N. Purushothaman Vs Officer Commanding and Others

Court: High Court Of Kerala

Date of Decision: Feb. 11, 1992

Acts Referred: Army Act, 1950 â€" Section 108, 128, 129, 130, 131
Army Rules, 1954 â€" Rule 100, 101, 102, 103, 104
Constitution of India, 1950 â€" Article 136, 14, 19, 19(1), 21

Hon'ble Judges: M. Jagannatha Rao, C.J; P. Krishnamoorthy, J

Bench: Division Bench

Advocate: G. Sivarajan and K.M.V. Pandalai, for the Appellant;

Final Decision: Dismissed

Judgement

M. Jagannatha Rao, C.J.
The Writ Petitioner is the Appellant herein. He was a Junior Commissioned Officer in the Army. He was charge-

sheeted for two offences as per Ext. P-13, dated 27th January 1990. The first charge was in relation to Section 41(2) of the Army Act, while the

second charge was in relation to Section 41(1) thereof. They read as follows:

1. Charge u/s 41(2).- Disobeying a lawful command given by his superior officer, in that he, at Talbahat, on 7th June 1989, when ordered by IC-

40039 P Capt. A.K. Manrai of the same unit to forward a report regarding Sector Stores to 373 (Independent) Artillery Brigade by 19.00 hours

on the same day, did not do so.

2. Charge u/s 41(1).- Disobeying in such manner as to show a willful defiance of authority a lawful command given personally by his superior

officer in the execution of his office, in that he, at Talbahat, between 8th June 1989 and 22nd June 1989, after having been released from close

arrest by IC-31224F Major A.K. Gupta, Officer Commanding of the same unit and when ordered by him to wear belt with uniform, did not do

so.

2. A General Court Martial was conducted according to the Army Act and rules in which the Writ Petitioner fully participated and he was found

guilty. Ext. P-20 contained the findings of the General Court Martial which reads as follows:

The Court find that the accused JC-144656K Subedar (Technical) Purushothaman N. of 181 (Independent) Artillery Brigade Workshop

Company E.M.E., attached with 284 Medium Regiment is guilty of all the charges.

The findings are then announced as follows:

The Court being reopened, the accused is again brought before it. The findings are read in open Court and are announced as being subject to

confirmation.

Ext. P-21 dated 20th February 1990 is the sentence of the General Court Martial. The punishments are as follows:

(i) to suffer rigorous imprisonment for 18 months, and

(ii) to be dismissed from the service.

The sentence was announced in open court stating that it was subject to confirmation. This was signed by the Judge-Advocate and the Presiding

Officer of the General Court Martial. Ext. P-23 dated 7th May 1990 is the order of the General Officer Commanding-in-Chief, Central Command

on the pre-confirmation petition dated 1st March 1990 submitted by the Writ Petitioner. The order states that the pre-confirmation petition is duly

considered and it is found that there are no merits in it and further stated that ""considering the gravity of the offence and the long service of the

accused, the sentence awarded by the Court is just and proper"". It is now not in dispute that the sentence of 18 months rigorous imprisonment was

reduced to six months rigorous imprisonment alongwith dismissal from service. The Writ Petitioner sought to quash Ext. P-13 charge-sheet, Ext.

P-20 findings of the General Court Martial, Ext. P-21 sentence and Ext. P-23 dismissal of the pre-confirmation petition on various grounds.

3. The Writ Petitioner contended before the learned Single Judge that though there was a summary evidence originally recorded, it was given a go-

by and a second summary evidence was taken. During the second summary evidence, the person who had been originally detailed at the

investigation stage was appointed to record the summary evidence. He also alleged that members of the General Court Martial was reduced to six

from seven for the period from 14th February to 22nd February 1990. The learned Judge considered these objections in detail and for that

purpose called for the relevant records. So far as the recording of the summary evidence is concerned, the first summary of evidence was set aside

for non-compliance with Rule 22 of the Army Rules and so far as the second summary of evidence is concerned, the Writ Petitioner had signed the

summary evidence agreeing that Rules 22 of the Army Rules had been complied with on that occasion. The summary evidence was recorded by

