Union of India

Vs

Parma Nanda

Civil Appeal No. 1709 of 1988

Parma Nanda

Vs

State of Haryana and Others

Special Leave Petition (Civil) No. 6998 of 1988

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

14.03.1989

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. The civil appeal, by special leave, and the connected SLP raise an important issue as to the power of the Central Administration Tribunal ("Tribunal") to examine the adequacy of penalty awarded by the competent authority to a Government servant in disciplinary proceedings.

2. Short factual background is this :

> Parma Nanda - respondent in the appeal was a Time Keeper in Beas Sutlej Link Project, Sundernagar. He was in charge of preparing the pay bills and other bills of the work charged employees of the project. It was alleged that he master-minded and prepared the pay roll pertaining to 'T' Token of Central Survey Division, Sundernagar for the month of May 1969 and entered the name of one Shri Ashok Kumar, Token No. 59-T at serial No. 10 on page 2 of the relevant pay roll. He made this entry with ulterior motive to withdraw the pay of Ashok Kumar for the month of May 1969, even though Ashok Kumar was not working in that division. A bogus identity card in the name of Ashok Kumar T. No. 59-T with the signatures of the issuing officer was also prepared by the respondent although it was not his duty to prepare the identity card. The said fictitious identity card was used by one Suraj Singh, cleaner T. No. 210-K of Boggi Tunneling Division for the purpose of withdrawing the pay of Ashok Kumar. While Suraj Singh by imperation was receiving the pay of Ashok Kumar, he was recognised by the Cashier since he knew him personally. There then started an enquiry followed by departmental proceedings against three persons including the respondent herein. The Personnel Officers of the BSL Project was appointed as Inquiry Officer. The enquiry was conducted under the Punjab Government Servants Conduct Rules, 1966.

3.The Inquiry Officer framed charge against the respondent in the following terms :

> That the said Shri Parma Nand, while working as Time Keeper in Time Keeping Sub-Division of Beas Sutlej Link Project, Sundernagar during the month of May 1969 failed to maintain absolute integrity and devotion to duty inasmuch as he falsely marked the attendance of Shri Ashok Kumar, Token No. 59-T in the Pay Roll of Control Survey Division for the month of May 1969, which resulted in fictitious drawal of Rs. 238.90 as pay of the said Shri Ashok Kumar. He also prepared a bogus identity card in the name of the above Shri Ashok Kumar and initialled it below the signatures of issuing officer and this identity card was used by Shri Suraj Singh, Cleaner (Token No. 210-K), Boggi Tunneling Division, at the time of attempting to receive the pay of Shri Ashok Kumar from the Cashier."

4. After a detailed enquiry the respondent and two others, the Inquiry Officer found all the three guilty of the charges framed against each of them. The report of enquiry was forwarded to the competent authority who after giving an opportunity of being heard dismissed the respondent from service. The other two persons were let off with minor punishments of with holding two or three future increments in their pay scales.

5. The respondent moved the High Court of Himachal Pradesh under Article 226 challenging the findings of Inquiry Officer as well as the order of dismissal passed by the competent authority. During the pendency of the writ petition, a Bench of the Central Tribunal at Chandigarh was constituted under the Administrative Tribunal Act, 1985. Consequently, the said writ petition stood transferred to the Tribunal by operation of Section 29 of that Act.

6. The Tribunal upon consideration of the matter agreed with the findings recorded by the Inquiry Officer that the respondent was the master-mind behind the scheme to defraud the project. The Tribunal observed :

> Since the applicant had access to the records which were fabricated at the relevant time the Inquiry Officer had come to the conclusion that the applicant was the master mind behind the scheme to defraud the Project.

In view of the foregoing, it cannot be termed that the finding returned by the Inquiry Officer is without any evidence."

