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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 14.08.2024*
Judgment pronounced on: 27.08.2024

\+ **W.P.(C) 1522/2018**

VISHAV BANDHU GUPTA .....Petitioner

Through: Mr. Saqib, Advocate

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra and Mr. Alexander Mathai Paikaday, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

GIRISH KATHPALIA, J.:

1. Where paring knife suffices, battle axe is precluded. The issue before us is as to whether sledgehammer has been used by the State in this case to crack a nut. To be tested by us in this case is proportionality or otherwise of the penalty of dismissal from service imposed by the Disciplinary Authority

on the petitioner for his acts of misconduct.

1.1 The petitioner, through this writ action, has assailed orders dated 16.07.2016 and 09.05.2017 passed by the learned Central Administrative Tribunal, Principal Bench, Delhi, whereby punishment of dismissal from service imposed upon him was upheld and the review application was dismissed.

1.2 On service of advance notice, respondents entered appearance through counsel.

1.3 As reflected from order dated 16.07.2016 impugned before us, learned counsel for petitioner at the outset had submitted before the learned Tribunal that she intended to address only as regards quantum of punishment and had further requested for taking a compassionate view since the petitioner had already superannuated and was seriously ill.

1.4 Before us also, learned counsel for petitioner confined his address to the quantum of punishment, raising no challenge to the legality of the departmental proceedings.

1.5 We heard learned counsel for both sides.

2. The circumstances relevant for present purposes, as pleaded by the

petitioner are as follows.

2.1 In the year 1976, petitioner was appointed as Income Tax Officer, Group A in Junior Time Scale after he successfully qualified the All India Civil Services Examination. Over a period of time, petitioner earned promotions and became Deputy Commissioner of Income Tax, posted at Bombay.

2.2 On account of his ill health and medical treatment at AIIMS, New Delhi, the petitioner was transferred to Delhi at his request on compassionate grounds as Officer on Special Duty till 20.11.1989, after which he was posted as Deputy Commissioner (Exemptions) at Delhi with charge over 74 trusts within his jurisdiction.

2.3 On 24.02.1990, the Hindustan Times published news that one General Secretary of All India Congress Committee had alleged that the Vishwa Hindu Parishad had collected Rs. 700 crores in the name of Ram Janmbhumi Temple. Taking cognizance of the said news item, on 02.03.1990 petitioner issued summons under Section 131 of the Income Tax Act to the said General Secretary as well as persons connected with the Ram Janmbhumi Nyas. That issue got raised in the Parliament of India, after which the petitioner was transferred from New Delhi to Tamil Nadu vide order dated 08.03.1990 and later the Director General of Income Tax (Exemptions) withdrew the said summons issued against the above mentioned persons.

The petitioner also submitted representation before the Hon'ble Finance Minister on 19.03.1990 against his transfer.

2.4 Finding himself unable to work under such situation, petitioner proceeded on leave, after which he was posted as Deputy Commissioner Income Tax, Madras. The petitioner challenged his transfer by way of O.A. No.1025/1990 before the learned Tribunal and the same was disposed of on 01.06.1990 directing the respondents to treat the same as representation/appeal, to be disposed of by 31.08.1990.

2.5 By way of order dated 06.06.1990, the respondents placed the petitioner under suspension and chargesheeted him on 03.07.1990 for misconduct and misbehaviour. However, on 21.10.1991 suspension of the petitioner was revoked and he was posted at Patiala, from where he was transferred back to Delhi in the year 1994 as Deputy Commissioner Income Tax.

2.6 The petitioner received a letter of appreciation on 31.03.1995 from the then Commissioner of Income Tax and also earned promotion as Additional Commissioner of Income Tax with retrospective effect from November, 1994.

2.7 While posted as Additional Commissioner of Income Tax, petitioner received letter dated 07.10.1998 from Assistant Commissioner Income Tax,

calling him upon to furnish the CBI details of various properties belonging to one Romesh Sharma, a henchman of Dawood Ibrahim. On 09.10.1998 petitioner issued summons under Section 131 of the Income Tax Act and also wrote a letter to the Recovery Officer to attach the helicopter of Romesh Sharma so as to ensure that the same was not used by the political parties. The said Romesh Sharma had on 31.12.1997 voluntarily disclosed his assets worth Rs.51,00,000/- under the Voluntary Disclosure Scheme, though the said assets did not belong to him.

