HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 01.06.2023
Pronounced on : 21.07.2023

SWP No. 736/2008 (O&M)

Yoginder Singh .....Appellant(s)/Petitioner(s)

Through: Mr. S. C. Sharma, Advocate

Vs

Union of India and Ors. ..... Respondent(s)

Through: Mr. Vishal Sharma, ASGI

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner, who was working as a L/Naik in the C.R.P.F was dismissed from the service by the respondent No. 4 vide order dated 18.10.99. The appeal preferred by the petitioner against the order of his dismissal from service was dismissed by the respondent No. 3 vide order dated 02.03.2000. The revision was also preferred by the petitioner but that too was dismissed by the respondent No.2 vide order dated 28.08.2000. The petitioner through the medium of this petition challenged all the orders mentioned above and has also prayed for issuance of direction to the respondents to reinstate the petitioner with back wages/salary from 18.10.1999 till date of his reinstatement in the services.

2. It is stated that the petitioner was allowed 15 days casual leave w.e.f. 13.11.1998 to 01.12.1998. He was to report back on 01.12.1998 but he could not report due to his illness and some family issues. He joined the service on

07.02.1999. The petitioners have impugned the orders mentioned above on the following grounds:

a) That section 9 of the CRPF Act of 1949 deals with the more heinous offences, whereas Section 10 of the Act deals with the less heinous offences. The employee, who absents himself without leave or overstayed leave granted to him, falls under section 10 (m) of the Act of 1949, which deals with the less heinous offences. As such, the punishment of dismissal awarded to the petitioner is harsh and disproportionate to the charge levelled against the petitioner. It is also submitted that the Enquiry Officer has not even mentioned a single word regarding the submission of medical certificate and the position of the petitioner that due to some family problems, he could not join the duties.

b) That neither the Presenting Officer was appointed nor Defence Assistant was provided to the petitioner and also the Enquiry Officer has himself acted as a Presenting Officer, which is contrary to the well settled law that one cannot be the judge of his own cause.

c) That the Disciplinary Authority, Appellate Authority as well as the Divisional authority while passing the dismissal orders against the petitioner have considered his past record which was not the part of the charge sheet, more particularly when the earlier absence of the petitioner was regularised by the respondents as leave without pay.

d) That no show cause notice before inflicting the penalty of dismissal upon the petitioner was served upon him by the Disciplinary Authority.

e) That the impugned orders have been passed by the respondents in violation of the principles of natural justice and the provisions of the Act of 1949 as well as the Rules framed thereunder.

3. The respondents have filed the response thereby stating that the petitioner was sent on 15 days casual leave w.e.f. 13.11.1998 to 01.12.1998. He was to report back for duty on 01.12.1998 (AN) but he failed to do so. Two registered letters dated 11.12.98 and 05.01.1999 were sent to the petitioner to report back to duty or to intimate the reasons of delay immediately but he did not respond to the same. Then OC F/22 lodged a complaint before the Commandant-cum-Chief Judicial Magistrate and prayed for taking judicial action under section 10 (m) of CRPF Act 1949 against the petitioner. Commandant-cum-Chief Judicial Magistrate took the cognizance and issued a warrant of arrest dated 13.01.1999 against the petitioner. The petitioner reported after absenting himself for 68 days without permission of the Competent Authority at his own at F/22 Bn location on 07.02.1999. The petitioner was produced before the Commandant-cum-Chief Judicial Magistrate on 08.02.1999 along with the prayer for cancellation of warrant of arrest. The petitioner was released on 08.02.1999 and warrant of arrest was cancelled. Thereafter, the respondent No. 4 ordered the departmental enquiry under the provisions of section 11 (1) of CRPF Act 1949 vide Memorandum No. P.VIII.3/99-EC-1-22 dated 23.02.1999. Sh. P.K Sharma was appointed as Enquiry Officer vide order dated 27.02.99. The departmental enquiry was conducted by the Enquiry Officer in accordance with the rules and after the conclusion of the departmental enquiry, the proceeding of the departmental enquiry was submitted by the Enquiry Officer to the Commandant for its disposal. Before taking any decision on the departmental

