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**(2015) 05 DEL CK 0222**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 3361 of 1992**

J. Khushalani

APPELLANT

Vs

Badarpur Thermal Power Station and Others

RESPONDENT

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**Date of Decision :** 05-05-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2015) 5 AD 650 : (2015) 220 DLT 410

**Hon'ble Judges :** Hima Kohli, J

**Bench :** Single Bench

**Advocate :** J.C. Seth, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Hima Kohli, J.—In this petition, challenge has been laid by the petitioner to the order dated 30.07.1991 passed by the Disciplinary Authority, imposing upon him a penalty of withholding two increments with cumulative effect and praying inter alia for release of his withheld increments.

2. Before proceeding to deal with the submissions made by the parties, it is necessary to recapitulate the facts of the case. On 12.09.1980, the petitioner was appointed as a Supervisor, Grade-I (P) in the pay scale of Rs. 630-30-1050 in the respondent No. 1/Badarpur Thermal Power Station (in short "BTPS"). Vide order dated 11/14.06.1985, he was promoted as Senior Supervisor in the pay scale of Rs. 950-45-1040-50-1540. On 28.12.1990, the respondents served a memorandum on the petitioner under Rule 27 of the NTPC Conduct, Discipline and Appeal Rules, 1977 (in short CDA Rules"), enclosing therewith a statement of imputation of misconduct and called upon him to make a representation in response to the proposal to take disciplinary action against him. As per the statement of imputation of misconduct, the respondents had found that the petitioner had abused the medical reimbursement facility provided to the employees as a welfare measure, by submitting 12 false medical reimbursement claims to the extent of Rs. 10,154.05 paise for his dependent wife and two

children for the period between September, 1989 and March, 1990. It was alleged that out of the 12 prescriptions mentioned in the statement of imputation, the petitioner had secured 11 prescriptions in the name of his wife and two dependent children by showing some other patients to Dr. Raj Kumar, Deputy Medical Superintendent, Deen Dayal Upadhyay Hospital. Based on the aforesaid findings, it was alleged that the petitioner had committed an act of misconduct in terms of Rule 5(5) of the CDA Rules, exhibited lack of integrity and indulged in a conduct unbecoming of a public servant, thus violating Rule 4(1) and (3) of the above Rules.

3. The petitioner had submitted a reply dated 25.01.1991 to the aforesaid memorandum, denying all the allegations levelled against him. Not satisfied with his reply, the respondents/BTPS issued the impugned order dated 30.07.1991, holding inter alia that the petitioner had abused the medical reimbursement scheme of the company that had caused wrongful pecuniary benefits to him and wrongful loss to the company. As a result, a penalty of withholding two increments with cumulative effect was imposed on the petitioner. The petitioner filed an appeal against the said order, which was dismissed by the Appellate Authority vide order dated 31.03.1992.

4. Aggrieved by the aforesaid decision, the petitioner had filed the present petition in August, 1992. Pertinently, in the prayer clause, the petitioner had prayed for quashing of the order dated 30.07.1991 passed by the Disciplinary Authority, but he did not assail the order dated 31.03.1992, passed by the Appellate Authority.

5. Notice was issued in the present petition on 24.09.1992. After the pleadings were completed, the petition was admitted for regular hearing on 18.05.1994. In the year 2009, the petitioner had filed an application, proposing to amend the writ petition by adding six more prayers (CM APPL. 4592/2009). Vide order dated 17.09.2009, the amendment application was dismissed with an observation that the said application was an attempt on the part of the petitioner to proceed de novo with the case, which was impermissible. However, he was granted leave to raise legal pleas during the course of arguments. The petitioner sought a review of the aforesaid order by filing a review application, being R.A. No. 406/2009, which came to be dismissed on 23.10.2009.

6. Discontented by the aforesaid order, the petitioner had filed an intra-court appeal, registered as LPA No. 601/2009. On 07.01.2010, when the said appeal was listed before the Division Bench, learned counsel for the petitioner/appellant had stated on instructions from his client that only prayer (b) as mentioned in the amendment application be permitted to be added in the writ petition. It was also recorded in the order passed by the Division Bench that the petitioner/appellant did not wish to make any further averments in the writ petition in support of the aforesaid prayer and instead, he sought leave to rely on certain decisions of the Supreme Court to substantiate the said prayer. Taking into consideration the submission made by learned counsel for the petitioner/

appellant, the aforecited appeal was allowed and the petitioner was permitted to amend the writ petition by adding the following prayer (b):-

"(b) That the penalty of withholding of two increments with cumulative effect under Rule 23(b) of NTPC (CDA) Rules is Major Penalty which cannot be imposed on the petitioner without adhering to the procedure for imposition of major penalty and therefore Rule 23(b) is contrary to law/clarification already given by various Hon''ble Courts."