2.8 Being a patient of acute angina and depression, the petitioner was finding it difficult to work so he submitted leave application on 12.10.1998, which leave was sanctioned and was extended later.

2.9 By way of order dated 19.06.2000, petitioner was again suspended from service in contemplation of departmental enquiry on the allegations of misconduct unbecoming of a government servant. Memo of Charge dated 25.07.2000 was served on the petitioner, alleging that while posted as Additional Commissioner of Income Tax he remained unauthorisedly absent from duty during the period from 09.11.1998 till the date of suspension (19.06.2000) and performed other acts of insubordination related thereto, reflecting lack of devotion to duty; and further alleging that he gave statements to the press and electronic media irresponsibly without authority and recklessly on sensitive issues even on matters of government policies, constituting acts of indiscipline unacceptable from any government servant.

2.10 On the basis of departmental proceedings, which are not relevant for present purposes (*since the present challenge remains confined to quantum of punishment*), petitioner was dismissed from service on 30.05.2003 in pursuance of Advice dated 08.05.2003, rendered by UPSC. The said dismissal order dated 30.05.2003 was successfully challenged by the petitioner through O.A. No. 2155/2003, in which the learned Tribunal vide order dated 04.06.2004 held that UPSC had based its opinion on certain facts which were not part of the Charge. Thus, the dismissal order dated 30.05.2003 was set aside, granting liberty to the disciplinary authority to pass fresh order in accordance with law.

2.11 Accordingly, fresh order dated 03.09.2004 was passed by the respondents, imposing punishment of dismissal from service on the petitioner. The petitioner challenged the said order dated 03.09.2004 by way of Revision Application before the Secretary (Revenue), Ministry of Finance, but on being informed through letter dated 09.12.2004 that Revision was not maintainable, he requested that the Revision Application be considered as Review Application.

2.12 During pendency of the said review proceedings, petitioner filed O.A. No. 1597/2005 before the learned Tribunal, challenging the dismissal order dated 03.09.2004 and the said O.A. was disposed of vide order dated 29.07.2005, directing the respondents to decide the Review of the petitioner

within four months, which period was extended upto 31.07.2006, but the Review remained undecided, and petitioner retired from service on 31.01.2010 upon attaining the age of superannuation. On 23.11.2010, the Review filed by the petitioner was rejected by the respondents.

2.13 The petitioner filed writ petition no. W.P.(C) 2281/2011, seeking quashing of the said order dated 23.11.2010 of Review rejection and a coordinate bench of this court, vide order dated 01.03.2013 directed that the said writ petition be treated as a petition filed before the learned Tribunal in view of protracted proceedings and age of the petitioner. Thus, the said writ petition came to be registered as T.A. No.14/2013 before the learned Tribunal and upon the same being dismissed, the petitioner preferred Review through R.A. No. 101/2017, which also came to be dismissed.

2.14 Hence, the present petition.

3. During final arguments, learned counsel for petitioner took us through above records and contended that punishment of dismissal from service imposed on the petitioner is highly disproportionate to the charged misconduct of mere unauthorised absence from duty. Learned counsel for petitioner contended that prior to the commencement of period of the alleged unauthorised absence, the petitioner was admittedly on sanctioned medical leave on account of various illnesses, so lenient view ought to be taken. It was argued that even during the period from 09.11.1998 to 19.06.2000, the

petitioner remained confined to bed due to ill health, so absence from duty during that period cannot be treated to be wilful. Learned counsel for petitioner referred to the judgment in the case of ***Indu Bhushan Dwivedi vs. State of Jharkhand & Anr.,*** (2010) 7 SCR 465 in support of his contention that while imposing punishment, the disciplinary authority ought to have taken into consideration the past service record of the petitioner, which was not done so the dismissal order was not sustainable.

