

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.8610 of 1995

Date of Decision: 14.07.2016

Peshkar Singh

... Petitioner

Vs.

The Board of Management, Chaudhary Charan Singh Haryana Agricultural
University, Hisar & others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S. Bains, Advocate,
for the petitioner.

Ms. Avin Sandhu, Advocate,
for respondents No.1, 3 & 4.

RAJIV NARAIN RAINA, J.

Challenge in this petition is to the impugned order of termination dated 12.10.1994 inflicted by way of removing the petitioner from service at the age of 49 years by invoking Clause 12 (ix) of Chapter IX of the Statutes of the Chaudhary Charan Singh Haryana Agricultural University, Hisar from the range of penalties enumerated therein but without disqualifying him for future service. The petitioner's statutory appeal against the order of termination was dismissed on 04.05.1995. The mercy appeal to the Board of Management of the University despite the Committee's recommendation to the contrary requesting for a review of the removal was declined. The petitioner alleges serious personal bias and mala fides in the acts of the authorities against the petitioner arrayed as parties by name and

especially the then respondent -Vice Chancellor of the respondent University who made it a mission to show him the exit door by abusing his authority.

The petitioner's service profile in the University is like this. He was appointed Sectional Officer (Horticulture) in 1971 possessing the essential degree of M.Sc. Horticulture with specialization in Floriculture. Petitioner was promoted as Landscape Officer Grade-B in November 1982 and thereafter as landscape Officer Grade-A in Sept 1990. The trouble began for the petitioner in 1993, when one Dr. S.S.Bisla had given testimony in a criminal complaint of defamation against the Vice Chancellor – respondent No.2 in the court of Chief Judicial Magistrate, Hisar. On the same day, Dr. S.S.Bisla was beaten up in the University campus by one Dr.O.P.Toki - respondent No.3 and petitioner happened to be passing by and became unwittingly a witness to the incident, as he rescued him like many others nearby. He was an eye witness against respondent No.3 Toki who had belaboured Dr. S.S. Bisla on instigation of the Vice Chancellor respondent No.2. Thereafter, Dr.S.S. Bisla filed a criminal complaint against respondent No.3 in which the petitioner was cited as a witness by Dr. Bisla, to get recorded his statement. In the departmental enquiry initiated against Dr.S.S.Bisla, the petitioner was also cited as a defence witness by Dr. Bisla. This annoyed the Vice Chancellor – respondent No.2. On 03.01.1994, the petitioner was temporarily transferred to Nilokheri although there was no post available there and was made to sit under the control of a junior officer. He obeyed the order. The Vice Chancellor got after him and set his machinery to foist a case of misconduct against the petitioner and find reasons for instituting a departmental enquiry with a view to end his employment anyhow.

Ultimately, the petitioner was charge-sheeted vide memo dated 25.01.1994 for drawing contingent bills as the Drawing and Disbursing Officer and handing over vouchers to the Inspecting Officer to escape scrutiny; making petty purchases and allowing petty payments exceeding ceiling of Rs 3000/- laid down in CAU's letter dated 21.7.1989; exceeding budgetary allocation for the year 1992-93 trying to discharge the liabilities of the year 1992-93 against the budget allocation for the next financial year; and other sundry expenses involving repair of equipment, diesel engines/pumps spares for tractors; getting tractors repaired many times during the year 1992-93; making piece-meal purchases, non-production of record; incurring liabilities over and above the budget provision for the same year to avoid financial sanction of higher competent authorities; financial irregularities with a view to take undue pecuniary advantage for which his conduct was put to notice and reply, if he had anything to say. In response to the charge-sheet, the petitioner submitted his reply dated 07.02.1994 explaining that all the charges are false and baseless. Respondent No.4 was appointed as enquiry officer. Still dissatisfied, another charge-sheet was slapped on the petitioner on 04.02.1994 even before the first reply was put in. In the second charge-sheet, many of the allegations are a repetition of the old allegations leveled in the earlier charge-sheet, but there is no allegation of any embezzlement or forgery of record.

