



2024:DHC:9438



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

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Date of Decision: 21st November, 2024

+ W.P.(C) 6244/2020

RK MITTAL

.....Petitioner

Through: Mr. Shanker Raju and Mr. Nilansh Gaur, Advocates with Petitioner in person.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Vikrant N. Goyal and Mr. Aditya Shukla, Advocates.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India for quashing impugned chargesheet dated 18.12.2018, inquiry report dated 25.06.2019 and penalty order dated 11.07.2019 as well as orders dated 10.12.2019 and 08.10.2020. Writ of mandamus is sought for a direction to the Respondent to release all consequential benefits of pension etc. to the Petitioner along with difference in the salary and allowances and subsistence allowance paid during the suspension period.

2. Facts to the extent necessary are that Petitioner was initially appointed as a subordinate Judge in Himachal Pradesh on 26.10.1982 and was promoted as Additional District Judge w.e.f. 05.09.2003 and thereafter promoted as a District Judge in December, 2006. Owing to family circumstances, Petitioner took voluntary retirement and thereafter served as



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President, District Consumer Forum in State of Uttar Pradesh between 13.05.2011 to 04.05.2015. Petitioner was appointed as Member (Judicial) in Railway Claims Tribunal ('RCT') and was posted at Patna Bench on 05.05.2015.

3. On a complaint made by an Advocate at Patna, Petitioner was transferred to Ranchi on 03.08.2017. Disciplinary proceedings were initiated against the Petitioner after placing him under suspension which culminated in a penalty of 'removal from service' vide order dated 11.07.2019. The inquiry report was not furnished to the Petitioner before the imposition of penalty and the copy was enclosed along with the order of the Disciplinary Authority (DA) and hence Petitioner was not given a chance to represent against the report and furnish his comments. Petitioner made a claim towards payment of TA, DA, HRA etc. but the same was denied on account of the penalty of removal from service and Petitioner approached this Court seeking relief of setting aside the disciplinary proceedings and the consequential penalty as also seeking consequential benefits of allowances and pension etc.

4. Mr. Shanker Raju, learned counsel for the Petitioner restricts his arguments at this stage to two grounds in support of Petitioner's challenge to the penalty order. It is urged that non-supply of inquiry report prior to passing of the penalty order has caused prejudice to the Petitioner since he was unable to submit his response to the findings of the Inquiry Officer ('IO') and point out the defects in the inquiry report. The report was appended as an enclosure with the penalty order and this violates Rule 9(2) of All India Services (Discipline and Appeal) Rules, 1969 ('1969 Rules') which provides that Disciplinary Authority shall forward or cause to be



forwarded a copy of the report of the inquiry to the Government servant along with its own tentative reasons for disagreement, if any, and the representation received from the Government servant, if any, shall be considered by the Disciplinary Authority.

5. It is argued that there are several lacunae and shortcomings including factual inaccuracies in the inquiry report, which have led to the major penalty of removal from service. It is no longer *res integra* that if the charged officer is prejudiced due to non-supply of inquiry report, it amounts to violation of principles of natural justice and in this context, Mr. Raju relies on the judgments of the Supreme Court in ***Managing Director, ECIL, Hyderabad and Others v. B. Karunakar and Others*, (1993) 4 SCC 727;** and ***Uttarakhand Transport Corporation (Earlier known as U.P.S.R.T.C.) and Others v. Sukhveer Singh*, (2018) 1 SCC 231.** Conceding that it is not enough to plead that inquiry report has not been supplied and it is also essential to show prejudice, Mr. Raju illustratively points out that there were 07 Articles of Charge in the charge sheet out of which Articles of Charge I, II and VII were proved while 04 Articles of Charge were held to be ‘not proved’. All the 07 charges were intrinsically linked and had the report been furnished, Petitioner would have pointed out to the DA how the remaining charges were also not made out. To demonstrate the prejudice by non-supply of the inquiry report, it is urged that the allegations in Article-I of the charge memo was that under the Railways Claims Tribunal Act, 1987 (‘1987 Act’) when a claim application is filed for compensation for death or injury in an untoward incident or an accident, the application is filed in Form-II and as per the original procedure prior to 2010, claimant was to give account number within one month of the decree and in order to directly transfer