4. On the other hand, learned counsel for respondents supported the impugned orders as well as the punishment order and contended that the present petition is totally devoid of merit. Learned counsel for respondents took us through detailed records of various statements unauthorisedly made by the petitioner to media and contended that in view of obnoxious allegations levelled by the petitioner against the government, no compassion is called for. It was argued that the misconduct of the petitioner is not just unauthorized absence or just making obnoxious statements before the media but both, so it cannot be believed that during the period in question, the petitioner was confined to bed due to illness.

5. Thence, the question before us is as to whether the punishment of dismissal from service imposed on the petitioner is or is not proportionate to the acts of misconduct committed by him.

6. The two Articles of Charge served vide Memo dated 25.07.2000 as

extracted in the impugned order are as follows:

> *"Article I*
> *That Shri Vishv Bandhu Gupta, while posted as Additional Commissioner of Income Tax in the region of CCIT, Delhi remained unauthorisedly absent from duty from 9.11.98 till the date of his suspension i.e. 19.6.2000 and performed other acts of insubordination related thereto. By his aforesaid conduct, Shri Vishv Bandhu' Gupta has shown lack of devotion to duty and has acted in a manner which is unbecoming of a government servant, thereby contravening rule 3(1) (ii) and 3(1) (iii) of CCS (Conduct) Rules, 1964 besides violating Rule 25 of the CCS (Leave) Rules, 1972.*
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> *Article II*
> *That Shri Vishv Bandhu Gupta gave statements to the press and on the electronic media irresponsibly without authority and recklessly on sensitive issues and even on matters of government policies constituting acts of indiscipline unacceptable for any government servant. By his acts as aforesaid Shri Gupta not only showed conduct unbecoming of a government servant thereby contravening Rule 3(1) (iii) of CCS (Conduct) Rules but also violated Rules 9and 11 of the said Rules."*

7. In order to properly understand the expanse of the acts of misconduct charged against the petitioner, we find it necessary to extract the relevant portion of Statement of Imputations of misconduct, which is as follows:

> *"1.1 Shri V.B. Gupta, Addl.CIT was transferred from Range-15, New Delhi and posted as Senior AR, ITAT vide CCIT's order dated 13.10.1998. Shri V.B. Gupta applied for earned leave from 20th October, 1998 till 6th November, 1998. However, on the expiry of the said leave, Shri Gupta neither reported for duty nor applied for any extension of leave. After this, a letter dated December 1, 1998 which was posted on 12.1.1999, as the post mark of the Vasant Kunj Post Office indicates, was received from Shri Gupta. This was addressed to CIT, Delhi-IX. Vide this letter, Shri Gupta sought the extension of leave till February 14, 1999. In this letter, Shri Gupta also stated that he had earlier furnished a letter seeking extension of leave upto December 4, 1998 on account of backache for which he was advised*

rest. On enquiry, it was found that no such letter ever reached the office of CIT, Delhi-IX, as mentioned in CIT's report dated 15.6.1999. Further, the medical certificate and leave application in the prescribed proforma were also never sent by Shri Gupta to the office of CIT, Delhi-IX, though he had mentioned in his letter dated 1.12.1998 that he would be sending the same shortly. The CIT, Delhi-IX has stated in his report that no leave was sanctioned to Shri V.B. Gupta after 6.11.1998 (7.11.98 and 8.11.98 having been suffixed). The absence of Shri V.B.Gupta since 9.11.98 is therefore totally unauthorised.

1.2 In view of the above, a letter dated 4th February, 1999 was issued by the Addl.CIT(HQ)Admn., Delhi to Shri V.B. Gupta requesting him to explain his unauthorised absence from duty since the expiry of his sanctioned leave, and also why no charge of his post was handed over by him before proceeding on his undated reply to the aforesaid letter, which was received in CCIT's Office. On 16.2.1999, Shri Gupta stated that he was suffering from backache and was advised medical rest. He also mentioned that he had applied for grant of medical leave from 20.10.1998 to CIT, Delhi-IX, and the same was sanctioned. He requested "for further extension of this medical leave till February 14, 1999." As mentioned earlier, he had applied only for earned leave (on medical grounds) for 18 days w.e.f 20.10.1998 to 06.11.1998 prefixing 17th, 18th & 19th October, 1998 and suffixing 7th & 8th November, 1998 to the period of leave, which was sanctioned by CIT, Delhi-IX vide order No.CIT-IX/Leave/Gazetted/98-99/1528 dated 12.10.1998.