7. Thereafter, pleadings were completed in respect of the amended writ petition and the matter was once again placed in the regular cause list. On 24.01.2013, when the matter came up for hearing and none appeared on behalf of the petitioner, the writ petition was dismissed in default. Subsequently, an application for restoration was filed by the petitioner (CM APPL. 2861/2013), which was allowed vide order dated 13.08.2013, subject to payment of costs and the petition was restored to its original position. This takes care of the factual background of the case and the sequence of events that have taken place after the present petition was filed.

8. The first grievance raised by the petitioner, who appeared in person, is that on 28.12.1990, when the respondents/BTPS had issued him a memorandum, he had asked for some documents to enable him to file a comprehensive reply, but the respondents had failed to furnish him the said documents and resultantly, he could not meet the allegations levelled against him. Secondly, the petitioner had raised a grievance that the impugned order dated 30.07.1991 bears the signature of the Manager (Training), who was not authorized by the Competent Authority to issue the same and nor did the Rules provide that the Competent Authority could authorize any officer to exercise such powers that were exclusively vested in him. In support of the above submission, he had referred to Rules 3(d) and (e) of the CDA Rules that define the words, "Board" and "Competent Authority" and urged that in his case, the Deputy Manager was the Competent Authority, whereas the impugned order was issued by the Manager (Training), who was superior to the Deputy Manager in the order of hierarchy and therefore, he could not have passed the said order and nor could the Deputy Manager have authorized his superior officer to exercise the powers vested in him. To substantiate the said submission, the petitioner had relied on the following decisions of the Supreme Court:-

(i) Longmal and Others Vs. Superintendent of Police and Others, AIR 1967 Raj 214 : (1969) 2 LLJ 266

(ii) Kashinath Dikshita Vs. Union of India (UOI) and Others, AIR 1986 SC 2118 : (1986) 2 LLJ 468 : (1986) 1 SCALE 909 : (1986) 3 SCC 229 : (1986) 2 SLJ 278

(iii) M. Gnanamma vs. Managing Director, Andhra Pradesh State Financial Corporation and Ors. reported as 1993(5) SLR 313

(iv) Managing Director, Electronic Corporation of India Vs. B. Karunakar, (1992)

65 FLR 185 : (1992) 3 JT 605 : (1993) 3 SCALE 952 : (1992) 1 SCC 709

(v) State Bank of India and others Vs. D.C. Aggarwal and another, AIR 1993 SC 1197 : AIR 1992 SC 1197 : (1993) 1 LLJ 244 : (1992) 2 SCALE 836 : (1993) 1 SCC 13 : (1992) 1 SCR 956 Supp

(vi) Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, AIR 1995 SC 1053 : (1995) 70 FLR 817 : (1995) 2 JT 74 : (1995) 2 LLJ 68 : (1995) 1 SCALE 451 : (1995) 2 SCC 474 : (1995) 1 UJ 313 .

9. It was next argued by the petitioner that before passing the impugned order, the respondents had failed to furnish him a copy of the Inquiry Report and the documents, that have now been placed on record and on the basis whereof a decision was taken to impose a penalty on him. He had particularly referred to Rule 28 of the CDA Rules that prescribes that orders made by the Disciplinary Authority under Rule 26 (Action on the Inquiry Report) and Rule 27 (Procedure for imposing minor penalty) shall be communicated to the employee concerned, who would also be supplied a copy of the inquiry report, if any. It was the petitioner's stand that even if the Rules do not require a copy of the Inquiry Report to be supplied to him, the same ought to have been furnished.