7. It was also observed that there was no denial of a reasonable opportunity for the respondent to set up proper defence. After reaching this conclusion, the Tribunal proceeded to examine the adequacy of penalty awarded to the respondent. This is how the Tribunal dealt with that question :

> Lastly, it was argued on behalf of the applicant that the punishment awarded to him is disproportionate to the gravity of the charge proved against him and is in start contrast to the punishment awarded to his other three colleagues in whose cases, only future increments were stopped, the maximum being for three years in respect of Shri Sain Ditta, Clerk. The finding regarding the applicant being the master-mind behind the attempt to defraud the Project appears to have weighed with the disciplinary authority while dismissing the applicant from service. An appreciation of the evidence, as done in the proceedings pages, would show that the applicant had entered the name of Shri Ashok Kumar in the pay roll for May 1969 and so far as

> other evidence against him is concerned, it is mostly of a circumstantial nature. There is no direct or expert evidence that it was he who had marked the attendance of Shri Ashok Kumar in the pay roll for May 1969 or that it was he who had initialled the identity card. The evidence against him is circumstantial inasmuch as the pay roll was under his custody and he could have access to the identity cards. Under these circumstances, the evidence that the applicant was the only master mind who sought to defraud the project of the funds cannot be termed to be direct.

The Tribunal concluded :

> As such it is a case where the applicant should not be measured with a different yardstick than the others, who have been punished along with applicant. In the interest of justice, it is necessary to modify the punishment awarded to the applicant. We, therefore, direct that the punishment of dismissal awarded to the applicant be reduced to that of stopping of his five increments which he had earned for a period of five years, in terms of clause (iv) of Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. There will be no order as to costs. The respondents shall comply with this order within four months from its receipt and pay all consequential benefits to the applicant."

8. The Tribunal seems to suggest that the respondent was not the only master mind to commit the fraudulent act and there were others too, and as such, he should not be measured with a different yardstick. The Tribunal however, has held that the respondent was guilty of entering the name of Ashok Kumar in the pay roll of May 1969. Yet it modified the punishment to fall in line with that of others whose part in the fraudulent act was evidently not similar in nature.

9. Being aggrieved by the reduction of penalty, the Union of India has preferred the Civil Appeal No. 1709 of 1988. Parma Nanda seeking a complete exoneration from the charge has preferred the SLP No. 6998 of 1988.

10. The question which has to be decided, therefore, is whether the Tribunal has power to modify the penalty awarded to the respondent when the findings recorded as to his misdemeanour is supported by legal evidence. To put in other words, whether the Tribunal could interfere with the penalty awarded by the Competent authority on the ground that it is excessive or disproportionate to the misconduct proved ? The answer to the question cannot be determined without reference to the scope of judicial review in the pre-Tribunal period. It is also necessary to remember the purpose for which the Tribunal came to be established. Before the Tribunal was constituted, the courts were exercising judicial review of administrative decisions in public services. This judicial review was sought to be taken away by the Constitution (42nd Amendment) Act, 1976). By this amendment, Articles 323-A and 323-B were introduced in the Constitution, thereby opening altogether a new chapter in our Administrative law. Article 323-A(1) which is relevant for our purpose is confined to matters relating to the public services. It provides power to Parliament to exact law for establishment of Administrative Tribunals for adjudication of disputes with regard to service matters. The service matters are of persons appointed to the public service and posts. The public service and posts may be in connection with the affairs of the Union or of any State. The law to be enacted by Parliament may also cover persons appointed in the local or other authority or of any corporation owned or controlled by the government. There should be only one Tribunal for the Union of India and one for each State or for two or more States put together. The law cannot provide for hierarchy or Tribunals. In pursuance of Articles 323-A(1) the Parliament enacted the

Administrative Tribunals Act, 1985 ("The Act").

11. We may briefly examine the statutory framework. Section 4 of the Act provides for establishment of Central Administrative Tribunal as well as State Administrative Tribunal. It also provides power to constitute benches of the Central Administrative Tribunal Section 5 to 11 deal with the composition of Tribunals and benches thereof and terms of office of the Chairmen, Vice-Chairman and other members. Section 14 provides powers and authority to the Central Administrative Tribunal. Section 15 deals with the similar power and authority of the State Administrative Tribunal. Section 16 refers to the powers of a Joint Administrative Tribunal. Section 22 state that the Tribunal shall not be bound by the procedure laid down in Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to other provisions of the Act and of any Rules made thereunder. The Tribunal could also regulate its own procedure including the fixing of places and time of enquiry and deciding whether to sit in public or in private. Sub-section (2) of Section 22 requires the Tribunal to decide every application made to it as expeditiously as possible. Ordinarily, the Tribunal shall decide every application on a perusal of documents and written representations and after hearing such oral arguments as may be advanced. Section 27 provides for execution of orders. Section 28 excludes the jurisdiction of all Court except the Supreme Court. Section 29 directs transfer of cases pending in courts to the Tribunal for adjudication.

