Rambir Mishra Vs Union of India (UOI) and Others

Court: Allahabad High Court

Date of Decision: May 19, 2004

Acts Referred: Allahabad High Court Rules, 1952 â€" Rule 2
Central Reserve Police Force Act, 1949 â€" Section 11(1)
Constitution of India, 1950 â€" Article 136, 14, 226
Penal Code, 1860 (IPC) â€" Section 468
Railway Protection Force Rules, 1987 â€" Rule 148, 149, 151, 151.1, 152

Citation: (2004) 5 AWC 3968

Hon'ble Judges: R.B. Misra, J

Bench: Single Bench

Advocate: Anoop Trivedi, for the Appellant; Govind Saran and Vivek Singh, for the Respondent

Final Decision: Allowed

Judgement

R.B. Misra, J.
Heard Sri. Anoop Trivedi, learned Counsel for the Petitioner and Sri. Govind Saran, learned Counsel for the Respondent.

With the consent of learned Counsels for the parties this writ petition is decided finally at this stage in view of the Second Proviso to Rule 2 of

Chapter XXII of the Allahabad High Court Rules, 1952.

2. In this petition prayer has been made for issuance of a writ of certiorari for quashing the impugned orders dated 28.9.1999, 22.11.1999 and

29.6.2001 passed by the Senior Security Commissioner, Railway Protection Force, Northern Railways, Allahabad, Chief Security Commissioner,

Railway Protection Force, Northern Railways Baroda House, New Delhi and Director General, Railway Protection Force, Railway Board, New

Delhi respectively, with a further prayer for commanding the Respondent to take the Petitioner back in service and allow him all service benefits.

3. The facts necessary for adjudication of the case, as stated by the Petitioner are that he was ''Head Constable'' in Railway Protection Force

(hereinafter in short called as ''R.P.F.'') The Petitioner had initially joined the service as a ''Constable'' in the year 1967 and his service was to be

governed by the Railway Protection Force Rules, 1987 (hereinafter in short called as ''Rules, 1987''). On 25.1.1999 an incident of coal theft was

noticed. Sri. S.N. Singh, Assistant Security Commissioner, Railway Protection Force. Northern Railways Kanpur (in short A.C.S., R.P.F., N.R.)

assisted by the Assistant Sub-Inspector R.S. Misra of Kanpur Central Post, Assistant Sub-Inspector Ram Adhar Rai of Cash Guard Kanpur and

constable Satbir Singh arranged night checking of R.P.F. post ""Goods Marshalling Yard"" (G.M.C. Post) and they reached in G.M.C. post at

about 1.40 hours and noticed that 15 anti-social elements were engaged in unloading and loading of coal bags in two tempos installed at R.P.F.

Post G.M.C. At the time of alleged incident of theft constables Girja Shankar Dubey, Satpal Singh and Bachchi Lal were deployed in Beat Nos. 4

and 5 where the said incident of theft alleged to have taken place. The Petitioner was posted on roznamcha duty and was having the charge of

lock-up. The coal was being stolen from Vagon No. S.E. 27118 Bankola Siding to Bharoli Pathankot and was being taken by a tempo No. U.P.

78N-9418, was apprehended near R.P.F. post G.M.C. loaded with 45 bags of coal and Anr. 47 bags of coal was also being taken away, where

the Petitioner a Head Constable was available near R.P.F. Office Gate along with Bachchi Lal Yadav, however, he did not make efforts to

apprehend the anti-social elements and the tempo and failed to assist the officers in chasing the criminals as well as tempo and as a result of which

one tempo with coals managed to escape from in front of R.P.F. Post. However, similar charges were served to all the four constables by Sri.

S.N. Singh, A.S.C. The charges are read as follows:

(i) Serious misconduct and neglect of duty in that Head Constable Rambir Mishra while he was on roznamcha duty from 2 hours to 4 hours on

25.1.1999 at G.M.C. post, did not make any efforts to apprehend the criminals and tempo No. U.P.-78N 9418 loaded with coal in front of

R.P.F. post G.M.C. at 2-4 hours.

(ii) He also failed to assist the Railway Protection Force Officers during chasing of criminals.

4. Sri. S.N. Singh, A.S.C., R.P.F. being head of the raiding party acted as disciplinary authority and conducted inquiry and passed the removal

order dated 28.9.1999. Being aggrieved with the order dated 28.9.1999, the Petitioner along with other three constables (alleged accused)

preferred appeals, which was rejected by order dated 22.12.1999. Against the above order dated 22.12.1999, the revision of three other

accused constables was allowed, whereas, the revision of Petitioner was dismissed by the Director General, R.P.F. by its order dated 29.6.2001.

5. According to the Petitioner, the revision of three other constables for the same charges was allowed on the ground that Sri. S.N. Singh, A.S.C.

being head of the raiding party and also reporting officer should not have acted as disciplinary authority and by virtue of the relief granted to other

three constables, namely, Bachchi Lal, Girja Shankar Dubey and Satpal Singh, they were reinstated, whereas, for the same charges in similar

circumstances, the Petitioner''s revision was dismissed, as such dismissal of Petitioner''s revision and affirmation by the appellate authority and

rejection by the revisional authority are illegal and the Petitioner has been singled out for imposition of penalty, which is shockingly

disproportionate.

