

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

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Reserved on: December 14, 2022

Pronounced on: December, 22, 2022

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W.P.(C) 14466/2022

GOVIND SINGH BHAKUNI

..... Petitioner

Through: Sh. T.N. Saxena, Sh. H.C. Kharband
and Dr. Shiv Kumar Tiwari, Advs.

Versus

**REGISTRAR GENERAL, HIGH COURT OF DELHI
AND ANR.**

..... Respondents

Through: Ms. Anu Bagai, Advocate for R-1.
Mrs. Avnish Ahlawat, Ms. Laavanya
Kaushik and Mr. N.K. Singh, Ms.
Aliza Alam, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J.

1. The petitioner after joining the office of District and Sessions Judge, Delhi as a Lower Division Clerk (presently Junior Judicial Assistant) in September, 1977 continued as such for almost 40 years, until, based on a complaint dated 17.07.2015 and pursuant to a Charge Sheet issued by the Disciplinary Authority, i.e., the District and Sessions Judge (HQ), Delhi¹, he was put under Suspension pending Disciplinary Action vide order dated 01.09.2015.

¹ Hereinafter referred to as the “D&SJ”

2. Thereafter, since charges in the enquiry report stood proved, the Disciplinary Authority vide a detailed order dated 06.02.2018 held the petitioner guilty and awarded him the punishment of 'Dismissal from Service'. Relevant portions of order dated 06.02.2018 are reproduced as under:-

12. Keeping in view the facts and circumstances of the case and nature of misconduct committed by the delinquent, I am of the view that ends of justice would be met by imposing a penalty of 'dismissal from service'.

13. In exercise of the powers conferred under sub-rules (4) & (5) of Rule 30 of Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012. I hereby impose a penalty of dismissal from service upon the delinquent Sh. Govind Singh Bhakuni, Reader, with immediate effect.

14. Sh. Govind Singh Bhakuni, Reader was placed under suspension vide order dated 01.09.2015. The said suspension order is hereby lifted with immediate effect.

15. It is further ordered that the official Sh. Govind Singh Bhakuni, Reader will not get any benefits for the period of suspension other than the subsistence allowance already paid to him.

3. Though the petitioner filed an appeal under Rule 35 of the Delhi District Courts (Appointment and Conditions of Service) Rules, 2012² before the administrative Appellate Authority against the above, however, during the pendency of the said appeal, the petitioner, vide representation dated 14.12.2018, had also prayed for the reduction of punishment of 'Dismissal from Service' to 'Compulsory Retirement' with all consequential benefits.

² Hereinafter referred to as the "Delhi District Court Rules"

4. Considering the unblemished past service record of forty one years, as it then was, the administrative Appellate Authority vide order dated 21.01.2019, based on the submission of the petitioner that the appeal was not pressed insofar as the findings recorded in the order dated 06.02.2018, while maintaining the petitioner guilty of misconduct, his punishment was reduced from that of 'Dismissal from Service' to that of 'Compulsory Retirement' with effect from the date of order dated 06.02.2018 of the Disciplinary Authority. Relevant portions of the said order dated 21.01.2019 are reproduced as under:-

"8. At the hearing it was submitted that the appellant does not press the appeal insofar as it challenged the findings of guilty, his request being restricted to reduction of penalty that has been awarded.

10. The department's representative confirmed that as per the service book, the date of birth of the appellant is 19.05.1958 and that had the order dated 06.02.2018 (whereby he has been dismissed by controlling officer from service) not supervened, the appellant would have reached the age of superannuation on 31.08.2018. The indiscretion shown at the fag end of his career to stoop and demand illegal gratification in the paltry sum of Rs. 100/- ought not result in punishment that may deprive him for the remainder of his life of the fruits of his past clean service. At the same time, given the nature of the misconduct indulged in, the appellant had forfeited the right to continue in service. In my considered opinion, ends of justice would be met if while maintaining the conclusion that he was guilty of misconduct, the rigor of the punishment is reduced from one "dismissal from service" to that of "compulsory retirement" taking effect from the date of the impugned order i.e. 06.02.2018, it, however, required to be clarified, for purposes of Rule 40 of Central Civil Service (Pension) Rules, that the appellant shall not be deprived of his right to pension or gratuity on such account.

