MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 278/2012 (D.B.)

Shri Pramod Yashwantrao Ramteke,
Aged about 56 years,
R/o Qtr. No. 8, Laghu Weten Colony,
Kamptee Road, Nagpur.

Applicant.

Versus

1) The State of Maharashtra,
Through the Secretary (CAD),
Irrigation Department,
Mantralaya, Mumbai-32.

2) The Chief Engineer,
Irrigation Department,
Sinchan Sewa Bhawan, Civil Lines,
Nagpur – 440 001.

3) The Superintending Engineer & Administrator,
Command Area Development Authority,
Purohit Building, Temple Road,
Civil Lines, Nagpur – 440 001.

Respondents

Shri G.G.Bade, ld. Advocate for the applicant.

Shri M.I.Khan, ld. P.O. for the respondents.

Coram :- **Hon'ble Shri M.A.Lovekar, Member (J) &**
Hon'ble Shri Vinay Kargaonkar, Member (A)

JUDGMENT

Judgment is reserved on 19th Jan., 2024.

Judgment is pronounced on 28th Feb., 2024.

[Per:-Member (J)]

Heard Shri G.G.Bade, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. Facts leading to this O.A. are as follows. By order dated 27.04.1984 (A-6) the applicant was placed under suspension w.e.f. 12.04.1984 as he was detained in Police custody for more than 48 hours in an offence registered against him. By order dated 17.03.1989 (A-8) he was reinstated. By order dated 12.09.1989 (A-9) period of suspension from 12.04.1984 to 30.03.1989 was directed to be treated as duty period for all purposes.

The applicant, his wife and one another were tried and convicted u/ss 313 and 315 of the Indian Penal Code, and sentenced. However, Criminal Appeal No. 14/1988 preferred by the applicant and his wife, as well as Criminal Appeal No. 13/1988 preferred by the remaining accused were allowed on 19.12.1988 (A-7). The Appellate Court, while setting aside conviction and sentence observed:-

> *I, therefore, feel that this is a case where benefit of doubt can well be conferred on the appellant accused.*

The applicant was thereafter served with a chargesheet dated 18.09.1991 (A-13). Following two charges were laid against him:-

> दोषारोप पत्र एक
>
> दिनांक ४.४.८४ ते १०.४.८४ पर्यन्त अनाधिकृतपणे कामावर गैरहजर राहून श्री रामटेके यांनी दिनांक ४.४. ते १९.४.८४ पर्यन्तचा रजा अर्ज दिनांक ११.४.८४ रोजी

सादर केला. दिनांक १९.०४.८४ रोजी कामावर रूजू होतांना त्यांना दिनांक १२.४.८४ ते १६.४.८४ पर्यन्त पाचपावली पोलीस स्टेशन, नागपूर येथे पोलीत कस्टडी रिमाण्डमध्ये ठेवले होते. ही बाब श्री रामटेके यांनी हेतुपुरस्सरपणे विभागीय प्रमुखांचे नजरेस आणून दिली नाही. सबब त्यामुळे महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील नियम ३ [१] [दोन] ये उल्लंघन झालेले असून त्यासाठी श्री रामटेके हे कारवाईस पात्र ठरतात.

दोषारोप क्र. २:- श्री. रामटेके वाहन चालक यांचेवर झालेल्या फौजदारी खटला क्र. १४ [१९८८ चा] च्या अंतर्गत न्यायालयाने त्यांना सबळ पुराव्याअभावी जरी दोषमुक्त केले असेल तरी त्या प्रकरणी श्री रामटेके यांचे वर्तन शातकीय कर्मचा-यास शोभनीय नव्हते. त्यामुळे महाराष्ट्र नागरी सेवा [वर्तणूक) नियम १९७९ मधील नियन 3[१] तीन प्रमाणे ते कारवाईस पात्र ठरतात.