6. It has been contended on behalf of Respondent that the provisions of Rules 151.1, 152.2 and 153.1 and 2 of ''Rules, 1987'' are relevant for the

case of present Petitioner. The Rules 151, 152 and 153 of ''Rules, 1987'' are quoted as below:

151. Disciplinary Authority.- 151.1. The disciplinary authority in respect of any enrolled member of the Force for the purpose of imposing a

particular punishment or the passing of any disciplinary order shall be the authority specified in this behalf in Schedule III in whose administrative

control the member is serving and shall include any authority superior to such authority.

151.2. The disciplinary authority, in the case of an enrolled member of the Force officiating in a higher rank, shall be determined with reference to

the officiating post held by him at the time of taking action.

152. Authority to institute proceedings.- 152.1. The appointing authority or any authority otherwise empowered by general or special order, may:

(a) institute disciplinary proceedings against any enrolled member ; or

(b) direct a disciplinary authority to institute disciplinary proceedings against any enrolled member of the Force on whom the disciplinary authority

is competent to impose, under these rules, any of the punishments specified in Rules 148 and 149.

152.2 A disciplinary authority competent under these rules to impose any of the minor punishments may institute disciplinary proceedings for the

imposition of any of the major punishments notwithstanding that such disciplinary authority is not competent, under these rules, to impose any of the

latter punishments.

153. Procedure for imposing major punishments.- 153.1. Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order

of dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the Force (save as mentioned in Rule

161) without holding an inquiry, as far as may be in the manner provided hereinafter, in which he has been informed in writing of the grounds on

which it is proposed to take action, and has been afforded a reasonable opportunity of defending himself.

153.2.1. Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or

misbehaviour against an enrolled member of the Force, it may itself inquire into or appoint an Inquiry Officer higher in rank to the enrolled member

charged but not below the rank of Inspector, or institute a court of inquiry to inquire into the truth thereof.

7. In reference to these provisions of Rules, 1987, it has been submitted on behalf of Respondent that Rule 151 deals with the disciplinary authority

and Sri. S.N. Singh, A.S.C. being a disciplinary authority could initiate the disciplinary proceedings against the Petitioner in view of Rule 152.2 and

could also inquire into the matter in reference to Rule 153.2.1.

8. According to the Respondent, though other three constables of R.P.F. were also charge-sheeted with same charges for same incident, but the

role in the said incident was different, therefore, the Petitioner has rightly been singled out for imposition of penalty as there was slackness on the

part of the Petitioner.

9. Endeavourance has been made on behalf of Petitioner to controvert that Sri. S.N. Singh, A.S.C. assisted by senior police officials was chasing

the party, where the Petitioner was not even taken into confidence and asked to participate in the team, as the Petitioner was not supposed to

leave the duty as he was on guard duty, where arms, ammunitions, cash property were in his custody at relevant time. The Petitioner was neither

informed with prior intimation regarding the raid nor was asked for becoming a member of raiding party to apprehend the criminals. It has further

been submitted on behalf of Petitioner that he was in bounded duty to discharge the work and could not leave the duty without orders of the

superior officers or without being relieved by another guard from his duty. Suo motu participation and leaving the roznamcha duty as a guard could

have amounted the offence and despite the endeavourance by large number of members of the raiding party if something was desired to be done,

for such lapse not only the Petitioner, but other three abovenamed constables and the members participating in the raiding party were to be held

responsible.

10. The Respondent on the other hand contended that the Petitioner did not acted bona fidely in discharge of duty which he was expected to

perform and role of the Petitioner was in derogation to the observations made by the Supreme Court in Ramchandra Keshav Adke (Dead) by Lrs.

and Others Vs. Govind Joti Chavare and Others, , where the Supreme Court has observed as under:

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance

are necessarily forbidden. This rule squarely applies where the whole aim and object of the Legislature would be plainly defeated if the command

to do the thing in a particular manner did not imply a prohibition to do it in any other.

11. However, according to Sri. Anoop Trivedi, learned Counsel for the Petitioner, when the Petitioner was not assigned and trusted any duty, in

that case nothing was expected from him otherwise it could have amounted unnecessary interference in the functioning of others. In order to

substantiate and strengthen the stand of the Petitioner it has been submitted by Sri. Anoop Trivedi that the Supreme Court did not interfere in the

finding of the High Court as well as of the labour court when three workmen charged for same offence, i.e., in the incident of involving drunkenness

fighting, riotous, disorderly and indecent behaviour out of which one punished out of disciplinary inquiry with one month''s suspension, out of

disciplinary inquiry another was reinstated but third was punished with the order of dismissal, such punishment was held to be unjustified. The

Supreme Court in Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and Another, , has observed as below:

Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in

separate proceedings, and one was punished with only one month''s suspension, and the other was ultimately reinstated in view of the findings

recorded by the labour court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the Appellant if he alone is

singled out for punishment by way of dismissal from service.

12. In Singara Singh and Ors. v. State of Punjab and ors. AIR 1984 SC 1499, the Supreme Court has observed that the dismissal of several

members of police force for participation in agitation, but reinstatement of large number of personnel denying the reinstatement of writ Petitioners

for involvement in similarly situated activities was held to be discriminatory and in derogation to the provisions of Article 14 of the Constitution. The

Supreme Court has observed that logically the writ Petitioners were to receive the same benefits like those, who were reinstated and without any

justification treating the writ Petitioners differently without pointing out how the writ Petitioners were guilty for more serious misconduct or degree

of indiscipline, in such circumstances the discrimination was held to be not justifiable.