5. Accordingly the pension, salary, emoluments etc. of the petitioner were fixed by the Pay and Accounts Office No.6, Tis Hazari, Delhi, counting his services till 31.08.2015 vide two letters dated 09.12.2019 and

27.12.2019. Against it, the petitioner filed a representation dated 06.01.2020 before the D&S Judge, which, after its rejection on 18.01.2021 resulted in another representation dated 16.02.2021 to the same D&SJ, which, once again, was rejected on 09.03.2021. It was then that the petitioner filed an appeal under Rule 35 of the Delhi District Court Rules dated 09.04.2021 on the administrative side seeking clarification of said order dated 21.01.2019 and praying that the period between 01.09.2015 till 06.02.2018 be considered as it to be in service for all consequential benefits, including for the grant of benefits under the 7th Central Pay Commission and revision thereunder. Needless to say, the Appellate Authority, once again, after noting the findings recorded in the order dated 21.01.2019, rejected the appeal of the petitioner vide the detailed impugned order dated 22.04.2022 under challenge. Relevant portions of the said order dated 22.04.2022 are reproduced as under:-

"1.This appeal has been filed praying that the period of suspension of the appellant between 01.09.2015 to 06.02.2018 be considered as one in service and consequential benefits, including the extension of benefit under the 7th Central pay Commission and revision thereunder, be granted to the appellant.

5.The learned Appellate Authority, considering the fact that the appellant had served the department for 38 years until the date he indulged in acts of commission, which have now been admitted by the appellant, and taking into account that the appellant would otherwise be reaching the age of superannuation on 31.08.2018, partly allowed the appeal with the following directions:

"In my considered opinion, ends of justice would be met if while maintaining the conclusion that he was guilty of misconduct, the rigor of the punishment is reduced from one of "dismissal from service" to that of "compulsory retirement" taking effect from the date of the impugned order i.e. 06.02.2018, it, however, required to be clarified, for purposes of Rule 40 of Central Civil Service (Pension) Rules, that the appellant shall not be deprived of his right to pension or gratuity on such account."

11. In my view, as the order does not require any clarification, the objections raised by the Department is left open.

12. As noted hereinabove, the learned Appellate Authority had merely substituted the punishment of dismissal from service to that of 'compulsory retirement'. It had not modified the direction contained in the order of the learned Disciplinary Authority, directing that the period of suspension not to be counted as one spent in service. Even otherwise, in absence of a specific order in this regard by the learned Appellate Authority, the period of suspension is not to be counted as one spent in service, where the inquiry results in an order of dismissal or compulsory retirement.

13. Reliance of the representative of the appellant on the judgment of the Supreme Court in Troll Nath Bali v. Registrar, High Court of Delhi & Anr., is ill-founded inasmuch as, in the peculiar facts of the said case, the Supreme Court had directed the period of suspension to be taken into account for determining the pension of the appellant therein. In the present case, clearly no such direction was passed by the learned Appellate Authority while passing the order dated 21.01.2019.

14. Similarly, the reliance of the appellant on Rule 40 of the Central Civil Services (Pension) Rules, 1972(hereinafter known as 'CCS (Pension) Rules, 1972') also cannot be accepted, for the reason that the Department has not denied the benefit of Rule 40 of the CCS(Pension) Rules, 1972 to the appellant. The only difference of opinion between the appellant and the Department is with regard to the date for determining the emoluments and basic pay of the appellant for purpose of calculating the pension and other benefits to the appellant.

15. As noted hereinabove, in absence of a specific direction/order of the Appellate Authority, in its order dated 21.01.2019 disposing of the appeal, to treat the period of suspension as one spent duty, I find no infirmity in the decision of the Department in taking the date of 31.08.2015 as the date for determination of the emoluments and basic pay of the appellant for purposes of calculating his pension. The appellant in form of this appeal is, in fact, praying for a review of the order dated 21.01.2019.

16. Accordingly, the order dated 21.01.2019 passed by the Appellate Authority requires no clarification. The appeal is accordingly dismissed."