The Enquiry Officer, by report dated 27.04.1992 (A-15) held both the charges to be proved. He concluded:-

या प्रकरणांत अपचारी यांचे अभिलेखांवर असलेले रजेचे अर्जापैकी प्रथम रजेचा अर्ज दि. ११.५.८४ चा असून तो कार्यालयात दि. १६.४.८१ रोजी प्राप्त झाला होता असे दिसते या अर्जात अपचारी यांनी दि ४.४.८४ पासून तो १९.७. ८४ पर्यंत वैद्यकीय रजा मंजूर करावी असे नमुद केलेले आहे. अपचारी हे कामावर दि १९.४.८४ चे १०.३० वाजता कामावर हजर झाल्याचे त्यांचे दि. १९. ४.८४ चे कामावर रूजू झाल्याचे प्रतिवेदनावरुन दिसते. या रुजु अहवाला सोबत त्यांनी रजा मंजूरीसाठी ठराविक नमुन्या 'तील रजेचा अर्ज व दि. १८.४.८४ चे डॉक्टर श्री वासनिक यांचे वैद्यकीय प्रमाणपत्र [एक्स पी. १] जोडले असल्याचे दिसते. रजेचे ठराविक नमुन्यातील अर्जात त्यांनी दोन प्रकारची रजा मिळाळी म्हणून विनंती केली व ती म्हणजे दि. ४.४.८४ ते १३.४.८४ करिता परावर्तीत रजा व दि १४.४.८४ ते १८.४.८४ करिता अर्जीत रजा एकंदरीत पाहता त्यांचा प्रथम रजेचा अर्ज दि. ११.४.८४ हा कार्यालयात १६. ४.८४ ला प्राप्त होऊनही कार्यालयाने तो ग्राहय धरल्याचे दिसते. अपचारी यांचा या संदर्भात बचाव असा आहे की त्यांची प्रकृति दि. ३.४.८४ चे मध्यरात्री अचानक बिघडली व रजेचा अर्ज पाठविण्यासाठी कुणीही नसल्यामुळे त्यांना त्याबाबद साधे पोस्ट कार्ड पाठविले व त्यावरही विलंबुन न राहता दि ११.४.८४ ला रजेचा अर्ज पाठवून कार्यालयाला अवगत केले. दि ११.४.८४ चा हा रजेचा अर्ज त्यांनी कसा पाठविला याचे विवेचन नसले तरी एकतर तो पोस्टाने पाठविला असावा किंवा कोणाचे हस्ते पाठविला असावा मात्र त्यांचा हा अर्ज कार्यालयाला प्राप्त होते व आधीचे ४.४.८४ चे पोस्टकार्ड कार्यालयाला मिळू शकत नाही या बाबीवर विश्वास

ठेवणे कठीण आहे. कार्यालयाने अपचारी यांचा अर्ज ग्राहय धरून ते दिनांक ४.४. ८४ ते १०.४.८४ पर्यंत अनाधिकृतपणे कामावरुन गैरहजर असल्याचा जो दोषारोप लावला तो वरील परिस्थितीत योग्य असल्याचे जाणवते. या प्रकरणात अपचारी यांनी ४.४.८४ ला पोस्टकार्ड पाठविल्याचा जो बचाव मांडला आहे त्यावर विश्वास बसणे कठीण आहे. अपचारी से खारोखरीच बिमार होते या गोष्टी- वरही विश्वास बसत नाही. या प्रकरणात सा.अ. यांनी आपले युक्तीवादासोबत सौ निशा रामटेके [वि. सा. क्र. २] हिचे पोलीस स्टेशन पांचपावली येथे दि १०.४.८४ रोजी दिलेल्या बयानाची प्रत जोडली आहे. त्यांतून एक गोष्ट ध्वनीत होते की या बाईला अपचारी यांचे संबंधातून गर्भधारणा झाली होती त्या गर्भाचा गर्भपात हा ८.४.८४ ला किंवा त्याचे आसपास करविण्यांत आल्याची घटना नमुद आहे. अपचारी कदाचित त्या व्यवस्थेत असण्याची व त्यामुळेच ते कामावरून गैरहजर असण्याचीच शक्यता जास्त असल्याचे एकंदर चित्र उभे राहते. अपचारी यांनी आपले २८.२.९२ चे बचाव निवेदनांतून दि ४.४.८४ ते १०.४.८४ चे कालावधीत अनाधिकृत गैरहजेरीचे मुद्यावर काहीच खुलासा केलेला नसल्याचे दिसून येते. एवढेच नव्हे तर अंतीम युक्तीवादात सुध्दा त्यांनी वरील बाबीचा परामर्श घेतला नसल्याचे स्पष्ट आहे. वरील प्रकारांमुळे मुद्या क्र. १ चे उत्तर होय असेच नमुद करणे योग्य ठरते.