10. The petitioner went to great lengths to read the statement of imputation enclosed with the memorandum dated 28.12.1990 and urged that it would be apparent therefrom that no case of misconduct could have been made out against him and the charges levelled against him had been trumped up. He claimed that the senior officers of the respondents had harboured some ill-will against him as he was an active office bearer of the Trade Union of the Supervisory Staff engaged in the respondent No. 1/BTPS and he had to take the brunt for having remained in the forefront. He also urged that the respondents were trying to shield the Deputy Medical Superintendent of Deen Dayal Upadhyay Hospital, which fact as per him, would be borne out from a perusal of the note file extracted and enclosed by the respondents as Annexure-A (colly.) to the counter affidavit in response to the amended writ petition.

11. Lastly, the petitioner had contended that withholding of two increments by the respondent/BTPS amounted to inflicting a major penalty on an employee under Rule 23 which categorizes minor penalties and major penalties under two sub-heads. It was the petitioner's stand that the net effect of imposing the penalty of withholding two increments on him would take the said penalty out of the scope of minor penalties listed under Rule 23(b), and place it in the ambit of a major penalty as envisaged under Rule 23(e). As per the petitioner, the quantum of financial loss suffered by him due to withholding of two increments of pay, with or without cumulative effect, would have translated into a sum of Rs. 10 lacs(approx.). To demonstrate the real effect of the penalty imposed under Rule 23(b), which stipulates withholding of increments of pay with or without cumulative effect, vis-a-vis Rule 23(e), which prescribes reduction to a lower grade or post or to a lower stage in a time scale, the petitioner had referred to

the following decisions:-

(i) Jagjiwan Chand Bhandari Vs. Rajasthan High Court and Others, (1989) 2 WLN 74

(ii) Kulwant Singh Gill Vs. State of Punjab, (1991) 61 FLR 635 : (1990) 4 JT 70 : (1990) 2 SCALE 597 : (1991) 1 SCC 504 Supp : (1990) 1 SCR 426 Supp : (1990) 3 SLJ 135

(iii) T.R. Goswami vs. Delhi Electric Supply Undertaking reported as 1992 LLR 451

12. Mr. J.C. Seth, learned counsel for the respondents/BTPS had opened his arguments by submitting that the impugned order dated 30.07.1991 passed by the Disciplinary Authority had merged in the order dated 31.03.1992 passed by the Appellate Authority but for reasons best known to him, the petitioner had elected not to challenge the final order dated 31.03.1992. He had pointed out that the petitioner had filed the present petition in August, 1992, and by the said date, the Appellate Authority had already passed the order dated 31.03.1992, upholding the penalty imposed on him by the Disciplinary Authority, vide order dated 30.07.1991. Thereafter, the petitioner had waited for seventeen years before approaching the Court for seeking an amendment to the writ petition, which request was partly allowed by the Division Bench in terms of the statement made by his counsel and recorded in the order dated 07.01.2010. Even at that stage, the petitioner did not take any step to ask for amendment to the prayer clause by adding a prayer for challenging the order dated 31.03.1992 passed by the Appellate Authority. It was therefore urged that when the petitioner has not questioned the order of the Appellate Authority, then the writ petition as filed, seeking quashing of the order passed by the Disciplinary Authority would not be maintainable and is liable to be dismissed outright.

13. On merits, learned counsel for the respondents/BTPS had disputed the submission made by the petitioner that though he had approached the respondents with a request for furnishing him certain documents so as to enable him to prepare a response to the memorandum dated 28.12.1990, they had declined the said request. To counter the said submission, he had drawn the attention of the Court to the document filed on behalf of the respondents at page 125 of the paper book, which is a part of the original counter affidavit, filed under index dated 30.10.1993. The said document is a copy of the letter dated 28.12.1990, addressed by the petitioner to the Manager (Training), NTPC in respect of the memorandum dated 28.12.1990 stating inter alia that the statement of imputation did not contain any enclosure and requesting that photocopies of all the documents (prescriptions) referred to in the said statement be supplied to him at the earliest. Learned counsel for the respondents/BTPS stated that the documents asked for were duly furnished to the petitioner under cover of letter dated 12.01.1991 (Annexure R-6), which had mentioned the enclosures, namely, a list with the details of the bills and photocopies of the medical prescriptions (24 Nos.). He had also pointed out that the said letter

bears the signatures of the petitioner in token of acknowledging receipt of the said documents.