Respondent No.4 held the enquiry and in the enquiry report submitted to the disciplinary authority held the petitioner guilty of all the charges. Pursuant to submission of such enquiry report, a show cause notice of removal from service was issued to the petitioner on 22.08.1994. The petitioner submitted his reply to the show cause notice on 20.09.1994 pleading that the proposed punishment was disproportionate to the gravity of

the charges in both the enquiries. The petitioner says, however, respondent No.2 is not competent to impose any punishment, but still passed the impugned order of removal from service of the petitioner on 12/13.10.1994 while recording that the petitioner is guilty of embezzlement and forgery, which is nowhere specifically charged in the charge-sheets and even in the enquiry report there is no such flavor of remissness and corruption.

Feeling aggrieved, the petitioner appealed to the Board of Management against the order of removal. The appeal against the impugned order was decided only after the petitioner obtained directions from the Division Bench of this Court in CWP No.15 of 1995 directing the Board of Management of CCS Haryana Agricultural University, Hisar to dispose of the appeal within three months from the date of receipt of the order. He was allowed to retain the official accommodation allotted to him by the University till the disposal of the appeal by the Board of Management.

The petitioner states that he was one of the founders of the Landscape Department in the University. Transforming the campus in what he claims was the most beautiful and best kept in the world as far as layout, architecture and landscaping is concerned. Quoting from the words of Professor Dr. E.G. Niemann of the Institute of Biophysics University of Hannover who after his fourth visit to the University Campus since 1978 by a letter dated 03.05.1989 congratulated the petitioner and his staff for the beautiful landscaping, planning and maintenance of the campus spread over 400 acres. The Professor records in his letter 03.05.1989 “that only 20 years ago (from 1989) this region was nearly a desert and is now full of lawns and colours. In spite of the continued threat of salinity due to the high brackish

groundwater table, every spot of the 400 acres is kept clean and green, the fruit of a never-ending maintenance.”

The petitioner states that being well known in landscaping work all over India, he had been invited by many Institutions and Universities, from time to time, to give the lay out/technical guidance for landscaping their campuses. The landscaping of M.D.University, Rohtak Campus and Regional Engineering College, Kurukshetra Campus was done under the technical guidance and supervision of the petitioner. The petitioner also gave technical guidance and supervised the landscaping of Pusa Institute of Agriculture, New Delhi. It was under the guidance and supervision of the petitioner that Hisar Cantonment, Hisar City, and other Educational Institutions, situated in Hisar were beautified. The petitioner's services were utilized for landscaping of the grounds adjoining the Martyrs Memorial built at Madhuban (Karnal) by the Haryana Police Department. A true copy of the letter sent to the Vice-Chancellor by the Inspector General of Police, Haryana, appreciating the efforts of the petitioner, is attached to the petition as Annex P-3.

That, so much so, the pages of Visitor's Book, kept at the University, are full of appreciation of the work done by the petitioner in maintaining lawns and gardens, written by distinguished guests from time to time, including compliments from leading personalities of India and abroad.

The petitioner goes on to aver in paragraph 9 of the petition that due to the sincere efforts put in, hard work and honesty, the petitioner's Annual Confidential Reports, throughout, have been Outstanding and A-One. There has been no complaint against the petitioner, throughout his service career, from any quarter. The petitioner was devoted to his work and

toiled day and night, and kept away from the politics of the University. Because of this reason, the petitioner was awarded many appreciation letters and incentives by the previous Vice-Chancellors.

Dr. S. Arya, Vice-Chancellor, Dr. O.P. Toki, Professor and Head of Forestry Department and Dr. S.P.S. Karwasra, Professor of Soils and Adviser to the Vice-Chancellor have been arrayed by name as respondents No.2 to 4 alleging bias and malice against them.

