THE ADMINISTRATOR UNION TERRITORY OF DADAR & NAGAR HAVELI

v.

GULABHIA M. LAD

(Criminal Appeal No. 3933 of 2010)

APRIL 28, 2010

[R.V. RAVEENDRAN AND R.M. LODHA, JJ.]

Service Law – Disciplinary proceedings – Punishment – Imposition of – Different punishment to delinquents in a joint inquiry – Propriety of – Held: Different punishment is permissible if the responsibilities and duties of co-delinquents differ or where distinguishing features exist – Similarity of charges is not determinative factor for imposition of punishment – On facts, instant case does not make out a case of discrimination in inflicting punishment – Punishment of removal imposed on the appellant-delinquent, commensurates with the misconduct proved against him.

Judicial Review – Scope of – In disciplinary matters – Held: In exercise of power of judicial review, court cannot interfere with discretion exercised by the disciplinary authority/ appellate authority, with regard to imposition of punishment unless such discretion suffers from illegality, or material procedural irregularity or that would shock the conscience of the court.

Disciplinary enquiry was initiated against respondent (Land Reforms Officers) along with two of his subordinate staff. After the joint enquiry, Inquiring Authority submitted its report to Disciplinary Authority. All the delinquents were imposed with major penalty of removal from service. In departmental appeal, the punishment of removal of the respondent-delinquent was upheld, while the punishment of the two co-delinquents were modified

A **viz. one was punished with compulsory retirement while the other was punished with reduction to lower stage of pay by five stages with cumulative effect.**

Respondent challenged the order before Central B **Administrative Tribunal. The Tribunal held that the award of different punishment to the respondent was discriminatory. Challenge to the order of the Tribunal was set aside by High Court. Hence the present appeal.**

Allowing the appeal, the Court

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HELD: 1.1. While exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the D **imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent** E **on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works.** F **Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts. [Para 13] [318-G-H; 319-A-B]**

B.C. Chaturvedi v. Union of India and Ors. **(1995) 6 SCC 749;** *Director General, RPF and Ors. v. Ch. Sai Babu* **(2003)** G **4 SCC 331;** *Chairman and Managing Director, United Commercial Bank and Ors. v. P.C. Kakkar* **(2003) 4 SCC 364;** *Union of India and Anr. v. S.S. Ahluwalia* **(2007) 7 SCC 257;** *State of Meghalaya and Ors. v. Mecken Singh N. Marak* **(2008) 7 SCC 580, referred to.**

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1.2. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination. [Para 13] [319-C-E]

Tata Engineering and Locomotive Co. Ltd. v. *Jitendra Pd. Singh and Anr.* **(2001) 10 SCC 530**; *State of U.P. and Ors..* v. *Raj Pal Singh* **JT 2001 (Suppl. 1) SC 44, distinguished.**

1.3. The present case does not make out discrimination in inflicting punishment. In the first place, the respondent and the two other delinquents may have been found guilty in connection with the same incident. but the charges against the respondent and the other two delinquents cannot be said to be same or substantially similar. Thus, there was variation in allegations of misconduct and all the three delinquents could not have been put on par although joint enquiry was held and there was common evidence. Secondly, the tribunal failed to notice that respondent was holding an important position and the co-delinquents were only his subordinates and they carried out his instructions. Therefore, the respondent and the two co-delinquents cannot be said to have been similarly placed. Thirdly, the tribunal overlooked a very important aspect that even the appellate authority has not treated the case of co-

A **delinquents alike inasmuch as in the departmental appeal, the punishment of removal awarded to one was modified to that of compulsory retirement while the punishment awarded to the other was modified to reduction to lower stage of pay by five stages with** B **cumulative effect. There was, thus, no similarity in award of punishment to the other two co-delinquents as well. [Para 13-15] [319-E-F; 320-B-D]**

1.4. The respondent being the Land Reforms Officer C **was the authorized officer under the Regulations for grant of occupancy rights and for illegal grant of occupancy rights in respect of Government lands, it was he who was squarely responsible. On the facts found and conclusions recorded in the enquiry report, the punishment of removal cannot be said to be not** D **commensurate with the misconduct proved against the respondent and the High Court ought to have interfered with the order of the Tribunal. [Para 17] [321-E-F]**

Case Law Reference:

E	(2001) 10 SCC 530	distinguished Para 6
	JT 2001 (Suppl. 1) SC 44	distinguished Para 6
	(1995) 6 SCC 749	referred to Para 8
F	(2003) 4 SCC 331	referred to Para 9
	(2003) 4 SCC 364	referred to Para 10
	(2007) 7 SCC 257	referred to Para 11
G	(2008) 7 SCC 580	referred to Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3933 of 2010.