Lieutenant Colonel S.S. Chatwal in the presence of an independent witness. The learned Judge also found that there was no legal bar in detailing

an officer who had recorded evidence in the Court of Enquiry, to record the summary evidence. The Writ Petitioner was also given one more

opportunity to cross-examine the witness. The learned Judge rejected the contention that the charges were improper. Adverting to Rules 28 to 32

of the Army Rules, the learned Judge held that so far as both the charges are concerned, the essential ingredients have been set out, namely,

disobedience of a lawful command given by a superior officer. The Commanding Officer is defined in Section 3(5) and superior officer is defined in

Section 3(23). The sixth Respondent, Capt. A.K. Manrai, according to learned Judge, very much comes under the chain of command and was

competent to give orders to any Commissioned Officer. The charge-sheet was properly drawn up and was signed by the competent authority and

it is not vague in any particulars. The learned Judge then considered the position whether there are any circumstances which vitiated Exts. P-20

findings and P-21 sentence. The learned Judge considered the evidence recorded in the chief examination and also the evidence recorded in cross-

examination by the Writ Petitioner and came to the conclusion that the proceedings of the General Court Martial were not vitiated in any manner

and that there was no violation of principles of natural justice. In fact, the Petitioner was permitted, during the course of the proceedings, to engage

a counsel on his behalf. Coming to the charges, the learned Judge found that the first Respondent ordered the Petitioner to wear belt along with his

uniform and the first Respondent was the Officer commanding of the Petitioner and, therefore, his orders were to be obeyed by the Petitioner.

Petitioner was also ordered by Capt. A.K. Manrai to forward a report and both the orders were disobeyed by the Petitioner. The learned Judge

then stated that the writ Petitioner can pursue any other remedies under the Army Act if he is aggrieved.

4. Three points are raised before us in this appeal:

(a) The Army authorities have no power to award the sentence of dismissal from service in addition to imprisonment.

(b) The orders of the court-martial and of the confirming authority are vitiated as they do not furnish any reasons.

(c) The punishment of imprisonment together with dismissal is wholly disproportionate to the gravity of the offence and this Court, under Article

226 could review the proportionality of the punishment.

Point (a).- On this point, we shall refer to the relevant statutory provisions.

5. Section 41 of the Army Act reads as follows:

Section 41 Disobedience to superior Officer.- (1) Any person subject to this Act who disobeys in such manner as to show a willful defiance of

authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or

by signal or otherwise, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such

less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial,

If he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less

punishment as is in this Act mentioned; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less

punishment as is in this Act mentioned.

Section 71 of the Act refers to the punishment awardable by a court-martial and it reads as follows:

Section 71.- Punishments awardable by courts-martial.- Punishment may be inflicted in respect of offences committed by persons subject to this

Act and convicted by courts-martial, according to the scale following, that is to say-

(a) death;

(b) transportation for life or for any period not less than seven years;

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;

(d) cashering, in the case of officers;

(e) dismissal from the service;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or

to a lower rank or grade, in the case of non-commissioned officers:

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

(g) forfeiture of seniority of rank in the case of officers, juniors commissioned officers, warrant officers and non-commissioned officers, and

forfeiture of all or any part of service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(i) severe reprimand or reprimand in the case of officers, junior commissioned officers, warrant officers, and non-commissioned officers;

(j) for future of pay and allowances for a period not exceeding three months for an offence committed on active service;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public

money due to him at the time of such cashiering or dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occassioned by the office of which he was convicted is made good.

Section 72 deals with alternative punishments awarded by court-martial and reads as follows:

Section 72.- Alternative punishments awardable by court-martial.- Subject to the provisions of this Act, a court-martial may, on convicting a

person subject to this Act of any of the offences specified in Sections 34 to 68 inclusive, award either the particular punishment with which the

offence is stated in the said sections to be punishable, or in lieu thereof, any one of the punishments lower in the scale set out in Section 71, regard

being had to the nature and degree of the offence.

Section 73 deals with combination of punishments and reads as follows:

Section 73.- Combination of punishments.- A sentence of a court-martial may award in addition to, or without any one other punishment, the

punishment specified in Clause (d) or Clause (e) of Section 71 and any one or more of the punishments specified in Clauses (f) to (l) of that

section.