In paras.18 to 20 of the petition, the petitioner explains the work he headed graphically and contains essential rebuttal reasons to understand the multifarious and miniscule charges in their right perspective:

“18. That the job of the petitioner is mainly technical one and field job. The petitioner's office is having a strength of about 253 employees at different levels. There are three Section Officers (Horticulture), two Horticulture Inspectors, two Horticulture Supervisors, two Horticulture Sub Inspectors, Seven Head Mails, Two Budders, five tractors, Drivers, one incharge of workshop, Beldars, Malis etc. All the bills of the concerned Section are routed through the incharge of that section to the petitioner. The establishment work is done by three office Assistants, Store Keeper, Stenographer, Cashier etc. Area Incharge of the concerned section used to send requirements for sanction and the same used to be approved by the petitioner as per rules and sent for appropriate action to the Establishment Branch of Landscape Office. The office work of the petitioner is Limited to Drawing and Disbursing Officer in the office. The Organisation, at the command of the petitioner, has six tractors, twelve diesel engines, three electric motors, one pumping set, three pumps, one tubewell, five trolleys, five land carts, thirty lawn owners, hundreds of aluminium pipes, mini-workshop, one fodder chaffer, Cattle Pond, four bullocks and many other employees and equipment. All these things are necessary for the day-to-

day working of the job at the command of the petitioner in the University.

The machinery and vehicles at the disposal of the petitioner are very-very old and have crossed/outlived their life and hence, required frequent repairs/replacement. If the repairs of these vehicles/machinery are not carried out, urgently, the whole work of the petitioner's office was bound to suffer.

19. That as per the procedure, prescribed in the Haryana Agricultural University Accounts Code Vol. I (hereinafter called the Accounts Code), the procedure for University accounts has been prescribed. As per the Haryana and Punjab Agricultural University Act, 1970 (hereinafter called the Act), the Comptroller of the University is custodian of the accounts of the University under section 10 of the Act. It is the duty of the Comptroller to ensure that expenditure, not authorized in the budget, is not incurred by the University and not to allow any expenditure, not warranted by the terms of any Statute under the Act. As per Rule 3.3(a) of the Accounts Code, it has been prescribed that when money is withdrawn from University accounts, a cheque shall be prepared and signed by the Comptroller or an employee empowered on his behalf. It further provides that before signing the cheque, it shall be ensured that the alleged cheque has been pre-audited by the Asstt. Examiner and he has enfaced the voucher with pre-audit stamps under Rule 3.12 of the Accounts code before signing the cheque. The employee signing the cheque will ensure that the amount proposed to be drawn has been duly classified under appropriate Scheme. Rule 3.16 further prescribes that the consolidated scheme-wise monthly income and expenditure statement for the month shall be completed and tallied, in all respects, by the comptroller's Office by the end of the next month and passed on to the Asstt. Examiner for Audit. Rule 4.11 (a) provides that, whenever, a bill for withdrawal of money is prepared and signed by the Drawing and Disbursing Officer, it shall be pre-audited from Assistant Examiner and further transmitted to the Comptroller, for issue of cheque.

20. *That as per procedure, prescribed in the Accounts Code, all the bills, submitted by the Drawing and Disbursing Office, are pre-audited by the Assistant Examiner and after that, cheque is issued by the Comptroller's Office. If there is any defect therein, such as, Non-availability Certificate (N.A.) or the budget limit etc., the bill is returned to the Drawing and Disbursing Officer for compliance. During the entire period of the petitioner as Drawing and Disbursing Officer, no bill irregularity was ever committed by the petitioner neither was it pointed out in pre-audit or by the Comptroller's Office to the effect that any bill was not properly presented. Every year, Inspection and post-audit is done by the Comptroller and the Assistant Examiner, respectively. Inspection for the year 1992-93 was also done by the Comptroller's Office in the month of April, 1993 and no serious irregularity was found and only procedural objections were raised which were to be cleared by the petitioner's office as per routine. A true copy of inspection Report of 1993-94 is attached as Annexure P/7-A."*

The first ground urged by Mr. Bains in his challenge to the adverse orders is withholding of the preliminary enquiry report 30.11.1993 submitted by the Chief Engineer-cum-Estate Officer in which the petitioner was held guilty of all the charges. The copy of the preliminary enquiry report was not supplied to him despite instructions to the contrary and this is so pleaded in para. 28 from pages 17-20 of the paper-book mentioning the closeness of respondent No 4 Dr.S.P.S. Karwasra. The reply to this important paragraph is on page 265 of the paper-book as part of written statement filed by the Registrar on behalf of respondents 1-4 stating that the preliminary enquiry was not relied upon and as such the petitioner was not entitled to that document as a matter of right. It was admitted that the presenting officer whose duty it was to place on record the preliminary enquiry report was Secretary to respondent 2 at one stage. What is left unsaid in the reply is that there were specific allegations against him that the