From the Judgment & Order dated 1.12.2008 of the High H Court of Bombay in W.P. No. 5219 of 2008.

P.P. Malhotra, ASG, Krishan Kumar, Rekha Pandey, D.S. Mahra and Sudarshan Singh Rawat for the Appellant. A

Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

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R.M. LODHA, J. 1. Leave granted.

2. The question that calls to be determined in this appeal by special leave is : on consideration of the report of the Inquiring Authority wherein misconduct of the respondent has been proved and after following the prescribed procedure, the Disciplinary Authority ordered his removal from service and the departmental appeal against that order has been dismissed by the Appellate Authority, whether Central Administrative Tribunal was justified, on the facts found, in interfering with the order of punishment on the ground that co-delinquents were awarded lesser punishment in departmental appeals and directing the appellant to reconsider the whole matter and give the respondent the same treatment which has been meted out to the co-delinquents. C D E

3. Gulabhia M. Lad – respondent – while functioning as Land Reforms Officer—I , Dadra and Nagar Haveli for the period October 14, 1997 to April 27, 1998 allegedly granted occupancy rights of the government land situate at village Athola to five persons with ulterior motive by getting the survey conducted from R.K. Kapdi, Surveyor and without following the procedure prescribed under the Dadra and Nagar Haveli Land Reforms Regulation, 1971 (for short, 'Regulations'). A disciplinary enquiry was initiated against him under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. He was charged for misconduct under Rule 3 of Central Civil Services (Conduct) Rules, 1964. Two other employees, R.K. Kapdi, Surveyor and P.N. Vinod, Patel Talati were also subjected to disciplinary enquiry in connection with illegal grant of occupancy rights of government land to those F G H

five persons. R.K. Kapdi was charged for having connived with the respondent and prepared a map by not following the procedure and without verifying the documentary evidence as required under the Regulations and in assigning new plot numbers without any authority in flagrant violation of law. Insofar as P.N. Vinod was concerned, he was charged for having connived with the respondent and prepared the statement on oath of each of the applicants in his own handwriting in the absence of the applicants and thereby abusing his official position as Patel Talati.

4. A joint enquiry was conducted against the respondent and two other delinquents, namely, R.K. Kapdi and P.N. Vinod. The three delinquents submitted their defence separately and denied any misconduct on their part. The Inquiring Authority, on consideration of the written statement of defence; evidence produced in the course of the inquiry and after hearing the Presenting Officer and the delinquents recorded its opinion that charges were proved and submitted its report to the Disciplinary Authority. The Disciplinary Authority (Administrator, Daman & Diu and Dadra and Nagar Haveli) served enquiry report upon respondent and after calling for explanation, imposed a major penalty of his removal from service vide order dated April 23, 2004. For the other two delinquents, the Disciplinary Authority was the Commissioner/Secretary (Finance), Daman & Diu and Dadra and Nagar Haveli and the said Disciplinary Authority after serving the enquiry report and calling for their explanation, ordered their removal from service by two separate orders.

5. The respondent filed the departmental appeal against the order of punishment dated April 23, 2004 before the Appellate Authority but the said appeal was dismissed on March 8, 2006. Insofar as the other two delinquents are concerned, their departmental appeals were partly allowed. The punishment of removal awarded to R.K. Kapdi was modified to that of compulsory retirement with effect from April 23, 2004

by the Appellate Authority while the punishment awarded to P.N. Vinod was modified to reduction to lower stage of pay by five stages with cumulative effect.

6. The order of punishment dated April 23, 2004 which was confirmed in departmental appeal by the Appellate Authority vide order dated March 8, 2006 came to be challenged by the respondent before the Central Administrative Tribunal, Bombay Bench at Mumbai (for short, 'Tribunal') on diverse grounds. The Tribunal accepted the argument of the respondent that he has been discriminated in the matter of imposition of punishment. The Tribunal vide its order dated June 22, 2007 allowed the original application and held that similarly placed persons have been treated differently and the action of the present appellant in awarding differential punishment to the respondent by singling him out for the extreme punishment of removal could not be sustained. In this regard, the Tribunal relied upon two decisions of this Court, namely, (1) *Tata Engineering & Locomotive Co. Ltd.* v. *Jitendra Pd. Singh and Another*[1] and (2) *State of U.P. and Others.* v. *Raj Pal Singh*[2].

7. The present appellant challenged the order of the Tribunal before Bombay High Court by filing a writ petition but that was dismissed on December 1, 2008. The High Court held that as the authorities did not challenge the orders passed by the Appellate Authority in respect of co-delinquents, the order of the Tribunal did not call for any interference

8. The scope of judicial review in disciplinary matters has come up for consideration before this Court time and again. It is worthwhile to refer to some of these decisions. In the case of *B.C. Chaturvedi v. Union of India and Others*[3] this Court held:

"18. A review of the above legal position would establish

1. (2001) 10 SCC 530.
2. JT 2001 (Suppl. 1) SC 44.
3. (1995) 6 SCC 749.