enquiry, the respondent No. 4 once again gave the opportunity to the petitioner thereby serving the copy of the report of Enquiry Officer upon the petitioner with a direction to submit any representation thereof vide communication dated 21.07.1999. The petitioner in response to that pleaded guilty and prayed for pardon for the last time through his representation dated 27.07.1999. The representation of the petitioner was considered by the respondent No. 4 and the respondent No. 4 vide order dated 18.10.1999 ordered dismissal of the petitioner from service with effect from 18.10.1999 (AN). The petitioner thereafter preferred an appeal against the order of dismissal before the respondent No. 3 and the respondent No. 3 vide order dated 02.03.1999 dismissed the appeal. Thereafter, the petitioner filed a revision petition before the respondent No. 2 but the revision petition too was dismissed by the respondent No. 2 vide order dated 28.03.1999. It is stated by the respondents that during the course of enquiry the petitioner did not submit any medical certificate in respect of his ill-health and treatment. He simply stated that he was ill due to fever and dysentery. The petitioner never made any correspondence with the Commandant or Coy Commandant regarding his illness.

4. Mr S.C. Sharma, learned counsel for the petitioner argued that the enquiry has not been conducted by the Enquiry Officer in accordance with the Rules of 1955. He further submitted that the earlier absence of the petitioner was never the subject matter of the charge and the Enquiry Officer has not considered the medical certificate submitted by the petitioner. He also laid stress that the punishment imposed upon the petitioner is dis-proportionate to the alleged act of mis-conduct on the part of the petitioner. He also urged that the

respondent Nos. 3 and 2 have also erred in dismissing the appeal and the revision petition filed by the petitioner respectively.

5. Per Contra, Mr. Vishal Sharma, learned DSGI vehemently argued that the Enquiry Officer has followed the procedure prescribed under the CRPF Rules, 1955. The petitioner was provided opportunity of hearing at every stage of the departmental proceeding and the petitioner right from the very beginning pleaded guilty to the charge against him. He further submitted that the petitioner earlier also had remained absent for 80 days but taking a lenient view, the said period was regularized as on leave without pay. He further submitted that the appeal and the revision filed by the petitioner has been rightly dismissed by the respondent Nos. 3 and 2 respectively.

6. Heard and perused the record.

7. The first contention raised by the petitioner is that the allegations against the petitioner is that he overstated the leave granted to him and this act of the petitioner falls within the purview of section 10 (m) of the Act of 1949, therefore, he could not have been awarded the punishment of dismissal from the service. There is no doubt that the act of the petitioner falls within the purview of section 10 (m) of the Act of 1949, which is punishable with imprisonment for a term which may extend to one year or with fine which may extend to three months pay or with both. The offence has been treated as one of the less heinous offences. **In '*Union of India v. Ghulam Mohd. Bhat*'[1] ,** the Hon'ble Apex Court has held as under:

> **"7.** It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be

[1] (2005) 13 SCC 228'

> awarded for them. Section 10 deals with less heinous offences and clause (*m*) thereof shows that absence of a member of the Force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10."

8. Similar view has been expressed by the Hon'ble Apex Court in ***"Union of India v. Ram Karan"***[2]**,** wherein it has been held as under:

> **"16.** The scheme of Section 11 of the 1949 Act mandates that the competent authority may, subject to rules made thereunder, award in lieu of, or in addition to, suspension or dismissal any one or more punishment if found guilty of misconduct in his capacity as member of the Force.
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> **17.** The use of words "in lieu of, or in addition to, suspension or dismissal", appearing in Section 11(1) clearly indicates that the authorities mentioned therein are empowered to award punishment of suspension or dismissal to member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clauses (*a*) to (*e*) may also be awarded.
>
> **18.** It may be noted that more heinous offences or less heinous offences prescribe penalty of sentence of imprisonment if member of the Force is found guilty. At the same time, Section 11 is clear and unambiguous and prescribe those minor punishments which the competent authority may award in a departmental enquiry in lieu of or in addition to suspension or dismissal any one or more of the punishments to member of the Force as referred to under clauses (*a*) to (*e*) of Section 11(1) of the 1949 Act even if the member has not been prosecuted for an offence under Section 9 or Section 10 of the Act.
>
> **xxxxxx**
>
> **20.** In the instant case, the respondent has been punished with penalty of removal from service after the charges levelled against him stood proved by the disciplinary authority in a departmental enquiry held against him after going through the procedure prescribed under Rule 27 of the 1955 Rules. Such nature of minor punishment of removal from service could be in addition to dismissal as being provided under Section 11 of the 1949 Act."

