

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 1267/2013
AND
WRIT PETITION (WP) NO. 2423/2013

WRIT PETITION (WP) NO. 1267/2013

Sharad Kumar Verma S/o. Shyamlal Verma,
aged about 66 years, Occu: Pensioner,
R/o. 70, Maharshi Karve Nagar, Wardha Road,
Nagpur-440025.

Amended as
per Court
order dt.
26.09.2022

- i) Smt. Kaushalya Wd/o Sharadkumar Verma;
Aged about: 71 years; Occu.: Pensioner;
- ii) Mr. Pawan S/o Sharadkumar Verma;
Aged about: 48 years;
Occu.: Government Servant.
- iii) Mr. Prashant S/o Sharadkumar Verma;
Aged about: 46 Years;
Occu; Legal Practitioner;
- iv) Mrs. Sushma W/o Kiran Waghmare;
Aged about: 44 Years;
Occu.: Government Servant;
R/o. C/o. Kiran Mangal Waghmare,
Plot No.31, Sadguru Saran Society,
Near Mausam Colony, New Manish Nagar,
Somalwada, Nagpur: 440005.

All the above Applicant Nos. (i) to (iii)
are R/o Plot No. 70, Karve Nagar,
Wardha Road, Somalwada,
Nagpur: 440025.

..... PETITIONER(S)

// VERSUS //

1. The Central Administrative Tribunal,
Mumbai Bench, Gulistan Building, Fort,
Mumbai-400 001.

2. Union of India,
through Secretary, Ministry of Communications &
I.T., Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
3. Shri M.E. Haque,
Post Master General, Vidarbha Region,
Dak Bhawan, Shankar Nagar Post Office Building,
Nagpur-440015.
4. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi – 110069.
5. Director of Accounts Postal,
Civil Lines, Aakashvani Chowk,
Nagpur-440001.

.... RESPONDENT(S)

AND

WRIT PETITION (WP) NO. 2423/2013

1. The Union of India, through Secretary,
Department of Posts, Dak Bhavan,
Sandad Marg, New Delhi.
2. The Desk Officer (Vig.), Govt. of India,
Ministry of Communications & IT
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi 110 001.
3. Shri M.E. Haque, Director of Postal Service,
O/o the Postmaster General,
Mujaffarpur (Bihar) 842001.
4. The Secretary, Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110 069.
5. Director of Accounts Posts,
Civil Lines, Nagpur 440001.

..... PETITIONER(S)

// VERSUS //

~~Shri Sharad Kumar Verma S/o. Shyamlal Verma,
retd. Sr. Accounts Officer, aged 66 years,
r/o. 70, Karve Nagar, Wardha Road,
Somalwada, Nagpur-440025~~

L.Rs. of respondent

- i) Smt. Kaushalya Wd/o Sharadkumar Verma,
Aged about 71 years;
Occu.: Pensioner;
- ii) Mr. Pawan S/o Sharadkumar Verma,
Aged about 48 years,
Occ.: Government Servant.
- iii) Mr. Prashant S/o Sharadkumar Verma,
Aged about 46 years,
Occ: Legal Practitioner.
- iv) Mrs. Sushma W/o Kiran Waghmare,
Aged about 44 years,
Occupation: Government Servant,
R/o. c/O. Kiran Manggal Waghmare,
Plot No.31, Sadguru Saran Society,
Near Mausam Colony, New Manish Nagar,
Somalwada, Nagpur - 440005.

All the above Applicant nos. (i) to (iii)
are R/o Plot No. 70, Maharashi Karve, Nagar,
Wardha Road, Somalwada,
Nagpur - 440025.

.... RESPONDENT(S)

WP No. 1267/2013

Mr. M.M. Sudame, Advocate for the petitioners
Mr. R.S. Sundaram, Advocate for respondent nos. 1 to 3 and 5
Ms. N.G. Choubey, Advocate for respondent no. 4

WP No. 2423/2013

Mr. R.S. Sundaram, Advocate for the petitioners
Mr. M.M. Sudame, Advocate for the respondents

Amended as
per Court's
order dt.
26.09.2022

CORAM : A.S. CHANDURKAR AND M. W. CHANDWANI, J.J.

