjustified and the petitioner even did not ask for regularization of his service granting any kind of leave as contemplated under Clause 8.7 of Administrative Manual. Treatment of period of suspension by the Appellate Authority is strictly in accordance with the Clause 8.7 of the Administrative Manual. Therefore, the petitioner is not entitled to claim any monetary benefit for the said period. So far as the period from the date of termination till the date of reinstatement is concerned, the petitioner was removed from service, by proceeding dated 27.07.1999, later in pursuance of the order of the appellate authority, he was reinstated modifying the punishment of stoppage of two annual grade increments with cumulative effect while denying the monetary benefits for the period of absence. The punishment of denial of monetary benefits is a part of punishment and the same cannot be treated as 'on duty'. When the petitioner was not 'on duty', there is no justification to pay salary for the said period, since he was found guilty by both the Enquiry Officer and the Appellate Authority. Therefore, the punishment imposed against the petitioner cannot be interfered.

29. One of the major contentions of the petitioner is that the punishment is disproportionate to the gravity of the misconduct. Normally the Court cannot interfere with the penalty and punishment imposed by the Appellate Authority unless it is shown that the punishment imposed against the petitioner by the Appellate Authority is disproportionate. In the instant case the petitioner committed severe financial irregularity in lakhs.

30. The Apex Court had an occasion to decide similar question i n ***U.P.State Road Transport Corporation v. Suresh Chand Srama***[7] after reviewing the entire law on quantum of punishment to be imposed against the conductor of the bus of Road Transport Corporation based on the doctrine of proportionality held that while deciding a case, the Court is under obligation to record reasons, however brief the same may be, as it is a requirement of principles of natural justice. Non observance of the said principle would vitiate the judicial order.

31. In the facts of the above judgment, the Apex Court went into the fact finding recorded by the courts and concluded that Industrial Tribunal is under obligation to re-appraise entire evidence, to decide of misconduct of employee, but not done so, on the sole ground, Appeal filed by the Road Transport Corporation was allowed, upheld the punishment of removal/ termination from service.

32. The learned Counsel for the petitioner further contended that the punishment imposed against the petitioner is harsh and for such irregularity the petitioner cannot be removed from service. The Apex Court in ***Municipal Committee, Bahadurgarh Vs. Krishnan Behari***[8] and in ***Ruston & Hornsby (I) Limited Vs. T.B. Kadam***[9] held that in a case involving corruption, there cannot be any other punishment than dismissal and no sympathy be shown to such employees and thereby no interference is called for. Decisions of the

Apex Court in ***NEKRTC Vs. H. Amaresh***[10] and ***U.P.S.R.TC. Vs. Vinod Kumar***[11], are directly to the point in issue wherein it was held that the punishment should always be proportionate to the gravity of misconduct and, however, in case of corruption/misappropriation, the only punishment is dismissal.

33. In ***Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others***[12], the Apex Court, modified the punishment, relying on its earlier decision in ***B.C. Chaturvedi Vs. Union of India***[13], where the question fell for consideration was whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation and observed as follows:

> *"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 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."*

34. If the principle laid down by the Apex Court in ***B.C. Chaturvedi***[16], is applied to the present facts of the case, it is not proper for this Court to set-aside or reduce the penalty unless the punishment imposed by the Appellate Authority shocks the conscience of this Court.

35. In view of the law declared by the Apex Court, this Court

normally cannot interfere with the punishment, unless it is shown that it is shockingly disproportionate, here the punishment is not shockingly disproportionate, since the petitioner is found guilty of financial irregularities which resulted in huge loss to Corporation. Therefore, I find no ground to justify the contention of the petitioner to set aside the punishment, granting all monetary benefits. Hence, the petition is devoid of merits and deserved to be dismissed.

36. In the result, the writ petition is dismissed, but without costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.04-03-2016
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[1] (2013) 10 SCC 324
[2] AIR 1964 SC 477
[3] 2004 (8) SCC 195
[4] 2006 (5) SCC 173
[5] AIR 1984 SC 1467
[6] AIR 1970 SC 1334
[7] 2010 (6) SCC 555
[8] 1996 (2) SCC 714
[9] 1976 (3) SCC 71
[10] 2006 (6) SCC 187
[11] 2008 (1) SCC 115
[12] 2004 (4) SCC 560
[13] 1995 (6) SCC 749