A 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 B 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 C 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 D thereof".

9. In *Director General, RPF and Others v. Ch. Sai Babu*[4], this Court stated the legal position thus :

"6. ....Normally, the punishment imposed by a disciplinary E authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved F against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/ establishment in which the delinquent person concerned G works."

10. In the case of *Chairman and Managing Director, United Commercial Bank and Others v. P.C. Kakkar*[5], this Court on review of long line of cases and the principles of

4. (2003) 4 SCC 431.

H 5. (2003) 4 SCC 364.

judicial review of administrative action under English law summarized the legal position in the following words :

"**11.** The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* [(1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, 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 litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. 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.

13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in *M.L. Keshwani case.* As was observed by this Court in *Balbir Chand* v. *Food Corpn. of India Ltd.* [(1997) 3SCC 371] even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different".

A 11. In *Union of India and Another v. S.S. Ahluwalia*[6], this Court reiterated the legal position as follows :

> "8. .....The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.....".

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12. In *State of Meghalaya and Others v. Mecken Singh N. Marak*[7] this Court stated :

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> **"14.** In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice."

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G 13. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard

6. (2007) 7 SCC 257.

H 7. (2008) 5 SCC 580.

to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination. Does the present case make out discrimination in inflicting punishment? We do not think so. In the first place, the respondent and the two other delinquents may have been found guilty in connection with the same incident, i.e. illegal grant of occupancy rights in respect of government land to five persons but the charges against the respondent and the other two delinquents cannot be said to be same or substantially similar. The substance of the charge against the respondent was that as a Land Reforms Officer-I, he granted occupancy rights to the government land to five persons with ulterior motive by getting the survey conducted from co-delinquent R.K. Kapdi, Surveyor and without following the procedure prescribed under the Regulations. On the other hand, the main charge against R.K. Kapdi was that he prepared

A a map by not following the procedure and without verifying the documentary evidence as was required under the Regulations and assigning new plot numbers without any authority in flagrant violation of law. As regards, P.N. Vinod, he was principally charged for having prepared the statement on oath of each of
B the applicants in his own handwriting in the absence of the applicants and thereby abusing his official position as Patel Talati. Thus, there was variation in allegations of misconduct and all the three delinquents could not have been put on par although joint enquiry was held and there was common
C evidence.

14. Secondly, the Tribunal failed to notice that respondent was holding an important position as Land Reforms Officer during the relevant period having been conferred with various powers and duties under the Regulations. As a Land Reforms
D Officer, the respondent possessed the official authority for grant of occupancy rights under the Regulations. The co-delinquents were only his subordinates and they carried out his instructions. In the facts and circumstances, therefore, the respondent and the two co-delinquents cannot be said to have been similarly
E placed.

15. Thirdly, and more importantly, the Tribunal overlooked a very important aspect that even the Appellate Authority has not treated the case of co-delinquents viz., R.K. Kapdi and P.N.
F Vinod alike inasmuch as in the departmental appeal the punishment of removal awarded to R.K. Kapdi was modified to that of compulsory retirement while the punishment awarded to P.N. Vinod was modified to reduction to lower stage of pay by five stages with cumulative effect. There was, thus, no
G similarity in award of punishment to the other two co-delinquents as well.

16. The Tribunal relied upon two decisions of this Court. In *Tata Engineering & Locomotive Co. Ltd.1*, this Court found no justification to interfere with the order of the High Court that
H recorded the following finding:

"Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service."

We are afraid *Tata Engineering & Locomotive Co. Ltd.1* has no application to the facts of the present case.

17. Similarly, the decision of this Court in *Raj Pal Singh2* has no application to the present case. It was found therein that the charges proved against the delinquents were same and identical. No dissimilarity was found and, therefore, it was held that it was not open for the Disciplinary Authority to impose different punishments for different delinquents. In the case in hand, we have already noticed above that the charges against respondent and co-delinquents were not exactly identical or substantially similar. Moreover, the respondent being the Land Reforms Officer was the authorized officer under the Regulations for grant of occupancy rights and for illegal grant of occupancy rights in respect of government lands, it was he who was squarely responsible. We have no hesitation in holding that on the facts found and conclusions recorded in the enquiry report, the punishment of removal cannot be said to be not commensurate with the misconduct proved against the respondent and the High Court ought to have interfered with the order of the Tribunal.

18. The result is that appeal is allowed, the order of the High Court dated December 1, 2008 and that of the Tribunal dated June 22, 2007 are set aside. The parties shall bear their own costs.

K.K.T. Appeal allowed.