Thus, there is no force in the contention of the petitioner, as such, the same is rejected.

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[2] (2022) 1 SCC 373

9. The second contention of the petitioner is that the Enquiry Officer has not conducted the enquiry in accordance with the Rules of 1955. The Rule 27 (c) of the Rules (Supra) provides the procedure for conducting the enquiry and the same is extracted as under:

> "27 (c) The procedure for conducting a departmental enquiry shall be as follows:-
>
> (1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.
> (2) At the commencement of the enquiry the accused shall be asked to enter a plea of "Guilty" or "Not Guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral;
> (i) it shall be direct;
> (ii) it shall be recorded by the Officer conducting the enquiry himself in the presence of the accused;
> (iii) the accused shall be allowed to cross examine the witnesses.
>
> (3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits.
>
> (4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty", he shall be required to file a written statement, and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.
>
> (5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.
>
> (6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If

> the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings, to the Commandant, who shall record his findings and pass orders, where he has power to do so."

10. The charge against the petitioner is reproduced as under:

> "That the said no. 830760919 L/NkYginder Singh while posted as such in F/22 Bn, CRPF committed an offence of misconduct in his capacity as a member of the Force under section 11(1) of CRPF Act, 1949, in that he was sent on 15 days C/L w.e.f. 13.11.98 to 01.12.98 (AN). But he failed to do so and he reported at his own on 07.02.99 at Coy Hqs after absenting himself or 68 days without any permission of the competent authority."

11. The memorandum alongwith the statement of article of charge, statement of imputation of misconduct, list of documents and list of witnesses was received by the petitioner as is evident from the plea of guilt recorded on 15.06.1999. The petitioner pleaded guilty to the charge. During the course of enquiry, the statements of witnesses were recorded and the petitioner was granted an opportunity to cross-examine them but he did not choose to cross-examine the witnesses. The petitioner received the copies of the statements of all the witnesses. The statement of the petitioner was recorded on 22.06.1999. The petitioner again admitted his guilt and also stated that he earlier came late for 80 days and he was with the same Unit. The petitioner also stated that due to dysentery and fever, he had fallen ill for one month. He used to reside with his in-laws. His in-laws turned him out of their house alongwith the children. He constructed one room and kept the children there. Thereafter, he came back after 68 days. The Enquiry Officer after examining the statement of the witnesses as well as the documents, proved the charge against the petitioner vide report dated 02.07.1999. The Enquiry Officer also noted that the petitioner did not produce any documentary evidence to substantiate his claim. The enquiry report was

provided to the petitioner by the respondent No. 4 vide communication dated 21.07.1999. The petitioner in response to the communication dated 21.07.1999 submitted the representation dated 27.07.1999, thereby furnishing the same reason as submitted by him, while recording his statement. The respondent No. 4 after examining the enquiry report and also the representation submitted by the petitioner, ordered dismissal of the petitioner from the service by virtue of order dated 18.10.1999. This Court finds that the Enquiry Officer has conducted the enquiry in accordance with the procedure prescribed by the Rule 27 of the Rules 1955.The petitioner in his statement recorded by the Enquiry Officer had stated that he obtained treatment/medicines privately. Though no medical certificate was produced before the Enquiry Officer but the petitioner has placed on record two medical certificates and one prescription in respect of his treatment obtained by him. The certificates and prescription have been issued by the Government Doctors and as such, the doubt arises in respect of issuance of these certificates and medical prescription in view of the statement made by the petitioner during the course of enquiry that he obtained medicines privately. The procedure prescribed under the Rule (supra) has been meticulously followed by the Enquiry Officer. This contention of the petitioner also fails.