14. As for the petitioner's claim that vide letter dated 08.08.1991, he had asked the respondents/BTPS to supply him some documents, which were allegedly not furnished to him, learned counsel for the respondents had argued that the said letter had lost its relevance because by the time the petitioner had asked for more documents, the impugned order dated 30.07.1991 had already been passed by the Disciplinary Authority, whereafter he had proceeded to file an appeal against the said order on 30.08.1991.

15. In reply to the second ground taken by the petitioner to assail the impugned order by questioning the authority and competence of the officer, who had passed the said order, learned counsel for the respondents/BTPS had submitted that when the memorandum dated 28.12.1990 was issued to the petitioner, he was working in the pay scale of Rs. 950-1540 and the Schedule of Delegation of Powers in respect of the disciplinary matters enclosed with the amended CDA Rules, would reveal that his Disciplinary Authority was the "Deputy Manager". He placed reliance on Rule 24 of the CDA Rules to strenuously urge that the Disciplinary Authority as specified in the said Schedule or any authority higher than the said authority, was equally empowered to impose any of the penalties set out in Rule 23. He submitted that in the present case, no doubt the Deputy Manager was authorized to impose a minor penalty on his subordinates, including the petitioner herein, but the penalty order against the petitioner was passed by the General Manager who was equally authorized to do so and only because the said order was communicated to him by the Manager (Training), did not make it an invalid order. To substantiate the said submission, learned counsel for the respondents/BTPS had relied on the extract of the note file of the Department, enclosed as Annexure R-5 to the affidavit dated 31.07.2014.

16. In support of his argument that communication of an order approved by the Competent Authority meets the norm even if it has been communicated by another officer, learned counsel for the respondents had relied on the decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Sumitra Devi (Smt) and Others, (2000) 85 FLR 749 : (2000) 4 JT 553 : (2000) 2 LLJ 255 : (2000) 9 SCC 326 : (2001) SCC(L&S) 78 . To buttress his submission that stoppage of two increments with cumulative effect would not convert the said penalty from a minor penalty to a major penalty, he had cited the following decisions:-

(i) Shri Govind Chandra Rout Vs. The State Government of Orissa and Others, (1975) 41 CLT 1373

(ii) State of Punjab Vs. Nirmal Singh, (2007) 115 FLR 345 : (2007) 10 JT 31 : (2007) 9 SCALE 543 : (2007) 8 SCC 108 : (2007) 2 SCC(L&S) 799

(iii) M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, AIR 2007 SC 3153 : (2007) 10 JT 571 : (2007) 10 SCALE 602 :

(2007) 10 SCC 88 : (2008) 1 SCC(L&S) 9 : (2007) 9 SCR 715 : (2007) AIRSCW 5712 : (2007) 6 Supreme 172

17. It was sought to be highlighted by the counsel for the respondents that unlike Rule 25 that lays down the procedure for imposing major penalties and stipulates that no order imposing any of the major penalties specified in Rule 23 shall be made except after holding an inquiry in accordance with the Rules, Rule 27, which prescribes the procedure for imposing minor penalties as was imposed in the present case, does not envisage holding of a regular inquiry. He had clarified that before the impugned memorandum was issued to the petitioner, only a Fact Finding Inquiry was conducted by the respondents/BTPS to satisfy itself and when he had submitted his reply to the memorandum, he too had not asked for a full-fledged inquiry to be held. It was asserted that in any event, only a minor penalty was proposed to be imposed on the petitioner in terms of the memorandum dated 28.12.1990 and on receiving his request, the petitioner was duly provided all the relevant documents. Thereafter, he did not demand any further documents till the impugned order came to be passed by the Disciplinary Authority. Hence, he cannot raise a grievance subsequently about non supply of material information/documents.

18. Learned counsel for the respondents had stated that initially, the Management was in favour of initiating proceedings for imposing a major penalty against him, but in the course of gathering information, when the respondents had written on 8.6.1990 to the Deputy Medical Superintendent, Deen Dayal Upadhyay Hospital, the latter had sent a reply dated 09.07.1990, stating that he was not inclined to participate in any disciplinary proceedings that may be initiated against the petitioner. Seeing his response, the Manager (Vigilance) of the respondent/BTPS had recorded in the note dated 12.12.1990, that though a case for imposing a major penalty was made out against the petitioner, having regard to the reply received from the concerned doctor, action for initiating a minor penalty may be initiated against him and the said recommendation was finally approved by the General Manager, BTPS vide order dated 13.12.1990.

