

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2115 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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MANOJ H MISHRA - Petitioner(s)**Versus****UNION OF INDIA & 3 - Respondent(s)****Appearance :**

MR GIRISH PATEL for Petitioner(s) : 1,
MR JD AJMERA for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 31/1/2007****ORAL JUDGMENT**

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order declaring the order of revisional authority the respondent No.3 dated 20-8-1996 removing the petitioner from services, as illegal. Petitioner has also challenged the order dated 20-8-1996 passed by the

appellate authority confirming the order of removal dated 30-3-1996.

2. Facts leading to the present Special Civil Application as per the petitioner are that the petitioner was working in the Nuclear Power Corporation at Kakarapar Atomic Power Project (for short “ the KAPP”) in the post of Tradesman and was the President of Kakarapar Unit Kendriya Sachivalaya Hindi Parishad. That he was selected as General Secretary of the recognized union of Class III and Class IV of KAPP on 7-2-1993. It is the case on behalf of the petitioner that monsoon of 1994 was violent and there were heavy rains and water of Kakarapar dam was flowing beyond the danger level. As a result, the dam authorities had to open the gates and let water flow. That the Kakarapar lake received the dam water through a canal which is an inter-link. The water of the lake is used by the respondent authorities for power generation. On the night of 15-7-1994, the flood water entered in the Kakarapar lake and within no time, the flood water entered into the plant. Before the next morning, more than 25 ft. of the turbine which is adjacent to the Nuclear reactor was submerged into the water and entire record room and computer room were washed away. That apart, some of the barrels containing nuclear wastes were also washed away by the flood water. On 16th July, emergency was declared and the respondent authorities started taking preventive measures. It is the case on behalf of the petitioner that every one raised questions as to why and how the flood water could not be prevented by the engineers in charge and why emergency measures were not taken in the night to prevent flood water from entering into turbine and other areas of the plant in the operation island. That the respondent

authorities placed the petitioner under suspension by an order dated 5-7-1994 intimating him that the disciplinary proceeding for major penalty was being contemplated. The petitioner was served with a charge sheet dated 4-8-1994 alleging inter alia that the petitioner while functioning as Tradesman/B in KAAP established contacts with press correspondence and fed him with information which might have come to his possession in course of his duty and has thereby criticized the project management and cast aspersions on the authorities and has thus committed breach of oath of secrecy warranting major penalty. An inquiry officer was appointed by the disciplinary authority and the preliminary hearing took place on 26-12-1994. It is the case on behalf of the petitioner that a assurance was given by the respondent No.2 that if the petitioner accepts the charges, in that case, a lenient view will be taken of the entire matter and leniency would be shown while imposing the punishment and therefore, the petitioner has resigned on 23-9-1995 from the preliminary membership of the Union and also admitted all the charges levelled against him and requested the inquiry officer to close the proceeding through his Defence Assistant. The inquiry officer declared the inquiry as closed. It is the case on behalf of the petitioner that the inquiry officer submitted the report and while concluding his report dated 20-12-1995 held all the charges against the petitioner as proved on the basis of admission of all the charges by the petitioner. The inquiry officer submitted his report on 20-12-1995 to the disciplinary authority. The petitioner was served with the inquiry report on 4-1-1996 along with a letter from the disciplinary authority giving a petitioner a chance to make representation in view of the report submitted by the inquiry officer. The

petitioner made his representation on 16-3-1996. After examining all the records and the inquiry report, the disciplinary authority passed an order dated 30-3-1996 removing the petitioner from service holding him guilty of charges framed against him. Being aggrieved by and dissatisfied with the order of removal, the petitioner preferred appeal before the respondent No.4 which came to be rejected by order dated 27-5-1996 against which the petitioner preferred representation before the revisional authority which also came to be dismissed by order dated 20-8-1996. Against which, the present Special Civil Application has been preferred under Article 226 of the Constitution of India.

3. Shri Girish Patel, learned senior advocate appearing on behalf of the petitioner has only made one submission that looking to the allegations and the charges proved against the petitioner, the order of removal is too harsh and the penalty imposed upon the petitioner is disproportionate. It is submitted that when in good faith the petitioner admitted all the charges and on assurance by the respondent No.2 that if he admits all the charges, a lenient view will be taken while imposing the punishment and therefore, it is requested to consider the question of penalty.