12. The third contention of the petitioner is that the Enquiry Officer acted as Presenting Officer which is against the settled principle of law that one cannot be a judge of his own cause. It was also submitted that no Defence Assistant was provided to the petitioner. In order to appreciate this contention it would be appropriate to take note of the judgment of the Hon’ble Supreme Court in case

titled, ***Union of India v. Ram Lakhan Sharma***[3]**,** wherein it has been held as under:

> **"33.** The Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect:
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> "*16*. We may summarise the principles thus:
>
> (*i*) The Enquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.
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> (*ii*) It is not necessary for the disciplinary authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.
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> (*iii*) The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.
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> (*iv*) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.
>
> (*v*) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.
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> Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may."
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> **34.** We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. **There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent.** When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice.

[3] (2018) 7 SCC 670

13. If the enquiry conducted by the Enquiry Officer in the present case is evaluated on the touchstone of law as mentioned above, this Court finds that the witnesses appeared before the Enquiry Officer and on being asked to depose, they made their respective statements. Certain questions were put to the witnesses by the Enquiry Officer and thereafter the petitioner was afforded an opportunity to cross-examine the witnesses but the petitioner did not choose to cross-examine the witnesses, as such, this Court is of the considered view that no prejudice has been caused to the petitioner, merely by non-appointment of Presenting Officer. So far contention of the petitioner that no defence Assistant was provided to him, it needs to be noted that CRPF Rules of 1955, do not provide for appointment of any Defence Assistant. In the instant case, the petitioner has pleaded guilty right from the very beginning when the plea of admission or denial of guilt of the petitioner was recorded by the Enquiry Officer, it cannot be said that the enquiry proceedings stand vitiated by not providing Defence Assistant to the petitioner.

12. The other contention of the petitioner is that he was not afforded any opportunity of hearing by the respondent No.4 before imposing punishment upon the petitioner. A perusal of the Rule 27 would reveal that there is no requirement of providing any such opportunity to the delinquent official before imposing any penalty by the disciplinary authority. This ground loses its relevance in view of the judgment of the Hon'ble Apex Court in **"ECIL v. B. Karunakar"[4].**

[4] (1993) 4 SCC 727

13. Lastly, it was also urged by the petitioner that the punishment imposed upon the petitioner is quite harsh and disproportionate to the alleged mis-conduct of the petitioner. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in '**State (Union of India) v. Ram Saran**'[5] wherein it has been held as under:

> **"12.** Residual question is what would be an appropriate sentence. It is not disputed and rather fairly conceded that for a person in a disciplined service like CRPF, any act of indiscipline deserves adequate and stringent punishment under the Act. In terms of Section 10(*m*) an employee who absents himself without leave or without sufficient cause overstays leave granted to him can be punished with imprisonment for a term which may extend to one year or with fine which may extend to three months' pay or with both. The offence has been treated as one of "less heinous offences". More heinous offences are provided in Section 9. The Assistant Commandant has found the explanation given by the respondent to be not acceptable. Therefore, he has been rightly held to have committed a less heinous offence. Taking note of the relevant aspects, we feel the fine of two months' pay which the respondent was drawing at the time when the proceedings were initiated would meet the ends of justice. By altering the punishment we are not belittling the gravity of offence but, in our view deterrent punishment must be resorted to when such absence is resorted to avoid and evade undertaking a testing or trying venture or deployment essential at any given point of time, and not as a routine in the normal course. The appeal is allowed to the extent indicated above."

14. A perusal of the enquiry report reveals that it has been mentioned that the petitioner remained absent earlier for 80 days. The respondent No. 4 in its order impugned, while dismissing the petitioner from the service has made following observations:

> "6. I agree with the findings of the enquiry officer that the said individual is a habitual offender. He had overstayed 8 times earlier and it is evident that although it had been regularized as leave without pay and not punished but it does not mean that he had been exonerated without any guilty from his side. The disciplinary authority had been very considerate and taken sympathetic consideration and lenient view was taken on humanitarian grounds 8 times earlier.