1.3. In his letter, Shri Gupta also alleged that he had proceeded on leave after signing the unilateral relinquishment of charge and leaving the required number of copies in the prescribed format as his successor was not available to take the charge. He further alleged that his successor without waiting for the completion of the date of his handing over the charge, broke open the steel drawers in his room in his absence and took the key of the almirah where sensitive/confidential documents (such as those of Shri Romesh Sharma and Gillette Inc.) involving detection of over two dozen crores of fraudulent tax evasion were kept. He further alleged that this may have been done with a view to either destroy the evidence or to help the affected parties.

1.4 As is evident from Shri Gupta's own submissions, his allegations

are self contradictory. On the one hand, he says that his successor broke open the steel drawer and took the key of the almirah on the very day of his relinquishment of charge, and on the other hand he states that his successor was not available to take the charge that day.

1.5 A copy of the letter from Shri Gupta was sent by CCIT-Delhi to the CIT, Delhi-IX for report. The charges levelled by Shri Gupta have been strongly denied by Shri Ravi Mathur, Addl. CIT, the successor to Shri Gupta and also by CIT, Delhi-IX. The CIT, Delhi-IX has also reported that inspite of his specific direction to Shri V.B. Gupta to hand over charge along with a handing over note. Shri Gupta left the office on 16th October, 1998 without doing the needful. Shri Ravi Mathur was accordingly directed to assume charge. The reply by Shri V.B. Gupta is unfitting, unduly slanderous and uncalled for.

1.6 In view of the above, it is clear that Shri Gupta has not been granted any leave subsequent to 8th November, 1998. It was also reported by senior DR (Admn.), ITAT, Delhi vide his letter no. 350 dated 14.6.99, Shri V.B.Gupta who was posted as Sr. DR, ITAT by CCIT's order dated 13.10.98 had not joined nor given any intimation.

1.7 Accordingly, a further show-cause notice regarding his unauthorised absence and non reporting for duties was issued by the CCIT on 2nd July, 1999, but no reply was received from Sh. V.B. Gupta. Thus, his absence beyond 8.11.1998 remains both unauthorised and wilful displaying contravention of Rules 3(l)(ii) and 3(l)(iii) of the CCS(Conduct) Rules. 1964.

1.8 Further, under Rule 25 of CCS (Leave) Rules, 1972 wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

Article-II

2.1 In several news items appearing in national dailies, the statements given by Shri V.B.Gupta have been reported. These are discussed below:-
(i) In a news item dated 27.2.2000 in Hindustan Times, it is reported that Shri V.B. Gupta had told a TV channel that he has "personal knowledge" that several test cricketers had disclosed concealed income under the VDIS and that a present Test captain had disclosed hidden income worth Rs.16 crores.

According to the press report, Shri Gupta told the Hindustan Times: "The disclosures are sufficient reason for investigation. I will write to the Cricket Board, asking it to direct all cricketers who have played for India over the last ten years to state whether they have disclosed money under VDIS. The list ought to be made public". Further, "... Gupta says questions should be asked of **.....** *(illegible) declaring unexplained wealth, especially when there is obvious criminality in ex-captain's case. He believes someone should file a public interest litigation to make public the names of VDIS beneficiaries."*

In view of the fact that Shri Gupta as Addl. Commissioner of Income-Tax was not supposed to have any official dealing with VDIS declarations, the information provided by him was either wrong and misleading or he was in wrongful possession of confidential information.

(ii) In another news item appearing in Hindustan Times dt. 3.11.98, it was reported that Mr. Gupta had alleged in his petition to the Chief Election Commissioner that the Chief Minister has been leading a personal campaign against him to protect Romesh Sharma's interest. Other allegations casting aspersions on the motives and conduct of the then Chief Minister of Delhi and on the Chief Commissioner of Income-Tax, Delhi for effecting the transfer of Shri Gupta were also reported in the same news item. Such statements to the press can never be expected from a government servant, who has to abide strictly by the CCS (Conduct) Rules.

(iii) A similar news item was published in Delhi Times of Times of India dated 05.11.98 disclosing alleged contents of his (Shri Gupta's) letter to the Election Commission.

