

\$~08.

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

+ W.P.(C) 1389/2015

%

Judgment dated 29th July, 2016

UNION OF INDIA & ANR.

..... Petitioners

Through : Mr.Arun Bhardwaj, CGSC, and
Mr.Mimansak Bhardwaj, Adv.

versus

ASHOK AGGARWAL & ORS.

..... Respondents

Through : Mr.Ghanshyam Thakur and Mr.Rahul
Dev Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 30.4.2014 passed by Central Administrative Tribunal (in short '*the Tribunal*') in OA No.380/2013 filed by the respondent, by which the learned Tribunal allowed the OA and set aside the order dated 24.10.2011 passed by Disciplinary Authority; the Office Order dated 7.12.2011; the order dated 2.3.2012 whereby the request of the respondent for LTC advance for visiting Port Blair was rejected and he was deprived of the LTC for the two block years i.e. 2010-2013 and 2014-2017; and the order dated 30.7.2012 whereby his revision petition was dismissed. It is informed to the Court that the respondent has now retired.
2. The necessary facts, which are required to be noticed for disposal of this writ petition, are that the respondent was working as a Section

Officer in the Department of Financial Services, Ministry of Finance, Government of India. On 27.11.2008, the respondent was sanctioned Leave Travel Concession (LTC) advance in the sum of Rs.1,18,000/- for visiting Port Blair for the Block year 2006-2009 for himself and his wife. The LTC advance was drawn by him on 10.12.2008. The respondent informed the petitioners that he had purchased the tickets from M/s Greentop Holidays, a travel agent of Delhi, for his tour to Port Blair by paying Rs.53,256/-. Subsequently, the respondent informed the Department that he had been cheated by the said travel agent as he was given false computer generated confirmed tickets for to and fro journey i.e. from Delhi to Port Blair. The respondent also brought to the notice of the Department that he had lodged a complaint with the Police.

3. The petitioners have relied upon Rule 15 of CCS (LTC) Rules, 1988, as per which one of the requirements of LTC Advance is that an applicant has to produce tickets within ten days from the drawal of the advance and thereafter produce evidence of actually having performed the due journey. Since the respondent did not proceed for the designated place i.e. Port Blair on LTC, he could not produce evidence of actually performing the journey. Resultantly, the respondent was advised to deposit the entire outstanding advance with penal interest as per the provision of Rule 15 in one lump sum. Since the respondent failed to deposit the entire outstanding advance in spite of repeated reminders, two Articles of Charge were framed against him. The Inquiry Officer submitted his report on 8.11.2010 holding the charges as proved against the respondent. Thereafter disciplinary proceedings were initiated against the respondent. Pursuant to the documentary evidence including the findings of the Inquiry Officer and the representation of

the respondent, the Disciplinary Authority referred the matter to the Union Public Service Commission, respondent no.2 herein, for its advice. The UPSC vide its communication dated 27.9.2011 advised the Disciplinary Authority that since the respondent has returned the entire amount together with interest, ends of justice would be met if the penalty of reduction by one stage in the time scale of pay for a period of two years without cumulative effect and not adversely affecting his pension, is imposed upon him. The Competent Authority, pursuant to the advise rendered by the UPSC, vide its order dated 24.10.2011 imposed the aforestated punishment upon the respondent. Thereafter the respondent filed a review petition before the petitioners herein which was dismissed. The petitioners issued an Office Order dated 7.2.2011 imposing the aforestated punishment upon the respondent. The petitioners also issued another Office Order dated 2.3.2012 informing the respondent that on the advice of DOP&T, a minimum of two sets of LTC had been disallowed to him. Aggrieved by the said orders, the respondent herein filed OA No.380/2013 before the Tribunal; which has been allowed and has led to the filing of the present writ.

4. Mr.Bhardwaj, learned counsel for the petitioners, submits that the learned Tribunal has failed to correctly apply the law laid down by the Supreme Court of India to the facts of the present case. While drawing the attention of the Court to the list of documents filed along with the Charge Sheet, learned counsel for the petitioners submits that the documents sought to be relied upon were communications either addressed to the respondent or his reply, it is further contended by counsel for the petitioners that a reading of the documents would show that issuance of the LTC advance was not disputed. Mr.Bhardwaj

further submits that advice to the respondent to deposit outstanding advance with penal interest was not disputed as the respondent in reply to the communication had agreed to deposit the balance amount but in installments. It is contended that the request of the respondent for waiver of penal interest was also rejected. Thus, it is submitted that the Tribunal has misdirected itself and not correctly applied the law to the facts of the present case with regard to leading evidence and proving documents.