[5] 2004AIR(SC) 481

15. This court could have ignored the said discrepancy in the order impugned as a mistake/remiss on the part of respondent No. 4, where a reference has been made in respect of the petitioner overstaying eight times earlier but the respondent No. 4 has repeated the said reference of overstaying of the petitioner eight times earlier. It appears that the respondent No. 4 while passing the order impugned, got swayed by the overstaying of the petitioner eight times earlier and ordered his dismissal from the service. The respondent No.4, after taking note of the overstaying of the petitioner eight times, recorded his subjective satisfaction that adequate chances were given to the petitioner but he did not rectify. The overstaying of the petitioner eight times earlier is not borne from the record and even the Enquiry Officer has not made any such reference in his enquiry report. It is not forthcoming from the record produced by the respondents as to what prompted the respondent No. 4 to make such observation while passing the order of dismissal of the petitioner from service. This Court is conscious of the settled position of law that the punishment awarded to the delinquent official is not to be interfered with until or unless it is shockingly disproportionate to the alleged misconduct of the delinquent official. In the instant case, the ground/circumstance relied upon by the respondent No. 4 is contrary to record and it would be unconscionable on the part of this court to ignore the perversity in the order impugned while imposing the punishment upon the petitioner. In **"Anil Kumar Upadhyay v. SSB"**[6], the Hon'ble Apex Court has held as under:

> **"22.** On the judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality, few decisions of this Court are required to be referred to:
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> i) In the case of *Om Kumar* (supra), this Court, after considering the *Wednesbury principles and the doctrine of proportionality*, has

[6] 2022 SCC OnLine SC 478

observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited **and is confined to the applicability of one or other of the well-known principles known as '*Wednesbury principles'***.

In the *Wednesbury case*, [1948] 1 K.B. 223, it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said **that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken**.

ii) In the case of *B.C. Chaturvedi* (supra), in paragraph 18, this Court observed and held as under:

"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."

iii) In the case of *Lucknow Kshetriya Gramin Bank* (supra), in paragraph 19, it is observed and held as under:

"19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, **as this function is exclusively within the jurisdiction of the competent authority**.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

> **19.5.** The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. **If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."**

16. The heavy and onerous responsibility lies with the Disciplinary Authority to ensure that the punishment proportionate to the misconduct of the delinquent official is imposed upon him. The punishment must commensurate with the misconduct and it should neither be harsh nor light in nature. Because of this reason only, the Revisional Authority has been vested with power to enhance the punishment but after providing due opportunity of hearing to the delinquent official. Once such heavy duty has been cast upon the Disciplinary Authority and the quantum of punishment has been kept away from the consideration of the Courts unless it shocks the conscience of the Court, such duty must be discharged by the disciplinary authority very fairly and in a transparent manner. The respondent No. 4 has miserably failed in discharging his onerous responsibility of imposing adequate punishment as he has made certain observations which were not only not forthcoming from the record of the enquiry proceedings but also contrary to the enquiry report. The respondent Nos. 2 and 3 while deciding the appeal and the revision, as the case may be, have also not considered/examined the said issue and have passed the orders impugned just by examining the validity of the enquiry proceedings. They were under obligation not only to test the enquiry proceedings on the parameters of requirements of section 27 of the Rules of 1955 but also to examine as to

whether the same has been awarded on the basis of material relied upon by the Disciplinary Authority and further to ensure that the punishment awarded was proportionate to the misconduct of the delinquent official.

17. In view of what has been said and discussed above, the orders impugned in the present petition are quashed. The respondent No.4 shall pass fresh orders in respect of penalty to be imposed upon the petitioner in accordance with law, within a period of one month from the date copy of this order is served upon the respondent No. 4. Since the petitioner cannot be reinstated into service as he has crossed the age of superannuation, so entitlement of service benefits, if any, shall be subject to outcome of the decision of the respondent No. 4.

(RAJNESH OSWAL)
JUDGE

Jammu
21.07.2023
Karam Chand/Secy.

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.