6. The above has now prompted the petitioner to file the present petition seeking the following reliefs: -

a) Quash Impugned Order dated 22.04.2019 and Order dated 09.03.2021 thereafter issue appropriate writ/order/direction in the form of mandamus or any other appropriate writ/order/direction to the respondents to calculate and grant remaining pay & allowances w.e.f 01.09.2015 upto 06.02.2018 when compulsory retirement was granted, thereafter grant pension & gratuity considering 06.02.2018 the actual date of retirement as per administrative appellate authority order dated 21.01.2019 (Annexure-I) and further direct the respondents to recommend to pension payment order (PPO) to pay & Accounts Office No.VI, Government of NCT of Delhi, Treasury Building, Tis Hazari, Delhi in this respect.

b) Grant cost of the present petition to the petitioner against the respondents.

7. As per petitioner, there is misinterpretation/misconstruction/misreading of words by the Appellate Authority of the order dated 21.01.2019 whereby it was clarified that the petitioner could not be deprived of the right to his pension or gratuity in terms of Rule 40 of The Central Civil Service (Pension) Rules, 1972³. As per the petitioner, the pensionary benefits under CCS Pension Rules shall prevail being for specific purpose as against Central Civil Service (Classification Control and Appeal) Rules, 1965 as the same are not in effect anymore and the same have been wrongly referred to, in letter dated 18.01.2021 issued by the office of D&SJ. Without going into the merits of the same, we find that the orders dated 06.02.2018 passed by the Disciplinary Authority, 21.01.2019 passed by the administrative Appellate Authority and 22.04.2022 passed by the Appellate Authority are not based on the same and have no relevance for adjudication of the present writ petition.

³ Hereinafter referred to as “CCS Pension Rules”

8. As per petitioner, there is no ambiguity in the order dated 21.01.2019 passed by the Appellate Authority and the objection raised vide letter dated 18.01.2021 by the Drawing and Disbursing Officer from the office of D&SJ is unwarranted in view of categorical finding given by administrative Appellate Authority vide appellate order dated 21.01.2019. Relying upon ***Prem Nath Bali v. Registrar, High Court of Delhi & Anr***⁴, wherein despite there being no specific order from which date the pensionary benefits were to be given, although major penalty of compulsory retirement was imposed, the Apex Court granted pensionary benefits considering the suspension period was long which was not attributable to Civil Court servants with effect from the date of passing compulsory retirement order. Learned counsel for petitioner contended that in the present case, there is a specific order by appellate authority for considering the date of retirement as 06.02.2018 which leaves no ambiguity to raise any objection at least for granting pensionary benefits to present petitioner by the Drawing & Disbursing Officer of the office of D&SJ as regards the date from which the calculating of pensionary benefits have to be granted.

9. In rebuttal, both Registrar General, High Court of Delhi as the respondent no.1 and Principal D&SJ as the respondent no.2 filed separate counter affidavits, over all supporting the orders passed by the various forum(s) at different stages on diverse dates. As per respondents, the order of the Disciplinary Authority dated 06.02.2018 and that of the administrative Appellate Authority dated 21.01.2019 are clear and specific and needed no change. Further, both the orders have been duly considered

⁴ AIR 2016 SC 101

by the Appellate Authority in the impugned order dated 22.04.2022. Thus no interference of any kind at this level is called for by this Court.

10. The respondents contended that as per Rule 33 of the CCS Pension Rules, where a government servant immediately, before his retirement or death, while in service, had been absent from duty on extraordinary leave or had been under suspension, the period whereof does not count as service and the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purpose of this rule. In view thereof, as the petitioner was not in service he is not entitled to the reliefs prayed for in the present writ petition. Reliance for the same is also placed upon Rule 23 of the CCS Pension Rules, according to which the time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; the period of suspension shall not count as service unless the authority competent passes such orders under the rule governing such cases, and the period shall count to such extent as the Competent Authority may declare.

11. The respondents also contended that it is settled law that in matters related to disciplinary proceedings, the scope of Judicial Review is limited and the Court(s) while exercising the Powers under Article 226 of the Constitution of India, do not sit in appeal to re-appreciate the evidence and facts or substitute its opinion unless it is shown that the appropriate procedure was not followed.