From the aforesaid provisions, it will be noticed that u/s 41(1) disobedience coupled with willful defiance of authority any lawful command given

personally by a superior officer in the execution of his office could result in rigorous imprisonment for a term upto fourteen years or such lesser

punishment as is mentioned in the Act. Likewise, disobedience of any lawful command of a superior officer, u/s 41(2) could result in imprisonment

for a term extending upto fourteen pears or such lesser punishment as is mentioned in the Act, so far as the persons in active service are

concerned. Section 71 provides for punishments not only by way of death, transportation for life or for any period not, less than seven years,

imprisonment, either rigorous or simple, for any period not exceeding fourteen years; cashiering (in the case of officers) and also dismissal from

service. In other words, dismissal from service is also one of the punishments contemplated in the Army Act. Section 72, as already referred to,

provides for alternative punishments awardable by court-martial.

6. In the present case what is relevant is Section 73 and not Section 72. Section 73 refers to combination of punishments and it states that the

court-martial may award punishments specified in Clauses (d) or (e) of Section 71 and any one of more of the punishments specified in Clauses (f)

to (l) of that section in addition to any other sentence or without any other punishment.

7. From the aforesaid provisions, it is clear that where a court-martial does not desire to inflict the punishments mentioned in Sections 34 to 68 but

desires to award an alternative punishments lower in the scale set out in Section 71, it could exercise its power u/s 72 and where it desires to

combine more than one punishments it can take recourse to the power u/s 73. The court-martial has jurisdiction to inflict the punishment of

dismissal in addition to the punishment of imprisonment awardable u/s 41 for the offence, of disobedience. This is the view taken by a Division

Bench of the Allahabad High Court in Ranjit Singh Chaurasia Vs. The Union of India (UOI) and Others, and we are in entire agreement with that

view. The same view has been taken by the Karnataka High Court in A. Nagaraj v. Union of India W.P. 1611/85, dated 19th March 1987. (See

Law relating to the Army by Lieut. Col. Nilendra Kumar and Anr. 1989 edition at page 53). The Orissa High Court also took the view in

Soubhagya Chandra Patnaik v. Union of India 1969 S.L.R. 148 that the court-martial could award the punishment of imprisonment together with a

punishment of dismissal. The Mardas High Court in R. Shanmugan v. The Officer Commanding 1984 (1) S.L.R. 108 took the view that the

punishment of imprisonment could be combined with a punishment of reduction in rank. Following the aforesaid decisions, we hold that the

authorities are empowered to impose punishment of dismissal together with other punishments of imprisonment contemplated in Section 71

because of the provisions of Section 73 of the Army Act.

8. Point (b).- The question is whether the orders, Exts. P-20 and P-21 holding the Petitioner guilty of the offence and imposing the punishment of

imprisonment and dismissal and the confirmation order Ext. P-21, are bad because they are pronounced and communicated without any reasons.

9. It should not be forgotten that proceedings under the Army Act, though subject to judicial review, are different from other judicial or quasi-

judicial proceedings. It is well to remember that the Constitution contains certain special provisions in regard to members of the Armed Forces.

Article 33 empowers Parliament to make law determining the extent to which any of the rights conferred by Part-III shall, in their application to the

members of the Armed Forces, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline

amongst them. By Clause (2) of Article 136, the appellate jurisdiction of the Supreme Court under Article 136 of the Constitution has been

excluded in relation to any judgment, determination, sentence or order passed or made by any Court or tribunal constituted by or under any law

relaing to the Armed Forces. Similarly Clause (4) of Article 227 denies to the High Courts the power of superintendence over any Court or

Tribunal constituted1 by or under any law relating to the Armed Forces. The Supreme Court under Article 32 and the High Courts under Article

226 have, however, the power of judicial review in respect of proceedings of courts-martial and the proceedings subsequent thereto and can grant,

appropriate relief if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said

proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record.

10. Protection of fundamental rights of the personnel of the Armed Forces is therefore, in itself, limited. This aspect has been further emphasised by

the Supreme Court while dealing with military courts and Article 19 and Article 21 of the Constitution of India and Section 21 of the Army Act.