13. According to the Respondent in view of R.S. Saini Vs. State of Punjab and Others, , the claim of the writ Petitioner assailing his removal on

the ground of perversity of the inquiry based on no evidence, non-application of mind and mala fide, the Supreme Court did not find any scope of

judicial review in the finding of the disciplinary inquiry as the same did not suffer from infirmities. The Supreme Court further observed that the

inquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate its findings and adequacy or reliability, which

cannot be permitted to be canvassed in the writ proceedings. If the conclusions have been drawn in a reasonable manner and objectively, such

conclusions cannot be termed as perverse or not based on any material. The Supreme Court has also held that the High Court as well as the

Supreme Court within limited scope of their jurisdiction could hold that the disciplinary inquiry against the delinquent did not suffer from infirmities.

14. According to the Respondent in High Court of Judicature at Bombay v. Shashi Kant S. Patil and Anr. 2000 (1) AWC 99 (SC): (2001) 1

SCC 416, the Supreme Court has observed that the findings of the Inquiry Officer are not binding on the disciplinary authority and final decision

rests with the disciplinary authority, which can come to its own conclusions, bearing in mind the views expressed by the Inquiry Officer, and judicial

interference is permissible if there is violation of the natural justice and statutory regulations and the decision of the disciplinary authority is also

vitiated by considerations extraneous to the evidences and merits of the case or if the conclusion made by the authority on the very face of it is

wholly arbitrary or capricious and no reasonable person could have arrived at such a conclusion on similar grounds.

15. According to the Respondent in Nagar Palika, Nataur Vs. U.P. Public Services Tribunal, Lucknow and Others, , the Supreme Court has held

that the principle of natural justice could not be said to violated where opportunity was afforded but not utilised by the delinquent employee,

despite repeated reminders reply was not given to the charge-sheet nor appearance was shown by the delinquent employee before the Inquiry

Officer and despite being permitted to inspect the records and opportunities were not availed of to inspect the records. In these circumstances, the

conclusion reached by the Inquiry Officer on the basis of available material that the charges were proved, cannot be said to be violative of principle

of natural justice and hence dismissal was upheld.

16. In Mirja Barkat Ali Vs. Inspector General of Police, Allahabad and Others, , the police constable was dismissed for absent from duty of 109

days on the ground of illness. The Inquiry Officer recommended for minor punishment, however, S.P. disagreed and imposed punishment of

dismissal. High Court found the punishment is too harsh and severe/disproportionate allegations and directed for awarding lesser punishment.

Punishment to be imposed-discretion of the disciplinary authority:

(a) The punishment to be imposed by the disciplinary authority is the discretion of the authority concerned and unless such penalty grossly

disproportionate there can be no occasion for the Court or Tribunal to interfere with the punishment. However, penalty should be commensurate

with the magnitude of the misconduct committed. If a lesser penalty can be imposed without jeopardising the interest of the administration, then the

disciplinary authority/punishing authority should not impose the maximum penalty of dismissal from service. When the rules require that the

disciplinary authority will determine the penalty after applying its mind to the enquiry report, then this shows that he has to pass a reasoned order.

However taking an overall and cumulative view the disciplinary authority may impose maximum penalty but after considering all aspects of the case

H.P. Thakore v. State of Gujarat (1979) 1 LLJ 339 (Guj). When an authority proceeds to impose a penalty, the only question which is ordinarily

to be kept in mind is to impose adequate penalty ; then punishment shall be neither too lenient nor to harsh. Ansarali Rakshak v. Union of India

1984 Lab IC 73 (Bom).

Punishment not to be disproportionate to the gravity of the charge established:

(b) Ordinarily the Court or Tribunal cannot interfere with the discretion of the punishing authority in imposing particular penalty but this rule has

exception. If the penalty imposed is grossly disproportionate with the misconduct committed, then the Court can interfere. The railway employee

on being charged with negligence in not reporting to the railway hospital for treatment was removed from service. The Supreme Court has thought

it fit to interfere with the punishment of removal from service and modify it to withholding of two increments. Alexander Pal Singh v. Divisional

Operating Superintendent (1987) 2 ATC 922 (SC).

But when the police constable working as Gunman of Deputy Commissioner of Police while on duty was wandering near the bus stand with

service revolver in a heavily drunken condition and when he was brought to hospital he began abusing the doctor on duty, the imposition of penalty

of dismissal of service cannot be held to be disproportionate because the constable was guilty of gravest misconduct. State of Punjab and Others

Vs. Ram Singh Ex. Constable, .

(c) When the charge of misconduct against the Civil Judge in disposing of the Land Acquisition Reference cases have been proved partially and for

fixing higher valuation of land than was legitimate in L.A. Reference was not proved for which he can be given benefit of doubt, the Supreme Court

has modified the penalty of dismissal to compulsory retirement. V.R. Katarki Vs. State of Karnataka and others, . In another case when the

employee had 29 years of unblemished record and P.S.C. on consultation had not agreed to the proposal of dismissal, but he was dismissed, the

Supreme Court, after the death of employee, held that the evidence in support of the charges which led to dismissal was not very strong and in

order to grant relief to poor widow, the punishment of dismissal should be converted to compulsory retirement so that the widow will get the

appropriate financial benefit. Kartar Singh Gerwal Vs. State of Punjab, .