RESERVED ON : 16 NOVEMBER, 2022

DELIVERED ON : 23 DECEMBER, 2022

JUDGMENT : (PER:- M. W. CHANDWANI, J.)

This common order and judgment will dispose of both writ petitions. Both petitions deal with the same order, one dated 20.11.2012, passed by Central Administrative Tribunal (for short the “**CAT**”), Nagpur in Original Application No. 2020/2007 (for short “**O.A.**”).

2. Writ Petition No. 1267/2013 has been filed by Sharad Kumar S/o. Shyamlal Verma (for short the “**Sharad**”) against Union of India and its concerned officers of the Audit & Accounts Department (for short “the Department”) and Union Public Service Commission. Whereas, the Union of India and officers of the Department (for short “**Union of India and ors.**”) have filed Writ Petition No. 2423/2013 against the very same order.

3. Brief facts which gave rise to these counter writ petitions can be summarized as under:

4. Sharad was initially appointed as lower division clerk in the Department of Union of India. By passage of time, he was promoted to the post of accounts officer, senior accounts officer and then assistant chief accounts officer. In the year 2001, he was selected and sent on deputation as a deputy registrar (finance) in the Central University of Hyderabad. On

16.08.2004, by order and in the name of the President of India, the vigilance department served charge-sheet to Sharad for misconduct whereby the departmental inquiry has been initiated against Sharad on the following article of charges:

ARTICLE – I

That Shri S.K. Verma, while functioning as Sr. Accounts Officer (Admn) in the office of Director of Accounts (Postal) Nagpur during the period from 25.07.1995 to 09.03.2000 had notified four (4) vacancies of Group 'D' posts in the requisition sent to the Sub Regional Employment Exchange Nagpur-10 vide D.A.(P) Nagpur letter No. Admn-1/RP-35/II/2753 dated 02.09.1998, indicating requirement of following qualifications:

- i) Essential – Middle School/standard pass*
- ii) Desirable – Training in Basic and Refresher course in Home Guards and Civil Defence.*

After receipt of a list of 20 candidates from Sub Regional Employment Exchange Nagpur under letter No.358-20/574-10 dated 11.09.98, the said Shri S.K. Verma notified these 4 Group 'D' vacancies in the "Employment News Weekly – 24-30 October 1998". On receipt of applications from 4335 candidates, he got prepared/shortlisted a list of 215 selected candidates for interview from amongst the applications received in response to the local advertisement. While doing so, he ignored the candidates sponsored by Employment Exchange and violated the provisions contained in the Directorate letter No.166-11/59-SPB-I dated 28.10.1970 (schedule for recruitment of orderlies, packers, peons in Circle and Administrative Offices) as also in the Directorate letter No. 166-12/59-SPB-I dated 26.7.66 (Section II Circles & Administrative Offices).

It is, therefore, alleged that by his aforesaid acts, the said Shri S.K. Verma failed to maintain absolute integrity, exhibited lack of devotion to duties and acted in a manner

unbecoming of a govt. servant in contravention of Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE -II

That the said Shri S.K. Verma during the aforesaid period and while functioning in the aforesaid capacity recast the earlier notified 4 vacancies of Group 'D' posts to 16 vacancies with malafide intention. He proposed to call for 215 selected candidates for interview vide noting dated 12.2.99 on N/38 in file No. Admn.-I/RP-35/Vol.-II. He acted as one of the members of the Selection Board constituted for the purpose and interviewed candidates from the selected list on 15.02.99 to 17.02.99, 19.02.99 & 22.02.99. He along with other members of Selection Board made the selection of 16 candidates for recruitment to the Group 'D' posts vide proceedings dated 22.02.99 and appointed all these 16 selected candidates against Group 'D' posts during the month of March/April, 1999. However, the said Shri S.K. Verma, the then Sr. AO, purposefully and intentionally ignored the candidates from the list sponsored by the Sub Regional Employment Exchange Office, Dharampeth Extension Nagpur and thus violated the provisions contained in Directorate letter No.166-12/59-SPB-I dated 26.7.66 (Section II Circles & Administrative offices).