11. In Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, the Supreme Court stated as follows:

Section 21 of the Army Act merely confers an additional power to modify rights conferred by Article 19(1)(a) and (c) by rules and such rules may

set out the limits of restriction. But the specific provision does not derogate from the generality of power conferred by Article 33. Therefore, the

law prescribing procedure for trial of offences by court-martial need not satisfy the requirement of Article 21 because to the extent the procedure is

prescribed by law and if it stands in derogation of Article 21, to that extent Article 21 in its application to the Armed Forces is modified by

enactment of the procedure in the Army Act itself... In the large interest of national security and military discipline, Parliament in its wisdom may

restrict or abrogate such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizens

not entitled to the benefits of the liberal spirit of the trial of an offence by the Criminal Court and the court-martial is apt to generate dissatisfaction

arising out of this differential treatment.

In that case, the Supreme Court did not interfere with the orders passed. It however observed that certain provisions of the Army Act and Rules

are not in keeping with the liberal spirit of the Constitution. The Court, therefore, hoped and believed that Parliament under the changed value

system, would consider the glaring anomaly that court-martial do not even write a brief reasoned order in support of their conclusions, even in

cases in which they impose death sentences.

12. The Delhi High Court in R.S. Ghalwat v. Union of India 1981 Crl. 1646 at p. 1655 referred to Burns v. Wilson 1952 346 U.S. 137 to say

that the Federal Courts do not sit to protect the constitutional rights of military Defendants, except to the limited extent indicated below. Their rights

are committed by the constitution and by Congress acting in pursuance thereof to the protection of the Military Courts, with review in some

instances by the President. Nor do we sit to review errors of law committed by military courts. This grant to set up military courts is as distinct as

the grant to set up civil courts. Congress has acted to implement both grants. Each hierarchy of courts it distinct from the other. We have no

supervisory power over the administration of military justice such as we have over civil justice in the federal courts. Due process of law for military

personnel is what Congress has provided for them in the military hierarchy in courts established according to law. If the court is thus established, its

action is not reviewable here. Such military courtÃ¯Â¿Â½s jurisdiction is exclusive but for the exceptions contained in the statute, and the civil courts are

not mentioned in the exceptions. If error is made by the military courts, to which Congress has committed the protection of the rights of military

personnel, that error must be corrected in the military hierarchy of courts provided by Congress. We have but one function, namely, to see that the

military court has jurisdiction, not whether it, has committed error in the exercise of that jurisdiction.

12A. That there was no need to give reasons while pronouncing findings and sentence was laid down as long back as in 1969 by the Supreme

Court in Som Datt Datta Vs. Union of India (UOI) and Others, .

13. Recently, the Supreme Court had occasion to reconsider the question whether at the various stages, the courts-martial and the comfirming

authorities and other superior authorities are required to give reasons in their orders in S.N. Mukherjee Vs. Union of India, . The Court reviewed

the legal position in various countries as to the requirement to furnish reasons in administrative orders and held that the position in India is more

similar to the position in the United States of America rather than in other countries, and that reasons have to be given not only to enable the

aggrieved party to take note of them but to enable an appellate court or a court having powers of judicial review to know the reasons. Of course,

requirement could be dispensed with either expressly or by necessary implication.

13A. The court then considered the provisions of the Act and rules, which have a bearing on the requirement to record reasons for the findings and

sentence of the court-martial. Their Lordships referred to the provisions of Section 108 of the Act dealing with the four types of court-martial and

to the procedure before the court-martial as envisaged by Sections 128 to 152 of the Act. Section 129 of the Act refers to benefit of the guidance

and advice of the Judge-Advocate while Section 131 provides for the decision of the majority of the court-martial to prevail. If there is equality of

votes, the accused is to be acquitted. In the case of sentence of death, a two-thirds majority is required if it is a General Court-martial. The

concurrence of all the members is necessary if it is Summary General Court-martial imposing death sentence. With regard to the procedure at the

trial before the General and District Court-martial further provisions are made in Rules 37 to 105 of the rules. In Rule 60 it is provided that the

Judge-Advocate (if any) shall sum up in open court the evidence and advise the court upon the law relating to the case and that after the summing

up of the Judge-Advocate no other address shall be allowed. Rule 61 prescribes that the court shall deliberate on its findings in closed court in the

presence of the judge-advocate and the opinion of each member of the court as to the findings shall be given by word of mouth on each charge

separately. Rule 62 prescribes the form, record and announcement of finding and in Sub-rule (1) it is provided that the finding on every charge

upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded simply as a finding of ''guilty'' or of

''not guilty''. Sub-rule (10) of Rule 62 lays down that the finding on charge shall be announced forthwith in open court at subject to confirmation.