However, even though the Supreme Court has power to modify the penalty imposed by the disciplinary authority in exercise of equitable

jurisdiction under Article 136 of the Constitution, but the High Court or the Administrative Tribunal has no such jurisdiction to interfere with the

punishment imposed by the disciplinary authority This is the view of the Supreme Court in Samarendra Kishore Endow''s case. It is held that the

High Court/Administrative Tribunal cannot interfere with the punishment if imposed after holding enquiry and if it is considered that the punishment

imposed is harsh, the proper course is not to modify the penalty but to remit the matter to the appellate or disciplinary authority. The Supreme

Court has observed as follows:

Imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to

interfere with it, but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the

powers of the High Court under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the

decision was made. The power of the judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the

authority after according a fair treatment reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the

eyes of law, Bhagat Ram Vs. State of Himachal Pradesh and Others, is no authority for the proposition that the High Court or Tribunal has

jurisdiction to impose any punishment to meet the ends of justice. The Supreme Court in Bhagat Ram''s case exercised the jurisdiction under

Article 136 of the Constitution. The High Court or the Tribunal has no such power'''' State Bank of India and Others Vs. Samarendra Kishore

Endow and Another, .

Samrendra Kishore Endow''s case is the authoritative pronouncement of the Supreme Court in the matter of jurisdiction of the High Court or the

Administrative Tribunal by way of judicial review of the penalty. It does not ordinarily have power to interfere with the penalty if there is no

infirmity in the enquiry but if the punishment imposed is harsh the proper course for the High Court/Tribunal is to refer the matter to the appellate

authority or the disciplinary authority for reconsideration of the penalty imposed. But in the instant case when on a proper departmental enquiry the

Respondent was removed from service on the basis of the charges of falsely claiming reimbursement of travel expenses on his transfer and there

was also another charge of release of construction loan of Rs. 1,00,000 in one case to a co-employee without verifying the progress of

construction, then the Supreme Court on taking the view that the punishment was harsh directed the appellate authority to consider whether a

lesser punishment is not called for in the facts and circumstances of the case.

(d) The three-Judge Bench judgment of the Supreme Court in B.C. Chaturvedi Vs. Union of India and others, , has to some extent modified the

view expressed in Samarendra Kishore Endow"s case by holding that even though the High Court/Tribunal, while exercising the power of judicial

review cannot normally substitute their 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 or the Tribunal it would be appropriate to grant the relief either

directing the disciplinary, or the appellate authority to reconsider the penalty or to shorten the litigation, it may itself, in exceptional and rare cases,

imposed appropriate punishment with reasons in support thereof.

(e) The decision of B. C. Chaturvedi"s case has also been reiterated by the Supreme Court in Union of India and another Vs. G. Ganayutham

(Dead) by LRs., . In that case, the Government employee whose disciplinary enquiry was continued even after retirement was imposed penalty of

50% pension and gratuity and he moved the Central Administrative Tribunal against such order. The Tribunal held that gratuity not being part of

pension cannot be curtailed and modified the deduction of pension for a limited period. In appeal by special leave, the Supreme Court has held that

the Tribunal had no jurisdiction to interfere with the penalty when there is no contention that the punishment imposed is illegal or vitiated by

procedural irregularity and there is no finding 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 an outrageous defiance of logic.

(f) When the appointing authority disagrees with the findings of the enquiry officer in respect of charges 1 and 2 and found those charges also

proved even though the disciplinary authority approved the report of enquiry officer and recommended a particular penalty, it is held by the

Supreme Court that when the Regulation 68 (3) (iii) of the Bank Regulation clearly stipulates that the appointing authority is not bound by the

recommendation of the disciplinary authority relating to penalty of compulsory retirement being quite valid and legal, it cannot be subjected to

judicial review on the ground that the appointing authority while imposing penalty cannot differ with the recommendation of the disciplinary

authority. State Bank of Hyderabad and Others Vs. Rangachary, .

(g) A member of the Central Reserve Police who only because he overstayed the leave for twelve years for which had sufficient reason and had no

intention to wilfully disobey the order was dismissed from service, High Court on the interpretation of Section 11(1) of the Central Reserve Police

Force Act, 1949 quashed the dismissal order and reinstated him with all consequential benefit. The Central Government moved the Supreme

Court in appeal by special leave. The Supreme Court in the facts of the case has held the dismissal to be harsh, upheld the order of reinstatement

of service but gave liberty to the Government to impose any minor penalty for such misconduct. Union of India and others Vs. Giriraj Sharma, .

(h) When the police constable was dismissed from service for using abusive language, but what the abusive words used were not disclosed in the

enquiry, then only because a police constable used abusive language there can be no strait-jacket formula that in all such cases the constable

should be dismissed from service. So, the Supreme Court has considered the punishment to be harsh and disproportionate to the gravity of the

charge and modified the penalty to stoppage of two increments with cumulative effect Ram Kishan Vs. Union of India and others, . When

subsequent to promotion as Inspector the police officer failed to deposit his service revolver and six live centisides, the Supreme Court has held

that penalty of dismissal is too harsh when his previous record was unblemished and at the relevant time he was sharing a room with two

colleagues. So, the Supreme Court substituted the penalty to compulsory retirement. Mehnga Singh, Ex-Sub Inspector Vs. Inspector General of

Police, PAP, Jalandhar Cantt. and Others, .

(i) On the finding delinquent guilty of demanding and accepting illegal gratification, the order of dismissal has been passed against the delinquent.

The same has been challenged on the ground that the penalty is harsh and that there is only one witness to prove the charge and that there was no

earlier charge of misconduct against him. The Supreme Court has held that it is for the disciplinary authority to decide about the punishment and

merely because there was solitary evidence to prove the charge the finding of the guilt by the enquiry officer and disciplinary authority is not illegal.

It is also observed that merely because there was no allegation of misconduct against the delinquent employee earlier is inconsequent. Even the

recommendation of the Public Service Commission to take a lenient view is not binding on the Government. It was held that the interference with

the penalty on the facts of the case is not called for: N. Rajarathinam Vs. State of T.N. and Another, .