Secretary was rewarded by the appointment of his son as District Extension Specialist in the University which is a post equivalent to Assistant Professor by overlooking the claim of even a gold medalist in the field of competitors. There is no answer to the allegation that the real author of the preliminary enquiry report is the presenting officer as there are so many instances of handwriting of PO in the report. This according to Mr. Bains is a valid ground for quashing the enquiry proceedings as there are specific instructions referred in paragraph 28 and which is part of letter dated 24.11.1993 and in paragraph 6 of these guidelines/instructions it is stated that if the preliminary enquiry is in favour of the University, it should be brought on the enquiry file before the start of the regular enquiry and the delinquent employee should also be supplied a copy thereof. The relevant paragraph 6 of the instructions is reproduced on page 18 of the paper-book and read as follows:-

“If in some cases , the preliminary enquiry had been held against the delinquent, before the start of regular enquiry, in that event, the C.P.O should bring on the enquiry file, the copy of the report if favourable to the university; and its copy supplied to the delinquent. The signatures of the concerned employee be also taken and fact should be got recorded on the file by the Enquiry Office”

Petitioner had filed rejoinder to this paragraph which is on page 285 of the paper-book where it is asserted that the preliminary enquiry report has been lavishly and profusely made use of even in the impugned order of illegal removal from service. A procedural safeguard had been breached. This denial of the preliminary enquiry report has caused grave prejudice to the petitioner as he had been denied opportunity of cross-examination of the witnesses produced against him. The argument is based on a valuable right conferred and the limitations imposed upon the disciplinary authority to act

in accordance with Note 1 below second proviso to sub rule (5) of Rule 14 of the rules which guarantees to charged official as follows:-

“Note: 1. Charges need not necessarily be framed in relation only to specific incidents or acts or misconduct. When reports received against an officer on a preliminary enquiry show that his general behaviour has been such as to be unfitting to his position, or that he has failed to reach or maintain a reasonable standard of efficiency he may and should be charged accordingly, and a finding on such a charge may be valid ground for the infliction of any authorised punishment, which may be considered suitable in the circumstances of the case. It will still be necessary to communicate the charges of misbehaviour or of inefficiency or of both, as the case may be, to the officer concerned but the statement which is to be communicated to the officer in support of the charges need not specify particular acts of misconduct. It will be sufficient in the statement to give the list of the reports on the basis of which misbehaviour or inefficiency is alleged.”

The second ground of challenge is mala fide of the respondents 2, 3 & 4. The Respondent 2, the Vice Chancellor; respondent 3 and respondent 4 (Enquiry Officer) are impleaded parties by name and yet no reply has been filed by them personally except the joint reply which is part of the university reply. It is relevant to point out that there was no charge of any embezzlement or forgery of record yet on page 211 of the paper-book, where lies the relevant portion of the impugned order dated 12/13.10.1994, respondent 2 Vice Chancellor records that the petitioner is guilty of financial irregularities “leading even to embezzlement of University funds” without mentioning the amount and holding that he is also guilty of forgery without mentioning the document forged. A clear evidence of enmity, bias and mala fide flows from the bald assertion unsubstantiated even by the imputations of misconduct. Respondent 4 who was appointed as enquiry officer, Mr. Bains says was the henchmen of the Vice Chancellor and the pleadings regarding