12. In pursuance of the provisions of the Act, the Central Government has established the Central Administrative Tribunal with a bench at Chandigarh whose order has been challenged before us.

13. It is now necessary to examine in detail the amplitude of powers of the Tribunal. Section 14, so far material, provides :

> 14. Jurisdiction, powers and authority of the Central Administrative Tribunal :
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> (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except Supreme Court) in relation to :-
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> (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being in either case, a post filled by a civilian;
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> (b) all service matters concerning -
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> # * * *##

14. Similar are the powers and authority of the State Service Tribunal under Section 15 and Joint Administrative Tribunal under Section 16.

15. The expression "all courts" in this connection includes civil courts and High Court but not the Supreme Court. The powers of the Supreme Court. The powers of the High Courts under Article 226, insofar as they are exercisable in relation to serve matters stand conferred on the Tribunal established under the Act. The power of other ordinary civil courts in relation to service matters to try all suits of a civil nature excepting suits of which their cognizance either expressly or impliedly

barred also stand conferred on the Tribunal.

16. This position becomes further clear by Sections 27, 28 and 29 of the Act. Section 27 provides for finality of the orders of the Tribunal. Section 28 excludes the jurisdiction of courts except the Supreme Court, or any Industrial Tribunal, Labour Court, concerning service matters. Section 29 provides for automatic transfer of all pending proceedings in the High Court under Article 226 and 227, relating to service matters (except appeals) to the Tribunal for adjudication. Likewise, suits and other proceedings pending before a Court or other authority relating to service matters also stand transferred to the Tribunal for determination.

17. The Act thus excludes the jurisdiction, power and authority of all Courts except the Supreme Court and confers the same on the Tribunal in relation to recruitment and service matters. Section 3(2) comprehensively defines 'service matters' to mean all matters relating to conditions of services including the disciplinary matters.

18. From an analysis of Sections 14, 15, 16, 27, 28 and 29, it becomes apparent that in the case of proceedings transferred to the Tribunal from a civil court or High Court, the Tribunal has the jurisdiction to exercise all the powers which the civil court could in a suit or the High Court in a writ proceeding could have respectively exercised. In an original proceedings instituted before the Tribunal under Section 19, the Tribunal can exercise any of the powers of a civil court, or High Court. The Tribunal thus could exercise only such powers which the Civil Court or the High Court could have exercised by way of judicial review. It is neither less nor more. Because, the Tribunal is just a substitute to the civil court and High Court. That has been put beyond the pale of controversy by this Court while upholding constitutional validity of the Act in S. P. Sampath Kumar v. Union of India ((1987 1 SCC 124 : (1987) 2 ATC 82).

19. In this backdrop, we may consider the main question that we have set out at the beginning of the judgment. Mr. Mahajan, learned counsel for the Central Government urged that the Tribunal has no powers to interfere with punishment imposed by the disciplinary authority on the ground that it is disproportionate to the proved misdemeanor. He also urged that if the enquiry held against the delinquent officer was proper with the findings supported by evidence then, the Tribunal cannot substitute its own judgment to modify the punishment awarded. Mr. Ashri, learned counsel for the respondent, however, justified the discretion exercised by the Tribunal in awarding the lesser punishment. We do not think that we could accept so bold a submission made for the respondent, nor can it be sustained by other consideration. Indeed, the contention for the respondent is unsustainable in view of the decisions of this Court.

20. In State of Orissa v. Bidyabhushan (1963 Supp 1 SCR 648 : AIR 1963 SC 779 : (1963) 1 LLJ 239) the enquiry was conducted against the petitioner on several charges and eventually he was dismissed from service. The Orissa High Court found that the findings on two of the charges were bad being in violation of the principles of natural justice. The findings on the remaining charges were however, found to be justified. The High Court remitted the matter to the government for fresh consideration for awarding a proper punishment. The High Court observed :

> That the findings in respect of charges 1(a) and 1(c) should be set aside as being opposed to the rules of natural justice, but the findings in respect of changes 1(c) and 1(d) and charge 2 need not be disturbed. It will be then left to government to decide whether, on the basis of these charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice."