The police constable who was dismissed on account of absence without leave from 7th November, 1986 to 1st March, 1988, on holding the

departmental enquiry filed civil suit challenging such punishment on the ground that the disciplinary rules applicable to him provided that the

dismissal could be resorted to if there was a gravest act of misconduct. The trial court dismissed the suit on the ground that it could not interfere

with the order of punishment imposed in a disciplinary proceeding. But the appellate court remanded the matter for reconsideration of the trial

court on the point of punishment. The Supreme Court has disapproved the order passed by the appellate court. It is held that it is for the

disciplinary authority to pass appropriate punishment and the civil court cannot substitute its own view to that of the disciplinary as well as that the

appellate authority on the nature of punishment to be imposed upon the delinquent, as he was absent without any leave for over one and half years

it ought not to have interfered with the degree passed by the trial court dismissing the suit. State of Punjab and others Vs. Bakhshish Singh, . The

Supreme Court has also held that when on the charge of demand and acceptance of illegal gratification by the Inspector of Police, the Inspector

has been dismissed from service, then the police officer being guilty of grave misconduct resorting to corruption, there is no occasion for

interference with the order of punishment imposed by the disciplinary authority. The Government of Andhra Pradesh Vs. B. Ashok Kumar, .

(j) When a bus conductor was charged for taking certain passengers without tickets and on holding departmental enquiry he was found guilty and

the disciplinary authority removed the Respondent from the post of the conductor, he moved the High Court challenging the order of removal. The

High Court while concurring with the finding of the authority that the charges levelled against the Respondent were proved held that the punishment

awarded did not commensurate with the gravity of the charge. On that basis the High Court set aside the punishment and directed the reinstatement

of the Respondent. Being aggrieved an appeal by special leave has been filed by the Corporation before Supreme Court. The Supreme Court has

held that it has consistently taken the view that under the judicial review the Court shall not normally interference with the punishment imposed by

the authority and this will be more so when the Court found the charges were proved and interfere with the punishment on the facts of the case

cannot be sustained. U.P. Road Transport Corporation v. A.K. Parul, Cal. : 1998 (4) AWC 67 (SC) : JT 1999 (1) SC 77. When the

Respondent. a police constable was dismissed from service on the ground that he illegally extracted money from the auto-rickshaw driver by

misusing his official position then the interference by the Administrative Tribunal with the penalty imposed by the departmental authority is not

warranted in this case, because it is only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic

or moral standard that a Court or Tribunal can interfere with the punishment imposed by the Administrative Authority. As in this case, the police

constable was guilty of grave misconduct, there was no reason as to why the Tribunal should interfere with the punishment imposed by the

disciplinary authority. State of Karnataka and Others Vs. H. Nagaraj, .

17. In Sahdev Singh v. U.P. Public Service Tribunal, Lucknow and ors. 2001 (2) AWC 983, this Court, (Hon''ble M. Katju and Onkareshwar

Bhatt, JJ.) decided on 19th February, 2001 the Writ Petition No. 1722 of 1999, where the Petitioner a confirmed police constable had consumed

liquor in the night, was charge-sheeted and after inquiry was dismissed from service. His appeal was rejected and his claim petition before U.P.

Public Service Tribunal was also dismissed. In writ petition this Court has observed that before the Tribunal neither the Petitioner has said anything

in his defence nor produced any witness but prayed for forgiveness and assured that he will not commit such act again in future. In these

circumstances, this Court had indicated that a lenient view should be taken against the Petitioner and for awarding some lesser punishment taking

view the sense of Shakespear''s Merchant of Venice that justice should be tempered with mercy. In these circumstances the Court has found the

punishment of dismissal is too harsh and set aside the order of dismissal and directed the Petitioner to be reinstated in service with 25% of the back

wages from the date of the dismissal to the date of reinstatement.

18. In Hussaini Vs. Hon. Chief Justice of High Court of Judicature at Allahabad and Others, , the Appellant was working as a sweeper and was

placed under suspension for derogation of duty and was dismissed from service after enquiry. At the time of dismissal he had rendered service

over 20 years and was denied retirement benefits such as pension, provident fund and gratuity to which he would have been entitled if he was

compulsorily retired from service. The Supreme Court has observed that the Appellant was a low paid Government servant, therefore, the order of

punishment of dismissal might have been converted into compulsory retirement on compassionate ground so that the Appellant may get retiral

benefits and the Supreme Court observed that the Appellant was a low paid safai jamadar. We do not propose to minimise the gravity of his

misconduct for which the High Court thought fit to impose maximum punishment of dismissal from service simultaneously denying him all retrial

benefits. Without in any manner detracting from the view taken by the High Court we are of the opinion that there is some scope for taking a little

lenient view in the matter of punishment awarded to the Appellant. The lenience if at all would render the post dismissal life of the low paid

employee a little tolerable and keep him away from the penury, destitution.

19. In Union of India and Ors. v. Giriraj Sharma 1994 SCC 604, it was held that the punishment of dismissal for over-staying the period of 12

days, on account of unexpected circumstances which have not been controverted in the counter is harsh since, the circumstances show that it was

not his intention to wilfully flout the order but the circumstances forced him to do so. It was open to the authority to visit him with a minor penalty,

but the major penalty of dismissal from service was not called for.