It is, therefore, alleged that by his aforesaid acts, the said Shri S.K. Verma failed to maintain absolute integrity, exhibited lack of devotion to duties and acted in a manner unbecoming of a govt. servant in Contravention of Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964."

5. Sharad participated in the departmental inquiry. After conclusion of departmental inquiry, the report came to be submitted. On 16.10.2005, a memorandum was sent along with inquiry report dated 17.05.2005 and disagreement note to Sharad, asking him to submit his representation and submission on the inquiry report and disagreement note within a period of 15 days from the date of receipt of the

memorandum. On 20.11.2005, Sharad submitted his comments against the inquiry officer's findings and also against the disagreement note. Despite sending the comments by Sharad, no decision was taken by Union of India, therefore, Sharad filed O.A.No. 102/2006 before CAT, Ahmedabad with prayer to direct Union of India to decide his case before the date of his superannuation on 30.09.2006. The CAT, Ahmedabad vide order dated 03.03.2006 directed the Union of India and its department to finalize the proceeding on or before 30.04.2006. The desk officer of the vigilance department, by order and in the name of the President of India issued order of imposing penalty of compulsory retirement of Sharad from service with 10% cut in his pension for a period of ten years.

6. Sharad assailed the said order of punishment in O.A No. 2020/2007 before the CAT, Nagpur. By order dated 20.11.2012, CAT, Nagpur while confirming the findings and punishment of compulsory retirement, reduced the period of 10% cut in pension from the period of ten years to a period of five years. Feeling aggrieved with the order passed by the CAT, Nagpur in so far as, it relates to upholding and confirming findings of the disciplinary authority and the order of punishment, Sharad has filed Writ Petition No. 1267/2013.

7. The Union of India and ors. also felt aggrieved by the order of reduction in penalty i.e. 10% cut in pension from a period of ten years to

five years, the Union of India and ors. have filed Writ Petition No. 2423/2013 on the ground that the CAT, Nagpur should not have reduced the penalty imposed on Sharad.

8. Before proceeding to deal with these petitions on merits, let us deal with the objection of Mr. R.S. Sundaram, learned counsel for the Union of India and ors.. During the pendency of these writ petitions, Sharad died and his legal representatives were brought on record in both writ petitions. Now, Writ Petition Nos. 1267/2013 is being prosecuted; and Writ Petition No. 2423/2013 is being defended by the legal representatives of the deceased Sharad (for short "**L.Rs.**"). It is the contention of the learned counsel for the Union of India and ors., that as per provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short the "**Rules of 1965**"), a departmental inquiry abates in case of death of a delinquent. Taking help of this analogy, Mr. Sundaram, learned counsel for the Union of India and ors., vehemently submits that these petitions also do not survive and are abated on the death of Sharad. According to him, these petitions do not survive also on the ground that the punishment which was imposed on Sharad has already been implemented i.e. he was compulsorily retired and punishment of 10% cut in pension for the period of ten years is already implemented.

9. Firstly, this argument was never made when the L.Rs. came to be brought on record. Secondly, we do not agree with the submission of the learned counsel for the Union of India and ors. that, since, on a death of the delinquent employee, a departmental inquiry abates, a proceeding challenging the departmental inquiry will also abate in case of death of a delinquent. The death of a delinquent employee, at the stage of a departmental proceeding and after filing an appeal or a proceeding for judicial review of the departmental inquiry is vastly different. In fact, if death of a delinquent employee occurs in the midst of departmental proceeding, there can be no confusion that the proceeding would abate instantly. The situation would arise vastly different, if death of a delinquent takes place at the time when the order of punishment is challenged under appeal or in judicial review, in that case, if the right to sue survives and the legal heirs who wish to contest the findings of guilt in the punishment order passed by the disciplinary authority, can pursue the proceeding.