त्यांनी सुटी मागतांनी दि. ४.४.८४ ते १३.४.८४ परावर्तीत रजा व १३.४.८४ ते १८.४.८४ अर्जीत रजा अशी मागितली आहे. त्यांचे वरीलप्रमाणे रजा मागण्याचे पाठीमागे नेमके काय कारण असावे असा स्पष्ट खुलासा शेवटपर्यंत होउ शकलेला नसला तरी अपचारी हे दि. १२.४.८४ चे २२.४५ वाजेपासून म्हणजे दि. १२.४.८४ चे रात्री १०.४५ पासून तो १६.४.८४ पर्यंत पोलीस कस्टडीत होते ही बाब कार्यालयाला पोलीसने पत्र लिहले म्हणून कळू शकली, अन्यथा रजेचे कारण व तेही स्वतःचे आजारपणाचे निमित्य दाखवून अपचारी यांनी अटकेची बाब समोर येऊच नये अशी छानपैकी व्यवस्था करून ठेवली होती असेच येथे नमुद करावे लागेल. अपचारी हे या प्रकाराबद्दल काहीही युक्तिवाद करत असले तरी तो निरर्थक असल्याची खात्री पटते व म्हणूनच मुद्या क्र. २ चे उत्तर होय असेच नमुद करणे भाग पडते.

He further concluded:-

अपचारी यांनी आपलेतर्फे दोन साक्षदार तपासलेले असले तरी त्यांनी आपले बचावाचे निवेदनांत तो मुद्दा न मांडता ते मुंबई न्यायालयांतून निर्दोष सुटल्यामुळे कोणताही शिस्तभंग केलेला नसल्याचे व त्यामुळेच ते कोणत्याही शिक्षेस पात्र ठरत नसल्याचे त्यांचे प्रतिपादन आहे. अपचारी यांचे या बचावाला असे उ-तर देता येईल की न्यायालयात त्यांचे विरुद्ध जे प्रकरण होते ते त्यांनी कुठल्या विशीष्ट

कायद्याखाली गुन्हा केल्याचे सिध्द होते किंवा नाही यासाठी होते तर प्रस्तुतचे प्रकरण अपचारी हे शासकिय नोकर असल्यामुळे त्यांचेकडून गैरवर्तन व गैरशिस्त झाली किंवा कसे एवढ्यापुरतेच मर्यादित आहे.

वरील कारणावरून व अपचारी म्हणतात त्याप्रमाणे ते फौजदारी प्रकरणांतून जरी निर्दोष सुटल्याचे मान्य केले तरी त्यांनी असामाजिक स्वरूपाचे कृत्य केले व शासकीय नोकर या नात्याने गंभीर स्वरूपाची गैरशिस्त करून अशोभनीय कृत्य केल्याची खात्री पटत असल्यामुळे दोषारोपाची ही बाब सिध्द होत असल्याचा निष्कर्ष मांडणे योग्य ठरते.

In respect of punishment the Enquiry Officer made the following recommendation:-

महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ चे नियमात शासकिय कर्मचाऱ्याकरिता जी वर्तणुक संहिता आहे त्याचे विपरीत अपचारी यांची वर्तणुक असल्याचा या आधीचे परिच्छेदांतील सकारण निष्कर्ष पाहता अपचारी हे जबर शिक्षेस पात्र ठरतात. अपचारी यांची गैरवर्तणुक ही सामाजिक बांधीलकीचे दृष्टीकोनांतून पाहता अतिशय गंभीर स्वरुपाची ठरत असल्यामुळे अपचारी श्री प्रमोद रामटेके यांना महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ५ [१] [२] नुसार शिक्षा देण्याची शिफारस करण्यात येते.