suggestion of this is in paragraph 26 on page 16 of the paper-book. There was agenda item 156 of the Board of Management to take disciplinary action against respondent 4 regarding the manipulation made by him in the promotion of Animal Nutritionist and this agenda item was withdrawn from the meeting so as to ensure that nothing adverse should happen to respondent 4. Secondly, he was appointed adviser to the Vice Chancellor, respondent 2. The third favour given to respondent 4, enquiry officer was that he was rewarded by appointing him as Chairman of the House Allotment Committee which averments have not been answered by the respondents concerned in separate reply admitting or denying the pleaded fact. All the above favours were showered on respondent 4 during the enquiry proceedings being conducted against the petitioner so that he may submit the enquiry report against the petitioner and as per the wishes of respondent 2. The close connection between respondent 2 (S.Arya) and respondent 3 (O.P.Toki) is clear from the slip P-28 on page 301. There have been a large number of research papers published by respondent 2 and respondent 3 authored together. The other ground which emerges from the same pleadings is the benefit given to the presenting officer's son which is not denied in the reply. Therefore, neither the enquiry officer nor the presenting officer was free from bias and were both direct beneficiaries of the favours conferred on them immediately before or during the enquiry by the Vice Chancellor respondent 2 due to smarting under the testimony of the petitioner in court against respondent 3 who had beaten up the professor at the behest of the Vice Chancellor against whom he had deposed. Further evidence of bias and mala fides is the extreme punishment awarded to the petitioner of the severest kind. The petitioner has further placed on record crucial documents placed at Annex P-48 to P-52, with civil miscellaneous

application No.233 of 2011. The enquiry officer was charged with forging of the record and was summoned to face trial and his revision against that order was dismissed on September 14, 1999. This shows the conduct of the enquiry officer and this document by way of proof is at Annex P-48. Respondent 3 has also faced departmental enquiry and the charge were serious in nature reflecting on his integrity but was given punishment of only withholding of two increments with cumulative effect and recovery of the financial loss sustained by the University. This order is at Annex P-49 dated 16.8.2000. All these orders show how the petitioner has been picked for punishment beyond all reasonable standards on the allegation levelled against him of not maintaining record properly. Another employee of the University was given show cause notice for similar lapses as alleged against the petitioner but in his case there was allegation of tampering of the date in the quotations which was not against the petitioner. Here there were specific allegations of causing loss to the University. The true copy of this show cause notice for major penalty is Annex P-50 but no action was eventually taken against him as he was made to retire honourably as were other persons referred to in documents Annex P-48 and P-49. Annex P-51 and 52 are documents addressed to each member of the Board of Management by the petitioner which is part of the appeal against the order of removal passed against the petitioner. None of the points raised by the petitioner has been answered in the punishment order dated 13.10.1994 or rejection of the appeal by order dated 4.5.1995. This aspect is only considered in the dissent note by Dr. P.S. Lamba, who was a nominee of the Government of India, Ministry of Agriculture on the Board of Management of CCSHAU and could take a dispassionate view. Dr. Lamba who had been the former Dean; Director and Vice-Chancellor of CCS HAU, had seen the performance of the

petitioner personally and has recorded his Note of Dissent. The dissent note has been vigorously pressed by the petitioner as an island of sense and reason by someone who had himself been the Vice Chancellor of the respondent University.

The only reference to dissent note is on page 256 of the paper-book in the impugned order of dismissal of appeal by the Board. But the point raised in the dissent note was not taken up in the impugned orders, which is a serious flaw in the decision-making process. The note of dissent is reproduced on the main writ petition from pages 50-59 and summarizes the entire case of the petitioner. The Note of Dissent reads:-

“I feel that none of the charges levelled against Shri Peshkar Singh has really been proved. Lapses of Shri Peshkar Singh are of procedural irregularities. At best he would be accused of having ineffective and inadequate supervision on the office staff which could be due to lack of proper assistance, and very heavy work. Under these circumstances, punishment awarded to Shri Peshkar Singh is very harsh and excessive. My conscience, therefore, does not permit me to agree with the decision of BOM in this regard, I have, therefore, given the above Note of Dissent. It would meet end(s) of justice, if he is given a recorded warning or his one or two increments are stopped, without cumulative effect. Simultaneously, he should be given adequate and suitable staff to assist him in office work.”