Rule 64 lays down that in cases where the finding on any charge is guilty, the court, before deliberating on its sentence, shall, whenever possible

take evidence in the matters specified in Sub-rule (1) and thereafter the accused has a right to address the court thereon and in mitigation of

punishment. Rule 65 makes provision for sentence and provides that the court shall award a single sentence in respect of all the offences of which

the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge and in respect of which it

can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given. Rule 66 makes

provisions for recommendation to mercy and Sub-rule (1) thereof prescribes that if the court makes a recommendation to mercy, it shall give its

reasons for its recommendation. Sub-rule (1) of Rule 67 lays down that the sentence together with any recommendation to mercy and the reasons

for any such recommendation will be announced forthwith in open court. The powers and duties of judge-advocate are prescribed in Rule 105

which, among other things, lays down that at the conclusion of the case he shall sum up the evidence and give his opinion upon the legal bearing of

the case before the court, proceeds to deliberate upon its finding and the court, in following the opinion of the judge-advocate on a legal point, may

record that it has decided in consequence of the opinion. The said rule also prescribes that the judge-advocate has, equally with the presiding

officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or

incapacity to examine or cross-examine witnesses or otherwise and may, for that purpose, with the permission of the court, call witnesses and put

questions to witnesses, which appear to him necessary or desirable to elicit the truth. It is further laid down that in fulfilling his duties, the judge-

advocate must be careful to maintain an entirely impartial position.

14. The above judgment of the Supreme Court in S.N. Mukherjee Vs. Union of India, can be divided into three parts, firstly in relation to the

findings and sentence of the court-martial, secondly in relation to the confirmation of the findings and the sentence and thirdly in relation to disposal

of the positions to higher authorities u/s 164. Question is whether at any of these stages, reasoned orders are to be passed.

14A. Adverting to the first stage of pronouncing the findings and the sentence, the Supreme Court observed (P. 1998).

From the provisions referred to above, it is evident that the Judge-advocate plays an important role during the course of trial at a general court-

martial and he is enjoined to maintain an impartial position. The court-martial records its findings after the judge-advocate has summed up the

evidence and has given his opinion upon the legal bearing of the case. The members of the court have to express their opinion as to the finding by

word of mouth on each charge separately, and the finding on each charge is to be recorded. ""simply as a finding of ''guilty'' or of ''not guilty''. It is

also required that the sentence should be announced forthwith in open court. Moreover Rule 66(1) requires reasons to be recorded for its

recommendation in cases where the court makes a recommendation to mercy.

Emphasising that there is no need to give reasons at the first stage of pronouncing the findings and sentence, the Supreme Court observed:

There is no such requirement in other provisions relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no

such requirement in other provisions relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no such

requirement because if such a requirement was there it would not have been necessary to make a specific provision for recording of reasons for the

recommendation to mercy. The said provisions thus negative a requirement to give reasons for its finding and sentence by the court-martial and

reasons are required to be recorded only in cases where the court-martial makes a recommendation to mercy.

(emphasis supplied)

15. Coming nextly to the stage of confirmation of the findings and sentence of a court-martial, the Supreme Court referred to the provisions of

Sections 153, 158, 160 and 162 and Rules 69 to 71, and observed that these provisions showed that confirmation of the findings and sentence of

the court-martial was necessary before the said finding or sentence became operative. In other words, the confirmation of the findings and sentence

was an integral part of the proceedings of a court-martial and before the findings and sentence of a court-martial were confirmed, the same were

examined by the deputy or assistant judge-advocate general of the command which is intended as a check on the legality and propriety of the

proceedings as well as the findings and sentence of the court reartial. Inasmuch as Section 162 provides for recording of reasons based on merits

of the case in relation to the proceedings of the summary court-martial in cases where the said proceedings are set aside or the sentence is

reduced, it must be held that no other requirement for recording of reasons is laid down either in the Act or in the rules in respect of proceedings

for confirmation. The Supreme Court concluded as follows:

... it must be held that the confirming authority is not required to record reasons while confirming the findings and sentence of the court-martial.

