REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 4715-4716 OF 2013
(Arising out of S.L.P.(C) NOs.22263-22264 of 2012)

S.R. Tewari ... Appellant

Versus

Union of India & Anr. ...Respondents

With

Contempt Petition (C) Nos.180-181 of 2013

S.R. Tewari ... Petitioner

Versus

R.K. Singh & Anr. ...Contemnors

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Leave granted in SLP(C) Nos. 22263-22264 of 2012.

2. These appeals have been preferred against the judgment and order dated 15.2.2012 of the High Court of Delhi passed in Review Petition No.102 of 2012; and the order dated 1.2.2012 in Writ Petition No. 4207 of 2011. By way of this order the High Court has allowed the writ petition filed by the Union of India – respondent no.1 against the order of the Central Administrative Tribunal (hereinafter called the 'Tribunal'), raising a very large number of grievances. The appellant was running from pillar to post as he had been harassed and penalised for no fault of his own and has been awarded a punishment which is uncalled for. Thus, he had moved the Tribunal, High Court of Delhi and this Court several times.

3. Facts and circumstances giving rise to these appeals and contempt petitions are as under:-

A. The appellant, an IPS Officer of 1982 batch joined the service on 1.9.1982, promoted on the post of Deputy Inspector General (D.I.G.), and subsequently as Inspector General of Police (I.G.) in his cadre of the State of Andhra Pradesh in May 2001. The appellant was on deputation and was posted as I.G., Frontier Head Quarters, Border Security Force (BSF) (North Bengal) from 23.6.2005 to 14.11.2006.

B. The appellant was put under suspension vide order dated 13.11.2006 as the disciplinary authority decided to hold disciplinary proceedings. As a consequence thereof, a charge sheet dated 23.3.2007 containing 8 charges was served upon him. The appellant denied all the said charges and therefore, an Inquiry Officer was appointed. The Department examined a large number of witnesses and produced documents in support of its case. The appellant also defended himself and the Inquiry Officer submitted the report dated 23.12.2008 holding him guilty, as charge no.3 stood proved fully while charge nos.4 and 6 stood proved partly.

C. The Disciplinary Authority did not agree with one of the findings recorded by the Inquiry Officer on one charge and held that charge no.4 was proved fully. In response to the show cause notice issued to the appellant by the Disciplinary Authority, he submitted a detailed representation against the disagreement note by the Disciplinary Authority on 10.11.2009.

D. On being sought, the Union Public Service Commission (hereinafter referred to as 'UPSC') gave its advice regarding the punishment on 20.8.2010. The Central Vigilance Commission

(hereinafter referred to as 'CVC') also gave its advice in respect of the charges against the appellant on 18.2.2009. After considering all the material, the Disciplinary Authority passed the order of punishment of dismissal from service on 8.9.2010.

E. Aggrieved, the appellant challenged the said order of dismissal by filing OA No.3234 of 2010 before the Tribunal. It was contested and opposed by respondent no.1. The Tribunal set aside the order of punishment dated 8.9.2010 vide judgment and order dated 11.2.2011 and directed for reinstatement of the appellant in service with all consequential benefits.

F. Aggrieved, respondent no.1, Union of India challenged the said order of the Tribunal by filing Writ Petition (C) No.4207 of 2011 before the High Court of Delhi. The High Court vide its judgment and order dated 1.2.2012 set aside the judgment and order dated 11.2.2011, passed by the Tribunal and directed respondent no.1 to pass a fresh order in respect of charge nos.4 and 6 as in the opinion of the High Court only the said two charges stood proved.

G. Appellant filed Review Petition No. 102 of 2012 against the order dated 1.2.2012, however, the same was rejected vide order dated

15.2.2012.

H. Aggrieved, respondent no.1 filed SLP(C) No.14639 of 2012, challenging the said order of the High Court of Delhi dated 1.2.2012. However, the same was dismissed by this Court on 9.5.2012.