The third contention raised on behalf of the petitioner is that the removal order of termination was passed by an authority not competent to do so. The factual matrix in support of the argument is that the petitioner was appointed by the Board of Management and the competent authority to terminate his services is also the Board of Management but in the present case the Vice Chancellor has terminated the services and the Board of Management has decided the appeal. The recommendation by the

Committee to review the order P-46 also indicates that the competent authority is Board of Management and not the Vice Chancellor for removal from service of the petitioner as the recommendations were sent to BOM. Order Annex P-1 is the order of grant of promotional scale to the petitioner and it was also granted on the basis of decision taken by the Board of Management. Rule 4 of Chapter V of the Statutes of the University prescribe that the appointment shall be made by the Vice Chancellor with the approval of the Board of Management. The appellate authority is the Chancellor of the University. Therefore, clearly both the removal/termination order, as well as the order dismissing the appeal, are by incompetent authorities who had no jurisdiction vested in them to pass the orders visiting evil civil consequences on the rights of the petitioner as a permanent employee of the University. Some of the relevant statutes are reproduced from page 363-372 but the specific chapter and rule number is not mentioned. Separate compilation of the Act and Statutes of the University is attached with the help-note provided by Mr. Bains for the assistance of the court on the procedure applicable. Statute 4 is on page 20 of the compilation. Pages 1-19 is the bare act styled as the Haryana and Punjab Agricultural Universities Act, 1970. Some of the relevant statutes are Section 12 on page 26 of the compilation and page 166 of the paper-book. Other relevant statutes are reproduced on page 174-179 of the paper-book and pages 30-31 of the compilation. The conduct rules are from page 41-47 of the compilation.

Section 16 (8) and statute 4 (1) is reproduced as under:

"16(8) Subject as aforesaid, the Vice Chancellor shall give effect to the orders of the Board regarding the appointment, suspension and dismissal of officers, teachers and other employees of the corresponding University."

"4(1) appointment of class 1/grade A posts shall be made by the Vice Chancellor with the approval of the Board."

The fourth contention of Mr. Bains is regarding improper procedure followed by the enquiry officer and no reasonable opportunity of cross-examination was permitted to the petitioner. The proceedings of the enquiry dated 19.5.1994, 24.5.1994, and 25.5.1994 are placed on record as Annex P-36 on pages 412-430. A reading thereof itself indicates that no cross-examination was allowed to witnesses and the strange procedure was followed similar to oral arguments in a court of law where one side says something and the other side retorts and the conclusion is recorded by the enquiry officer. Proceedings of the enquiry officer on 28.5.1994 is on page 466 and surprisingly shows Raj Singh Yadav, Store Keeper who was also charge-sheeted has been made a witness against the petitioner. This is clear from proceedings on page 471 and on page 472 which are questions put to Yadav by the enquiry officer. The next meeting held was on 1.6.1994 the proceedings of which are on page 473 while the proceedings of 6.6.1994 is on page 478 and proceedings of 7.6.1994 are on page 488. The proceedings of 14.6.1994 are on page 523. Further proceeding of 18.6.1994 are placed at pages 531-535-545. The enquiry proceedings dated 28.7.1994 begins from page 562 and the proceedings dated 1.7.1994 begins from page 566 and the enquiry ends on page 571 which are proceedings of 6.7.1994. It again begins against the petitioner on 16.7.1994 which appears in the paper-book at page 575 and finally ends on page 580. The proceedings speak for themselves and are clearly unfair recording of evidence by denying effective opportunity to cross question the witnesses. The questions were posed by the presenting officer and the answers are summarized by the enquiry officer and the role of the charged officer was only to witness and sign the proceeding.

The fifth plank of attack by Mr. Bains is the strange case of the Storekeeper Raj Singh Yadav who was made a witness against the petitioner. Though the Storekeeper was also charge-sheeted a few days after the petitioner yet his enquiry was conducted separately and he was made a witness against the petitioner and finally the same findings were recorded against him as in the case of the petitioner but he was given only a recorded warning years later after the appeal of the petitioner was dismissed. The charge against the Storekeeper is that all he did in connivance with the petitioner and therefore he is incompetent to be a witness against the petitioner as he was himself in the dock. It is urged that even in the matter of punishment principles of equality are to be actively kept in mind and applied proportionately where alleged misconduct originate from common or same transactions.

