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Arun Kumar Basu Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: Oct. 12, 2004

Acts Referred: Constitution of India, 1950 â€" Article 14, 311

Citation: (2005) 1 CALLT 549 : (2005) 104 FLR 667 : (2005) 2 LLJ 364

Hon'ble Judges: Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench: Division Bench

Advocate: K.K. Moitra, P.K. Samanta, K.K. Maiti and Prasanta Bishal, for the Appellant;Arunava Ghosh, S. Sil and R. Basu, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.
I have the privilege of going through the judgment and order of brother Sinha, J. I fully agree with the same. However, I

would like to add a few words of mine.

1.1. The order of dismissal of the petitioner/appellant from service was set aside by an order dated 28th April 1995 passed in CO No. 1888(W)

of 1993 with direction upon the disciplinary authority to consider the representation of the appellant/petitioner against the enquiry report and to

pass an appropriate order. The representation having been rejected by the disciplinary authority after such consideration, another writ petition

challenging the merit of the decision of the disciplinary authority and that of the appellate authority. This appeal is directed against the order dated

11th of April 2002 passed by the learned single Judge in CO No. 18735(W) of 1996 dismissing the said writ petition.

Appellant"s submission;

2. Mr. Moitra, learned counsel for the appellant, submits that the learned single Judge had failed to note the infirmities in the enquiry report and

ought to have quashed the enquiry report itself. He had made his submission on various grounds. The charge-sheet was issued against the

petitioner requiring him to show cause on the following charges viz. unauthorized absence for more than seven consecutive days from 20th of April

1991 without furnishing medical certificate from a panel doctor along with the petitioner"s leave application and wilful absence and insubordination

by absenting from duty since 20th of April 2001 despite repeated advice from time to time which amounts to maligning or feigning illness as per

Clause 20.03.34 of the HMT Disciplinary and Appeal Rules. According to Mr. Moitra, the Rules permit treatment in case of necessity or

emergency by doctors outside the panel. There is no bar in getting oneself treated by doctors other than the panel doctors.

2.1. The first ground of challenge was that the entire action and exercise of power by the respondents commencing from dealing with the

petitioner"s leave application supported by the medical certificate issued by a non-panel doctor; initiation of the disciplinary proceedings; conduct

of the enquiry proceedings and the enquiry report made thereon as well as the order of dismissal passed by the disciplinary authority and the order

of dismissal of the appeal were passed on the superseded Leave Rules vide Office Order No. 1/85 dated 2nd April 1985, which requires the

employees to avail of medical treatment from any panel doctor or specialist. The amended Leave Rule vide Office Order No. 45/88 dated 28th of

January 1989, which superseded the aforesaid Leave Rule was not taken into consideration by the respondent authorities under which it is not

mandatory to apply for sick leave supported by medical certificate issued by the panel doctor.

2.2. The second ground was that the principle of proportionately has been completely ignored by the authorities concerned for imposing the major

penalty of dismissal from service on the plea of unauthorized absence for more than seven days. It is contended by Mr. Moitra that the learned

single Judge did not deal with the said aspect though the same was agitated in the writ petition and urged at the time of hearing.

2.3. Mr. Moitra had argued the matter elaborately and relied upon various decisions cited by him at the Bar. He relied on Bachhittar Singh v. State

of Punjab and Anr. AIR 1973 SC 395 to contend that the departmental enquiry has two stages and both these stages are justiciable; therefore, the

learned single Judge ought to have examined the contention raised before him and should have come to a definite conclusion with regard to the

findings in the report. Relying on Om Kumar and Ors. v. Union of India AIR 2000 SC 3689 , he had contended that the Court has power to

judicial review an administrative action including quantum of punishment related only to Wednesbury"s principle, i.e., the order passed on irrelevant

factors or decision was one, which no reasonable person could have taken. He attempted to point out on facts that this particular case comes

within the scope of the said principle; inasmuch as the authority had proceeded on the basis of a superseded leave rule. In order to support the

contention that administrative action is subject to control by judicial review on the ground of illegality, irrationality (Wednesbury"s