I. The appellant challenged the same order of the High Court dated 1.2.2012 by filing these appeals. In the meanwhile, respondent no.1 re-instated the appellant on 23.5.2012 and tentatively formed a decision to impose a suitable penalty on the said two charges in view of the order of the High Court dated 1.2.2012, **a penalty of withholding two increments for one year without cumulative effect**. The respondent no.1 sought advice from the UPSC, which vide letter dated 13.8.2012 advised that the appellant be compulsorily retired. The advice given by the UPSC was served upon the appellant and he was asked to make a representation on the same.

In the meanwhile, this Court vide order dated 5.10.2012 asked the appellant to file a detailed representation before respondent no.1, who was asked in turn to pass a speaking and reasoned order within a stipulated period in respect of the punishment. However, **the order of punishment would not be given effect to immediately and the same would be placed before this Court on the next date of**

hearing. In pursuance thereof, the appellant submitted the representation on 5.10.2012. Respondent no.1 vide order dated 17.10.2012 passed the order imposing the punishment of compulsory retirement. The said order was given effect to and communicated to the appellant vide letter dated 19.11.2012.

J. Thus, the questions that arise for consideration of this Court are whether the punishment of compulsory retirement awarded by the Disciplinary Authority is proportionate to the delinquency proved and whether the respondents in the contempt petitions wilfully violated the order dated 5.10.2012 passed by this Court holding that the punishment should not be given effect to until it is produced before the court at the time of the next hearing.

4. Shri P.S. Patwalia, learned senior counsel appearing for the appellant has submitted that there has been misreading of evidence by the High Court of Delhi that charge nos.4 and 6 have been proved fully. The charges were trivial in nature and could not warrant the punishment of compulsory retirement. The appellant faced departmental proceedings for six years and had been deprived of being considered for further promotion. He is due to retire in

December, 2013. The appellant remained under suspension for 11 months and was dismissed from service for about 19 months. He had been granted 'Z' class protection initially which was subsequently scaled down to 'Y' category. The appellant was given the said security/protection even during the period of suspension and dismissal. Even during that period he had been provided with a bullet proof car and PSOs as he had been facing threats from naxalites. Therefore, the punishment so imposed is to be set aside.

In view of the orders passed by this court stating that the punishment order can be passed by the respondents but could not be given effect to without production before the court stood voluntarily violated. Therefore, the respondents in the contempt petitions are liable to be punished for wilful disobedience of the same.

5. Per contra, Shri R.P. Bhatt, learned senior counsel for the Union of India has vehemently opposed the appeals and contempt petitions contending that the said charges stood fully proved against the appellant. Being an IPS Officer, he knew his responsibilities and no leniency should be granted. The order passed by this Court has not voluntarily been violated. Therefore, the appeals as well as the contempt petitions are liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. The chargesheet dated 23.3.2007 containing the following 8 charges was served upon the appellant under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 for his alleged misconducts during his tenure in BSF, North Bengal, on the following counts :-

(i) Indulged in living with a lady by name Smt. Chandrakala, not being his legally wedded wife.

(ii) Allowed unauthorized interference by Smt. Chandrakala in the official functioning of North Bengal Frontier causing premature release of four constables from the Quarter Guard.

(iii) Complete disregard to the rules and without jurisdiction, reviewed punishment awarded and mitigated the sentence awarded to No. 86161306 Constable Prakash Singh by Frontier Headquarter, BSF South Bengal.

(iv) Favoritism and manipulation in the selection of Headmaster, BSF Primary School Kadmatala even though the candidate did not possess essential qualification and was not eligible.

(v) Assisted enrolment of a person in BSF from his native district, UP by fraudulent means.

(vi) Misuse of official vehicle, arms and ammunition

and BSF personnel during the marriage of his son in Feb. 2006 at his native place in Balia, UP.

(vii) Retaining of four BSF Constables for Personal work.