5. Mr. Thakur, learned counsel for the respondent, submits that the sanction of LTC advance or the advance drawn by the respondent is not disputed. The counsel has also not disputed having received communications calling upon the respondent to pay the advance with penal interest and that too in one go.
6. It is further contended by the counsel for the respondent that the respondent never disputed return of the money, however, he only prayed that the penal interest imposed upon him be waived and money be not recovered in one lump sum on account of the fact that he was cheated by the travel agent and part payment was made to the travel agent.
7. Counsel for the respondent further submits that the punishment imposed upon the respondent was not commensurate to the Articles of Charge for the reason that on the one hand the respondent was cheated by the travel agent and on the other hand he was asked to pay the penal rate of interest. Counsel also contends that to prove his *bona fides*, the respondent had submitted the computer generated travel ticket to the petitioners and in fact before the enquiry could be concluded, the respondent had paid the entire amount together with penal interest.
8. We have heard learned counsel for the parties and given our thoughtful

consideration to the matter. The first issue which arises for consideration before this court is whether the enquiry would stand vitiated in the absence of oral evidence not having been led by the petitioner.

9. It may be noticed that the Tribunal has noticed in the impugned order that not a single witness was produced to prove the charges and in spite of this the Inquiry Officer held that the charges stood proved. The Tribunal has also observed that findings of the Inquiry Officer are not sustainable. The Tribunal has further observed that in the absence of any witness, if the Inquiry Officer comes to the conclusion that the charges have been proved, such findings can only be termed as perverse and the same cannot be accepted.
10. The learned Tribunal has noticed the decision rendered in the case of ***Kuldeep Singh v. The Commissioner of Police & Others***, reported at JT 1998 (8) SC 603 wherein it has been held that there was absolutely no evidence in support of the charge framed against the appellant therein and the entire findings recorded by the Enquiry Officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.
11. The learned Tribunal while passing the impugned order has also taken into consideration the decision rendered in the case of ***Roop Singh Negi v. Punjab National Bank And Others***, reported at (2009) 2 SCC 570, wherein the Apex Court has held that mere production of documents is not enough but their contents have to be proved by examining the witnesses. Relevant portion of the judgment reads as under:

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges levelled against the delinquent

officer must be found to have been proved. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceedings. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof...”

12. The Tribunal has also taken into consideration the case of ***Modula India v. Kamakshya Singh Deo***, reported at (1988) 4 SCC 619 wherein it has been held that in a disciplinary proceeding, documents are the tools for the delinquent employee for cross-examining the witnesses who deposed against him. The Tribunal also noticed the case of ***Hardwari Lal v. State of U.P. & Others*** reported at (1999) 8 SCC 582 it has been held by the Apex Court that in a departmental enquiry proceedings examination of material witnesses is a must.
13. There is obviously no quarrel to the proposition which has been laid down. However, in the facts of the present case the judgments relied upon by the Tribunal and the counsel for the petitioners, would not apply for the reason that the list of documents, which are reproduced below, would show that these are admitted documents and they are admitted even during the course of hearing of this writ petition:

“List of documents by which the Articles of Charge framed against Sh. Ashok Aggarwal, Section Officer are proposed to be sustained.”

1.	Order sanctioning LTC advance of Rs.1,18,000/- to Sh. Ashok Aggarwal, Section Officer	27-11-08
2.	LTC advance drawn by Sh. Aggarwal, S.O.	10-12-08

3.	<i>Advice to Sh. Aggarwal to deposit the outstanding advance with penal interest</i>	6-3-09
4.	<i>Letter from Sh. Aggarwal that he is ready to deposit the balance amount of LTC, rest of the amount to be recovered in instalments.</i>	2-4-09
5.	<i>Intimation to Sh. Aggarwal that he has to deposit the LTC advance in one lumpsum</i>	4-5-09
6.	<i>Offer by Shri Ashok Aggarwal to allow him to pay the balance amount of Rs.64,774/-</i>	26-5-09
7.	<i>Advice to Sh. Aggarwal to deposit the LTC advance in one lumpsum with penal interest in accordance with LTC Rules</i>	2-6-09
8.	<i>Letter from Sh. Aggarwal for waiving of penal interest and requesting to recover the amount in instalments.</i>	12-6-09
9.	<i>Reminder to Sh. Aggarwal to deposit the entire amount in lumpsum with penal interest otherwise disciplinary action to be initiated.</i>	22-6-09
10.	<i>Reminder to Sh. Aggarwal to deposit the amount in one lumpsum with penal interest otherwise disciplinary action will be initiated without any further notice.</i>	6-8-09

14. To lead oral evidence in this situation in our view would not be

required.