funds electronically to the bank account of the claimant and to ward off pilferage by unscrupulous elements, Column-13A was inserted in Form-III in 2010 in which the claimant had to give his account number in the claim petition itself, however, Petitioner adopted a deviant procedure by which he passed directions to the Railways to deposit the decretal money in a 'lawyer verified account' of the claimant due to which conducting lawyers got other accounts opened in the beneficiaries name and gained control over the money and swindled the amounts legitimately due to the claimants/beneficiaries. Had the inquiry report been furnished on time, Petitioner would have brought forth and established that there was not a single complaint at any point in time from any claimant/beneficiary that the money due to him under any claim was misappropriated and there was no deviation as perceived by the Respondent.

6. The second argument on behalf of the Petitioner is that the order of the DA is a non-speaking order and shows total non-application of mind. Not a single reason has been given as to why the DA agreed with the findings of the IO or that the charges warranted an extreme penalty of removal from service keeping in view the past unblemished service of the Petitioner with the Respondent as also his long service as a judicial officer prior to joining as a Member (Judicial) at the Railways Claim Tribunal. In this light, learned counsel also emphasises that the penalty of removal from service is highly disproportionate and has resulted in forfeiting the retiral benefits as also various allowances.

7. Learned counsel for the Respondent, *per contra*, argues that failure to supply the inquiry report prior to the passing of the penalty order cannot *per se* result in disciplinary proceedings being vitiated. Petitioner will be



required to establish that prejudice has been caused due to non-supply of the report and it cannot be presumed that in every case, principles of natural justice are violated only on account of the inquiry report not being furnished to the charged officer. Petitioner participated in the inquiry and knew the charges against him as well as the evidence led and could have represented effectively on this basis even without the inquiry report. Reliance is placed on the judgment in **B. Karunakar (supra)** in this context. In response to the argument that the penalty order is a non-speaking order, learned counsel submits that a reading of the order dated 11.07.2019 shows that the DA has gone into the charges levelled, the inquiry report wherein the charges were held to be proved based on evidence led before the IO and the DA is not required to give a detailed finding like an IO to come to a conclusion. It goes without saying that the decision was on the basis of the record of the inquiry proceedings and there was complete application of mind to the evidence led by the prosecution and the defence.

8. Heard learned counsels for the parties and examined their submissions.

9. Law in relation to furnishing of inquiry report to the charged officer prior to passing of the penalty order by the DA is fairly well-settled. In **B. Karunakar (supra)**, the Constitution Bench of the Supreme Court observed that the reason why the right to receive the report of the IO is considered an essential part of reasonable opportunity and also a principle of natural justice is that findings recorded by the IO form an important material before the DA which along with evidence is taken into consideration before it comes to any conclusion. It is difficult to say in advance as to what extent the findings in the report would influence the DA while drawing its conclusions. If any



finding of the IO is to be one of the factors to be considered by the DA, principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is a negation of tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by the IO without giving the employee an opportunity to reply to it. Having so observed, the Supreme Court further held that the Courts should not mechanically set aside the orders of punishments on the ground that report was not furnished and must apply their judicial mind to see if any prejudice was caused to the charged officer and only when the Court comes to a conclusion that furnishing of the report would have made a difference to the result in the case and the penalty imposed, order of punishment should be interfered with. Relevant paragraphs are as follows:-

"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the



enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

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31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final



outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

10. In ***Haryana Financial Corporation and Another v. Kailash Chandra Ahuja, (2008) 9 SCC 31***, the Supreme Court reiterated the principle and held as follows:-

“25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem (hear the other side). But it is equally well settled that the concept of “natural justice” is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula.

26. Before about six decades, in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225 (CA)] , Tucker, L.J. stated: (All ER p. 118 D-E)

“... There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.”

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39. In B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] this Court considered several cases and held that it was only if the court/tribunal finds that the furnishing of the report “would have made a difference” to the result in the case that it should set aside the order of punishment. The law laid down in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] was reiterated and followed in subsequent cases also (vide State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , M.C. Mehta v. Union of India [(1999) 6 SCC 237])

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43. In Ranjit Singh v. Union of India [(2006) 4 SCC 153 : 2006 SCC (L&S) 631] , referring to the relevant case law, this Court said: (SCC pp.