Unreasonableness) and procedural impropriety, he relied upon Tata Cellular Vs. Union of India,

2.4. In order to support his contention that the punishment was disproportionate and disproportionate penalty is violative of Article 14, he relied on

Bhagat Ram Vs. State of Himachal Pradesh and Others, . Citing Inspecting Assistant Commissioner Bombay and Ors. v. Sharat Narayan Parab

(1988) 1 SCC 484 , he contended that the punishment shocking to conscience warrants intervention by Court. Relying on B.C. Chaturvedi Vs.

Union of India and others, and UP. U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, , he submitted

that the High Court can impose appropriate punishment without directing the authority to reconsider the punishment. He then relied upon Ranjit

Thakur Vs. Union of India (UOI) and Others, , to contend that the punishment disproportionate to the offence and shocking to conscience

amounts to conclusive evidence of bias. To establish that the punishment is disproportionate, he relied upon Hind Construction and Engineering

Co. Ltd. Vs. Their Workmen, wherein an order of dismissal on the ground of absenteeism was held to be an extreme punishment. Relying upon

the decision in Union of India and another Vs. G. Ganayutham (Dead) by LRs., , he contended that fundamental freedom is affected in the case of

disproportionate punishment.

2.5. He then contended that certificate issued by a non-panel doctor cannot be refused in the absence of any material that the plea of illness is false

relying upon Gouranga Acharjee v. Third Industrial Tribunal, West Bengal and Ors., 2001 (1) CHN 663. The dismissal of the appeal was without

any application of mind, which is abhorred by the Apex Court in R.P. Bhatt Vs. Union of India and Ors (UOI) ., wherein it was held that the

appellate authority must apply its mind to all the requirements of the rule. Relying on Mantu Biswas v. Union of India and Ors. ART 1988. (2)

CAT 17 (Calcutta Bench), he contended that a cryptic order of the appellate authority without application of mind is liable to be quashed.

Submission on behalf of the respondent:

3. The learned counsel for the respondent had relied on the decisions in Union of India v. Upendra Singh, JT 1994 (1) 658; State of Tamil Nadu

Vs. Thiru K.V. Perumal and others, and R.S. Saini Vs. State of Punjab and Others, in order to support his contention that the judicial review

cannot be extended to the examination of the correctness of the charges or reasonableness of the decision. Judicial review is not an appeal from a

decision but a review of the manner in which the decision is made (Union of India v. Upendra Singh JT 1994 (1) 658). To support his contention

that the question as to whether the charges were established by material available was held to be beyond the scope of judicial review as the

administrative Tribunal is not an appellate authority over the departmental authorities (State of Tamil Nadu Vs. Thiru K.V. Perumal and others, To

support his contention that the High Court while exercising writ jurisdiction does not reverse a finding of an enquiry authority on the ground that the

evidence adduced before it is insufficient; if there is some evidence to reasonably support the conclusions of the requiring authority, it is not the

function of the Court to review evidence and to arrive at its own independent finding; the enquiring authority is the sole Judge of the fact so long as

there is some legal evidence to substantiate its findings; adequacy or reliability of evidence is not a matter which can be permitted to be canvassed

before the Court in writ proceedings, he relied on the decision in R.S. Saini Vs. State of Punjab and Others, . Relying on these decisions, he

contended further that the scope of judicial review in matters of disciplinary proceedings being restricted, the High Court can consider the challenge

to the impugned order within a limited degree of scrutiny. The Supreme Court in T.S. Saini (supra) considered the matter within the limited scope

in order to find out the correctness of the appellant''s allegation that the impugned order of disciplinary authority suffered from vice of perversity

and non-application of mind and was tainted by malice. Report of the enquiring authority cannot be faulted except on grounds other than those.