15. We are fortified in our view by a decision rendered in the case of ***Zonal Manager, LIC of India and Others v. Mohan Lal Saraf***, reported at 1978 LAB. I.C. 1312, more particularly paragraphs 4, 6 and 11, which read as under:

“4. The learned single Judge held that the allegations of the respondent with regard to the enquiry, not being fair, were not well founded. ‘The learned single Judge also found, as devoid of force, the objections of the petitioner that since the enquiry officer was a subordinate of the officer who had framed the charges against him, he was under the influence of the appointing authority. It was further held that there was no violation of the principles of natural justice in the conduct of the enquiry. The allegation of the respondent with regard to the dismissal being mala fide was also found to be not well founded. The learned single Judge, however, set aside the order of dismissal on the ground that certain inadmissible evidence had been taken into consideration and relied upon by the enquiry officer. The document which had been so admitted into evidence by the enquiry officer was a list Exhibit 36, were either inflated or non-existent. The learned Judge allowed the writ petition by observing that inadmissible evidence had been taken into account which vitiated the report. The learned single Judge observed:

“Now in the instant case the list furnished could not be a substitute for the original documents sought to be proved against the accused. The maker of the list was not examined as a witness and the petitioner had no occasion to cross-examine the maker thereof or anybody else on matters contained in the list.”

At another place the learned Judge opined:

“In my opinion the mere filing of the list could not take the place of legal proof. On this account the report of the enquiry officer as also the impugned order based on the report stands vitiated.”

...

6. Mr. Ravi Nanda, appearing for the appellants has very vehemently argued that the learned single Judge did not take the entire facts into consideration and that he failed to

appreciate that the charges of misappropriation of postal accounts were not sought to be substantiated on the basis of the list Exhibit 36, alone but that the charges had been established before the enquiry officer from other oral and documentary evidence produced by the appellants. It is urged that the enquiry officer had relied upon the entire evidence in finding the charges proved against the respondent and the learned single Judge should have taken this fact into consideration. It has been argued with ability, that the finding of the learned single Judge that the list Exhibit 36 is not legal evidence on the ground that the maker thereof was not examined before the enquiry officer is erroneous in law. It is urged that strict and sophisticated rules of evidence, not being applicable to domestic enquiries, an enquiry officer can take into account any credible evidence, even hearsay evidence, during an enquiry and that it is immaterial whether or not the maker of a document which is sought to be relied upon, is examined before him. It has further been submitted that the Evidence Act not being applicable to proceedings before domestic tribunals, it would be erroneous to hold that a document is inadmissible in evidence in a departmental enquiry, because the maker thereof has not been produced for being subjected to cross-examination. Mr. Nanda has submitted that since the writ petition has been allowed on an erroneous ground, the order of the learned single Judge deserved to be set aside. It is further argued that even if assuming for the sake of arguments, the list Exhibit 36, was not be relied upon, there was sufficient other evidence to support the charges and justify the order of dismissal. Mr. Nanda asserts that if the order of dismissal can be sustained on the other evidence, this court should uphold the dismissal and deny any relief to the respondent.

...

11. It is, thus, clear that domestic tribunals may act on any credible information or evidence received from any channel and source. All that the law requires is that it should be put to the party against whom it is sought to be used to give a fair opportunity to explain it. If the opportunity to explain the evidence has been given, the domestic tribunals can rely upon such evidence. Even hearsay evidence, if it is credible has been held to be admissible before a domestic tribunal.

The observations of Lord Denning, M.R. in T.A. Miller Ltd. v. Minister of Housing and Local Govt. (1968) 1 WLR 992(at page 995) are very relevant.

“Hearsay is clearly admissible before a tribunal. No doubt in admitting the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it.”

It would thus follow that the learned single Judge was in error in holding the document to be inadmissible for the reasons set out by him and we accordingly hold the reasoning and the finding based thereon to be incorrect.”