10. The provisions of order 22 rule 1 r/w. rule 11 of the Code of Civil Procedure, 1908 are self-eloquent of the right to sue subsisting in the legal heirs who are fully entitled to pursue the cause in judicial proceedings for testing legality and validity of the order passed by the disciplinary authority or to defend the deceased delinquent, particularly, when the result of the proceeding may culminate either in financial

benefits or financial burden to the legal heirs being successor in interest. To deny such persons, the right to pursue the proceeding on the ground of death of delinquent employee, in our opinion, is wholly unreasonable and illegal. Rather, to remove stigma of findings in the departmental inquiry against the deceased delinquent employee, the legal heirs are entitled to pursue the proceedings towards that end. We do not find any force in the submission of the learned counsel Mr. Sundaram. Thus, we hold that the legal heirs of Sharad are entitled to prosecute the proceedings.

11. Though, Writ Petition No. 1267/2013 filed by Sharad contains various grounds including the manner of inquiry and exceeding jurisdiction by the inquiry officer, during argument only two main grounds were pressed by learned counsel Mr. Sudame. Firstly, depriving Sharad of a right to appeal and secondly, not following the principles of natural justice.

12. Mr. Sudame, learned counsel for the L.Rs. would contend that as per the Rules of 1965, the disciplinary authority of Sharad was the Director General (Posts and Telegraphs), whereas the punishment is inflicted by the President of India, which is highest authority. Under the Rules of 1965 appeal against the order of the disciplinary authority is provided before the President of India. In the present case, since, the punishment order has been passed by the President of India himself,

Sharad could not file appeal before the President of India. Sharad lost his right to appeal against the said departmental inquiry. He vehemently submits that Sharad lost one forum and on this ground alone, the order of punishment dated 20.09.2006 is required to be set aside. To buttress his submission, he seeks to rely on the judgment of the Hon'ble Apex Court in the case of ***Surjit Ghosh Vs. Chairman & Managing Director, United Commercial Bank and ors. [(1995) 2 SCC 474]***, wherein in paragraph 6, the Hon'ble Apex Court has held as under;

“6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM [Personnel]. According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a

provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.”

13. Mr. Sudame, learned counsel took us to the various rules of the Rules of 1965. According to him, an appointing authority is disciplinary authority and in case of Sharad the appointing authority is the Director General (Posts and Telegraphs) and, therefore, the order of punishment should have been passed by the Director General (Posts and Telegraphs) who is disciplinary authority and not by the President of India. According to him, as per rule 24 of the Rules of 1965, the President is the appellate authority against the order made by any other authority. Taking help of this rule, he submits that just because the order of punishment has been passed by the President who is the appellate authority, right of appeal of Sharad was curtailed and, therefore, Sharad

lost one forum of appeal. On this ground, the order of punishment is not sustainable and required to be set aside.

14. Mr. Sundaram, the learned counsel for the Union of India and ors. vehemently submitted that the order of punishment has been passed by the President of India who is the disciplinary authority in case of Sharad, therefore, there is no point in saying that Sharad has lost one forum i.e. his right to appeal under rule 24 of the Rules of 1965. According to him, even the President of India is the highest authority who assumes jurisdiction of all his subordinate authority, therefore, the order of punishment passed under the name and order of the President of India is not without jurisdiction. He further submits that the order of punishment has been got tested by Sharad in O.A. No. 2020/2007, therefore, no prejudice is caused to Sharad and his legal heirs.

15. For appreciating the argument of the learned counsel for the respective parties, it will be apposite to mention here the relevant parts of rules 8, 9, 12, 22 and 24 of the Rule of 1965, which are reproduced as under;

“8. Appointments to Group ‘A’ Services and Posts: - All appointments to Central Civil Services, Group ‘A’ and Central Civil Posts, Group ‘A’, shall be made by the President :

Provided that the President may, by a general or a special order and subject to such conditions as he may

specify in such order, delegate to any other authority the power to make such appointments.