21. The Supreme Court reversed this order on the ground that if the dismissal could be supported on any finding as to substantial misdemeanor for which the punishment could lawfully be imposed, it was not for the court to consider whether that ground alone would have weighed with the authority dismissing the public servant. Shah J. observed (SCR pp. 665-66)

.... in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is not justifiable; not is the penalty open to review by the court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final and the High Court had no jurisdiction to direct the Governor to review the penalty, for as we have already observed the order or dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justifiable. Therefore, if the order my be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question."

22. In Dhirajlal Girdharilal V Commissioner Of Income Tax (AIR 1956 SC 271 : (1954) 26 ITR 736), Mehar Chand Mahajan, C.J., while dealing with a reference application against an order of Income-Tax Tribunal under the Indian Income Tax Act had struck slightly a different note : (AIR p. 273)

The learned Attorney General frankly conceded that it could not be denied that to a certain extent the Tribunal had drawn upon its own imagination and had made use of a number of surmises and conjectures in reaching its result. He, however, contended that eliminating the irrelevant material employed by the Tribunal in arriving at its conclusion, there was sufficient material on which the finding of fact could be supported. In our opinion, this contention is not well founded. It is well established that when a court of facts acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of indismissable material and thereby an issue of law arises.

23. This proposition in Dhirajlal case (AIR 1955 SC 271 : (1954) 26 ITR 736) was explained and the statement of law in Bidyabhusan case (1963 Supp 1 SCR 648 : AIR 1963 SC 779 : (1963) 1 LLJ 239) was affirmed in State Of Maharashtra v. B. K. Takkamore ((1967) 2 SCR 583 : AIR 1967 SC 1353). It was a case of supersession of the corporation. The show cause notice issued to the

corporation mentioned two grounds for supersession. One of the grounds was held to be irrelevant. This court, however, upheld the order of supersession stating that the order cannot be set aside for reason that one of the grounds is found to be non-existent or irrelevant if another ground by itself was serious enough to supersede the corporation. Bachawant, J., said : (SCR p. 594)

The principle underlying these decisions appears to be this. An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non existent or irrelevant and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant, can be sustained if the court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision.

24. This principle again receives support from the decision in Zora Singh v. J. M. Tandon ((1971) 3 SCC 834 : AIR 1971 SC 1537). There the Chief Settlement Commissioner cancelled the allotment of land made to a person but the High Court allowed the writ petition quashing the order of the Chief Settlement Commissioner and directing him to proceeds to decide the case on merits. The Commissioner re-heard the entire case as directed by the Court but came to the same conclusion as before and reaffirmed his earlier decision cancelling the allotment. The person unsuccessfully moved the High Court with a writ petition challenging the order of the Commissioner and finally appealed to the Supreme Court. In dismissing that appeal, Shelat, J., made inter alia, the following observations : (SCC p. 838, para 10 : AIR p. 1540)

The High Court was right in holding that even if there were, amongst the reasons given by the Commissioner, some which were extraneous, if the rest were relevant and could be considered sufficient, the Commissioner's conclusions would not be vitiated. The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of its was irrelevant, a superior court would not interfere if the finding can be sustained on the rest of the evidence. The reasons is that in a writ petition for certiorari the superior court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence. There was, in our view, legal evidence before the Commissioner upon which he was entitled to rest his finding that the copies relied on by the appellant were not genuine.

