

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11822-CAT of 2016

Date of Decision: 03.06.2016

UOI & Ors.

... Petitioners

VS.

CAT & Anr.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE A.B. CHAUDHARI**

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Sundeep Kumar, Advocate for the petitioners

SURYA KANT, J. (Oral)

(1) Union of India through Ministry of Health and Family Welfare and the PGIMER, Chandigarh have laid challenge to the order dated 30.03.2016 (P4) passed by Central Administrative Tribunal, Chandigarh Bench (in short, 'the Tribunal') whereby the order of compulsory retirement of respondent No.2 has been set aside and having regard to the peculiar facts and circumstances of the case, the punishment of compulsory retirement has been substituted by imposing the penalty of withholding of two increments of pay with cumulative effect from the date respondent No.2 is deemed to be reinstated in service.

(2) A brief reference to the facts may be made.

(3) The second respondent joined the PGIMER, Chandigarh as Welfare Officer on 29.09.1993. He was promoted as Administrative Officer (Group 'A') on 03.09.2005. He had 17 years' unblemished service record and his Annual Confidential Reports were graded as 'Very Good' or 'Outstanding'.

(4) Respondent No.2 was charge-sheeted on 29.04.2011 alleging as follows:-

“That Sh. Rajneesh Anand, Administrative Officer, PGIMER, Chandigarh misconducted himself by dereliction for duties with full knowledge, by way of signing the award letter given to M/s Helpline Facility Management, Noida whereas it was approved by the competent authority to issue the award letter to M/s Helpline Hospitality, New Delhi. Sh. Rajneesh Anand by this act has exhibited lack of devotion to his duty and acted in a manner which is unbecoming of an employee of the Institute. In this way Sh. Rajneesh Anand has contravened the provisions of Rule 3(1)(i), (ii) and (iii) of CCS Conduct Rules, 1964.”.

(emphasis applied)

(5) Respondent No.2 requested to supply certain documents which were not given to him. He, however, submitted his reply, whereafter the Inquiry Officer was appointed. According to respondent No.2, the Inquiry Report dated 01.06.2012 does not even remotely proves any misconduct against him. No allegation of ‘dereliction of duty’ or ‘lack of devotion to duty’ or of ‘unbecoming of an employee’ was proved.

(6) On the other hand, the Inquiry Officer believed the candid admission made by respondent No.2 to the effect that the draft letter was put up before him through a channel of 3-4 subordinate officials and he made certain corrections in the draft letter and sent the file down to the office for putting up the fair draft for his signatures. Respondent No.2 categorically pleaded that the draft letter in which corrections were made in the name of correct addressee but in the final draft which was again put up through the

channel of 3-4 subordinate officials, there was a mistake but he signed the same in good faith without suspecting such mistake.

(7) The disciplinary authority imposed major penalty of compulsory retirement from service on respondent No.2 vide order dated 13.10.2012 which he challenged before the Tribunal, who in turn, set aside the said order with a direction to the disciplinary authority to re-consider the 'quantum of penalty'.

(8) PGIMER, Chandigarh did not challenge the Tribunal's order but the disciplinary authority vide order dated 29.04.2013 again imposed the major penalty of compulsory retirement on the second respondent. He challenged that order but this time the Tribunal relegated him to the remedy of departmental appeal.

(9) The following comments made by the appellate authority i.e. President of the Institute-cum-Union Minister of Health & FW on 07.04.2014 on the appeal of respondent No.2 are quite pertinent:-

*"It appears that Institute has actually not suffered any financial loss in the case and that no written advice has been obtained from CVC before imposing the above major penalty of compulsory retirement.....
The Institute may reconsider the matter particularly with regard to quantum of penalty and thereafter obtain the advice of CVC in writing in the matter.*

*Sd/- President-cum-
Union Minister of Health &
FW 7.4.2014"*

(emphasis applied)

(10) The Central Vigilance Commission also advised the Authority to impose suitable penalty “*commensurate with the proved charges*”.

(11) The Appellate Authority, finally dismissed the appeal observing that in the light of point-wise comments given by the Director, PGI, the appeal is dismissed.

(12) Respondent No.2 thus challenged these orders before the Tribunal. The petitioners filed their reply and after hearing the parties, the Tribunal has vide impugned order allowed the Original Application in part and has set aside the order of compulsory retirement of respondent No.2 from service. The Tribunal has thereafter substituted the punishment observing as follows:-

“Normally the Tribunal would not pass an order regarding penalty to be imposed upon the applicant, but as has been observed already, the respondent Institute does not appear to be willing to reconsider the quantum of penalty. Hence, keeping in view the responsibility of the applicant in this matter regarding issue of award letter to M/s Helpline Facility Management Pvt.Ltd., Noida rather than to M/s Helpline Hospitality Pvt.Ltd., New Delhi, we are of the view that the ends of justice, will be met by reinstating the applicant in service and imposing the penalty of withholding of two increments of pay with cumulative effect from the date when the applicant is deemed to be reinstated in service. The period for which he has been

away from the job may be treated as leave of the kind
due...”