The scope of the present case:

4. We have heard the respective counsel for the parties and gone through the material placed before us and had considered the erudite arguments

made by Mr. Moitra and have also perused the judgment of the learned single Judge. A great stress was given by Mr. Moitra on the supercession

of the Leave Rules and the ingenuinity of the charges levelled and on the mala fide and non-application of mind and the haste in which the order of

dismissal was issued on the facts which are stinking. We agree with the principle of law as propounded by Mr. Moitra relying on the various

decisions cited by him and as discussed hereinabove while noting the submission of Mr. Moitra. These are correct proposition of law. At the same

time, we also agree that the principles of law propounded by the learned counsel for the respondent are equally settled principles of law. The

question before us is as to what extent these principles of law propounded by the respective counsel can be applied in the facts and circumstances

of the case.

The context of the case:

5. Before we proceed further, we must appreciate the context in which we would be dealing with this case. Admittedly, a charge-sheet was issued

and an enquiry was held in which the appellant/petitioner having been found guilty was dismissed from service and the appeal thereout was also

dismissed. The learned single Judge had declined to set aside the order of dismissal on the ground that on facts there was no infirmity in the order

of dismissal.

5.1. The appellant got himself treated on account of his illness at Bangalore. Admittedly, in an emergent situation it may not be possible to get

oneself examined by the panel doctor of the employer. But when he applied for leave on the ground of his illness, he was intimated by the employer

that he was not examined by a panel doctor. It was open to him get himself examined by a panel doctor immediately and obtain a reference from

the panel doctor for being outside. Nothing prevented him from submitting to a panel doctor. The learned single Judge has also found that the

complained of chest pain for the last six months and was not hospitalised. At the same time, he offered to join his transferred post with certain

conditions. He did not joint the transferred post quite for a long time. In these circumstances, he was found to be feigning illness by the fact-findings

authority. It was also found by the fact-finding authority that he was ignoring the orders of his superiors to join his transferred post. May be these

are finding of fact which are not in dispute.

5.2. Unless the Court found these facts to be perverse or based on no material or that there was any mala fide in the whole process, the writ Court

cannot interfere with the finding of fact arrived at by the disciplinary authority. The jurisdiction of the writ Court is circumscribed within the

principles enunciated in the decisions cited by Mr. Ghosh referred to in paragraph 3 hereinbefore, in order to avoid complexity, we may not repeat

the same herein. We may, however, summarise the principles enunciated in the said decisions referred to in paragraph 3 hereinbefore. The judicial

review, of the decision of the disciplinary authority and as affirmed by the appellate authority being a concluded finding of fact, by a writ Court

cannot be extended to the examination of the correctness of the charges or reasonableness of the decision. Judicial review is not an appeal from a

decision but a review of the manner in which the decision is made. Whether the charges were established by material available is beyond the scope

of judicial review since it is not an appellate authority over the departmental authorities. The High Court while exercising writ jurisdiction does not

reverse a finding of an enquiring authority on the ground that the evidence adduced before it was insufficient. If there was some evidence to

reasonably support the conclusions of the enquiring authority, it is not the function of the Court to review evidence and to arrive at its own

independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate its findings.

Adequacy or reliability of evidence is not a mater, which could be permitted to be canvassed before a Court in writ proceedings. The scope of

judicial review in a matter of disciplinary proceedings being restricted, the High Court can consider the challenge to the impugned order within a

limited degree of scrutiny. However, the writ Court can interfere in cases where the impugned order of the disciplinary authority suffers from vice

of perversity, non-application of mind and is tainted by malice. Report of the enquiring authority cannot be faulted except on grounds other than

those.