12. The respondents also contended that in terms of para 13 of Office Memorandum dated 04.08.2016 issued by the Ministry of Personnel, Public

Grievance & Pensions, Govt. of India for implementation of 7th Central Pay Commission for pre-2016 pensioners, the Pension Disbursing Authorities should ensure that the revised pension and the arrears due to the pensioners who have retired before 01.01.2016 is paid in their account by 31.08.2016 or before positively. The case of the petitioner is not falling under the said head.

13. The respondents further contended that the petitioner in the present case was not acquitted by the Disciplinary Authority and the punishment of 'Dismissal from Service' was awarded by the Disciplinary Authority treating the period of suspension as non-qualifying service vide order dated 06.02.2018 and the Administrative Appellate Authority also did not acquit the petitioner from the charges levelled against him. It was only the punishment of 'Dismissal from Service' which was reduced to the one of 'Compulsory Retirement' with effect from 06.02.2018. Therefore, the order of the Disciplinary Authority treating the period of suspension as non-qualifying service is valid.

14. In support thereof, learned counsel for respondents relied upon *Management of Reserve Bank of India v. Bhopal Singh Panchal*⁵, *Sh. D. N. Kadian v. LG., GNCTD & Ors*⁶, *Jagdish Chander v. Government of NCT of Delhi & Ors*⁷, and *Union of India & Ors. v Devi Krishan Sharma*,⁸ wherein under similar circumstances, the delinquent was not given benefit of reduction of punishment.

⁵ (1994) 1 SCC 54

⁶ 2017 SCC OnLine Del 9628

⁷ 2014 SCC OnLine Del 4819

⁸ 2015 SCC OnLine Del 3382

15. After hearing both learned counsel for the parties at considerable length and upon a careful perusal of the documents on record and cited judgments, this Court, at the outset, notes that a perusal of the writ petition reveals that the petitioner is guilty of raising similar grounds, which already stand negated vide detailed order(s) at different levels, before us. Though the petitioner has raised various grounds to agitate the case, pertinently, there is no challenge to the manner of the proceedings or to the decision making process. In a nutshell, all that the petitioner is seeking by virtue of the present writ petition is a 'clarification', *which has already been denied to him*, to the effect that if the punishment of 'Dismissal from Service' imposed vide order dated 06.02.2018 by the Disciplinary Authority has been reduced to the punishment of 'Compulsory Retirement' vide order dated 21.01.2019 by the Appellate Authority, accordingly, it should be deemed that the petitioner continued to remain in service for the period 01.09.2015 till 06.02.2018 and the said period cannot be treated as not being in service and that he is well and truly entitled for the extension of pensionary benefit under the 7th Central Pay Commission and other benefits and not under the 6th Central Pay Commission.

16. It is further not the case of the petitioner that the respondents have not extended the benefit of his pension or gratuity in terms of Rule 40 of the CCS Pension Rules as the dispute raised in the present writ petition is only with regard to the final date of service of the petitioner, whether it is to be taken as 01.09.2015 or 06.02.2018. Though, under the garb of the present writ petition, the petitioner has, *wrongly*, tried to contend to the contrary before us.

17. Coming to the facts of the case, admittedly, the petitioner was awarded the punishment of 'Dismissal from Service' vide detailed order dated 06.02.2018 passed by the Disciplinary Authority as he was held guilty of misconduct, and as categorically stated in the said order, reproduced above, the petitioner was not to get any benefits for the period of suspension other than subsistence allowances already paid to him. Admittedly, the administrative Appellate Authority vide its detailed order dated 21.01.2019 reaffirmed and reiterated the earlier order dated 06.02.2018 passed by the Disciplinary Authority without commenting or disturbing the material *paragraph 15*, and merely, partly allowed the appeal with certain modifications of the said order. As such, there was/could be no change of the period of suspension mentioned therein. In effect, the directions regarding non-grant of benefits for the period of suspension to the petitioner remained as such and only the punishment was scaled down. In our view, it can safely be inferred from a reading of the order dated 21.01.2019 that it is in the nature of a benevolent gesture extended by the administrative Appellate Authority in view of the then past 38 years of service rendered by the petitioner. The same can also be deciphered from the language of the order dated 22.04.2022 passed by the Appellate Authority. Thereafter, the date of service for the purpose of fixation of pensionary benefits was termed as on 31.08.2015 i.e. the date prior to him being put on suspension, in terms of order dated 21.01.2019 passed by the administrative Appellate Authority. The same was, once again, reaffirmed and reiterated by the Appellate Authority vide its detailed order dated 22.04.2022.