20. In Union of India and others Vs. Giriraj Sharma, . In this case the Respondent who was deputed to undergo a course as an electrician sought

leave for 10 days which he was granted and while on leave he sent a telegram for extension of leave for 12 days which request was rejected,

however, the Respondent joined duty after over staying period of 12 days and for this misdemeanour his services came to be terminated and his

departmental appeal and revision were also rejected, whereupon he filed a writ petition in the High Court challenging the order of termination and

the writ petition was allowed with a direction to reinstate his service with all monetary and other service benefits. The Supreme Court did not find

merit in the appeal preferred by Union of India but has been pleased to modify the order of the High Court by stating that as there was no wilful

intention to flout the order on the part of the Respondent and punishment was treated to be harsh and disproportionate, therefore, relief with

monetary benefits was granted to the minor punishment.

21. In State of Punjab and others Vs. Bakhshish Singh, , where the Respondent a police constable was dismissed on account of absence without

leave from 7.11.1986 to 1.3.1988. The disciplinary rules applicable to him provided that dismissal could be resorted to, if there was a ""gravest act

of misconduct"". The trial court dismissed the suit but the appellate court remanded the matter for reconsideration by the trial court on the point of

punishment. It was held by the Supreme Court that if is for the disciplinary authority to pass appropriate punishment ; the civil court cannot

substitute its own view to that of the disciplinary as well as the appellate authority on the nature of the punishment to be imposed upon the

delinquent officer. The appellate court, in view of its own findings, that the Respondent''s conduct was grave, ought not to have interfered with the

decree of trial court.

22. In U.P. S.R.T.C. and Others Vs. Har Narain Singh and Others, , where a disciplinary enquiry was held against the Respondent who was a bus

conductor in the Appellant''s Corporation. The Assistant Regional Manager of the Appellant himself conducted the enquiry and found that the

charges against the Respondent are proved and issued a show cause notice on the punishment and after considering the reply of the Respondent

imposed a punishment from dismissal of service on the Respondent who preferred an appeal before the Regional Manager which too was

dismissed. In claim before the Labour Tribunal held that it had no jurisdiction in the matter. Thereafter, the Respondent preferred a writ petition

before the U.P. Public Services Tribunal at Lucknow and the Tribunal dismissed the writ petition and held that there is no illegality in the conduct of

the enquiry and the enquiry officer cannot be said to be perverse or against merit on the record. Against this judgment of the Tribunal the

Respondent filed writ petition before High Court where a single Judge of the High Court re-appreciated the evidence led in the enquiry and

quashed the order passed by the Tribunal as also the order passed by the Disciplinary Authority. The Supreme Court has held that because the

High Court was not sitting in appeal over the findings given by the disciplinary authority as such the re-examination of the evidence led in the

disciplinary proceedings was not warranted. The impugned judgment and order of the High Court were set aside and the order of the Tribunal was

restored.

23. In U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, , the delinquent driver Respondent of Corporation went

in a drunken state to the Assistant Cashier in the cash room, demanded money from him and on his refusal abused and threatened to assault him

held was a serious charge of misconduct and the punishment of removal awarded after the said charge was found proved in a departmental

enquiry. The said punishment by stopping and payment of 50% back wages, Supreme Court found that the judgment of Allahabad High Court was

arbitrary and was not justified. The Supreme Court found that the opinion of the High Court was erroneous in exercise of jurisdiction under Article

226 to correct the erroneous order of labour court as the punishment of removal was not stood as disproportionate and in order to arrive at such

decision the Supreme Court consider the following judgment of the High Court in B.C. Chaturvedi Vs. Union of India and others, and Colour

Chem Ltd. v. A.L. Alaspurkar (1998) 3 SCC 192and Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, .

24. However, the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, in another case

of U.P. State Road Transport Corporation and Ors. v. Mahesh Kumar Misra and ors. while considering the B.C. Chaturvedi"s case (supra) and

Colour Chem Ltd. (supra) and also in reference to the Civil Appeal No. 9754 of 1995 arising out of SLP (C) No. 1960 of 1994, U.P. State Road

Transport Corporation and Anr. v. Om Prakash Pandey, in which the order of High Court by which interference was made with the punishment

inflicted upon the delinquent employee of the Corporation was set aside. In Mahesh Kumar Misra the Supreme Court has interfered with the

quantum of punishment inflicted by the Disciplinary Authority. The conductor of local city bus was dismissed from service on the allegations that all

passengers were without tickets and on the dispute whether the passengers boarded at High Court or Zero Road and what tickets should be

charged and what rate. In domestic enquiry no passenger was examined. In these condition the punishment on the face of highly? and interference

of the High Court in the quantum of punishment of dismissal was found to be justified.

25. In was held by the Supreme Court that the punishment must be commensurate to the offence vide Sardar Singh v. Union of India AIR 1992

SC 417. In Girija Shanker Singh v. General Manager U.P.S.R.T.C.-II Varanasi and Anr. (1992) 2 UPLBEC 851, this Court (Hon"ble M. Katju,

J.) has interfered in the quantum of punishment of termination and directed for reinstatement of Petitioner on the charge of coming late while

deployed on to operate the bus and refusing to operate the bus and using insulting language to the A.R.M. and the punishment was concurrently

approved by the enquiry officer, disciplinary authority and appellate authority. On finding the punishment is not consonance to the allegations and

charges the same was rejected and the authorities were directed to pass lesser punishment.