(emphasis applied)

(13) We have heard learned counsel for the petitioners at a considerable length and gone through the record. The foremost contention is that the Tribunal could not have acted as the next Appellate Authority and reduced the punishment as no such jurisdictional competence is vested in the Tribunal, more-so when no fault was found with the disciplinary proceedings.

(14) True it is that a Court of Tribunal would sparingly invoke their extraordinary jurisdiction to substitute the quantum of punishment imposed by Departmental authorities who have the exclusive domain to determine the nature of punishment warranted in the facts and circumstances of a case.

(15) In **Ranjit Thakur vs. Union of India & Ors. (1987) 4 SCC 611**, it was held that question of choice and quantum of punishment was within jurisdiction and discretion of Court-Martial. But sentence had to suit offence and offender. Sentence should not be vindictive or unduly harsh and should not be so disproportionate to offence as to shock conscience and amount in itself to conclusive evidence of bias. Doctrine of proportionality, as part of concept of judicial review, would ensure that even on aspect which was within exclusive province of Court-Martial, if decision of Court even as to sentence was outrageous defiance of logic, then sentence would not be immune from correction.

(16) In **B.C. Chaturvedi v. Union of India and Others (1995) 6 SCC 749**, the Supreme Court held that 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. (emphasis applied)

(17) The Apex Court in **Admin. Union Territory of Dadra & Nagar Haveli vs. Gulabhia M. Lad, (2010) 5 SCC 775**, reiterated the legal position that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works.

(18) In **S.R. Tewari vs. Union of India and Anr. (2013) 6 SCC 602**, the appellant was an IPS Officer against whom two charges of administrative lapses were proved in the disciplinary proceedings. He was awarded the punishment of compulsory retirement from service. Having regard to the nature of misconduct proved against the delinquent officer, the Hon'ble Supreme Court found that the punishment of compulsory retirement

shocks the conscience of the Court and it cannot be held to be proportionate or commensurate to the delinquency committed and proved against the appellant. The punishment of compulsory retirement was substituted with withholding of two increments for one year without cumulative effect.

(19) In **Deputy Commissioner, KVS and others vs. J. Hussain (2013) 10 SCC 106**, the delinquent official who was working as Upper Division Clerk, forcibly entered into the office of the Principal while he was in a fully drunken state. The disciplinary authority imposed the penalty of removal from service. The delinquent employee approached the Central Administrative Tribunal but his petition was dismissed. Thereafter he filed a writ petition and the High Court, applying the doctrine of proportionality held that the penalty of removal from service was disproportionate to the nature and gravity of his misconduct. The Hon'ble Supreme Court set aside the order of the High Court and restored that of the Tribunal, reiterating that the principle of proportionality comes into play only when the punishment is found to be outrageously disproportionate to the nature of charge. These principles have again been re-stated in **Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Anr. vs. Rajendra Singh, (2013) 12 SCC 372**.

(20) Having regard to the above quoted settled principles of law, we are satisfied that the case in hand falls within those exceptions where the Tribunal has rightly intervened and substituted the punishment from compulsory retirement to stoppage of two increments with cumulative effect. We say so for the reasons that:-

- (i) it has come on record that the draft letter corrected by respondent No.2 was in the name of correct addressee but the

final draft when put up for signatures was in the name of another firm;

- (ii) there is lot of familiarity in the names of both the firms, namely, M/s Helpline Facility Management Pvt.Ltd., Noida (UP) and M/s Helpline Hospitality Pvt.Ltd., New Delhi. Both the firms are stated to be the proprietorship of one person who had signed both the bidding letters;
- (iii) no loss, financial or otherwise, was admittedly caused to the Institute as the mistake was timely detected and remedial steps were taken;
- (iv) the candid admission made by respondent No.2 acknowledging human error may amount to a mistake or at best dereliction of duty but not the 'grave misconduct' of such a degree, which would warrant major penalty of loss of employment i.e. compulsory retirement from service. The nature of punishment awarded by Disciplinary Authority does shock the conscience of Court;
- (v) the Inquiry Officer has, in a way, exonerated respondent No.2 and in the absence of any 'Note of Disagreement', the disciplinary authority could not proceed on the premise that respondent No.2 was guilty of committing some serious or grave misconduct;
- (vi) in the absence of any further finding *re:* malice, dishonesty, corrupt motive, the punishment of compulsory retirement from service is surely disproportionate to the nature of charges said to have been proved against respondent No.2;

(vii) the Tribunal has rightly observed that it would not have substituted the order of penalty save the compelling reasons, for the petitioner-authorities were not willing to re-consider the quantum of penalty. The Tribunal was very much reluctant to usurp the powers of disciplinary or appellate authorities but had to intervene due to reluctance shown by the authorities.

(21) For the reasons afore-stated, no case to interfere with the order passed by the Tribunal is made out.

(22) Dismissed.

(Surya Kant)
Judge

03.06.2016
vishal shonkar

(A.B. Chaudhari)
Judge