18. It is not in dispute that the petitioner was out of service since

31.08.2015 and that the same has not been modified or changed by any authority whatsoever. The only clarification given by the administrative Appellate Authority was vide its order dated 21.01.2019 whereby it is crystal clear that the relevant date for consideration in the present case is indeed 31.08.2015. The carrying out of any modification/ amendment by the administrative Appellate Authority vide its order dated 21.01.2019 of the order dated 06.02.2018 passed by the Disciplinary Authority is of no consequence or relevance as the petitioner was admittedly not in service. In any event, the same cannot come to the aid of the petitioner in view of the settled position of law, as enunciated in ***Management of Reserve Bank of India (supra)***, wherein the respondent was convicted by the Sessions Judge for misconduct and dismissed from service treating the period of suspension as period without pay and allowances and though the petitioner therein was given an honourable acquittal, however, the order of dismissal was not altered and was upheld. The Hon'ble Supreme Court in that case held as follows:-

“..... We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such

employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable."

19. Similarly, reliance is also placed upon **Sh. D.N. Kadian (supra)** wherein petitioner was a member of Delhi Judicial Services and after being prosecuted for the demand and acceptance of illegal gratification, was suspended from service and was found guilty and the request of petitioner for payment of arrears for the period of suspension was denied holding that the period of suspension as 'period not spent on duty'. Once again, the Hon'ble Supreme Court in the said case observed as follows: -

".....Therefore, a conjoint reading of Rules 9 and 69 of the Pension Rules with FR 54-B, in the opinion of the Court, means that the employer (in this case, the High Court) had the discretion to treat the period that the petitioner was under suspension, as not having been spent on duty; indeed, a plain reading of Rule 54B (5) and (7) reveal that without a finding that the suspension was unjustified, the period cannot be treated as having been spent on duty. Rule 9 (1) read with Rule 69 of the Pension Rules, enables only fixation of provisional pension and the authority has to await the outcome of judicial proceedings pending in the criminal charges alleged against the petitioner.

To some extent, the petitioner is right in contending that the lack of any finality in the proceeding has resulted in his being deprived of his pension and terminal benefits. The Court observes that inherent in the nature of charges leveled and having regard to the

procedural history of the case, delay was inevitable. The consequence of this hardship cannot mean that the petitioner, by default can claim as an entitlement the right to full pension fixation, with terminal benefits, which he is in law, and under the relevant rules, clearly not entitled to.”

20. Reliance is also placed upon **Jagdish Chander (supra)**, wherein the petitioner was suspended from service for misconduct and inflicted with the punishment of withholding of five years of increments, though the Appellate Authority modified the punishment by reducing the withholding of increment by two years and decided that the period of suspension will be treated as period not spent on duty, this Court observed as follows:-

“9. Having heard learned counsel for the petitioner and perused the impugned order, we are of the view that there is no merit in this petition. Rule 27 deals with circumstances in which a delinquent police officer may be suspended and the circumstances in which the suspension would stand revoked. It also deals with the manner in which the continued suspension of a police officer would be dealt with. It does not, however, deal with a situation, where the delinquent is suspended in contemplation of a major penalty enquiry; or where the delinquent is inflicted with a major penalty though not dismissal, removal or compulsory retirement, and his suspension revoked.

10. Obviously, the respondent could not have prejudged the issue whether the petitioner would eventually be found guilty, and if so, the quantum of penalty that he may be subject to. The charge against the petitioner was of misbehaviour with a senior woman officer. There is nothing to suggest that such a charge could not have resulted in the petitioners eventual removal or dismissal from service. Pertinently, the eventual penalty imposed upon the petitioner was a major penalty. Rule 27, therefore, had no application in the facts of the present case. Merely because the penalty may have been reduced from withholding/stoppage of increment for a period of five years with cumulative effect - as originally awarded on 15.05.2000, to stoppage of one increment for a period of one year with cumulative effect - as eventually awarded on 23.04.2012, it does not follow that the period of

suspension was also liable to be regularised as spent on duty.”