The sixth line of challenge, and an interesting one, is the Vice Chancellor acting as Supervising Officer and this being a vitiating factor of sharing responsibility. It is submitted that as per the statutes (AnnexP-30) the Estate Officer works under control and supervision of the Vice Chancellor and in exercise of his responsibilities under Section 19 of the HAPU Act, 1970. That makes the petitioner a Supervisory Officer and the Vice Chancellor for failure in supervising duty of which the petitioner has been charged with, is equally responsible as the Head of his Supervisory Officer, which is respondent 2 the Vice Chancellor. Mr. Bains invokes collective responsibility. If the charges were so serious and lapses were found it was a systems failure and the Vice Chancellor should have stepped down from the office on moral grounds. Therefore, the petitioner was made a scapegoat.

The seventh labour of Mr. Bains to vindicate the honour of his client who is now I'm told a septuagenarian who can never be reinstated to service even if he succeeds in the setting aside of the termination order; is to the effect that all the bills in question and subject matter of departmental proceedings were duly audited and cheques issued by Comptroller of the University for onward payments to suppliers and repair workshops of old University owned tractors and implements required for the daily upkeep of the University landscapes and gardens of which the petitioner was in-charge. As explained in para. 18 of the rejoinder on page 282, all the bills were duly passed by the internal auditor and they alone were passed on to the University Comptroller and his office on the basis of vouchers passed by audit after exercising their own checks and balances, the office used to issue cheques and thereafter send such cheques to the petitioner's office for dispatch to the parties concerned. If the bills had not been prepared by the petitioner as per rules and regulations then Mr. Bains asks how could such bills be first approved by the audit and, secondly, cheques issued by University Comptroller after applying their own checks and thereafter issue the payment cheques. Therefore, the conclusion of the enquiry officer that the bills have not been passed in terms of rules and regulations is fallacious and an incorrect assessment of channels of approval of payments and thus the blame could not have been put on the shoulders of the petitioner but should instead be on the shoulders of the auditors and the Comptroller of the respondent University. It is also stated in para. 20 at page 283 of the rejoinder that each and every bill was passed by the audit and the Comptroller of the University issued the cheques to supplier third parties

Moreover, the show cause notice issued to the Storekeeper is on page 377 and at page 394. The charge is that he did not maintain the record

properly and committed various irregularities in collusion with the petitioner. It is part of the enquiry proceeding in the charge-sheet where the Storekeeper is charged with non-production of record, violation of prescribed purchase procedures, splitting up of purchase intentionally, violating rules in collusion with the petitioner and getting bills passed from audit when the Storekeeper was not dealing with contingencies, ceilings fixed for petty purchases which allegedly were not observed in the maintenance of record and thus committed other financial irregularities with a view to take undue pecuniary advantage. Despite such grave charge of taking undue pecuniary advantage, he was not removed from service and he was barely given a recorded warning vide order dated 23.11.1998.

The eighth lacuna in the management of disciplinary action is inflicting excessively disproportionate punishment for the alleged misconduct even assuming *arguendo* it was committed which were no more than minor procedural lapses duly audited by the authorities. This petition is an appeal to reason and on proportionality tested on Wednesbury principles inasmuch as it is urged that the Storekeeper Raj Singh Yadav was punished by extremely minor penalty vide order dated 23.11.1998 after sufficient delay with only a recorded warning on the pretext of taking a lenient view though he was also given notice for removal of service as was the petitioner. The true copy of the minor punishment order handed down to the Storekeeper whose responsibility it was to keep the record and the petitioner was only a supervisory officer of the Storekeeper. The order is placed on record as Annex P-47 in civil miscellaneous application No 32809 of 2001 dated 20.11.2001 and by this application two documents are placed on record Annex P-46, the recommendation by the Committee to review the punishment order of the petitioner and recognition to place the proposal

before the Board of Management was made but it was eventually dismissed. The 2nd order placed on record is Annex P-47 being the punishment order of recorded warning issued to the Storekeeper who was charged with collusion with the petitioner for committing a large number of infirmities. In any case, the supervisory officer is not guiltier than the person who actually managed the record and had its lawful custody and therefore, even in the worst of circumstances, on the principle of parity of punishment in similar circumstances, the petitioner deserves only the maximum punishment of recorded warning as given to the Storekeeper.