9. Appointments to other Services and Posts:- (1) *All appointments to the Central Civil Services (other than the General Central Service) Group 'B', Group 'C' and Group 'D' shall be made by the authorities specified in this behalf in the Schedule :*

Provided that in respect of Group 'C' and Group 'D', Civilian Services, or civilian posts in the Defence Services appointments may be made by officers empowered in this behalf by the aforesaid authorities.

(2) *All appointments to Central Civil Posts, Group 'B', Group 'C' and Group 'D', included in the General Central Service shall be made by the authorities specified in that behalf by a general or special order of the President, or where no such order has been made, by the authorities, specified in this behalf in the Schedule.*

12. Disciplinary Authorities :- (1) *The President may impose any of the penalties specified in Rule 11 on any Government servant.*

(2) *Without prejudice to the provisions of sub-rule (1) subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on –*

(a) *a member of a Central Civil Service other than the General Central Services, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;*

(b) *a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.*

(3) *Subject to the provisions of sub-rule (4), the power to impose any of the penalties specified in Rule 11 may also be exercised, in the case of a member of a Central*

Civil Services, Group 'C' (other than the Central Secretariat Clerical Service), or a Central Civil Service, Group 'D'

(a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India in that Ministry or Department, or

(b) if he is serving in any office, by the head of that office, except where the head of that office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

(4)

22. Orders against which no appeal lies :- *Notwithstanding anything contained in this Part, no appeal shall lie against-*

(i) any order made by the President;

(ii) any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;

(iii) any order passed by an inquiring authority in the course of an inquiry under Rule 14.

.....

24. Appellate Authority:- *(1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in Rule 23 to the authority specified in this behalf either in the Schedule or by a general or special order of the President or, where no such authority is specified-*

(i) where such Government servant is or was a member of a Central Service, Group 'A' or Group 'B' or holder of a Central Civil Post, Group 'A' or Group 'B' -

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the President where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Central Civil Service, Group 'C' or Group 'D', or holder of a Central Civil Post, Group 'C' or Group 'D', to the authority to which the authority making the order appealed against his immediately subordinate."

(2)

(3)"

16. From the aforesaid rules, it is clear that the appointing authority of group-A in the Department is the President of India. A perusal of schedule referred in rule 9 reveals that the appointing authority of employee of group-B in the Department is the Director General (Posts and Telegraphs). As per rules 12 of the Rules of 1965, the power to impose any of the penalties specified in rule 11 of the Rules of 1965 on any government servant is vested with the appointing authority. In short, the appointing authority is disciplinary authority.

17. It is not in dispute that the Sharad was initially appointed as lower division clerk and lastly promoted to assistant chief accounts officer. It is also matter of record that he was sent on deputation as the deputy registrar (finance) in the Central University of Hyderabad in the year 2001 till 2004. The record shows that the charge-sheet was served to Sharad on 16.08.2004 when he was working as a deputy registrar (finance) on deputation in the Central University of Hyderabad. Indisputably, the post of deputy registrar (finance) in the Central University of Hyderabad is

group-A post and as per rule 8 of the Rules of 1965, appointment of Central Civil Services group-A post shall be made by the President of India. Therefore, when the charge-sheet was issued he was working as a deputy registrar (finance), the appointing authority of the post of deputy registrar (finance) was the President himself and consequently, as per rule 12 of the Rules of 1965, the President of India is disciplinary authority of the deputy registrar (finance). Thus, the appropriate authority has passed the order of the punishment of Sharad.

18. Even otherwise, rule 12(1) of the Rules of 1965 makes it clear that the President of India may impose any of the penalty specified in rule 11 of the Rules of 1965 on any government servant irrespective of who is the appointing/disciplinary authority. Thus, even for the sake of argument, it is presumed that the Director General (Posts and Telegraphs) was the appointing authority to the assistant chief accounts officer the post of Sharad in his original cadre in the Department before sending on deputation, the President is duly empower to impose punishment on any government servant. Rule 24 of the Rules of 1965 is clear that no appeal lies against the order of the President. Thus, in all contingencies the right of appeal was not available with Sharad. The argument of Mr. Sudame, learned counsel for Sharad does not hold water the right to appeal against departmental inquiry was curtailed. In view of the above

facts of the case, Mr. Sudame, the learned counsel will not get any help from the case of *Surjit Ghosh* (supra) relied by him.