In the facts whether interference is called for:

6. Having regard to the facts and circumstances of the case, even if we accept that the authority had proceeded on the basis of a superceded rule,

even then we do not find that the finding could be held to be perverse when on facts it is apparent that the appellant did not join for long six months

without getting himself examined by a panel doctor and requesting the authority to permit him to be treated by a doctor of his choice. The Rule

does not compel a person to be treated by a panel doctor. The appellant had every right to get himself treated by a doctor of his choice. But the

examination of the panel doctor was necessary only for the purpose of enabling him to obtain the leave. Even without being got himself treated by a

panel doctor, he could have got himself examined by a panel doctor for the purpose of obtaining leave. Under the Rules, it was equally open to ask

for reference to a specialist by the panel doctor. The Rule never required that a person must be treated by a panel doctor. It required only that he

should get himself examined by a panel doctor in order to obtain the benefit of leave of the company under the Rules. The extent of the Rules was

limited only for that purpose. In these circumstances, the question of superceded rules does not become so important so as to declare the whole

disciplinary proceedings as perverse. Neither it can justify to impugn the disciplinary proceedings as malicious or mala fide.

6.1. Having regard to the facts discussed and the materials available on record to come to a definite finding even on the principle laid down in

Bachhittar Singh (supra), empowering the Court to examine the contention raised before it and to come to a definite conclusion with regard to the

findings in the report, we do not find any material to enable us to take a view different from that concluded by the disciplinary and the appellate

authority.

6.2. We have also considered the question of proportionality of the punishment. Right it is, that in view of the decision in Om Prakash (supra),

Court could go into such question for examining on the ground of illegality, irrationality on the principle of Wednesbury"s unreasonableness and

procedural impropriety as held by Tata Cellular (supra). But in this case, the appellant was holding a very high and responsible post. He

complained of chest pain for over six months without being got himself admitted in any nursing home or any hospital and imposed condition to join

the transferred post and did not join the transferred post over a long period of time ignoring the direction of his superiors. These are sufficiently

grave. At the same time, this situation continued over a long period of time. Over and above he did not get himself examined by the panel doctor.

Therefore, we do not think that the principle of Wednesbury"s unreasonableness could be applied in this case and that the punishment inflicted

could be held to be disproportionate having regard to the gravity of the situation and the conduct of the appellant in the given circumstances as are

evident from the facts and the materials disclosed before us.

6.3. As held in Bhagat Ram (supra) the disproportionate penalty is violative of Article 14 and that the punishment shocking to conscience warrants

intervention as was held in Sharat Narayan Parab (supra) and that the High Court can impose appropriate punishment without directing the

authority to re-consider the punishment as laid down in Mahesh Kumar Mishra (supra) and a punishment disproportionate to the offence and

shocking to conscience amounts to conclusive evidence of bias as held in Ranjit Thakur (supra) and that a punishment of dismissal on the ground of

absenteeism is an extreme punishment propounded in M/s. Hind Construction & Engineering Co Ltd. (supra) and such punishment affects the

fundamental freedom by reason of disproportionate punishment enunciated in Gouranga Acharjee (supra) are settled proposition of law, which are

supposed to be attracted in a given situation. These principles cannot be applied in a straightjacket formula. Application of these principles is

dependent on the given facts. In case the facts revealed are such that the punishment inflicted, though severe, yet until it is shocking to conscience

on account of being so disproportionate that no reasonable man can take such a decision on the basis of the materials available, the principles

cannot be applied. In the present case, as we have already from, even though the punishment may be on the verge of little stringent, but having

regard to the situation as discussed above, we do not think that the punishment is so disproportionate to shock the conscience in order to attract

the above principles.

6.4. Whether the illness was false or not is a finding of fact. After having gone through the materials placed before us, it does not appear that the

examination by a non-panel doctor was the only ground on which the conclusion was arrived at. The disciplinary authority had also taken into

account the fact that the appellant had been complaining a chest pain over a period of long six months without having got himself admitted in any

nursing home or in any hospital and that he had been avoiding joining his transferred post ignoring instruction given to him by his superior authority,

though he was holding a very high responsible post and had imposed conditions for joining the transferred post, were additional facts apart from

examination by non-panel doctor, and as such the finding cannot be said to be without any application of mind as held in R.P. Bhat (supra) or that

it could not be so held in the absence of any material as was held in Gouranga Acharjee (supra) in view of the above finding. Nor we could hold

that the order of the appellate authority was cryptic and without application of mind as was held in Mintu Biswas (supra) since it is apparent that

the appellate authority though have not given detailed reasons, but from the text of the order, it appears that it had applied its mind.