25. The view taken in Bidyabhushan case (1963 Supp 1 SCR 648 : AIR 1963 SC 779 : (1963) 1 LLJ 239) has been repeatedly affirmed and reiterated in Railway Broad v. Niranjan Singh ((1969) 1 SCC 502, 506 : (1969) 3 SCR 548, 552); O. P. Gupta case (State if U. P. v. Om Prakash Gupta, (1969) 3 SCC 775 : AIR 1970 SC 679) and Union of India v. Sardar Bahadur ((1972) 4 SCC 618 : (1972) 2 SCR 218). Any doubts as to the incapacity of the Court to review the merits of the penalty must vanish when we read the remarks of Mathew, J., in Sardar Bahadur case ((1972) 4 SCC 618 : (1972) 2 SCR 218) : (SCC p. 623, para 15 : SCR p. 225)

A disciplinary proceeding is not a criminal trial. The standard of proof required is that if preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

The learned Judge also said : (SCC p. 624, para 19 : SCR p. 227)

Now it is settled by the decision of this Court in State Of Orissa v. Bidyabhushan Mohapatra (1963 Supp 1 SCR 648 : AIR 1963 SC 779 : (1963) 1 LLJ 239) that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established.

26. So much is, we think, established law on the scope of jurisdiction and the amplitude of powers of the Tribunal. However, of late we have been receiving a large number of appeals from the orders of Tribunals - Central & States - complaining about the interference with the penalty awarded in the disciplinary proceedings. The Tribunals seem to take it within their discretion to interfere with the penalty on the ground that it is not commensurate with the delinquency of the official. The law already declared by this Court, which we reiterate, makes it clear that the Tribunals have no such discretion or power.

27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

28. Our attention was drawn to the decision of this Court in Bhagat Ram v. State of Himachal Pradesh ((1983) 2 SCC 442 : 1983 SCC (L&S) 342). We do not consider that this decision is of any assistance to support the contention urged for the respondent. There the facts found were entirely different. This Court, after considering the matter was of opinion that the appellant therein was not offered a reasonable opportunity to defend himself and accordingly the enquiry and consequential order of removal from service were found to be bad. Ordinarily, where the disciplinary enquiry is

shown to have been held in violation of principles of natural justice, the enquiry would be vitiated and the order based on such enquiry would be quashed with liberty to hold fresh enquiry. But that procedure was not adopted by this Court since the charge against appellant was found to be a very minor infraction of duty in checking hammer-marks of trees. That negligence, if any, caused no loss to the government, for, the man who resorted unauthorised felling of trees, had compensated the department. The appellant was a low paid class IV government servant. Considering all these facts this Court felt that it would not be fair to direct a low paid class IV employee to face the hazards of a fresh enquiry. This Court in the interest of justice and fair play thought that a minor penalty would be sufficient. Accordingly, two increments with future effect, of the appellant were ordered to be withheld. This decision is, therefore, no authority for the proposition that the High Court or the Tribunal has jurisdiction to impose any punishment to meet the ends of justice. It may be noted that this Court exercised the equitable jurisdiction under Article 136 and the High Court or Tribunal has no such power or jurisdiction.

29. We may however, carve out one exception to this proposition. There may be cases where the penalty is imposed under clause (a) of the second proviso to Article 311(2) of the Constitution. Where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable of uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties under clause (a). This power has been conceded to the court in Union of India v. Tulsiram Patel ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) where Madon, J., observe : (SCC pp. 501-02, para 127)

[W]here a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be .... The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servants. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particulars government service the court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India ((1985) 2 SCC 358 : 1985 SCC (L&S) 444 : 1986 SCC (Cri) 242) this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstance of the case.

30. The last contention that the respondent falls into the category of a workman and the Tribunal

could exercise the powers of an industrial court for giving appropriate relief is unavailable in this case, since the respondent had made his choice of forum and was even otherwise dealt with under the Government Servants (Conduct) Rules which are undisputedly applicable to him.

31. In the light of the principles to which we have called attention and in view of the aforesaid discussion, the order of the Tribunal imposing a lesser penalty on the respondent cannot, therefore, be sustained. He was found guilty of the charge framed against him. He was a party to the fraudulent act for self-aggrandisement. He prepared bogus documents for withdrawal of salary in the name of Ashok Kumar who was not working in his Division. He has thus proved himself unbecoming and unauthority to hold any post. Any sympathy or charitable view on such officials will not be conducive to keep the streams of administration pure which is so vital for the success of our democracy.

32. In the result, we allow the appeal and set aside the order of the Tribunal. Consequently, the SLP of the respondent is dismissed. In the circumstances of the case however, we make no order as to costs.

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