(viii) Attachment of Shri Prakash Singh, constable with North Bengal Frontier despite contrary remarks of the PSO, North Bengal Frontier.

8. The Inquiry Officer held that out of the 8 charges levelled against the appellant, charge nos.1, 2, 5, 7 and 8 were not proved at all. Charge no.3 was proved fully and charge nos.4 and 6 stood partly proved.

The Inquiry Officer dealt with the said charges as under:

I. Charge No.3 stood **proved only to the extent** of passing an order in a case lying outside the jurisdiction of the Commanding Officer.

II. Charge 4 proved **partly** to the extent of wrong selection of Head Master and Teacher in BSF Primary School Kadmatala by the Commanding Officer **without any favouritism and manipulation**.

III. Charge No.6 stood partly proved to the extent of using BSF vehicle for private journey outside jurisdiction upto Balia **without prior permission of the Competent Authority**.

9. The Disciplinary Authority dealt with two of the charges differently:

Charge No.3: The appellant though not competent to review the punishment awarded to one Sri Prakash in his capacity as a prescribed officer and thus, it clearly **established the misconduct** on the part of the appellant and the charge stood proved against him.

Charge No.4: Shri S.S. Majumdar did not fulfil the eligibility criteria and **was not recommended by the Selection Board** for the post of Head Master and thus, he **had been favoured by the appellant** who appointed him as Head Master. Thus, this charge stood proved.

10. All the proved charges were re-examined by the Tribunal. After re-appreciating the evidence, the Tribunal dealt with charge no.3 observing that entertaining a review petition is a quasi-judicial function. It may be without jurisdiction and the order passed can be corrected in further proceedings but it does not amount to misconduct. The Tribunal took note of the finding on charge no.4 that the order of appointment of a primary school teacher as well as Head Master in BSF School had been **without favouritism/manipulation** in the selection process as recorded by the Inquiry Officer and came to the

conclusion that the selection was made **by the Board** having various members and **not by the appellant alone** and it also took note of the fact that Shri Majumdar was not appointed as a primary school teacher by the appellant, rather he had been working in the school for 10 years. Other teachers who had been working for more than 7 years were also considered. Instead of adducing any documentary evidence the Department only examined witnesses in the inquiry. The appellant was competent to decide the eligibility criteria for the post of Head Master. There was **no favouritism or manipulation** on the part of the appellant. The Tribunal further took note of the subsequent developments as under:-

> "It is rather strange that the same very respondents, who were harping upon irregular appointment of Majumdar as Headmaster, the same being against the education code, when the applicant issued them show cause notice for termination of services, directed him to withdraw the same and permit all of them to continue in service. So much so, it was specifically ordered that Majumdar would be continued in service."

And then recorded the following finding:

> "We accept the contention of the learned counsel for the applicant that the respondents are blowing hot and cold in the same breath. The applicant, at the most, could be jointly held responsible for making selection of Majumdar on the post of Headmaster, even though he was the best amongst the lot to the extent that his

> appointment was against the educational qualification criteria mentioned in the advertisement itself, but for that, as mentioned above, **he alone could not be held responsible."** (Emphasis added)

On charge no.6, the Tribunal took note of the facts as under:

> "The charge has been **partly proved** by them **completely ignoring the explanation furnished by the applicant**. There is thus, an apparent error both on facts and law. The respondents completely ignored the defence projected by the applicant. Even though, prima facie, we are of the view that the explanation furnished by the applicant required acceptance, but once, while doing so we will be appreciating evidence, we may not do the same." (Emphasis added)

And further held as under:

> "On this charge, therefore, the course open may have been to remit the matter to the concerned authorities, but in the peculiar facts and circumstances of this case, we refrain from doing so, as even if the charge to the extent it stood proved, the same requires to be ignored inasmuch as, once the applicant was entitled to take the vehicle and PSOs to Balia, not obtaining prior permission **would not be a serious issue at all."** (Emphasis added)

11. The High Court while dealing with charge no.3 concurred with the Tribunal that entertaining the review petition against the order of punishment could have been without jurisdiction but there was no finding by the Inquiry Officer that it was intentional. Therefore, there could be a judicial error which could be set aside or corrected in

appeal or in any other proceedings but it did not amount to misconduct. The same could not be a subject matter of enquiry as it was not a misconduct for want of malafide or any element of corruption or culpable negligence on the part of the appellant. In such circumstances, it would not be permissible to consider it as a misconduct.