19. This takes us to sheet anchor arguments of Mr. Sudame, learned counsel for L.Rs.. According to him the inquiry officer had held that some charges which are leveled have not been proved and the disciplinary authority disagreed with the findings recorded by the inquiry officer and held that all charges are proved. The disciplinary authority had acted in violation of principles of natural justice. It did not give an opportunity of hearing at the stage when it developed the inclination that some of the findings recorded by the inquiry officer were not acceptable and were liable to be reversed. Sharad was denied an adequate opportunity of hearing which should have been afforded to him before taking a decision that he was guilty of charges leveled against him.

20. Per contra, Mr. Sundaram, learned counsel for the Union of India and ors. vehemently submitted that sufficient opportunity has been given to Sharad not only during the inquiry but also after the inquiry, opportunity was given to Sharad before inflicting punishment by the disciplinary authority. According to him, an appropriate opportunity of hearing has been given to Sharad, therefore, there is compliance of principles of natural justice in a strict sense.

21. To appreciate the argument advanced on behalf of the learned counsel appearing on behalf of the respective parties, it will be apt to reproduce the conclusion of the inquiry report which is as under:

“CONCLUSION:- It is noticed that from the very beginning of recruitment process, procedural lapses committed, Departmental rule/instructions conveniently twisted, proposals moved and approval sought from local authority but at no point of time Shri S.K. Verma proposed to seek clarification/approval on any issue during recruitment process from higher office. Thus I arrive at the conclusion that charges brought under Article I & II except the charge of violation of the provisions of Directorate letters dated 27.6.1966 and 28.10.1970 under reference in Article – I are clearly and conclusively proved.”

22. Thus, it appears from the conclusion, except some part of charge of Article I, i.e. violation of the provisions of directorate letters dated 27.6.1966 and 28.10.1970, the inquiry officer held that Articles I and II are proved against Sharad.

23. A perusal of the disagreement note shows that the disciplinary authority did not agree with a part of findings of inquiry officer, where the inquiry officer concluded that part of Article I has not been proved. The disciplinary authority issued memo of disagreement note by giving reasons for the same. The disagreement note is reproduced here for ready reference:

“Disagreement Note

The observations of the I.O. that the instructions contained in Directorate letter No. 166-12/59-SPB-I dated 28.10.1970 have not been violated by the C.O. are not acceptable. The I.O. is found to have failed to appreciate the exact charge levelled against the C.O. The instructions contained in the aforesaid Directorate letter dated 28.10.1970 relate to recruitment rules for Orderlies, Packers, Peons in Circles and Administrative Offices and these apply to all cases whether the candidates are from open market or from the Employment Exchange. In Article I, it was inter alia alleged that while sending requisition to the Employment Exchange for sponsoring names of suitable candidates, Shri S.K. Verma prescribed the required qualifications as (I) Essential- Middle School/standard pass and (ii) Desirable- Training in Basic and Refresher courses in Home Guards and Civil Defence whereas in the Recruitment Rules, the qualification prescribed is only Middle School standard pass or equivalent Examination from a recognised school.

It is, therefore, clear that the C.O. deliberately included the aforesaid desirable qualification in violation of the provisions in the recruitment rules and the charges framed against him on this count are thus proved.”