3. On 02.09.1992 the Disciplinary Authority, respondent no. 3 passed the following order (A-2):-

आणि ज्याअर्थी श्री प्रमोद यशवंत रामटेके, वाहन चालक यांच्यावर ठेवलेल्या दोषारोपाची रितसर विभागीय चौकशी करण्यासाठी जिल्हा चौकशी अधिकारी, विभागीय चौकशी, नागपूर यांची या कार्यालयाचे गोपनीय आदेश क्रमांक १६ व पृष्ठांकन क्रमांक लाक्षेवि/प्रलि/७४२ दिनांक २८.११.९१ नुसार नियुक्ती करण्यात आली होती. व जिल्हा चौकशी अधिकारी, नागपूर यांनी चौकशी अंती श्री प्रमोद यशवंत रामटेके यांच्या विरुद्ध खालील प्रमाणे दोषारोप सिध्द झाले असे निष्कर्ष काढले.

१] श्री प्रमोद यशवंत रामटेके, वाहन चालक हे दिनांक ४. ४. ८४ ते १०.४. ८४ पर्यंत अनाधिकृतपणे कामावरून गैरहजर होते.

श्री प्रमोद यशवंत रामटेके वाहन चालक हे दिनांक १२. ४. ८४ चे रात्री १०.४५ पासून ते १६.४.८४ पर्यंत पोलीस कस्टडीत होते. अटकेची बाब समोर येवू नये म्हणून त्यांनी रेजेचे कारण व लेखी स्वतःचे आजारपणाचे निमित्त दाखवून छानपैकी व्यवस्था केली होती.

२] श्री प्रमोद यशवंत रामटेके, हे विवाहीत असून त्यांनी कु. निशा हिचेशी अवैध संबंध ठेवून गैरवर्तन केले. ते फौजदारी प्रकरणातून जरी निर्दोष सुटल्याचे मान्य केले तरी त्यांनी असामाजिक स्वरूपाचे कृत्य केले व शासकीय नोकर या नात्याने गंभीर स्वरूपाची गैरशिस्त करून अशोभनीय कृत्य केले.

आणि ज्या अर्थी चौकशीत वरील प्रमाणे आरोप अहवालात स्पष्ट केल्याप्रमाणे सिध्द झाले आहेत. व त्यावरील अपचारी श्री रामटेके यांचे प्रतिवेदनाचा विचार करता चौकशी अधिका-यांच्या निष्कर्षाशी निम्नस्वाक्षरीत सहमत झाले आहेत आणि चौकशी अधिका-यांचे निष्कर्ष व त्यांनी शिफारस केलेली शिक्षा व एकंदरीत प्रकरणाची वस्तुस्थिती विचारात घेता निम्नस्वाक्षरीत अशा निर्णयाप्रत आले आहेत की, श्री प्रमोद यशवंत रामटेके वाहन चालक हयाला सेवेत ठेवून घेण्यालायक ती व्यक्ती नाही, आणि म्हणून निम्नस्वाक्षरीत व्यक्ती त्यांनी श्री प्रमोद यशवंत रामटेके, वाहन चालक याला सेवेतून काढून टाकण्याची शिक्षा देण्याचे ठरविले आहे.

म्हणून आता, निम्नस्वाक्षरीत, महाराष्ट्र नागरी सेवा [शिस्त व अपील) नियम १९७९ मधील नियम ६ व ९ [४] मधील शक्तीचा वापर करून या आदेशान्वये श्री प्रमोद यशवंत रामटेके, वाहन चालक यांना खालील प्रमाणे शिक्षा देण्याचे आदेश देत आहे.