Mr. Bains laments that the petitioner is now 70 years old and in fragile health as removal made him penniless at the age of 49 with the responsibility of a family to take care of when the father's income was most needed as the children were at the critical stage of the education. Ensuing litigation made him worse off. In fact, the Vice Chancellor was so inimical to the petitioner that even the recommendation by the Committee to review the order of removal of the petitioner (Annex P-46) was not accepted by the Board of Management, which was part of the mercy appeal of the petitioner, which if accepted may have saved him from doom.

These are eight points to ponder over, as raised by the petitioner detailed above for the Court to determine whether each of them or in combination or in part add up to a view that the removal from service was a vindictive act of the respondents, or were the acts fair and reasonable and free from bias and mala fides as alleged by the petitioner inferentially duly supported by the materials on record.

Heard Mr. Bains for the petitioner and Ms. Avin Sandhu for the University at considerable length and ploughed through the two parts of the paper-book.

Ms. Sandhu's defence is written statement-based and the stock responses are the usual that an enquiry was held where the charges were proven. It is for the management to select punishment. The Court does not sit in appeal over the findings recorded by the enquiry officer duly accepted by the disciplinary authority. The court cannot go into adequacy or inadequacy of evidence.

Having given my thoughtful consideration to the facts of the case and for the reasons recorded above, I reach a conclusion that the petitioner was unfairly dealt with by a vindictive administration on trivial charges when he was working in supervisory capacity. It cannot be held that the petitioner was charged with corruption or acts of embezzlement and this was an add-on in the order of removal. A mass of papers have been built by the University purporting to be incriminating material against the petitioner only to obfuscate the matter and make it seemingly impenetrable by the daunting size of the paper-book capable of putting off anyone except the Court when it ventures to unveil the substratum of the charges to do justice. There is sufficient explanation by the petitioner on all the charges in the two successive charge sheets which should not invite the extreme punishment of removal from service. The punishment is extremely excessive and totally disproportionate to the gravity of the charges which enormity disturbs the mind as a reasonable man may not select. This is virtually a case of no direct evidence of grave misconduct imputable against the petitioner. There may be minor lapses caused due to lack of supervision but the petitioner was not a criminal. The dissent note of Dr. P.S. Lamba is standing testimony which persuades the court to shun major punishment. Dr. Lamba had been the Vice Chancellor of the University and had no personal axe to grind when he made a dispassionate disapproval of the action being taken against the petitioner

by entering a dissent note. He had seen firsthand the working of the petitioner. Other than the charge-sheets there was no blemish in 23 years of service rendered to the University. That was itself a mitigating circumstance which was ignored when the impugned removal order was passed. Even in the matter of punishment there should be no discrimination practiced. The Storekeeper Raj Singh Yadav was let off only with a mild recorded warning. The swing of the pendulum from warning to removal/termination appears rather intolerable to the conscience. I find after weighing all the preponderance of probabilities, for and against the petitioner, in the setting of the charges and the evidence on record and the wayward procedure followed denying reasonable and effective opportunity to cross-examine the prosecution witnesses; that the case of the petitioner is as good or as bad as that of Raj Singh Yadav, inter alia, on quantum of punishment. The petitioner deserves to be put on a par with the gentleman.

I agree with the submissions of Mr. Bains that this is a fit case for intervention through certiorari to restore whatever is left of the past. Restorative justice is the only way to vindicate the wrongs done to the petitioner at the hands of the respondents who have shied away from filing their individual written statements admitting or denying the averments in the petition. An adverse inference is drawn against them and especially the then ice Chancellor- respondent that he walked many extra miles to harass the petitioner with frivolous charges, mostly dug out to hound the petitioner and remove him from service.

Neither do I have any doubt or hesitation in striking down the impugned order of removal as illegal, arbitrary, perverse, unreasonable and unconstitutional. Accordingly this petition is allowed. The impugned order is invalidated and is hereby quashed. It will be the petitioner's right to take all

consequential benefits which would naturally flow when the removal order is removed from his way as though it was never passed. A direction is issued to the University to reconsider punishment within two months of the receipt of this order by scaling it down to one of the minor penalties by keeping in view the punishment imposed on Storekeeper Raj Singh Yadav.

[RAJIV NARAIN RAINA]
JUDGE

14.07.2016
Vimal

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*