

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23283 of 2011

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Niraj Kumar Rajak Son Of Tunnulal Rajak Resident Of Village Metra, P.S.
Ghoshi, District Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar through the Law Secretary, Old Secretariat, Patna.
2. The Registrar (Administration), Patna High Court, Patna.
3. The District And Sessions Judge, Jehanabad in the capacity of Administrator.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Mahasweta Chatterjee, Adv.
For the Respondent/s	:	Mr. Ram Balak Mahto, AG
For the Resp. 2 & 3	:	Mr. Piyush Lall, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 06-05-2019

Heard learned counsel for the parties.

The petitioner is challenging the order contained in order no. 18/2008 dated 11.03.2008 (Annexure-15), whereby and whereunder, the petitioner has been imposed punishment of withholding of two increments with cumulative effect as also directed that the petitioner would not be made as Office Clerk or the Bench Clerk in any court for a period of two years from the date of the order.

The short facts of the present case is that the petitioner was appointed as Assistant, was posted in Civil Court, Jehanabad. The Single Bench of this Court had called for a case diary of Arwal P.S. Case No. 9 of 2004 vide an order dated 10.11.2006 passed in Cr. Misc. No. 31196 of 2005 and by Memo No. 29750



dated 21.11.2006, a copy of the aforesaid order was communicated to the court of Judicial Magistrate, 1st Class, Jehanabad which was seen by the learned Magistrate on 11.12.2006 and, in turn, he issued a letter to the Superintendent of Police to send the carbon copy of case diary of the said case and, accordingly, vide Letter No. 64 dated 27.1.2007, remitted the carbon copy of the case diary for perusal of this Court. On 20.12.2006, the aforesaid case was taken up again by the same Bench but, the copy of the case diary was not attached. The Court directed to issue reminder and also called for the explanation to failure to remit the case diary whereafter the photocopy of the case diary was remitted to this Court. In the meantime, the Presiding Officer asked show-cause to the petitioner as to why he has not placed before him the order passed by the High Court, whereupon, the petitioner filed his explanation, therein he took the plea that he had placed the record before him and, after looking to that, the Presiding Officer had written a letter to the Assistant Registrar of this Court vide letter no. 25 of 2005 dated 20.3.2007 in which the signature of Presiding Officer was there which can be verified from the naked eye but, he has used some derogatory words in the explanation are as follows:-

“very cunningly, your honour has not put your initial on the order of the Hon'ble Court but, now question arises to be



considered, if your honour has not seen the order, then, the reply of this letter has been sent to the Hon'ble Court, which is quite contradictory to each other”.

The Court has passed the order and directed to submit a detailed report in connection with the enquiry regarding non-transmission of the explanation from the concerned trial court in terms of the order passed by this Court and also directed to hold enquiry on conduct and use of language used by concerned office clerk, whereupon, a full-fledged enquiry was conducted in which he was served with the charge-sheet, which reads as follows:-

“1. Where as your Neeraj Kumar Rajak, being posted as office clerk in the court of Sri R.N. Nigam, J.M. 1st class, Jehanabad had not put up the order dated 20.12.2006 passed by the Hon'ble High Court in Cr. Misc. No. 31196 of 2005, before the Presiding Officer of the court for compliance of the Hon'ble Court's order, and thereby you were grossly negligent and careless in performance of your duty.

2. Secondly, whereas you while submitting your explanation dated, 24-9-07, as sought for by the Presiding Officer Sri R.N. Nigam, J.M. 1st Class as to why the Hon'ble Courts order was not put for compliance, you used very harsh, indisciplined and derogatory language against the court viz- 'cunningly', 'false claim', 'to save his own skin', he has tried to make a castle in the air etc., which amounts to gross misconduct and insubordination.”



He replied, having stated, he had placed records before the Presiding Officer and also accepted that as a new entrant, he used some derogatory remarks without any intention. It has further been said that it was prepared by some other person and he cannot understand the fall out of the word used by him, tendered apology. On detailed discussion, the Enquiry Officer submitted enquiry report that the charge no.1 has not been proved but, the charge no.2 has been found to be proved wherein he has stated that he is a new employee who has no depth of the work nor has a command over the language in English and has also tendered his apology. Hence, a lenient view may be taken in awarding the punishment.

The District Judge, who is the Disciplinary Authority, accepted the enquiry report but, while passing the order on the second charge, has held that the petitioner has used very harsh derogatory words against the Presiding Officer which is nothing but, contemptuous, in such view of the matter, a major penalty has been inflicted upon the petitioner.

On perusal of the record, it appears that Rule 17 of the 2005 Rules has not been followed as only on the basis of show-cause, the punishment has been awarded, safely it can be said that Rule 17 of the 2005 Rules has flagrantly been violated by the Enquiry Officer which hardly to be cured as he has accepted that



he has used harsh words and Enquiry Officer has suggested that lenient view should be taken but, the Disciplinary Authority has passed the order of major penalty. It has been submitted that the punishment is so harsh that no normal person can pass such an order when he himself has come forward and tendered his unqualified apology that he is a new entrant and, by mistake, the words have been used in the show-cause on account of drafting made by some other person without any intention to cause harm to the reputation of Presiding Officer as it was unintentional.