26. In U.P.S.R.T.C. v. Basudev Chaudhary and Anr. 1998 SCC (L&S) 15, where the conductor worked in the corporation recovered fair at

higher rate and entered in the bills at lower rate per head passenger and the manipulation in the fair for such misconduct and attempt to cause loss

of money to the corporation. The offence was treaded to be of serious nature and punishment of removal held to be justified and not

disproportionate. The Supreme Court in Basudev Chaudhary has distinguished the case of Bhagat Ram 1983-442 and Gulzar v. State of Punjab

1986 Suppl SCC 738. In Municipal Committee Bahadurgarh v. Krishna Bihari and Ors. 1996 SCC (L&S) 539, where the Respondent was

convicted u/s 468, I.P.C. by criminal court for committing forgery and the municipal committee imposed punishment of dismissal which was

reduced to stoppage of four increments by Director of Local Bodies and appeal to the Commissioner preferred by Municipal Committee the same

was dismissed and writ petition filed by the Municipal Committee. In these circumstances civil appeal preferred by the Municipal Committee

before the Supreme Court while upholding the punishment of dismissal has observed that the amount misappropriated may be small or large it is

the act of misappropriation, i.e., relevant, therefore, the punishment was not to be interfered with. In Bhagwan Krishna Pandey, Meerut v.

U.P.S.R.T.C., Meerut 2002 (1) UPLBEC 82, where dismissal of bus conductor for carrying eight passengers without tickets in a bus and for not

collecting proper fair from the passenger, the punishment of dismissal indicated by the Inquiry Officer and affirmed by the disciplinary authority was

found to be disproportionate directing the authorities replacing the punishment by a minor punishment, however, this case cannot be applied. In the

facts of the case as the High Court in Bhagwan Krishna Pandey has failed to receive proposed punishment under challenge was shockingly

disproportionate.

27. In State of U.P. and Others Vs. Rama Kant Yadav, , (Hon''ble G.B. Pattanayak and H.K. Sema, JJ.) the view of the High Court in not

interfering with the punishment was an error where the constable for the alleged charge of sleeping in duty to guard armoury was on an inquiry

found to be guilty and dismissed by the disciplinary authority and affirmed by the U.P. Public Service Tribunal, such dismissal was interfered on

preferring the writ petition. The High Court had interferred in the said punishment of dismissal with an observation that the finding of guilt is not a

finding of fact and High Court has no jurisdiction to interfere in the finding and indicated that the punishment was disproportionate and was set

aside the dismissal of the order with direction to reinstatement of the Petitioner with a payment of 50% back wages.

28. In Director General R.P.F. v. Ch. Sai Babu 2003 (2) AWC 986 (SC): 2003 (1) UPLBEC 566 (SC), (Hon''ble Shivaraj V. Patil and Arijit

Pasayat, JJ.), where quantum of punishment of removal from service imposed for the alleged charges under Rule 153 Railway Protection Force

Rules, 1987 was found proved by the enquiry report and affirmed by the disciplinary authority as well as appellate/ revisional authority and the

same was interfered with by the High Court by substituting dismissal from stoppage of increment with cumulative effect and reinstatement of the

Petitioner the decision of the High Court interfering in the punishment of removal on the ground of shockingly disproportionate was not found

justifiable by the Supreme Court as it was not supported by recording of reasons.

29. In State of Rajasthan and Others Vs. Sujata Malhotra, (Hon''ble G.B. Pattanaik and Brijesh Kumar, JJ.) where the Respondent absented from

1983 to 1987 and departmental inquiry was initiated and termination order was passed. The High Court found the punishment was grossly

disproportionate and set aside the termination and reinstated the writ Petitioner with 50% of back wages, in these circumstances the Supreme

Court has observed that the High Court should not have interfered with the punishment, however, since the reinstatement had taken place that

order was not touched and the Respondent employee did not get back wages and the period of absence were treated for retirement benefits but

not for pecuniary benefits.

30. In Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , (Hon''ble Shivraj V. Patil and Arijit Pasayat, JJ.) where

the Respondent employee conductor for dereliction of duty, for violation of Employment Code and misappropriation and extraction of money from

the passenger for not issuing the tickets was enquired into by a retired District Judge and was found guilty and his termination was affirmed by

appellate authority, the punishment too was affirmed by single Judge of High Court, however, Division Bench of the High Court while allowing the

appeal of U.P.S.R.T.C. had set aside the order of termination leaving it open to the employer to award other punishment except termination or

compulsory retirement. In those circumstances the Supreme Court held that High Court (Division Bench) has not recorded any reason for

consideration of disproportionate punishment and as such there was denial of justice and mere statement that the punishment is disproportionate

was not sufficient in cases where the persons deals with the public money or is engaged in financial transaction or acts in fiduciary capacity as such

are to be dealt with by an iron hands. As such the order of the High Court (D.B.) was set aside and the dismissal order of the High Court (single

Judge) was upheld

31. In Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , the Supreme Court (Hon''ble Shivaraj V. Patil

and Arijit Pasayat, JJ.) has analysed, in the matter of quantum of punishment in respect of Respondent Bank Officer where he was found to be

involved in financial irregularities, dereliction of duty, misappropriation of fund and whose service was dispensed with, however, the High Court

found the charges proved, nevertheless accepted the plea of the Respondent employee and directed the Appellant Bank to impose lesser

punishment with recording reason for giving lesser punishment being disproportionate. The Supreme Court held that when the High Court finds that

the punishment is shockingly disproportionate and could not meet the requirement of law, therefore, in the facts of the case since the charges

against the Respondent employee were of serious nature, therefore, the High Court was not justified in interfering the quantum of punishment and

the matter was remitted to the High Court for fresh consideration only with regard to the quantum of punishment.