Order:

7. In these circumstances, I am in agreement with the decision taken by my learned brother Sinha, J. The appeal, therefore, stands dismissed.

7.1. There will, however, be no order as to costs.

Xerox certified copy of this judgment be made available to the parties, if applied for, on usual undertaking.

R.N. Sinha, J.--The writ petitioner/appellant in the writ petition challenged his dismissal and consequent confirmation of the same by the appellate

authority by its order dated 7th March 1996 before the learned single Judge. The petitioner/appellant suffered a judgment of dismissal of the writ

petition leading to filing of this appeal.

Facts:

9. The facts and circumstances leading to initiation of a disciplinary proceeding and its resultant effect as has been stated earlier arose out of the

grounds stated herein below:

10. The appellant is stated to have fallen ill while at Bangalore as early as on 20th April 1991 and after initial treatment there came back to

Calcutta and sought leave up to 1.6.1991. Then again from 3rd June 1991 to 20.7.1991 he sought earned leave. Thereafter goes on praying

earned leave from 22.7.1991 to 7th September 1991 and 9 September to 14 October 1991.

11. The aforesaid leave applications were not entertained as the medical certificates were issued by non-panel doctor as provided under the rules

of the respondent Hindustan Machine Tools (hereinafter referred as the respondent in short).

12. In the meanwhile, on 11.5.1991 petitioner was transferred and asked to report at Ranchi office. Admittedly he happened to be the Deputy

General Manager in rank, i.e., quite a senior position in the hierarchy on the respondent organisation.

13. Though the said transfer order was served on the appellant on and from 21.5.1991 he entered into a series of correspondences with the

authorities and eventually on 14 November 1991 set a condition precedent stating that unless leave salary was settled it was not possible for him to

go to Ranchi.

14. Thereafter, on 19.11.1991 charge-sheet was issued on the ground of misconduct under the provisions of misconduct, discipline and appeal

rules of the respondent Company and he was called upon to explain the same within seven days. Article of charges contained in pages 163 to 165

goes to show that the charges were as under:

a) absence without leave for more than seven consecutive days without sufficient grounds or proper satisfactory explanation,

b) wilful insubordination,

c) malingering or feigning sickness which are misconduct as per Clauses 23.1.2, 23.1.7 and 23.1.34 of HMT conduct, discipline and appeals rules.

15. The Enquiring Officer submitted his initial reports and findings wherein the appellant was found guilty of all the charges levelled against him and

the Company dismissed his services with immediate effect.

16. On appeal the appellant authority confirmed the punishment vide their order dated 7th March 1996.

17. The aforesaid order of the appellate authority dated 7th March was challenged by way of a writ petition No. 18735 of 1996 which was

disposed of by the learned single Judge vide order dated 11.4.02 dismissing the said writ petition on the grounds amongst others that the petitioner

is stated to have been suffering from chest pain for about six months without any hospitalisation. And in any event when the writ petitioner was

asked to join his transfer place of posting being a top official of the Company he should not have attached any precondition and should have joined

the said post without imposing any condition. This was a serious misconduct as has been found by both the Disciplinary Authority as well as the

Appellate Authority and the learned Judge did not find any reason to interfere with the decision of the said authorities. As against the aforesaid

order of dismissal this appeal was filed on the grounds among others that:

i) important and decisive bearings in the case have not been taken into consideration.

ii) The factum of referring the petitioner by the doctor in the panel of the company to a non-penal physician for treatment did not receive the

attention and consideration in passing the impugned judgment and order and

iii) the office order No. 1/85 dated 2nd April 1985 relating to sick leave was superseded by the office order No. 45/88 dated 28.1.1989 which

does not contain any mandatory provision requiring a sick employee to avail of medical treatment from a doctor in the panel of the company.

iv) Clause 4A of the Amended Leave Rules enables the employees of the company to proceed on leave in case of emergency when prior sanction

cannot be obtained imposing upon him two obligations which having been fulfilled by the petitioner. Thus, his proceeding on leave could not have

been termed to be unauthorised.

v) That withholding the salary and allowances in the month of May 1991 was absolutely illegal and highly improper despite the

petitioner/appellant''s appearance before the penal of Chief Medical Officer on 23.10.1992. Amended leave rules support the action of the writ

petitioner/appellant.