(iv) In a news item under the title 'I.T. officer sees politics in transfer' In Hindustan Times dated 15.10.98, Shri Gupta has been quoted to be protesting against his transfer order, and claiming that the same was motivated to entice the electorate.

2.2 In an interview on Zee TV in 'News Break', Shri Gupta had made statements about corruption related transfers in government and payment of huge dowry to government servants in view of their 'potential' to earn money illegally. He cited his frequent transfers in the past as a punishment for good work done by him.

2.3 The excerpts of interview given by Shri V.B. Gupta on DD (Metro) in 'Aaj Tak' show that he had criticised the Chief Minister of Delhi for allegedly trying to get him transferred and for her alleged links with tax evaders.

2.4 Shri Gupta appeared on "Zee News" channel (Prime Time News) and put forth his views regarding links of film industry with criminal mafia. On an issue of attack on film star Shri Rajesh Roshan he said that the entire film industry was being funded by criminal mafia who make major contributions to the film industry for running the same. He officially said that we (the department) conducted a survey which unearthed Rs.10000 crores invested by the mafia in the industry out of which only 100 crores were declared by the film producers in their income-tax returns. He is further reported to have said that kidnapping, extortion and murder were being done with the knowledge of Govt. of India and Maharashtra Government. He went to the extent of saying that one Secretary was caught in a hotel room along with the keep of Mafia King Dawood Ibrahim and that the Home Secretary had approached Dawood to harm an actress Manisha Koirala to benefit some other heroine, the tape or conversation of which was available with CBI. He further, officially announced that "I on behalf of the Government of India would bring out a White Paper on this issue and I can challenge that only 5% has been declared as white money". In case, it was found incorrect he would tender his resignation, says the news item report.

2.5 Regarding Jain Hawala case, the officer made the statement that the CBI had deliberately not taken appropriate action and did not place full facts before the Hon'ble Supreme Court which were available with the Income-tax Department. He further said that besides the fact that politicians duly accepted on their oath under the Income-tax Act the fact that they had received money from Jain Brothers which was made available to CBI, the CBI did not deliberately take appropriate action and that if the CBI wished these cases could be reopened in case Hon'ble Supreme Court is approached for the same.

2.6 In an interview published in a Magazine, 'Business Today', in its issue dated July 7-21.2000. Shri Gupta has sharply criticised the circular from the C.B.D.T. on the VDIS, and has stated that the loopholes in the scheme were abused by certain foreign agencies or some underworld people.

In a news item published in Economic Times dated 22.6.2000, Shri Gupta was reported to have given an interview to a private T.V. programme, India Talks, on CNBC, making allegations of criminal-misconduct on part of the then Revenue Secretary in matters relating to VDIS.

3. The above noted instances show that Shri V.B. Gupta has showed insubordination, indiscretion and lack of a sense of proportion, and his conduct has been unbecoming of a government servant. Shri Gupta was never authorised to make any statements to the press or the T.V., and his actions have been grossly violative of official discipline and decorum. He has made comments which are derogatory to his superiors and critical of governmental procedures and policies. Such statements and conduct are totally unacceptable from a government servant, and against the accepted norms of behaviour and service rules.

4. In this context, it may be stated that Shri V.B. Gupta had earlier been suspended (6.6.90 to 21.10.94) and disciplinary proceedings for major penalty were initiated vide Memorandum dated 3.7.90 on somewhat similar charges. The inquiry Officer had held two of the three articles of charge as proved and the UPSC, when consulted, advised levy of penalty of reduction of pay by 3 stages for a period of 3 years with the directions that the charged officer will not earn increments during the period of penalty. On that occasion, keeping in view all the facts and circumstances of the case, penalty of 'Censure' was finally imposed under Rule 15 of the CCS(CCA) Rules, 1965 vide order dated 11/15.11.1994. However, Shri Gupta has not learnt lesson from his past mistakes and the misconduct of the officer appears to have only increased with the passage of time. Shri Gupta has again been placed under suspension vide Ministry's order dated 19.6.2000 for his grave lapses discussed herein above."