"श्री प्रमोद यशवंत रामटेके, वाहन चालक [नि. अ. आ.] यांना महाराष्ट्र नागरी सेवा [शिस्त व अपील) नियम १९७९ चे नियम ५ [१] [८] अन्वये सेवेतून काढून टाकण्याची शिक्षा देण्यात येते."

सदरहू आदेश तात्काळ अंमलात येईल.

By order dated 31.10.1992 (A-17) the Appellate Authority, respondent no. 2 maintained order dated 02.09.1992. The applicant challenged orders of Disciplinary as well as Appellate Authority in O.A. No. 19/1993 which was dismissed by order dated 04.07.1997 (A-19). This order was challenged in W.P.No. 72/1998 in which order dated 13.06.2011 (A-21) was passed as follows:-

> *The order of the Appellate Authority dated 31.10.1992 as also the order passed by the Maharashtra Administrative Tribunal on 29.07.1997, are hereby quashed and set aside. The Appellate Authority is directed to re-consider the appeal filed by the petitioner and dispose of the same after affording personal hearing to the petitioner and by passing an appropriate speaking order.*
>
> *The Appellate Authority is directed to decide the appeal as early as possible and in any case within a period of four months from the date of appearance of the petitioner before the Appellate Authority.*
>
> *The petitioner undertakes to appear before the Appellate Authority on 01.07.2011 so that issuance of notice to the petitioner could be dispensed with.*

The Appellate Authority afforded opportunity of hearing to the applicant and proceeded to dismiss the appeal by order dated 25.10.2011 (A-1) by holding as follows:-

> आणि ज्या अर्थी अपिलीय प्राधिकरणाने याचिका कर्त्याचे अपिलावर फेर विचार करून याचिका कर्त्यास समक्ष बाजू मांडण्याची संधी देउन याचिका कर्त्याने आवेदनात मांडलेल्या मुद्यावर व दिलेल्या संदर्भावर सखोल विचार केला.
>
> आणि ज्या अर्थी अपिलिय प्राधिकरण याचिका कर्त्याचे शिस्तभंग विषयक प्राधिकारी विरुध्द अपिलिय प्राधिका-यास सादर केलेले १४.०९. १९९२ चे अभिवेदन तसेच त्यांनी समक्ष सुनावणीत मांडलेले बचावाचे मुद्दे, चौकशी अधिका-याचा अहवाल या दस्तऐवजाचा सखोल व निःपक्षपातीपणे न्यायिक भावनेतून सोबतच्या

परिशिष्ठानुसार विचार करून तसेच महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ मधील कलम -२ २३(२) (अ)(ब) (क) चे अनुषंगाने खातर जमा करून अपचाऱ्यावरील दोषारोप सिध्द होतात व शिस्तभंग विषयक प्राधिका-यांने दिलेली शिक्षा योग्य आहे या निष्कर्षाप्रत आले.

Hence, this Original Application impugning orders dated 02.09.1992 (A-2) and 25.10.2011 (A-1).

4. The applicant raised following two contentions:-

A. The applicant was honourably acquitted by the Appellate Court and hence he ought to have been exonerated in departmental enquiry.

B. Assuming that the charges were proved in the enquiry, punishment imposed was shockingly disproportionate to nature of proved delinquency and hence, punishment should be appropriately scaled down.

5. By filing reply at pp. 210 to 222 the respondents supported the impugned orders.

6. So far as the first contention of the applicant is concerned, it is not supported by record. The applicant and the co-accused were not honourably acquitted. Benefit of doubt was extended to them while acquitting them. On this point the applicant has relied on **Jaywant Bhaskar Sawant Vs. Board of Trustees of the Port of Bombay and**

others 1994 Mh.L.J. 1477. In this case it is held that where the Criminal Court passes an order of honourable acquittal, the departmental enquiry can be continued but the Enquiry Officer/Disciplinary Authority is duty bound to give reasonable weightage to the finding recorded in criminal trial. If it is found that the order of honourable acquittal has been ignored and no weightage is attached to such order, the Writ Court would be bound to quash finding of Disciplinary Authority in an appropriate case.