18. Mr. Moitra learned senior counsel has submitted in his arguments in broad these three lines:

1) the proceeding was undertaken and punishment was inflicted on the basis of the repealed rule.

2) Punishment is disproportionate.

3) Article 311 has two parts, both the parts are quasi-judicial. Article 14 will apply in both the stages.

19. Sri Moitra in support of the aforesaid contention has cited quite a number of decisions which we shall proceed to discuss later on.

20. Sri Arunava Ghosh learned senior advocate ably assisted by Sri Sil argued that in a disciplinary proceeding the scope of judicial review is very

limited, which has already become a settled law keeping in view of a large number of decisions of the Hon''ble Apex Court and that of different

High Courts. According to Sri Ghosh the judicial review cannot extend to the examination of the correctness of the charges or reasonableness of a

decision because judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. He has cited the

reported decision in Union of India (UOI) and Others Vs. Upendra Singh,

21. Sri Ghosh has also urged that in respect of service laws and the departmental inquiry the scope of judicial review is to the extent of the question

as to whether charges were established on the material available, is beyond the scope of judicial review as the administrative tribunal etc. is not an

appellate authority over the departmental authorities and reliance has been placed in State of Tamil Nadu Vs. Thiru K.V. Perumal and others,

22. Sri Ghosh goes on urging that it was held in a reported decision R.S. Saini Vs. State of Punjab and Others, wherein it was held amongst others

that in respect of service law - departmental inquiry -judicial review - there is limited scope, if there is some evidence to reasonably support the

finding of inquiring authority, the Court in exercise of its writ jurisdiction would not reverse the finding on the ground of insufficiency of evidence

unless it does suffer from any other infirmities, only a limited degree of scrutiny is called for in such a case.

23. After hearing the respective arguments of both the sides the question is to be decided as to whether the impugned judgment of the learned

single Judge can be sustained.

24. Mr. Moitra learned senior counsel in support of his contention regarding the rules has argued that administrative action is subject to control by

judicial review on the grounds of illegality, irrationality (Wednesbury unreasonableness) and procedural impropriety and cited the reported decision

in Tata Cellular Vs. Union of India,

25. Mr. Moitra learned senior counsel goes on urging that even in the case of issuance of certificate by a non-panel doctor cannot be refused in the

absence of any material that the plea of illness is flase and has relied on the reported decision in 2001(1) CHN 663) (Gouranga Acharya v. Third

Industrial Tribunal West Bengal and Ors.). But this case does not help Sri Moitra as in that case, the panel doctor was ill at the relevant time and

incumbents, past absence were taken into account. But in this instant case there is no such extraneous consideration taken into account either by

the Enquiring Officer or by the appellate authority. Thus, this argument does not have any legs to stand.

26. Furthermore, the argument of Sri Moitra, learned senior counsel, is that the appellate authority must apply its mind to all the requirements of the

rule and here in this instant case, according to him, the Rules of 1989 has not been strictly adhered to and reliance was placed on the reported

decision in R.P. Bhatt Vs. Union of India and Ors (UOI) .,

27. Sri Moitra has urged that para 4(a) of the Leave Procedure has undergone changes from the earlier one which is reproduced below:

leave must be applied for and sanctioned before it is availed of. However, in case of an emergency, if prior sanction cannot be obtained, an

intimation in writing must be sent to the sanctioning authority immediately and sanction must be obtained on resuming duty"".