16. As to the third stage of the petitions to the higher authorities, the Supreme Court referred to the provisions of Section 164 under which

petitions could be presented to the Central Government, the Chief of the Army Staff, or any prescribed officer superior in command to the one

who confirmed such finding on sentence, and the Central Government, the Chief of the Army Staff or other office, as the case may be, may pass

such orders thereon as it or he thinks fit. The Supreme Court then posed the question whether reasons were to be recorded in the post-

confirmation proceedings, and observed that there was no such requirement. The Supreme Court then stated as follows:

...There is nothing in the language of Sub-section (2) of Section 164 which may lend support to such an intention. Nor is there anything in the

nature of post-confirmation proceedings which may require recording of reasons for an order passed on the post-confirmation petition even though

reasons are not required to be recorded at the stage of recording of findings and sentence by a court-martial and at the stage of confirmation of the

findings and sentence of the court martial by the confirming authority.... Since reasons are not required to be recorded at the first two stages

referred to above, the said requirement cannot, in our opinion, be insisted upon at the stage of consideration of post-confirmation petition u/s

164(2) of the Act.

17. Point (c).- The next point is whether the proportionality of the punishment can be gone into under Article 226 of the Constitution of India and

whether the dismissal and imprisonment imposed in this case can be said to be wholly disproportionate to the gravity of the offence proved.

18. Proportionality is now considered as one of the factors which can be considered under the power of judicial review. This aspect has been

brought into the forefront by the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service 1984 (3) W.L.R. 1174 (H.L.).

In that case, it was held that judicial review takes in not only the three aspects of "illegality", "irrationality", "procedural impropriety" but also

''proportionality'' of the administrative action taken. Lord Diplock observed in the above case:

...Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come

about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The

first ground I would call ''illegality'', the second ''irrationality'' and the third ''procedural impropriety''. That is not to say that further development on

a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of

''proportionality'' which is recognised in the administrative law of several of our fellow members of the European Economic Community.

Our Supreme Court had also observed in one of the earlier cases Bhagat Ram Vs. State of Himachal Pradesh and Others, as follows:

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the

gravity of the misconduct would be violative of Article 14 of the Constitution.

The above said two cases were relied upon in Renjit Thakur v. Union of India AIR 1984 S.C. 2386 while dealing with the quantum of punishment

imposed upon an Army Officer. It was held that the sentence of imprisonment and dismissal imposed u/s 41 of the Army Act for the offence of

disobedience of lawful command of a superior officer was, on the peculiar facts of the case wholly disproportionate. There the allegation was that

the officer refused to take food while serving sentence. In that context, Venkatachalaiah, J. observed.

Judicial review generally speaking, is not directed against a decision, but is directed against the decision making process. The question of the

choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the outcome has to suit the offence and the

offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in

itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect

which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of

logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of Judicial review.

19. There are several other cases decided by the Supreme Court in regard to quantum of punishment in disciplinary matters. Though in Vidya

Parkash Vs. Union of India (UOI) and Others, , a case under Army Act, the Court refused to interfere with the sentence of forty days''

imprisonment together with dismissal from service, for absenting from service without leave on four occasions, on the ground that the punishment

was not disproportionate to the gravity of the offence, there are other cases, wherein, the court, in exercise of its power under Article 136 of the

Constitution, reduced the punishment. In Hussaini Vs. Hon. Chief Justice of High Court of Judicature at Allahabad and Others, , the employee was

a poor sweeper and the dismissal was converted to one of compulsory retirement. Again in Shankar Dass Vs. Union of India (UOI) and Another,

, the dismissal having been based only on conviction in a criminal case, the Supreme Court reinstated the employee with backwages, describing the

punishment as ""whimsical". In Vijay Bahadur Singh v. Union of India 1988 (2) S.L.R. 147 S.C., the punishment of dismissal was converted to one

of compulsory retirement. In A.V. Mdhal v. Senior Supdt., Post Offices 1991 (1) S.L.R. 764 S.C., the punishment of removal was converted as

compulsory retirement. In V.R. Katarki Vs. State of Karnataka and others, , the Supreme Court again converted dismissal into compulsory

retirement observing that ordinarily, justification for the quantum of punishment imposed in a disciplinary action is not for the court to decide. The

court went on to observe that:

...this Court (i.e, Supreme Court) has taken interference by the High Courts on quantum of punishment as an act of excess of jurisdiction.