4. Shri JD Ajmera, learned advocate appearing on behalf of the respondents while opposing the present Special Civil Application has vehemently submitted that looking to the allegations and the charges proved against the petitioner and when all the charges have been admitted by the petitioner, the order passed by the respondents in

removing the petitioner is just and proper. It is submitted that looking to the facts and the charges admitted and proved against the petitioner, there is no question of taking any lenient view and the only penalty/punishment which is required to be imposed is removal from service. It is also specifically denied in the affidavit with regard to any assurance given by the respondent No.2 as alleged by the petitioner to the effect that if the petitioner accepts all the charges, a lenient view will be taken. It is submitted that against the order of removal, appeal was preferred which was considered by the appellate authority and the appellate authority dismissed the appeal, against which a further revision was filed and the same was also considered by the revisional authority and the revisional authority also confirmed the order of removal. Therefore, when all the three authorities have taken a decision to remove the petitioner, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. The petitioner was the employee of the Nuclear Power Corporation which is under the department of Atomic Energy and which is a very sensitive department, where strict discipline, more particularly confidentiality is required to be maintained. The charge levelled against the petitioner which has been subsequently admitted by the petitioner are as under:

Article I: That Shri Manoj Mishra, while functioning as Tradesman/B in the Kakrapar Atomic Power Project, vide his letter on 18-6-1994 to the Editor, "Gujarat Samachar" newspaper, Surat, unauthorisedly

communicated with the Press.

Article II: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project, in the letter dated 18-6-1994 written by him to the Editor, Gujarat Samachar made certain statement or expressed certain opinions, which amounted to criticism of the Project management or casting of aspersion on the integrity of its authorities.

Article III: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project, though his letter dated 18-6-1994, he wrote to the Editor of the Gujarat Samachar unauthorisedly communicated to the Press official information concerning the Kakrapar Atomic Power Project.

Article IV: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project established contact with a Press correspondent to feed information enabling the press to create news story about the Project containing inflammatory and misleading information causing embarrassment to, and damaging the reputation of the Project and the NPCIL.

Article V: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project, established contacts with the Press correspondent and fed him with vital information which has come into his possession in the course of his duty as Tradesman/B in the Project, enabling the press to create a news story about the Project creating embarrassment to the Project as well as to the State authorities. Shri Manoj Mishra has thus committed breach of oath of secrecy which he took at the time of joining the Project.

It is required to be noted that the petitioner admitted all the charges. Now it is the contention on behalf of the petitioner that an assurance was given by the respondents that if the petitioner admits the

charges, a lenient view will be taken. However, the same has been denied by the respondents. As per the respondents, no such assurance has been given. Even, otherwise, assuming that the petitioner would not have accepted the charges, in that case also, looking to the documentary evidence, more particularly, the press report, it was not possible for the petitioner to get out of the same. The petitioner was serving in a department of Atomic Energy which is most sensitive department and where strict discipline, more particularly confidentiality is required to be maintained. The petitioner went to the press, shared the information with the press which was not required to be shared and when considering the said, charges held and proved and even admitted by the petitioner, when the order of removal has been passed which has been confirmed by two higher authorities, it cannot be said that the order of removal is disproportionate to the charges held and proved against the petitioner. It is required to be noted at this stage that the charges are very serious in nature, more particularly considering the department in which the petitioner was serving. Petitioner came to be removed against which an appeal was filed which came to be dismissed, against which revision application was filed which also came to be dismissed. This Court is not sitting as an appellate authority against the decision of the disciplinary authority. At this stage, the judgment of the Hon'ble Supreme Court in the case of **Govt. of A.P. And others V. Mohd. Nasrullah Khan** reported in (2006) 2 SCC 373 and in the case of **Syed T.A. Naqshbandi and others V. State of Jammu and Kashmir and others** reported in (2003) 9 SCC 592 are required to be referred to and considered. It is observed by the Hon'ble Supreme Court that the High Court exercising

the power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. It is also observed by the Hon'ble Supreme Court in the case of **Damoh Panna Sagar Rural Regional Bank and another V. Munna Lal Jain** reported in (2005) 10 SCC 84 that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision. The Court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court, in the sense that it is in defiance of logic or moral standards. Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. When a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. In the normal course, if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

7. In view of the above and seriousness of the charges admitted by the petitioner and thereafter held proved against the petitioner by the disciplinary authority and when the petitioner is removed from service, it cannot be said that there is any illegality committed by the respondents and that looking to the charges proved against the petitioner, it cannot be said that order of removal is disproportionate to the charges. Even on the facts of the case and charges levelled against the petitioner, this Court is also of the firm opinion that except punishment of removal, no other punishment is required to be imposed against the petitioner.

8. For the reasons stated above, the petition fails and dismissed accordingly. No costs.

(M.R.SHAH,J.)

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