8. To reiterate, the petitioner has opted not to dispute that during the period from 09.11.1998 to 19.06.2000 he remained unauthorisedly absent from duty and that he made the above quoted unauthorized statements before media against the government. And the only submission on behalf of petitioner is that punishment of dismissal from service is disproportionately

excessive to the acts of misconduct.

9. At this stage, it would be apposite to briefly traverse through the legal position relevant for present purposes.

9.1 In the case of ***B.C. Chaturvedi vs. Union of India***, (1995) 6 SCC 749, the Hon'ble Supreme Court examined the issue of punishments and the scope of judicial review, holding thus:

> *"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.* ***The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its 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/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof****."*
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> *(emphasis supplied)*

9.2 In the case of ***Union of India vs. G.Ganayutham***, (1997) 7 SCC 463, the Hon'ble Supreme Court elaborately considered the proportionality of punishments in administrative law in England as well as India and after examining various judicial precedents, held thus:

> *"31. 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 the 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 : (1947) 2 All ER 680] test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in 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 CCSU [1985 AC 374 : (1984) 3 All ER 935] principles.

(3)(a) As per Bugdaycay [R. v. Ministry of Defence, ex p Smith, (1996) 1 All ER 257] , Brind [(1991) 1 AC 696 : (1991) 1 All ER 720] and Smith [Cunliffe v. Commonwealth, [(1994) 68 Aust LJ 791] (at 827, 839) (also 799, 810, 821), Australian Capital Tel. Co. v. Commonwealth, 1992 CL p. 106 (at 157) (Aus), R. v. Oake, 1987 Law Reports of Commonwealth 477 (at 500) (Can), R. v. Big M Drug Mart Ltd., (1985) 1 SCR 295 (Can)] as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) ***The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the***

courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

(emphasis supplied)

9.3 In the case of ***Coimbatore District Central Coop. Bank vs. Employees' Association***, (2007) 4 SCC 669, the Hon'ble Supreme Court held thus:

"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".

18. ***"Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise - the elaboration of a rule of permissible priorities***.

19. ***de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative****. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]*

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

> *"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."*

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".

22. In the celebrated decision of Council of Civil Service Union v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] Lord Diplock proclaimed:

> *"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 on 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'...."*
>
> *23. CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] has been reiterated by English courts in several subsequent cases. We do not think it necessary to refer to all those cases.*
>
> *24.* ***So far as our legal system is concerned, the doctrine is well settled. Even prior to CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a court to interfere with such penalty in appropriate cases****."*
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> *(emphasis supplied)*

9.4 In the case of ***Chairman cum Managing Director, Coal India Limited & Anr. vs. Mukul Kumar Choudhuri & Ors.***, (2009) 15 SCC 620, the Hon'ble Supreme Court recapitulated the legal position and held thus:

> *"19 [Ed.: Para 19 corrected vide Official Corrigendum No. F.3/Ed.B.J./9/2010 dated 11-1-2010.].* ***The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault****. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.*
>
> *20.* ***One of the tests to be applied while dealing with the question of***

> ***quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances?*** *Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."*
>
> *(emphasis supplied)*

9.5 In the cases of ***B.C. Chaturvedi*** (supra) as well as ***Ganayutham*** (supra), the Supreme Court also held that the Court exercising writ jurisdiction in such matters will not interfere with quantum of punishment in order to substitute the decision of the disciplinary authority with its view unless the punishment awarded was one which shocked the conscience of the court and that even in case its conscience is shocked, this court would normally remand the matter to the disciplinary authority instead of substituting the impugned punishment with an alternate penalty. In ***B.C. Chaturvedi*** (supra), the Supreme Court elaborated thus:

> *"25.* ***No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of the High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law-makers do desire application of judicial mind to the question of even proportionality of punishment/penalty****. I have said so because the Industrial Disputes Act, 1947 was amended to insert Section 11-A in it to confer this power even on a labour court/industrial tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under Section 11-A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to government employees or employees of public corporations. I have said so because if need for*

maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. ***I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate****."*

(emphasis supplied)