21. Lastly, reliance is placed upon ***Union of India (supra)*** wherein while deciding the issue of grant of increment during the period of suspension, a co-ordinate bench of this Court made the following observations:-

“..... At the outset before delving into the merits of the case, it would be relevant to analyze the dictionary meaning of suspension. The term - 'Suspend' would mean 'to debar usually, for a time, from any privilege, the execution of an office or from the enjoyment of an income'. It is a temporary deprivation of office or privilege. By reason of suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to the same discipline and penalties to the same authorities. The above definition makes it clear that during the period of suspension, all the privileges and benefits attached to the office is temporarily suspended unless the period of suspension is considered as the period spent on duty.”

22. Now coming to the issue of maintainability of the present writ petition in the present form. The petitioner by virtue of the present writ petition is seeking judicial review of the order(s) passed against him. As noted hereinabove, the petitioner has not challenged the constitution of the forum(s) or the manner of the proceedings or the decision making process and the whole case is based on the final decision arrived at by the administrative Appellate Authority first and then by the Appellate Authority thereafter, which cannot be gone into by this Court under a petition under Article 226 of The Constitution of India. In view thereof the present writ petition is not maintainable in law. We are fortified by ***H.B. Gandhi, Excise and Taxation Officer-cum-assessing Authority, Karnal***

*and Others vs. M/s Gopi Nath & Sons And Others*⁹ wherein it is held as follows:-

“8.....Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.”

23. Similarly, reliance is placed upon *Swapan Kumar Pal vs. Achintya Kmar Nayak and Others*¹⁰ wherein it is held as follows: -

“19. In a case of this nature, ordinarily, the High Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution. For exercising the power of judicial review, the Court has a limited role to play. It could interfere only if any legal error has been committed in the decision making process. It could not enter into the merit of the decision.”

24. Lastly, reliance is also placed upon In *Bank of India and Others vs. T. Jogram*¹¹ wherein it is held as follows: -

“13. In B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749, a three Judge Bench of this Court held in paragraph 12 as under:- "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority

⁹ 1992 Supp (2) SCC 312

¹⁰ (2008) 1 SCC 379

¹¹ (2007) 7 SCC 236

entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

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15. By now it is well-settled principle of law that judicial review is not against the decision. It is against the decision making process. In the instant case, there are no allegations of procedural irregularities/illegality and also there is no allegation of violation of principles of natural justice. Counsel for the respondent tried to sustain the allegation of malafide. He tried to assert that the respondent filed a case against the Chief Manager of Secunderabad Branch in 1996 and the enquiry initiated against the respondent is the fall out of malafide. We are unable to accept the bald allegations. The allegation of malafide was not substantiated. It is well settled law that the allegation of malafide cannot be based on surmises and conjectures. It should be based on factual matrix. Counsel also tried to assert the violation of principles of natural justice on the ground that the documents required by the respondent were not supplied to him. From the averment it is seen that the documents, which were sought to be required by the respondent, were all those bills submitted by the respondent himself before the authority. In these circumstances, no prejudice whatsoever was caused to the respondent.”

25. In view of the aforesaid settled law regarding the scope of interference in matters of judicial review, in the opinion of this Court there is hardly any, in fact extremely little scope of interference in matters like

the present one.

26. As such, in view of the punishment imposed by the Disciplinary Authority, upheld by the administrative Appellate Authority and also by the Appellate Authority and in view of the settled legal position qua the scope of interference in matters of judicial review involved in the present writ petition, this Court finds no merit in the present writ petition and holds that the petitioner is not entitled to the reliefs sought for in the present writ petition.

27. Accordingly, the present writ petition is dismissed, leaving the parties to bear their own costs.

SAURABH BANERJEE, J.

MANMOHAN, J.

DECEMBER 22, 2022
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