160-61, para 22)

“22. In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. The enquiry officer arrived at findings which were in favour of the appellant. Such findings were required (sic sought) to be overturned by the disciplinary authority. It is in that view of the matter, the power sought to be exercised by the disciplinary authority, although not as that of an appellate authority, but is akin thereto. The inquiry report was in favour of the appellant but the disciplinary authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in the absence of any show cause filed by the appellant, to analyse the materials on record afresh. It was all the more necessary because even CBI, after a thorough investigation in the matter, did not find any case against the appellant and thus, filed a closure report. It is, therefore, not a case where the appellant was exonerated by a criminal court after a full-fledged trial by giving benefit of doubt. It was also not a case where the appellant could be held guilty in the disciplinary proceedings applying the standard of proof as preponderance of the probability as contrasted with the standard of proof in a criminal trial i.e. proof beyond all reasonable doubt. When a final form was filed in favour of the appellant, CBI even did not find a prima facie case against him. The disciplinary authority in the aforementioned peculiar situation was obligated to apply its mind on the materials brought on record by the parties in the light of the findings arrived at by the inquiry officer. It should not have relied only on the reasons disclosed by him in his show-cause notice which, it will bear repetition to state, was only tentative in nature. As the appellate authority in arriving at its finding, laid emphasis on the fact that the appellant has not filed any objection to the show-cause notice; ordinarily, this Court would not have exercised its power of judicial review in such a matter, but the case in hand appears to be an exceptional one as the appellant was exonerated by the inquiry officer. He filed a show cause but, albeit after some time the said cause was available with the disciplinary authority before he issued the order of dismissal. Even if he had prepared the order of dismissal, he could have considered the show cause as he did not leave his office by then. The expression ‘communication’ in respect of an order of dismissal or removal from service would mean that the same is served upon the delinquent officer. (See State of Punjab v. Amar Singh Harika [AIR 1966 SC 1313] .)”

44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be



furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show “prejudice”. Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.”

11. Recently, a Division Bench of this Court in ***B. Vasudeva Rao v. Union of India and Another***, 2022 SCC OnLine Del 3808, relying on the judgment of the Supreme Court in ***B. Karunakar (supra)*** interfered in the order of punishment and remanded the matter back to the Appellate Authority to consider whether non-supply of inquiry report had caused prejudice to the Petitioner and pass a reasoned order with an observation that Petitioner had specifically pleaded that non-supply of the report had prejudiced his case on various grounds such as non-production of vital witness, non-adherence to procedures etc. and the Appellate Authority ought to have given reasons on the issue.

12. In the present case, Petitioner has urged by way of illustration that the IO has wrongly established Article-I of the charge memo that Petitioner had deviated from the procedure of furnishing the account details of the claimants/beneficiaries inasmuch as in all RCTs, the claimant is required to give legal heir/dependency certificate along with the claim petition and the compensation awarded is divided amongst all dependents as defined in Section 123 of the Indian Railways Act, 1989. Only the details of one claimant were given and neither the other beneficiaries of the deceased in a given case were impleaded nor any of their identity proofs or bank account details were furnished. Several other such issues have been highlighted in



the petition which according to the Petitioner would have manifestly shown to the DA, if pointed out by the Petitioner that he was not guilty of the allegations levelled against him. But this important opportunity which is embedded in the principles of natural justice has been taken away from the Petitioner as he did not have the benefit of the inquiry report prior to the penalty order. This Court agrees with the contention that Petitioner has been prejudiced due to non-supply of the inquiry report for reasons spelt out in the writ petition and this issue does go to the root of the matter. Indisputably, the report was for the first time given to the Petitioner as an enclosure to the penalty order and in light of the prejudice *prima facie* shown by the Petitioner, the matter deserves to be remanded back to the DA for a reconsideration.