24. We have given out anxious consideration to the submissions made by the counsel for respective parties. We are of the opinion that a delinquent employee has right of hearing as envisaged under Article 311 of the Constitution of India not only during the proceeding conducted by the inquiry officer, but also at the stage when findings of the inquiry officer are considered by the disciplinary authority, particularly, when the disciplinary authority disagrees with the findings of exoneration recorded by the inquiry officer before taking final call to its opinion of disagreement. So that, the delinquent employee can put his case and get

an opportunity to show that how findings recorded by the inquiry officer is correct one. If that is not done, at this stage, the delinquent employee would have no say in spite of having findings in his favour when the opinion of the inquiry officer is being overturned by the disciplinary authority. Our view is supported by the judgment in the case of ***Yoginath D. Bagde Vs. State of Maharashtra and anr. [(1999) 7 SCC 739]*** relied by learned counsel for L.Rs., wherein after considering the case of ***Managing Director, ECIL Vs. B. Karunakar [(1993) 4 SCC 727]***, the Apex Court in para 31 of the judgment has held that before reversing the findings of the inquiry officer, the disciplinary authority should form a tentative opinion and not final and at that stage also the delinquent employee should be given an opportunity of hearing after he has been informed of the reasons on the basis of which the findings of the inquiry officer was overturned. This is in consonance with the requirements of Article 311 of the Constitution of India.

25. Mr. Sudame, learned counsel for L.Rs. vehemently submitted that no tentative opinion on the disagreement was given to the delinquent employee and the final disagreement note was given expressing their disagreement, with reasons, to the findings of the inquiry officer. Therefore, according to him, charge-sheet as well as findings of the disciplinary authority will not sustain and are required to be quashed and set aside. Even, the CAT, Nagpur has not considered these aspects.

26. This bring us to the memorandum dated 26.10.2005 which is rather covering letter to the disagreement note whereby the delinquent employee was asked to submit his representation/submission before taking final decision in the matter. The relevant portion of the memorandum is reproduced below:

“Accordingly, the said Shri S.K. Verma is hereby given an opportunity to submit his representation/submissions, if any, against the Inquiry Report and the Disagreement Note within a period of fifteen (15) days from the date of receipt of this memo. The said Shri S.K. Verma is also informed that the competent authority will take into account his submissions before taking a final decision in the matter. If the said Shri S.K. Verma fails to submit his representation within the stipulated period, it would be presumed that he has nothing to say and further action in the matter will be taken ex-parte.”

27. Thus, it can be seen from the above paragraph of the memorandum dated 26.10.2005 whereby the delinquent employee was asked to submit his representation/submission not only against the inquiry report, but also against the disagreement note within fifteen days from the date of receipt of the memorandum. Notably, it was further stated in the said memorandum that the disciplinary authority will take into account his submission before taking a final decision in that matter. It is matter of record that the delinquent employee submitted his submission to the disciplinary authority and, thereafter the order of punishment dated 20.09.2006 came to be passed.

28. Though, in the disagreement note, the disciplinary authority did not mention that these are tentative reasons for disagreement, from the memorandum which was accompanied with the disagreement note, the delinquent employee was not only asked to submit his representation/submission against the inquiry report but also to the disagreement note. Thus, the delinquent employee was given opportunity to make his representation/submission against the disagreement note of the disciplinary authority and mentioning of the very words that “*the competent authority will take into account his submissions before taking a final decision in the matter*”. This spells out that the disagreement note of the disciplinary authority was tentative one and were subject to final decision by the disciplinary authority after considering the submission of Sharad made by him on disagreement note. Just because in the disagreement note the word tentative is missing, it cannot be said that the disagreement note was final finding of the disciplinary authority. Rather, submission made by the delinquent employee after receipt of the memorandum along with the disagreement note shows that he did not avail this opportunity and no comments were made by Sharad on the disagreement note. Therefore, we do not find force in the argument of the learned counsel Mr. Sudame that principles of natural justice has not been followed and there is non-compliance of Article 311 of the Constitution of India.