So far as the appointment of Shri Majumdar as a Head Master of the school is concerned, the High Court held that the appellant was guilty of favouritism shown to Shri Majumdar.

Charge No.6 related to the allegation of using the vehicle from Patna to Balia. The High Court also took note that the appellant was granted 'Y' category security, due to threats from Naxalites. However, he was not entitled to an escort vehicle for his journey from Patna to Balia without permission. And in view of the above, the High Court modified the findings recorded by the Tribunal.

12. We have reconsidered the case within permissible limits. The case remained limited to the charge nos. 4 and 6 only as all other charges have lost the significance at one stage or the other, and we have to advert only to the said charges.

The Inquiry Officer, the Disciplinary Authority, the Tribunal and the High Court have considered all the facts involved herein. On charge no.4, the High Court has admittedly committed a factual mistake observing that Shri S.S. Majumdar had been appointed by appellant as a regular teacher with retrospective effect. In fact there is no evidence that appellant had appointed him or regularised him as Shri Majumdar was already in service for a period of 10 years. Same remained the position in respect of charge no.6 as the High Court mis-directed itself as it considered the case as if the charge against the appellant had been taking two vehicles; one his official car and another an escort, though there had been no such charge levelled against the appellant.

The High Court while dealing with the review petition on charge no.4, did not consider the fact that the appointment of Shri S.S. Majumdar as a Head Master, was a unanimous decision of the Board and not that of the appellant alone. The High Court also did not correct the mistake in its original judgment regarding the usage of two vehicles.

13. In **Commissioner of Income-tax, Bombay & Ors. v. Mahindra & Mahindra Ltd. & Ors.**, AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held:

> "It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same."

14. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegal-

ity, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: **Tata Cellular v. Union of India**, AIR 1996 SC 11; **People's Union for Civil Liberties & Anr. v. Union of India & Ors**., AIR 2004 SC 456; and **State of N.C.T. of Delhi & Anr. v. Sanjeev** alias Bittoo, AIR 2005 SC 2080).

15. In **Air India Ltd. v. Cochin International Airport Ltd. & Ors.**, AIR 2000 SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not.

16. There may be a case where the holders of public offices have forgotten that the offices entrusted to them are a sacred trust and such offices are meant for use and not abuse. Where such trustees turn to

dishonest means to gain an undue advantage, the scope of judicial review attains paramount importance. (Vide: **Krishan Yadav & Anr. v. State of Haryana & Ors.**, AIR 1994 SC 2166).

17. The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. (Vide: **High Court of Judicature at Bombay through its Registrar v. Udaysingh s/o Ganpatrao Naik Nimbalkar & Ors**., AIR 1997 SC 2286; **Government of Andhra Pradesh & Ors. v. Mohd. Nasrullah Khan,** AIR 2006 SC 1214; and **Union of India & Ors. v. Manab Kumar Guha,** (2011) 11 SCC 535).

18. The question of interference on the quantum of punishment, has been considered by this Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity

of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution.

In **Ranjit Thakur v. Union of India & Ors.**, AIR 1987 SC 2386, this Court observed as under:

> *"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 the 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.** In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."* (Emphasis added)

(See also: **Union of India & Anr. v. G. Ganayutham** (dead by Lrs.), AIR 1997 SC 3387; **State of Uttar Pradesh & Ors. v. J.P. Saraswat**, (2011) 4 SCC 545; **Chandra Kumar Chopra v. Union of India & Ors.**, (2012) 6 SCC 369; and **Registrar General, Patna High Court v. Pandey Gajendra Prasad & Ors.**, AIR 2012 SC 2319).