32. In Shri Panchanan Manna v. Indian Oil Corporation, Haldia Madinapur and Ors. 1996 (2) LLJ, the Calcutta High Court has found the scope

of judicial review in analysing the disproportionate aspect of punishment inflicted upon the writ Petitioner for the misconduct and the High Court,

indicating the punishment should be commensurate with the nature of misconduct alleged upon. Similar view was taken by the High Court of

Bombay in Abdullah A. Latif Shah v. Bombay Port Trust 1992 (1) LLJ.

33. In Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , (Hon''ble Shivaraj V. Patil and Arijit Pasayat,

JJ.) the observations made in paragraphs 8, 10, 11, 12, 13 and 14 read as below:

8. In Om Kumar and Ors. v. Union of India JT 2000 (3) SCC 92: 2001 (2) SCC 386, this Court observed inter alia, as follows:

The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The

European Court of Justice at Luxembourg and the European Court of Human Rights at Stasbourg have applied the principle while judging the

validity of administrative action. But even long before that the Indian Supreme Court has applied the principle of ''''proportionality'''' to legislative

action since 1950, as stated in detail below.

By ''''proportionality'''', we mean the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive, choice of

measures has been made by the Legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative

order as the case may be. Under the principle, the Court will see that the Legislature and the administrative authority'''' ''''maintain a proper balance

between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind

the purpose which they were intended to serve.'''' The Legislature and the administrative authority are, however, given an area of discretion or a

range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.

xxxxxx xxxxx xxxxxx

But when an administrative action is challenged ""arbitrary"" under Article 14 on the basis of E.P. Royappa Vs. State of Tamil Nadu and Another,

(as in cases where punishments in disciplinary cases are challenged),, the question will be whether the administrative order is ""rational"" or

reasonable"" and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see

whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors into consideration or

whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In

G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, , Venkatachalian, J. (as he then was) pointed out that ""reasonable-ness

of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata

Cellular Vs. Union of India, , Indian Express Newspapers Bombay (P.) Ltd. v. Union of India 1985 (2) SCR 287; Supreme Court Employees''

Welfare Association and Others Vs. Union of India (UOI) and Another, and U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and

Others, , while judging whether the administrative action is ""arbitrary"" under Article 14 (i.e., otherwise than being discriminatory), this Court has

confined itself to a Wednesbury review always.

The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of ""arbitrariness"" of

the order of punishment is questioned under Article 14.

xxxxxx xxxxx xxxxxx

Thus, from the above principles and decided cases, it must be held that whether an administrative decision relating to punishment in disciplinary

cases is questioned as ""arbitrary"" under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court

will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies

in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the

matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time

taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as

to the quantum of punishment.

10. In Union of India and another Vs. G. Ganayutham (Dead) by LRs., , this Court summed up the position relating to proportionality in

paragraphs 31 and 32 which reads as follows:

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 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 test.

(2) The Cse that it was iourt would not interfere with the administrator''s decision unless it was illegal or suffered from procedural impropriety or

was irrational-in the senn 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 C.C.S.U. 1985 AC 374 principles.

11. 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 the Wednesbury''s case (supra) 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 to that of the administrator. The scope of judicial review is limited to

the deficiency in decision-making process and not the decision.

12. To put difference 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 certain litigation 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.

13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even

there is no discussion on this aspect. The only discernible reason was the punishment awarded in M.L. Keshwani''s case. As was observed by this

Court in Balbir Chand Vs. Food Corporation of India Ltd. and others, , even if a co-delinquent is given lesser punishment it cannot be a ground for

interference. Even such a plea was not available to be given credence, as the allegations were contextually different.

14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers.

Every officer/ employee of the bank is required to all possible steps to protect the interests of the bank and to discharge his duties with utmost

integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable

from the functioning of every officer/ employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager and

Others Vs. Nikunja Bihari Patnaik, , it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee

acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting

and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and is a misconduct. The charges against

the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

34. The review of above legal position would establish that Sri. S.N. Singh, Assistant Security Commissioner, Railway Protection Force, heading

the raiding party himself became the inquiry and disciplinary authority, which is not fair, however, this aspect cannot be only a ground of dismissal

brushing aside the finding of the disciplinary authority. Mere minor infirmities in procedure of inquiry could not make inquiry and finding of the

disciplinary authority absurd when the provisions of Rules, 1987 provided wide power to the Assistant Security Commissioner to act as an inquiry

officer and disciplinary authority also, however, the Petitioner was never taken into confidence or asked to be a member of raiding party or he was

not invited at the spot to become member of the raiding party or to render assistance. The Petitioner while discharging his original assigned duty

could never suo motu was expected to come forward and participate in the activity of apprehending the criminals and obstructing the tempos

taking away stolen coal bags. In any case, the charges were vague, not specific. Similar charges were against three other constables, and they were

allowed to go scott free in the revision by exonerating them and the Petitioner has only been singled out, therefore, the Petitioner could not be held

guilty of not rendering assistance to the raiding party and removal of Petitioner from service is a punishment too harsh and disproportionate to the

alleged charges against him, and action and quantum of punishing the Petitioner is shockingly disproportionate and on the reasons stated above

impugned orders dated 28.9.1999, 22.11.1999 and 29.6.2001 are not legally sustainable, therefore, these are set aside. The Senior Security

Commissioner, R.P.F. (N.R.), Allahabad, is directed to consider the case of Petitioner sympathetically and may take decision within six months of

awarding minor punishment other than removal of Petitioner from service, so that Petitioner may be entitled to his post retiral and other service

benefits.

35. In view of the above observations, writ petition is allowed.

36. No order as to cost.