19. Lastly, it was argued on behalf of the respondents/BTPS that the petitioner had not laid any factual foundation to challenge Rule 23(b) of the CDA Rules as he has elected not to amend the writ petition by adding any grounds to substantiate his plea that the punishment envisaged under the said provision is a major penalty and the same could not have been imposed on him without adhering to the procedure prescribed in the Rules for imposition of a major penalty. To fortify the said submission, learned counsel had cited the decision of the Supreme Court in the case of Seema Silk and Sarees and Another Vs. Directorate of Enforcement and Others, AIR 2008 SC 2564 : (2008) 106 CLT 381 : (2008) 226 ELT 673 : (2008) 7 SCALE 624 : (2008) 5 SCC 580 : (2008) 84 SCL 321 : (2008) AIRSCW 3577 : (2008) 4 Supreme 419 .

20. The Court has carefully considered the arguments advanced by both sides, scrutinized the documents placed on record and examined the judgments

referred to by the petitioner and the counsel for the respondents.

21. Before dealing with the arguments advanced by the parties, it is necessary to be cognizant of the parameters within which this Court ought to exercise its powers of judicial review in service matters when dealing with disciplinary proceedings, where challenge is laid to the orders passed by the Disciplinary Authority and the Appellate Authority.

22. It is no longer *res integra* that in exercising its discretion under Article 226 of the Constitution of India, the High Court would not interfere with the decision in respect of a disciplinary action against an employee unless there is a procedural impropriety that goes to the root of the matter or the decision is so perverse that it cannot be sustained. A court will refrain from supplanting its views for that of a Disciplinary Authority unless and until it is found to be grossly arbitrary or patently capricious. As long as the court is satisfied that the decision arrived at by the Disciplinary Authority is *bona fide* and is supported by relevant material, it would not upset the said decision only because in its opinion, the said decision is erroneous. While exercising the jurisdiction under Article 226 of the Constitution of India, the court is expected to examine the decision making process rather than delve into the merits of the decision itself unless and until the said decision is found to be patently perverse or it shakes the judicial conscience of the court. It is an equally well established principle that the High Court would exercise its jurisdiction to do substantial justice between the parties or where non-interference would result in depriving an employee of a substantive right.

23. Coming to the doctrine of proportionality, it is a well settled concept of judicial review that once a charge of misconduct has been proved, it is the discretion of the decision maker or the Disciplinary Authority to quantify the punishment and judicial intervention would be warranted only if the Court is of the opinion that the quantum of punishment imposed in a case is grossly disproportionate to the gravity of the misconduct. The litmus test to be applied when dealing with the question of quantum of punishment would be as to whether a reasonable employer would have imposed such a punishment in similar circumstances. [Refer: *Union of India (UOI) Vs. H.C. Goel*, AIR 1964 SC 364 : (1964) 9 FLR 161 : (1964) 1 LLJ 38 : (1964) 66 PLR 305 : (1964) 4 SCR 718 , *Moni Shankar Vs. Union of India (UOI) and Another*, (2008) 2 CLT 105 : (2008) 118 FLR 1092 : (2008) 3 JT 484 : (2008) 3 SCALE 455 : (2008) 3 SCC 484 : (2008) 1 SCC(L&S) 819 : (2008) 3 SLJ 325 and *Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others*, AIR 2010 SC 75 : (2009) 123 FLR 601 : (2009) 11 JT 472 : (2009) 4 LLJ 672 : (2009) 11 SCALE 608 : (2009) 15 SCC 620 : (2009) 13 SCR 487 : (2009) 7 SLR 546 : (2009) 7 SLR 251 : (2009) 9 UJ 4097 : (2009) AIRSCW 5596 .

24. Coming to the instant case and taking first the objection raised by the learned counsel for the respondents with regard to the maintainability of the present petition in the absence of any challenge laid by the petitioner to the order dated 31.03.1992, passed by the Appellate Authority, no doubt, when

asking for relief, the petitioner ought to have prayed for quashing of the order dated 31.03.1992, passed by the Appellate Authority, whereby the order dated 30.07.1991 passed by the Disciplinary Authority was upheld, but keeping in view the fact that the Appellate Authority had dismissed the petitioner's appeal and upheld the order of the Disciplinary Authority, it is not considered a valid ground for the Court to dismiss the writ petition outright on this count. Moreover, having regard to the vintage of the present petition, which relates back to the year 1992, no fruitful purpose would be served by declining to entertain the same on merits on the aforesaid technical plea taken by the respondents. The said ground shall therefore not detain the court as it has heard the parties on merits at some length and proposes to deal with the arguments raised by them and pass a substantive order.