13. There is also merit in the contention that penalty order passed by the DA is a non-speaking order. A plain reading of the impugned order dated 11.07.2019 shows that the DA has merely referred to Section 8(2) of the 1987 Act, order of appointment of the IO, date of the inquiry report, Articles of Charge and simply come to a conclusion that the charges of misbehaviour established against the Petitioner are serious enough to warrant his removal from the office of Judicial Member in RCT. There is not an iota of reasoning in the entire order. The Supreme Court in ***S.N. Mukherjee v. Union of India, (1990) 4 SCC 594*** emphasised on the importance of passing a reasoned order and I quote:

“36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative



authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The Committee expressed the opinion that “there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise” and that “where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity”. (p. 80) Prof. H.W.R. Wade has also expressed the view that “natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice”. (See Wade, Administrative Law, 6th edn. p. 548.) In Siemens Engineering Co. case [(1976) 2 SCC 981 : 1976 Supp SCR 489] this Court has taken the same view when it observed that “the rule requiring reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process”. This decision proceeds on the basis that the two well known principles of natural justice, namely (i) that no man should be a judge in his own cause, and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view



is in consonance with the law laid down by this Court in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : (1970) 1 SCR 457] wherein it has been held : (SCR pp. 468-69 : SCC p. 272, para 20)

“The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely : (i) no one shall be a judge in his own cause (nemo debet esse judex propria causa), and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice.”

38. A similar trend is discernible in the decisions of English courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See : *R. v. Deputy Industrial Injuries Commissioner ex p. Moore* [(1965) 1 QB 456 : (1965) 1 All ER 81] ; *Mahon v. Air New Zealand Ltd.* [1984 AC 648 : (1984) 3 All ER 201])

39. The object underlying the rules of natural justice “is to prevent miscarriage of justice” and secure “fair play in action”. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a



provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.”

14. Doctrine of proportionality is a recognised doctrine in service jurisprudence and in this context, I may allude to the judgment of the Supreme Court in ***Chairman-Cum-Managing Director, Coal India Limited and Another v. Mukul Kumar Choudhuri and Others***, (2009) 15 SCC 620, where the Supreme Court held that one of the tests while dealing with question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the measure, magnitude and degree of misconduct as well as all other circumstances. Relevant paragraphs are as follows:-

“19 [Ed.: Para 19 corrected vide Official Corrigendum No. F.3/Ed.B.J./9/2010 dated 11-1-2010.] . 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 unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any



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."

15. In ***Union of India and Another v. G. Ganayutham***, (1997) 7 SCC 463, the Supreme Court elaborately considered the doctrine of proportionality both under the Administrative Law in England and in India and summed up the position of law as follows:-

"31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury [(1948) 1 KB 223 : (1947) 2 All ER 680] test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational — in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU [1985 AC 374 : (1984) 3 All ER 935] principles.

(3)(a) As per Bugdaycay [R. v. Ministry of Defence, ex p Smith, (1996) 1 All ER 257] , Brind [(1991) 1 AC 696 : (1991) 1 All ER 720] and Smith [Cunliffe v. Commonwealth, [(1994) 68 Aust LJ 791] (at 827, 839) (also 799, 810, 821), Australian Capital Tel. Co. v. Commonwealth, 1992 CL p. 106 (at 157) (Aus), R. v. Oake, 1987 Law Reports of Commonwealth 477 (at 500) (Can), R. v. Big M



Drug Mart Ltd., (1985) 1 SCR 295 (Can)] as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of “proportionality” and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

Punishment in disciplinary matters: Wednesbury and CCSU tests

32. *Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of “proportionality”. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to “irrationality”, there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in “outrageous” defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain “Ranjit Thakur [(1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113] ”.*

33. *In Ranjit Thakur [(1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113] this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In*



other words, this Court felt that, on facts, *Wednesbury* and *CCSU* tests were satisfied. In another case, in *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] a three-Judge Bench said the same thing as follows: (SCC p. 762, para 18)

“18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

Similar view was taken in *Indian Oil Corpn. Ltd. v. Ashok Kumar Arora* [(1997) 3 SCC 72 : 1997 SCC (L&S) 636] that the Court will not intervene unless the punishment is wholly disproportionate.

34. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury* [(1948) 1 KB 223 : (1947) 2 All ER 680] or *CCSU* [1985 AC 374 : (1984) 3 All ER 935] norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi* case [AIR 1961 SC 418 : (1961) 2 SCR 343] that the Court might — to shorten litigation — think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In *B.C. Chaturvedi* [AIR 1961 SC 418 : (1961) 2 SCR 343] and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the respondent, namely, *State of Maharashtra v. M.H. Mazumdar* [(1988) 2 SCC 52 : 1988 SCC (L&S) 436 : (1988) 6 ATC 876] cannot be of any help.”