Their Lordships stated that they were cognizant of that fact but said, on facts of the case before them, keeping the residue of the charges in view,

they were inclined to hold that dismissal of the Appellant in that case from service was not ""out of proportion"". It was converted into compulsory

retirement to meet the ends of justice.

20. Obviously, their Lordships in the last mentioned case were having in mind the decision of the court in Union of India (UOI) Vs. Parma Nanda,

In that case, the appeal to the Supreme Court was from the judgment of the Central Administrative Tribunal which had converted an order of

dismissal into one of stoppage of five increments on the ground that three other officers who were also jointly involved in the incident were let off

by the authorities with the minor punishment of stoppage of increments. Jagannatha Shetty, J., who spoke for the Court, posed the question:

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 scope of judicial review in the pre-tribunal period was then considered and after stating that the Tribunal, on transfer of cases to it from the

civil courts or High Courts was bound to exercise only the powers of the Court from which the cases were transferred to it, the Court observed

that the High Courts had no power to substitute a lesser punishment for the one awarded by the disciplinary authority. Reference in this behalf, was

made to State of Orissa Vs. Bidyabhushan Mohapatra, to say that the punishment awarded cannot be interfered with even if the findings on some

charges are set aside and the High Court had no jurisdiction to direct the Governor to review the penalty. The punishment could be supported by

the findings on the other charges. The Court referred to State of Orissa Vs. Bidyabhushan Mohapatra, and Zora Singh, which are non-service

cases-wherein the decision of an administrative authority was held not vitiated merely because some of the reasons are found irrelevant. State of

Orissa Vs. Bidyabhushan Mohapatra, was followed in Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, , State of U.P.

v. O.P. Gupta 1970 S.C. 679 and The Kannan Devan Hills Produce Vs. The State of Kerala and Another, . In all these cases also, it was held

that the fact that findings on some charges are set aside, is not a ground for interfering with the quantum of punishment. After stating that the

Tribunal has ""no discretion"" to interfere with the penalty, the Supreme Court also pointed out that, even in regard to the findings on the charges, the

Tribunal cannot interfere unless they are arbitrary or utterly perverse. It was stated also that ""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 proved misconduct,

the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of the penalty unless it is mala fide, is certainly not

a matter for the Tribunal to concern with''. The Supreme Court then distinguished Bhagat Ram Vs. State of Himachal Pradesh and Others, and

said that case was

No authority for the proposition that the High Court or the Tribunal has jurisdiction to impose any punishment to meet the ends of justice.

(emphasis supplied)

It was finally observed, referring to that case:

It may be noted that this Court exercises the equitable jurisdiction under Article 136 and the High Court or Tribunal has no such power or

jurisdiction.

However, one exception was carved out, namely, where the punishment was based on conviction in a criminal case and the conviction is later set

aside. In such cases, the Tribunal may remit the matter to the disciplinary authority. That was what was done in Union of India and Another Vs.

Tulsiram Patel and Others,

21. From the aforesaid judgment of the Supreme Court in Union of India (UOI) Vs. Parma Nanda, it is clear that even in ordinary cases of

punishment of civil servants, it has been held that this Court cannot interfere with the quantum of punishment awarded by the disciplinary authority

unless the punishment awarded is proved to be mala fide or where the punishment is based on a conviction in a criminal case and where the

conviction is set aside and in the latter case, the matter have to be remitted to the Tribunal. On the facts of the case before us, no mala fides has

been established.

22. For the aforesaid reasons, we are unable to go into the proportionality of the punishment. Even otherwise, this being a case under the Army

Act where strict discipline is imposed, we do not think that, in the absence of proof of mala fides, there are any merits in the submission.

The Appeal accordingly fails and is dismissed.