25. The first argument advanced by the petitioner was that the respondents/BTPS had failed to furnish him documents that he had asked for, which had resulted in depriving him of his right to meet the allegations levelled against him in the memorandum dated 28.12.1990. However, a perusal of the documents filed by the respondents/BTPS demolishes the aforesaid plea. The facts on record reveal that in response to the memorandum dated 28.12.1990, the petitioner had written a letter to the Manager (Training), NTPC on the very same date, asking for the enclosures to the statement of imputation and requesting that he be furnished photocopies of the prescriptions referred to in the said statement. The documents demanded by the petitioner were duly supplied by the respondents/BTPS under cover of letter dated 12.01.1991. Enclosed with the said letter was a list with the details of bills and photocopies of medical prescriptions, numbering 24 and the said letter bears the signatures of the petitioner in token of receipt. In the given facts, the petitioner cannot be heard to state that he had not been furnished the documents and so he was unable to prepare an effective reply to the memorandum dated 28.12.1990. The subsequent letter dated 08.08.1991, addressed by the petitioner to the respondents/BTPS asking for some more documents was clearly belated for the reason that by the said date, the impugned order dated 30.07.1991 had already been passed by the Disciplinary Authority and aggrieved by the said decision, the petitioner had proceeded to file an appeal before the Appellate Authority on 30.08.1991.

26. The second grievance raised by the petitioner was with regard to the authority of the Manager (Training) to have issued the impugned order dated 30.07.1991, when he was not the Competent Authority as envisaged under the Rules. Coupled with the said argument was a plea taken by the petitioner that the respondents/BTPS had failed to furnish him a copy of the Inquiry Report and the documents that formed the basis of the decision taken by the Management to impose a penalty on him.

27. In this context, it is considered necessary to refer to the relevant Rules under the NTPC Conduct, Discipline and Appeal Rules, 1977, as amended upto 1993 which are reproduced hereinbelow:

"Rule 3: Definitions: In these rules, unless the context otherwise requires-

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(d) "Board" means the Board of Directors of the Company and includes, in relation to the exercise of powers, any committee of the Board/management or any officer of the Undertaking to whom the Board delegates any of its powers.

(e) "Chairman/Managing Director" means the Chairman/Managing Director of the Company.

(f) "Disciplinary Authority" means the authority specified in the Schedule appended to those rules and competent to impose any of the penalties specified in Rule 23.

(g) "Competent Authority" means the authority empowered by Board of Directors by any general or special rule or order to discharge the function or use the powers specified in the rule or order.

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#### Rule 5: Misconduct

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Rule 23: Penalties: The following penalties may be imposed on an employee as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons:

#### Minor Penalties

(a) Censure;

(b) withholding of increments of pay with or without cumulative effect;

(c) withholding of promotion;

(d) recovery from pay or such other amount as may be due to him, or the whole or part of any pecuniary loss, caused to the Company by negligence or breach of orders.

#### Major Penalties

(e) reduction to a lower grade or post, or to a lower stage in a time scale;

(f) removal from service which shall not a disqualification for future employment;

(g) dismissal.

#### Rule 24: Disciplinary Authority

The Disciplinary Authority, as specified in the schedule, or any authority higher than it, may impose any of the penalties specified in Rule 23 on any employee.

#### Rule 25: Procedure for imposing major penalties

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#### Rule 26: Action on the inquiry report

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#### Rule 27: Procedure for imposing minor penalties

(1) Where it is proposed to impose any of the minor penalties specified in clauses (a) to (d) of Rule 23 the employee concerned shall be informed in writing of the imputations of misconduct or misbehavior against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days. The defence statement, if any submitted by the employee shall be taken into consideration by the disciplinary authority before passing orders.

(2) The record of the proceedings shall include:

(i) a copy of the statement of imputations of misconduct or misbehavior delivered to the employee;

(ii) his defence statement, if any; and

(iii) the order of the disciplinary authority together with reasons therefor.