Per contra, learned counsel for the respondents submits that the punishment is not disproportionate of such nature which require interference, when the Disciplinary Authority arrived to a finding on the charge of misconduct, hence, this Court is exercising the secondary review not the primary review would interfere. In such circumstances, only the theory of Wednesbury applies in the sense that if the punishment is so harsh that no normal person would inflict such punishment, only then, the Court may interfere with the punishment, placed reliance on the judgment passed in the case of *State of Orissa & Ors. Vs. Bidyabhushan Mohapatra* reported in AIR 1963 SC 779, (2017) 15 SCC 217, *Prem Nath Bali Vs. Registrar High Court of Delhi & Anr.* Reported in (2015) 16 SCC 415 (para 19 & 21) and in the case of *Om Kumar*



& Ors. Vs. Union of India reported in (2001) 2 SCC 386 (para 66, 69).

Before deciding the issue of degree of punishment which has been inflicted upon by the Disciplinary Authority, requires interference, it will be relevant to consider the judgment on the doctrine of proportionality. For deciding this issue, it would be appropriate to take help of the talk given by Justice A.K. Sikri on the proportionality as a tool for achieving rule of law. There Justice Sikri has dealt with the different angles of proportionality on different areas but, consideration for present is confined to the administrative law, has taken into consideration in the context of the situation of India where the Constitution of India has given edict of welfare state, not a police State which exercises the sovereign function for welfare of people of this country, Administration is supposed to undertake various tasks which may include the civil security and the social welfare, administration is supposed to undertake various tasks which may include social security and social welfare, regulation of industrial relations, control over the manufacture and distribution of essential commodities, education to children, etc. Administrative law is the law relating to the administration, namely, the manner in which it exercises the administration functions. Even if when a particular



action is found to be valid, if the effect thereof is disproportionate, on the application of doctrine of proportionality, that part of the action can be set aside by the Constitutional Court under the banner of judicial review placed reliance on the observation made in the case of *Council of Civil Service Unions v. Minister for Civil Service*, 1985 AC 374 wherein the quotation reads as follows:-

“... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call “illegality”, the second “irrationality” and the third “procedural impropriety”. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of “proportionality”.

“25. ... The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. 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. Irrationality and perversity are recognised grounds of judicial review.”

It gives a meaning that administrative action must not be more drastic than is necessary for attaining the desired result. If an action taken by an authority is grossly disproportionate, the said decision is not immune from judicial scrutiny. However, it is improper and unreasonable exercise of power, it shocks the conscience of the court, amounts to evidence of bias and prejudice. The doctrine operates both in procedural and substantive matters. Justice Sikri has quoted the judgment of Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669, the judgment of B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749 and also mentioned the judgment of Coal India Ltd. Vs. Mukul Kumar Choudhari, (2009) 15 SCC 620, Ranjit Thakur Vs. Union of India, (1987) 4 SCC 611 and ultimately again quoted the judgment in the case of Council of Civil Service Unions and finally has said that the doctrine of proportionality, as a part of judicial review ensures that a decision otherwise within the province of administrative authority must not be arbitrary, irrational or unreasonable. Though in judicial review the court is not concerned with the correctness of the decision but the way in which the decision is taken, the very decision-making process involves attributing relative importance to various aspects in the



case and there the doctrine of proportionality enters, in the sense, it is applied to uphold the rule of law. The lecture of Justice Sikri has been published in the issue of (2019) 3 SCC, Journal Section 1-64.

When the Court exercises the judicial review against the order passed by the tribunal or administrative authority, it takes secondary role of judicial review and can only be interfered when the order is palpably irrational, arbitrary and no normal person can pass such an order. In that circumstances, the Court while exercising the judicial review can interfere with the order on the question of punishment and the Court in the case of Chennai Metropolitan Water Supply and Sewerage Board and Ors. Vs. T.T. Murali Babu reported in (2014) 4 SCC 108 held that doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the Disciplinary Authority or the appellate authority shocks the conscience of the court. It is relevant to quote paragraph nos. 28 to 30 of the aforesaid judgment which reads as follows:-

“28. Presently, we shall proceed to scrutinize whether the High Court is justified in applying the doctrine of proportionality. Doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the court on the analysis of material brought on record comes to the conclusion



that the punishment imposed by the Disciplinary Authority or the appellate authority shocks the conscience of the court. In this regard a passage from Indian Oil Corporation Ltd. and another v. Ashok Kumar Arora [(1997) 3 SCC 72] is worth reproducing: -

“20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee.”

29. In Union of India and another v. G. Ganayutham [(1997) 7 SCC 463], the Court analysed the conception of proportionality in administrative law in England and India and thereafter addressed itself with regard to the punishment in disciplinary matters and opined that unless the court/tribunal opines in its secondary role that the administrator was, on the material before him, irrational according to Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223] and Council of Civil Service Unions v. Minister for Civil Service [1985 AC 374] norms, the punishment cannot be quashed.