28. It has been urged that after his initial ailment at Bangalore on 17.4.91 after taking treatment came down to Calcutta and on 19.4.91 informed

the General Manager at Calcutta about his sickness. Thus, there is sufficient compliance. But we are not oblivious about the ''Leave Procedure'' in

para 4 of the Leave and Encashment Rules which came into force on 1.2.89 wherein 4(c) provides:

leave availed of without sanction will be treated as unauthorized absence and it will attract disciplinary proceedings in accordance with the CDA

Rules of the Company or the Certified Standing Orders as the case maybe"".

29. Thus, the support as has been sought by the learned senior counsel Sri Moitra on behalf of the appellant that the amended rules support his

client is of no avail as we cannot be oblivious to the aforesaid contents of 4(c).

30. There is no reason to agree with the proposition as has been advanced on behalf of the appellant that the entire proceeding preceded on the

old repealed rules as the correspondences in between the parties go to show that both the parties acted as per the new rules and the entire

proceedings proceeded accordingly.

31. Sri Moitra has relied on a reported decision Ranjit Thakur Vs. Union of India (UOI) and Others, wherein he has drawn the attention that:

the judicial review, generally speaking, is not directed against a decision but is directed against the decision making process.

32. The fact of this case does not help Sri Moitra as it appears that the case is one of a trial in the Court marshal which was vitiated by procedural

wrangle as the officer whose command is supposed to have violated by the incumbent was amongst the Court and dominated the proceeding in the

said Court marshal and it was not inquired initially at the outset as to whether the incumbent wanted to be tried by the aforesaid officer.

33. Sri Moitra has further urged on the grounds of the principles of "Wednesbury" which mean that irrationality and unreasonableness in the

procedure and findings. In the case of Tata Cellular v. Union of India (supra) it was held amongst others that:

Judicial quest in administrative matter has been to find right balance between the administrative discretion to decide matter whether contractual or

political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy and unfairness. Such an unfairness is set

right by judicial review. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary

manifestations. One is the ambit of Judicial intervention; the other covers the scope of the Court"s ability to quash an administrative decision on its

merits. These restraints bear the hallmarks of judicial control over administrative action. Judicial review is concerned with reviewing not the merits

of the decision in support of which the application for judicial review is made, but the decision making process itself.

34. The duty of the Court is to confine itself to the question of legality. Its concern should be:

1. whether a decision-making authority exceeded its powers?

2. committed an error of law;

3. committed a breach of the rules of natural justice;

4. reached a decision which no reasonable tribunal would have reached; or

5. abused its powers.

35. The other grounds taken by Sri Moitra learned senior counsel that cryptic order of the appellate authority without application of mind is liable

to be quashed and has relied on the reported decision in ATR 1988 (2) CAT 17 (Calcutta Bench) (Mania Biswas v. Union of India and Ors.).

36. Sri Moitra has placed reliance and argued that in the sphere of judicial review of administrative action including quantum of punishment limited

only to Wednesbury principle i.e. order based on irrelevant factors or decision was one which no reasonable person could have taken and reliance

was placed on AIR 2000 SC 3689) (Om Kumar and Ors. v. Union of India).

37. Sri Moitra has also argued that the penalty of dismissal is quite disproportionate to the charges even if taken for granted but without admitting

the same that there was such clause would be violative of Article 14 and reliance was placed in Bhagat Ram Vs. State of Himachal Pradesh and

Others,

38. It has also been argued that the punishment even shocking to conscience warrants interference and reliance placed in 1998 SCC 484

(Inspecting Assistant Commissioner v. S.N. Prasad).

39. Absentism vis-a-vis order of dismissal is an extreme punishment as has been held in Hind Construction and Engineering Co. Ltd. Vs. Their

Workmen,

40. The last of all has been urged that in the event of disproportionate punishment fundamental freedom is affected and reliance has been placed oh

Union of India and another Vs. G. Ganayutham (Dead) by LRs.,

41. Last part of the argument of Mr. Moitra is that the departmental enquiry has two stages and both the stages are judicial as has been held in

Bachhittar Singh Vs. The State of Punjab,

42. And in the last one it has been held that this Court can impose appropriate punishment without directing the authority to reconsider the

punishment and reliance has been placed in support of the contention in B.C. Chaturvedi Vs. Union of India and others,

43. Sri Ghosh learned senior counsel for the respondent has taken us through the inquiry report (pages 195 to 211 of the Paper Book) wherefrom

we find that maximum latitude given to the incumbent appellant/petitioner for a fair inquiry. Event the Chief Medical Officer was called from

Bangalore for cross-examination, but not availed of by the incumbent who in his term did not produce the doctors whose certificate he filed in

support of leave application despite opportunity given to him.