9.6 In the case of ***Jai Bhagwan vs. Commissioner of Police,*** (2013) 11 SCC 187, the Hon'ble Supreme Court held thus:

"10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. ***But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment****. The law on the subject is well settled by a series of decisions rendered by this Court. We remain content with reference to only some of them.*

11. In Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] this Court held that 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 even as to the sentence is in defiance of logic, then the quantum of sentence would not be immune from correction. Irrationality and perversity, observed this Court, are recognised grounds of judicial review. The following passage is apposite in this regard: (SCC p. 620, para 25)

> *"25. ... 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 [quantum of] sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."*

12. Similarly, in Dev Singh v. Punjab Tourism Development Corpn. Ltd. [(2003) 8 SCC 9 : 2003 SCC (L&S) 1198] this Court, following Ranjit Thakur case [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] held: (Dev Singh case [(2003) 8 SCC 9 : 2003 SCC (L&S) 1198] , SCC p. 11, para 6)

> *"6. ...* ***a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof****. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."*
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> *(emphasis supplied)*

9.7 In the case of ***Union of India & Ors. vs. Constable Sunil Kumar,*** (2023) 3 SCC 622, the Hon'ble Supreme Court elaborated on the scope of

judicial review in such cases and held thus:

> *"11.* ***Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong****. In Surinder Kumar [CRPF v. Surinder Kumar, (2011) 10 SCC 244 : (2012) 1 SCC (L&S) 398] while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in Union of India v. R.K. Sharma [Union of India v. R.K. Sharma, (2001) 9 SCC 592 : 2002 SCC (Cri) 767] that* ***in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution****."*
>
> *(emphasis supplied)*

9.8 Thence, the legal position relevant for present purposes, as culled out of above quoted and other plethora of judicial pronouncements is that imposition of penalty is in the domain of exclusive discretion of the disciplinary authority, which discretion has to be exercised judiciously; that the punishment imposed must not be strikingly disproportionate to the proved misconduct, in the sense that it should not shock the judicial conscience; that scope of the High Court in the exercise of judicial review of the punishment awarded is a limited to the extent of examining the proportionality of the punishment with the proved misconduct; and that the test to be applied by the court in order to ascertain proportionality is as to whether any reasonable employer would have imposed such punishment in

the like circumstances.

10. Falling back to the present case, as described above, two charges of misconduct stand admittedly proved against the petitioner *viz*, unauthorised absence for the period from 09.11.1998 to 19.06.2000 (*the date of his suspension from service*) and his unauthorised scandalous communications with media which created avoidable controversies with potential of generating cynicism against the government. What is to be considered by us is as to whether any reasonable employer would have imposed the punishment of dismissal from service on the petitioner for his said acts of misconduct.

11. The unauthorised absence of the petitioner from duties was not for a period of a day or two or a week or so. The absence was for much prolonged period from 09.11.1998 to 19.06.2000.

11.1 Even according to his own pleadings, the petitioner availed leave for a fairly long period, till 06.11.1998 with next two days being suffixes and admittedly he could not cope up with work pressure. If he was ill, nothing prevented him from seeking further leave. Rather, in response to letter dated 04.02.1999 of the respondents, calling him upon to explain his unauthorised absence and for a failure to hand over charge, the petitioner stated that on 16.02.1999 he had been advised medical rest for backache and that he had applied for medical leave for the period from 20.10.1998 and had sought

extension thereof till 14.02.1999. It would also be significant to note that the petitioner in the said letter, seeking extension of medical leave till 14.02.1999, ante-dated the letter to 01.12.1998, and dispatched the same on 12.01.1999 as reflected from the postal record of PO, Vasant Kunj. The petitioner also claimed in the said letter that he had sought extension of leave up to 04.12.1998 by way of earlier letter. But no such earlier letter had ever reached the respondents. Not only this, neither the medical certificate nor the leave application in prescribed format was sent by the petitioner ever.

11.2 The said unauthorised absence of the petitioner across such prolonged period of time has to be also seen in the light of high profile nature of his duties.

11.3 It would also be very significant to note that during the said period of unauthorised absence, reason whereof is sought to be explained by the petitioner as backache, it is not that the petitioner was bedridden and was unable to submit leave application; as mentioned above, even during this period of unauthorised absence, petitioner was engaged in tirade against the government through his interactions with media and was making obnoxious and scurrilous statements against the government.