29. Turning to Writ Petition No. 2423/2013 filed by the Union of India and ors., wherein the Union of India and ors. assailed the order dated 20.11.2012 reducing the punishment of 10% cut in pension from the period of ten years to five years. It is vehemently submitted by the learned counsel appearing for the Union of India and ors. that CAT, Nagpur has rightly held that it cannot go into correctness or truth of the charges unless charges framed are contrary to law, but erroneously reduced the punishment. According to him, CAT, Nagpur was not authorized to interfere with the discretion exercised by the disciplinary authority in imposing punishment, unless the same suffers from illegality or procedural irregularity of material nature or punishment is shockingly disproportionate. If the tribunal feels that the punishment is disproportionate to consider the charge, the tribunal may send the matter to the disciplinary authority. But, for imposing the fresh penalty, the tribunal cannot pass the order of punishment.

30. To buttress his submission, he seeks to rely in the cases of *Administrator, Union Territory of Dadar and Nagar Haveli Vs. Gulabhia M. Lad [(2010) 5 SCC 775]*, *Rajasthan Tourism Development Corporation Limited and anr. Vs. Jai Raj Singh Chauhan [(2011) 13 SCC 541]* and *Deputy Commissioner, Kendriya Vidyalaya Sangthan and ors. Vs. J. Hussain [(2013) 10 SCC 106]*. Common thread running through in all these decisions is that unless, the punishment imposed by the disciplinary

authority/appellate authority shocks the conscience of the court/tribunal, there is no scope in interference of the matter. And if, the punishment imposed is shocking, disproportionate, barring in exceptionable and rare cases, it would be appropriate to direct the disciplinary authority or appellate authority to reconsider the penalty imposed.

31. Thus, law is well settled that the power of tribunal under judicial review is very limited. The court/tribunal should not interfere with the discretion exercised by the disciplinary authority/appellate authority with regard to imposition of punishment unless the discretion suffers from illegality and material procedural irregularity which would shock the conscience of the court/tribunal. In such cases the court/tribunal can only refer back to the disciplinary authority and it should be left to the disciplinary authority to consider the punishment, rather than directing exact nature of penalty. In exceptional and rare cases, the court/tribunal can impose the appropriate punishment that by recording cogent and convincing reasons in support thereof. By keeping this principle in mind, let us see the impugned order of reduction of penalty which is reproduced here:

“26. However, in the peculiar facts and circumstances of the case, particularly keeping in view the nature of the charge, we are of the view that the second limb of the penalty viz. “10% cut in pension for ten years” is a little too harsh and disproportionate to the misconduct committed by the applicant. In our view, interest of justice will be met if

the said limb of the penalty is modified and reduced to the extent that 10% cut in pension shall remain in force for 5 years in lieu of 10 years. In all other respects, the order passed by the Disciplinary Authority is affirmed and upheld.”

32. Perusal of the aforesaid findings do not show that the punishment imposed by the disciplinary authority is shocking to the conscience of the court/tribunal. Except expressing that the punishment is a little too harsh, no other reason has been given how the punishment is disproportionate to the charge. Rather, by holding that punishment is little harsh itself shows that CAT, Nagpur also felt that punishment of 10% cut in pension for ten years does not shock the conscience of the court/tribunal.

33. Thus, no cogent and convincing reason has been given by CAT, Nagpur while reducing the penalty of 10% cut in pension from ten years to five years. If, at all, it was felt that the punishment is too harsh considering the nature of charges, the CAT, Nagpur should have relegated the matter to the appointing authority for imposing appropriate punishment afresh. In view thereof, we find substance in the argument of Mr. Sundaram, learned counsel for the Union of India and ors. that the CAT has exceeded its jurisdiction. Accordingly, the order of reduction of punishment of 10% cut in pension from ten years to five years does not

sustain and require to be set aside. Consequently, we pass the following order:

- I) Writ Petition No. 1267/2013 is dismissed.
- II) Writ Petition No. 2423/2013 is allowed.
- III) The order of CAT, Nagpur in O.A. No. 2020/2007 dated 20.11.2012, modifying the penalty and reducing 10% cut in pension from ten years to five years is set aside.

34. Rule is made absolute in the above terms. No costs.

(M. W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

**SANDIP
MAHADEV
GATE**

Personal Assistant to the
Hon'ble Judge
Digitally signed by
SANDIP MAHADEV GATE
Date: 2022.12.23
18:43:01 +0530