30. In Chairman-cum-Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others [(2009) 15 SCC 620], the Court, after analyzing the doctrine of proportionality at length, ruled thus: -



“19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reason for his absence by stating that he did not have intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in



like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.”

After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment.”

In the judgment reported in the case of Nicholas Piramal India Limited Vs. Harisingh reported in (2015) 8 SCC 272, the Court has considered the doctrine of proportionality, held that the doctrine of proportionality will apply to the fact and situation that the order of termination, even accepted, the same is justified, it is disproportionate to the gravity of misconduct and placed reliance in paragraph no. 66 to 68 of the judgment in the case of Om Kumar v. Union of India, [(2001) 2 SCC 386]. In that case, the Court has considered the primary review and secondary review and having held that when the administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the constitutional courts as primary reviewing courts to consider correctness of the level of discrimination applied but, where an administrative action is challenged as arbitrary then the test of



Wednesbury will apply [Associated Provincial Picture Houses Ltd.
Vs. Wednesbury Corpn., [All ER 680 (CA)].

The Court has held that the doctrine of secondary review would apply, while testing the correctness of order passed by the administration authority, it will only available to see whether the administration has done well in his primary review. It will be relevant to quote paragraph no. 29 of the aforesaid judgment which reads as follows:-

“29. The same has been laid down by this Court in the case of Raghbir Singh v. Haryana Roadways [(2014) 10 SCC 301], wherein this Court has held thus:-

“39. The above said “Doctrine of Proportionality” should be applied to the fact situation as we are of the firm view that the order of termination, even if we accept the same is justified, it is disproportionate to the gravity of misconduct. In this regard, it would be appropriate for us to refer to certain paragraphs from the decision of this Court in Om Kumar v. Union of India, [(2001) 2 SCC 386] wherein it was held as under: (SCC pp. 410-11, paras 66-68)

“66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the constitutional courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Hence the court deals with the merits of the



balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.

67. *But where an administrative action is challenged as 'arbitrary' under Article 14 on the basis of Royappa [(1974) 4 SCC 3] (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. [In G.B. Mahajan v. Jalgaon Municipal Council.] [(1991) 3 SCC 91] Venkatachaliah, J. (as he then was) pointed out that 'reasonableness' of the administrator under Article 14 in the context of administrative law has to be judged from the standpoint of Wednesbury rules. In Tata Cellular v. Union of India [(1994) 6 SCC 651] (SCC at pp. 679-80), Indian Express Newspapers Bombay (P) Ltd. v. Union of India, Supreme Court Employees' Welfare Assn. v. Union of India [(1989) 4 SCC 187] and U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd. [(1993) 2 SCC 187] while judging whether the administrative action is 'arbitrary' under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.*

68. *Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as 'arbitrary' under Article*



14, the principle of secondary review based on Wednesbury principles applies.”

40. Additionally, the proportionality and punishment in service law has been discussed by this Court in Om Kumar case as follows:

“69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of ‘arbitrariness’ of the order of punishment is questioned under Article 14.

70. In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India, this Court referred to ‘proportionality’ in the [pic]quantum of punishment but the Court observed that the punishment was ‘shockingly’ disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India, [(1995) 6 SCC 749] this Court stated that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham.”

In view of the aforesaid judgments, this is very much clear that the Court would not be acting as a court of appeal but has to examine the correctness of action of the disciplinary authority in awarding the punishment would be labeled, which shocks the conscience of the court in the sense that it is outrageous defiance of a logic that no normal person would pass such a harsh order against the person in such nature of misconduct. Now, let us



test the principle in the present case as to whether the Court should interfere with the order of punishment. The charge no.1 has been held not proved and the second charge with regard to using some harsh words in his explanation is of-course not in a good taste rather it is offensive but, it has to be looked into from the angle, the petitioner was a newcomer and he has humbly accepted in his explanation that by mistake, some offensive words have been used as well as he has also explained that the same was prepared by some other person having no idea of consequence and was not settled in the new environment and, as such, has tendered unconditional apology. The enquiry report also reflects and suggests that the person is a newcomer and that too he has tendered unqualified apology and lenient view should be taken but, the disciplinary authority has taken otherwise that he has used the words very seriously, formed the view that he should be treated with iron fists.

The disciplinary authority would have been correct in passing the order of punishment of stoppage of two increments with cumulative effect which is a major punishment, when he was seasoned employee and used the words with impunity but, when he has tendered apology as also explained the circumstances of using such language, in such circumstances, it will not be proper



for the disciplinary authority to pass such a harsh order against the newcomer as it will affect his entire career and moral of this young employee.

In that view of the matter, the order no. 18/2008 dated 11.3.2008 issued vide Memo No. 338-340/2008 is quashed and the matter is remanded back to the Disciplinary Authority to take a decision in accordance with law.

In the result, this writ application stands allowed.

(Shivaji Pandey, J)

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