44. Copy of the inquiry report was made available to the incumbent on 23.1.1991. On the basis of the same a representation was filed on

9.5.1995 (pages 219 to 232 of the PB). The entire matter was considered by the disciplinary authority on 23rd June 1995 and dismissal was with

immediate effect (pages 232 to 240 of the PB under Clause 23.4.8) of the CD & A Rules of the Company.

45. The incumbent preferred appeal to the Board of Directors on 23.9.1995 (PB pages 241 to 283). The Board deliberated the same on

20.2.1996 and confirmed the order of dismissal passed by the disciplinary authority (pages 284 to 286 of the PB) and the same was

communicated with a forwarding letter dated 7.3.1996.

46. After going through the entire materials on record we are unable to find that there is any violation of any statutory provision and/or the doctrine

laid down by the Hon''ble Courts and the Apex Court which has already been cited by Sri Moitra in particular in respect of the reported decision

in Bachhittar Singh Vs. The State of Punjab,

47. The departmental inquiry has two stages and both the stages are judicial and as we find that such a norm has all along been maintained in the

entire process undergone by the authorities.

48. The last proposition as has been propounded by Sir Moitra that even if it is so taken for granted about the misconduct on the part of the

incumbent/appellant but the punishment of dismissal is quite disproportionate to the offence and disproportionate punishment/ offence under Article

14 of the Constitution and that the order of dismissal is an extreme one. Thus, the Court must take it that in view of a conscience shocking

punishment inflicted amounts to conclusive evidence of bias as has been propounded in Ranjit Thakur Vs. Union of India (UOI) and Others,

49. On the plain reading of the aforesaid decision it appears that the aforesaid case related to a summary proceeding before the Court Marshal for

imposing punishment and that the facts of the case is quite different from that of the case in hand.

50. Admittedly, in a case of disciplinary proceedings and its punishment is the domain of the authorities as provided under the Act and Rules but

the Court''s power of review of the same is limited to the extent of scrutinising as to whether justice and fair play have been taken place in respect

of the entire proceeding.

51. In the instant case we do not find that anywhere that there is deviation therefrom. Sense of discipline may vary from institution to institution and

amongst different category of staffs and, of course, nature of the jobs, if any or at all. However, in this instant case the incumbent happens to be a

senior sales functionary in a reputed concern where such officers are supposed to stand as a marker to the staff and employees of the entire

organisation concerned. In short, lenience in inflicting punishment will create a bad precedent and would not augur well in the sphere of industrial

relations. Moreso, since we have gone global and that the competence in respect of marketing and sales of one"s merchandise has become a

competitive one.

52. Thus, we are unable to persuade ourselves to accept the contentions of Mr. Moitra and that the other cited cases which are U.P. State

Transport Co. v. Mahesh Kr. Mishra and Ors., reported in, and other referred cases have no manner of application in this case as we do not think

that the penalty shocks the conscience of the Court as we have already observed above that it is the discipline of the institution that counts and the

policy of the corporate houses in respect of its maintenance of the discipline cannot be interfered with by the Court as we are not supposed to be

sitting in appeal as against the findings of the disciplinary authority and that of the appellate authority which according to us do not suffer from any

infirmities.

53. Summing up, as we are unable to persuade ourselves to accept the contentions of Mr. Moitra and accordingly held that the impugned

judgment of the learned single Judge does not require any interference and the same be confirmed dismissing the appeal.

There will, however, be no order as to costs.