16. In ***Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. and Another***, (2007) 4 SCC 669, the Supreme Court held as under:-

“Doctrine of proportionality

17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by



various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of proportionality”.

18. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. *de Smith* states that “proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also *Wade & Forsyth: Administrative Law* (2005), p. 366.]

20. In *Halsbury's Laws of England* (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

“The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.”

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no “pick and choose”, selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time; “where paring knife suffices, battle axe is precluded”.

22. In the celebrated decision of *Council of Civil Service Union v. Minister for Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] Lord Diplock proclaimed: (All ER p. 950h-j)



“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 on 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’....”

(emphasis supplied)

23. CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] has been reiterated by English courts in several subsequent cases. We do not think it necessary to refer to all those cases.

24. So far as our legal system is concerned, the doctrine is well settled. Even prior to CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)], this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a court to interfere with such penalty in appropriate cases.

25. In *Hind Construction & Engg. Co. Ltd. v. Workmen* [AIR 1965 SC 917 : (1965) 2 SCR 85], some workers remained absent from duty treating a particular day as holiday. They were dismissed from service. The Industrial Tribunal set aside the action. This Court held that the absence could have been treated as leave without pay. The workmen might have been warned and fined. (But)

“It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner.” (AIR p. 919, para 7)

(emphasis supplied)

The Court concluded that the punishment imposed on the workmen was

“not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would have imposed”. (AIR pp. 919-20, para 7)

(emphasis supplied)

26. In *Federation of Indian Chambers of Commerce and Industry v. Workmen* [(1972) 1 SCC 40 : AIR 1972 SC 763], the allegation against the employee of the Federation was that he issued legal notices to the Federation and to the International Chamber of Commerce which brought discredit to the Federation—the employer. Domestic inquiry was held against the employee and his services were terminated. The punishment was held to be disproportionate to the misconduct alleged and established.



This Court observed that: (SCC p. 62, para 34)

“[T]he Federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation.”

27. *In Ranjit Thakur [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] referred to earlier, an army officer did not obey the lawful command of his superior officer by not eating food offered to him. Court-martial proceedings were initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment.*

28. *Applying the doctrine of proportionality and following CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , Venkatachaliah, J. (as His Lordship then was) observed: (SCC p. 620, para 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.”

(emphasis supplied)

17. Mr. Raju has without prejudice to the other contentions urged that considering that Petitioner has served as a Judicial officer from 1982 till 2017 and had earned two promotions in the said tenure as an Additional District Judge and District Judge with no blemish as also his contribution as a Judicial Member in RCT where he has pronounced more than 2,500 orders/ judgments etc., the penalty of removal from service is highly disproportionate *albeit* this is strongly refuted by counsel for the Respondent.

18. Having considered all the 03 contentions holistically, I am of the view that the impugned order dated 11.07.2019 whereby penalty of removal from



service was imposed on the Petitioner deserves to be set aside. However, keeping in view that the illegality has crept from the stage of non-supply of the inquiry report to the Petitioner, the matter is remanded back to the Disciplinary Authority to reconsider its decision to impose the penalty after calling upon the Petitioner to furnish his representation against the inquiry report.

19. Accordingly, this writ petition is disposed of permitting the Petitioner to make a representation against inquiry report to the Disciplinary Authority within a period of 05 weeks from the date of receipt of this order. On receipt of the representation, the DA shall take a decision afresh in light of the representation made as well as the evidence led during the inquiry proceedings and the inquiry report. The argument of proportionality of punishment raised by the Petitioner, without prejudice to his contentions that the charges are *per se* not proved and he is innocent, will also be examined by the DA without being influenced by the penalty order dated 11.07.2019.

20. The decision will be taken by the DA within a period of 06 weeks from the date of receipt of the representation and the same shall be communicated to the Petitioner within 01 week. It is made clear that this Court has not expressed any opinion on the merits of the case and it will be open to the DA to take a decision in accordance with law.

21. In view of the aforesaid, impugned order dated 11.07.2019 is set aside. Consequential reliefs of notional reinstatement etc. will depend on the outcome of the decision of the Disciplinary Authority.

JYOTI SINGH, J

NOVEMBER 21, 2024

B.S. Rohella/shivam