16. In the peculiar facts of this case, where the respondent has not denied either receipt of LTC advance or letter from the Department calling upon him to deposit the outstanding advance with penal interest or the reminders issued to him as well as letters written by him to the Department, we are of the opinion that no purpose would have been achieved in leading oral evidence, neither any cross-examination would have been required.
17. As far as the second question, which is involved in the present matter, gains immense importance and i.e. whether the punishment awarded to the respondent was commensurate to the Articles of Charge? Our answer is in the negative. In this case it is the respondent who informed his Department that he had been cheated by the travel agent and an FIR in this regard had also been lodged, which would show his *bona fide*. The respondent had also submitted the computer copy of a ticket which was received by him from the travel agent. The only time taken by the respondent in not depositing the money with the petitioners was due to the reason that he was pleading that he should be permitted to return the amount in installments and without penal rate of

interest. In our view, any ordinary person in such a situation would certainly make such a request to the Department considering that on the one hand he had been cheated by the travel agent due to which on one hand he could not claim the benefit of LTC and on the other he had to return the money out of his own pocket and that too with penal interest.

18. Another factor, which the Inquiry Officer as also the Disciplinary Authority has lost track of, is that before the inquiry was completed the entire amount with penal interest was returned by the respondent in spite of which the Inquiry Officer, the Disciplinary Authority and the Appellate Authority have taken rather a harsh view in the matter.
19. The law in respect of interference with the quantum of punishment is well-settled. To this end, we may refer to the following judgments. In ***S.R. Tewari v. Union of India***, reported at (2013) 6 SCC 602, the Supreme Court has held as under:

“24. The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. In Ranjit Thakur v. Union of India [Ranjit Thakur v. Union of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113 : AIR 1987 SC 2386], this Court observed as under: (SCC pp. 620-21, paras 25 & 27)

“25. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction.

27. In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.”

(emphasis supplied)

(See also *Union of India v. G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806 : AIR 1997 SC 3387], *State of U.P. v. J.P. Saraswat* [(2011) 4 SCC 545 : (2011) 1 SCC (L&S) 718], *Chandra Kumar Chopra v. Union of India* [(2012) 6 SCC 369 : (2012) 2 SCC (L&S) 152] and *High Court of Patna v. Pandey Gajendra Prasad* [(2012) 6 SCC 357 : (2012) 2 SCC (L&S) 140 : AIR 2012 SC 2319].)

25. In *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484], this Court after examining its various earlier decisions observed that in exercise of the power of judicial review, the court cannot “normally” substitute its own conclusion or penalty. However, if the penalty imposed by an authority “shocks the conscience” of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority.

26. In *V. Ramana v. A.P. SRTC* [(2005) 7 SCC 338 : 2006 SCC (L&S) 69 : AIR 2005 SC 3417], this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be

“shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards.” In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the court itself can impose appropriate punishment by recording cogent reasons in support thereof.

27. *In State of Meghalaya v. Mecken Singh N. Marak* [(2008) 7 SCC 580 : (2008) 2 SCC (L&S) 431 : AIR 2008 SC 2862] this Court observed that: (SCC p. 584, paras 13-14)

“13. ... A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it felt that the punishment is not commensurate with the proved charges.

14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. ... The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.”

(See also *A.P. SRTC v. P. Jayaram Reddy* [(2009) 2 SCC 681 : (2009) 1 SCC (L&S) 529].)

28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide *Union of India v. Bodupalli Gopalaswami* [(2011) 13 SCC 553 : (2012) 2 SCC (L&S) 94] and *Sanjay Kumar Singh v. Union of India* [(2011) 14 SCC 692 : AIR 2012 SC 1783].)

29. *In Union of India v. R.K. Sharma [(2001) 9 SCC 592 : 2002 SCC (Cri) 767 : AIR 2001 SC 3053]* , this Court explained the observations made in *Ranjit Thakur [Ranjit Thakur v. Union of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113 : AIR 1987 SC 2386]* observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in *Ranjit Thakur [Ranjit Thakur v. Union of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113 : AIR 1987 SC 2386]* are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.”

(Emphasis Supplied)

20. Having considered the peculiar facts of the case, we are of the view that the punishment imposed upon the respondent shocks our conscience as not only the petitioner has taken a very harsh view but also the action of the petitioner lacks application of mind and sensitivity in dealing with the situation. The respondent was duped by the travel agent, he informed the Department on his own and even prior to the conclusion of enquiry paid the advance received and after the enquiry even paid the penalty amount to the Department. For the above reasons, we find no reason to interfere in the order of the Tribunal.

21. With these directions writ petition stands dismissed.

CM APPL. 2436/2015 (STAY)

22. Application stands disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

JULY 29, 2016

//msr

I.S. MEHTA, J