These observations will not help the applicant to whom benefit of doubt was extended and it was not a case of honourable acquittal. For the same reason the applicant will not derive any benefit from **Jijaba Namdeo Borude Vs. Union of India & Ors. 1995 (2) Mh.L.J. 210,** which, too, was a case of honourable acquittal. In the facts of the said case enquiry report was held to be vitiated.

7. The applicant has further relied on **Jagdish Singh Vs. Punjab Engineering College & Ors. AIR 2009 Supreme Court 2458.** In this case punishment of dismissal was imposed on the delinquent for unauthorised absence. It was not a case of habitual absenteeism. His record was unblemished. In these facts punishment was scaled down to stoppage of two increments with cumulative effect.

8. It was submitted by Shri Khan, ld. P.O. that considering limited scope of powers of judicial review interference by this Tribunal

would not be warranted. In support of this submission reliance was placed on **State of Andhra Pradesh & Ors. Vs. S. Sree Rama Rao, AIR 1963 SC 1723.** In this case it is held:-

> *"11. In our judgment the proceedings before the Departmental Authorities were regular and were not vitiated on account of any breach of the rules of natural justice. The conclusions of the departmental officers were fully borne out by the evidence before them and the High Court had no jurisdiction to set aside the order either on the ground that the "approach to the evidence was not consistent with the approach in a Criminal case nor on the ground that the High Court would have on that evidence come to a different conclusion. The respondent had also ample opportunity of examining his witnesses after he was informed of the charge against him. The conclusion recorded by the punishing authority was therefore not open to be canvassed, nor was the liability of the respondent to be punished by removal from service open to question before the High Court."*

9. The respondents have also relied on **Deputy General Manager & Ors. Vs. Ajai Kumar Srivastava (2021) 2 SCC 612.**In this case it is held:-

> *"24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry 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 or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact."*

10. The respondents have also relied on paras 8 & 9 of judgment in the case of Jagdish Singh (Supra) which read as under:-

> *The Courts and the Tribunals can interfere with the decision of the disciplinary authority, only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. Reference can be made to the decision of this Court in the case of V. Ramana Vs. A.P.S.R.T.C. and Ors. (2005) 7 SCC 338, wherein it is stated:*
>
> > *"The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.*
> >
> > *To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course, if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."*
>
> *9) The other principle that requires to be kept in view, is the observation made by this Court in Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Anr. (1994 (1) SCALE 631, wherein it is stated:*
>
> > *"In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion*

at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

11. The respondents have further relied on **B.C.Chaturvedi Vs. Union of India & Ors. (1995) 6 SCC 749** wherein it is held:-

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. 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/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.

12. Respondents have also relied on **State of Tamil Nadu & Anr. Vs. S.Subramaniam 386 SC 1996 & Ors.** wherein it is held:-

It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application to the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

13. The respondents have also relied on **Deputy Commissioner, Kendriya Vidyalaya Sangthan & Ors. Vs. J.Hussain (2013) 10 SCC 106**. In this case it is held:-

> *When the charge is proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist.*
>
> *The order of the Appellate Authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Appellate Authority departmentally is ordinarily not available to the Court or a Tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See: Union Territory of Dadra & Nagar Haveli vs. Gulabhia M.Lad.) In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.*
>
> *When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with doctrine of Wednesbury Rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the Court and the Court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in Council of Civil Service Unions vs. Minister for Civil Service in the following words:*

> *"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 of 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". This 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."*

14. We have referred to the charges which were held to be proved on appraisal of evidence. Considering the nature of the charges punishment imposed on the applicant cannot be said to be shockingly disproportionate thereto. In view of this conclusion, **the O.A. fails and it is accordingly dismissed with no order as to costs.**

(V.Kargaonkar) **(M.A.Lovekar)**
Member(A) **Member (J)**

aps
Dated – 28/02/2024

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J)
& Hon'ble Member (A).

Judgment signed : 28/02/2024.
on and pronounced on

Uploaded on : 29/02/2024.