19. In **B.C. Chaturvedi v. Union of India & Ors.,** AIR 1996 SC 484, this Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also **consider the circumstances under which the misconduct was committed.** In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority.

20. In **V. Ramana v. A.P.S.R.T.C. & Ors.**, AIR 2005 SC 3417, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that **it is not commensurate with the gravity of the charges and if the court comes to the conclusion** that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, **in order to shorten the litigation, in exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof.**

21. In **State of Meghalaya & Ors. v. Mecken Singh N. Marak**, AIR 2008 SC 2862, this Court observed that a Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The

punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review. (See also: **Depot Manager, A.P.S.R.T.C. v. P. Jayaram Reddy,** (2009) 2 SCC 681).

22. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide: **Union of India & Ors. v. Bodupalli Gopalaswami,** (2011) 13 SCC 553; and **Sanjay Kumar Singh v. Union of India & Ors.**, AIR 2012 SC 1783).

23. In **Union of India & Ors. v. R.K. Sharma,** AIR 2001 SC 3053, this Court explained the observations made in **Ranjit Thakur** (supra) observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in **Ranjit Thakur** (supra) are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.

24. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which

could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: **Rajinder Kumar Kindra** v. **Delhi Administration,** AIR 1984 SC 1805; **Kuldeep Singh** v. **Commissioner of Police & Ors.,** AIR 1999 SC 677; **Gamini Bala Koteswara Rao & Ors.** v. **State of Andhra Pradesh thr. Secretary,** AIR 2010 SC 589; and **Babu v. State of Kerala,** (2010) 9 SCC 189).

Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible.

25. So far as charge no.4 is concerned, the matter was considered by a Board consisting of several officers and the appellant could not have been selectively targeted for disciplinary action. Further, no material could be placed on record that BSF had ever formulated a policy for regularisation of a temporary teacher as a regular teacher and in such a fact-situation, the appellant could not have regularised the services of Shri Majumdar as a school teacher, even if he had the experience of 10 years. (This was not even a charge against the appellant nor there was any finding of the Inquiry Officer, nor has such a matter been agitated before the Tribunal).

It is evident from the record that as per letter dated 4.4.2013 sent by the Government of India to the appellant through the Chief Secretary, Andhra Pradesh, the proposed punishment is as under:

> "A penalty of withholding two increments for one year without cumulative effect, be imposed on the appellant as a punishment under Rule 6 of the All India Services (Discipline and Appeal) Rules, 1969."

26. The proved charges remained only charge nos.4 and 6 and in both the cases the misconduct seems to be of an administrative nature rather than a misconduct of a serious nature. It was not the case of the department that the appellant had taken the escort vehicle with him. There was only one vehicle which was an official vehicle for his use and charge no.6 stood partly proved. In view thereof, the punishment of compulsory retirement shocks the conscience of the court and by no stretch of imagination can it be held to be proportionate or commensurate to the delinquency committed by and proved against the appellant. The only punishment which could be held to be commensurate to the delinquency was as proposed by the Government of India to withhold two increments for one year without cumulative effect. It would have been appropriate to remand the case to the disciplinary authority to impose the appropriate punishment. However, consider-

ing the chequered history of the case and in view of the fact that the appellant had remained under suspension for 11 months, suffered the order of dismissal for 19 months and would retire after reaching the age of superannuation in December 2013, the facts of the case warrant that this court should substitute the punishment of compulsory retirement to the punishment proposed by the Union of India i.e. withholding of two increments for one year without having cumulative effect.

In view thereof, we do not want to proceed with the contempt petitions. The appeals as well as the contempt petitions stand disposed of accordingly.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(DIPAK MISRA)

New Delhi,
May 28, 2013