11.4 And all these factors have to be kept in mind while testing as to whether any reasonable employer would or would not have imposed the punishment of dismissal from service on account of such acts of misconduct.

12. Coming to the second article of charge proved against the petitioner, as extracted above from statement of imputation, the petitioner despite being a government servant engaged himself in slanderous campaign against the government and made scandalous statements to the media, which statements owing to his high position in the taxation machinery enjoyed high acceptability by media and public as credible information, thereby damaging the reputation of the government in the eyes of public.

12.1 Some such scandalising statements made by the petitioner to the media were that he had personal knowledge about disclosure of concealed income under the VDIS by several test cricketers including a disclosure of hidden income of Rs.16 crores by a test captain; that the said disclosures are sufficient reason for initiating investigation against all cricketers who played for India over last 10 years and in this regard someone should file Public Interest Litigation (*though he was not authorised to deal with VDIS declarations and information provided by him was wrong or misleading*); that the Chief Minister was leading a personal campaign against him to protect the interests of Romesh Sharma and in that regard, he had written to the Chief Election Commissioner; that there were other allegations, casting aspersions on the motive and conduct of the then Chief Minister of Delhi and Chief Commissioner Income Tax, behind his transfer; that there were corruption related transfers in the government and payment of huge dowry to government servants owing to their potential to earn money illegally; that

the Chief Minister of Delhi was siding with the tax evaders; that there was nexus between the film industry and criminal mafia which led to attack on film star Rajesh Roshan; that Income Tax Department had unearthed Rs.10,000 crores invested by mafia in the film industry, out of which only Rs.100 crores was declared by the film producers in their income tax returns; that kidnappings, extortions and murders were being committed with the knowledge of Government of India and Maharashtra Government; that one Secretary was caught in a hotel room with the keep of mafia king Dawood Ibrahim and the Home Secretary had approached Dawood to harm the actress Manisha Koirala to benefit some other heroine and tape recorded conversations was available with CBI; that in Jain Hawala case, the CBI had deliberately not taken appropriate action and had not placed full facts before the Supreme Court; that the CBI deliberately concealed from Supreme Court statements of the politicians whereby they had accepted on oath under the Income Tax Act having received money from Jain Brothers; that there were many loopholes in VDIS of CBDT, which were abused by certain foreign agencies or some underworld people; and that there were acts of criminal misconduct on the part of Revenue Secretary in the matters related to VDIS.

12.2 Those scandalous statements were made by the petitioner through interviews to various popular media entities including the Hindustan Times, the Times of India, the Zee TV, the DD (Metro), the Zee News, the Business Today, the Economic Times and the CNBC etc.

13. Going by the above described acts of misconduct committed by the petitioner, we are unable to believe that no reasonable employer would have dismissed him from service by way of penalty. We are unable to find the punishment of dismissal imposed on the petitioner as the one that could shock conscience of any court. We are of the considered view that no lesser punishment than dismissal from service would be commensurate to the gravity of the multiple acts of misconduct described above. Even if there were no restraints on this court exercising judicial review of punishment order, we would not find any other punishment proportionate to the acts of misconduct committed by the petitioner. A person castigating their employer through a constant tirade of false and scandalous allegations does not deserve to continue in the employment of the said employer.

14. So far as consideration of past service record of the petitioner is concerned (*on which learned counsel for petitioner laid strong emphasis*), suffice it to record that petitioner's own pleadings cited above and also the extracted statements of imputations reflecting repeated suspensions for his other acts of misconduct would fail to help his cause here. As reflected from the above extract earlier also the petitioner was suspended from 06.06.1990 to 21.10.1994 and disciplinary proceedings for major penalty were initiated against him, which proceedings culminated into a lenient penalty of censure.

15. Certainly, it is not a case which could be dealt with paring knife; use of battle axe was most appropriate. We do not find it a case of the State

using sledgehammer to crack a nut. We are unable to find any infirmity in the impugned order, so the same is upheld and the petition is dismissed.

GIRISH KATHPALIA
(JUDGE)

SURESH KUMAR KAIT
(JUDGE)

AUGUST 27, 2024/*ry*