#### Rule 28: Communication of Order

Orders made by the disciplinary authority under Rule 26 or 27 shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.

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Rule 36A: Notwithstanding anything contained in these rules for the purpose of disciplinary proceedings under Rules 20 to 35 (both inclusive) wherever the terms Disciplinary Authority and Competent Authority have been used either interchangeably or otherwise, they shall mean the authorities as specified in the Schedule appended to the CDA Rules for exercising various powers as detailed therein.

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#### Schedule of Delegation of Powers in respect of Disciplinary Matters under NTPC Conduct, Discipline and Appeal Rules

28. Rule 24 as above states that a Disciplinary Authority prescribed in the Schedule or any authority higher than it, is empowered to impose any of the penalties on an employee as specified in Rule 23. Rule 23, that lays down the nature of penalties that can be imposed on an employee for the misconduct committed by him, is split into two parts, (i) Minor Penalties and (ii) Major Penalties. It is the case of the respondents/Management, though disputed by the other side, that it had imposed a minor penalty on the petitioner by withholding

two increments of pay with cumulative effect for which the procedure laid down in Rule 27 was to be followed.

29. Rule 27 prescribes that when the Management proposes to impose any of the minor penalties specified in clauses (a) to (d) of Rule 23, it shall inform the employee in writing of the imputations of misconduct or the misbehaviour against him. Thereafter, the employee has to be afforded an opportunity to submit his defence statement, which would be taken into consideration by the Disciplinary Authority before passing an order. Rule 27 also mandates that the record of proceedings would include a copy of the statement of imputation of misconduct that is delivered to an employee and his defence statement, if any, and the order passed by the Disciplinary Authority together with the reasons for passing such an order.

30. As is apparent from a perusal of Rule 27, the Management is not expected to conduct a full fledged inquiry based on the imputation of misconduct communicated to an employee and the defence statement received from him in reply. The said Rule only requires that the Management should intimate in writing to an employee, the sum and substance of the misbehaviour alleged against him and afford him an opportunity to reply thereto by submitting his defence statement, the main object being to comply with the principles of natural justice. The said defence statement is required to be submitted by an employee within a prescribed timeline and after considering the same, the Disciplinary Authority is expected to pass an order. Sub Rule (2) of Rule 27 further elaborates that the record of proceedings will include only the copy of the statement of imputation of misconduct, the defence statement, if any, submitted by the employee and the order of the Disciplinary Authority.

31. The report of inquiry referred to in Rule 28, in the context of Rule 27 can only be held to mean the imputation of misconduct that spells out the nature of misbehaviour alleged against an employee. Unlike Rule 25, which prescribes the procedure of imposing major penalties and makes it obligatory for the Management to hold a full blown inquiry against an employee before imposing such a penalty, Rule 27 only requires the Management to communicate to an employee in writing, the imputation of misconduct and elaborate the misbehaviour alleged against him, that may invite imposition of a minor penalty. Therefore, it cannot be argued that when a minor penalty is proposed against an employee, the Rule prescribes holding of a full-fledged inquiry.

32. The records reveal that the respondent had not conducted a full-fledged enquiry or prepared a report. Therefore, the contention of the petitioner that failure on the part of the Disciplinary Authority to adhere to the procedure prescribed in Rule 28 of furnishing him a copy of the enquiry report, makes the impugned order bad, is found to be unsustainable. Any reliance placed by the petitioner on Rule 28 is misplaced as the said Rule prescribes that an order passed by the Disciplinary Authority under Rule 26 or 27 has to be communicated to the employee, who shall also be supplied with a copy of the

report of the inquiry, if conducted. When the relevant Rules do not contemplate that the respondents had to conduct an enquiry for imposing a minor penalty on the petitioner and nor did they actually do so, the question of withholding the report from the petitioner, does not arise. As noted above, before the impugned order was finally passed, all the relevant documents were duly supplied to the petitioner and he was afforded a reasonable opportunity of defending himself in response to the Statement of Imputations served on him.

33. The decisions referred to by the petitioner to substantiate his argument that failure to furnish the Inquiry Report to him had resulted in defeating the principles of natural justice and thus violated the proceedings, are founded on entirely different facts. Unlike the instant case, where the Rules do not prescribe holding of a full fledged enquiry, in the case of Managing Director, ECIL (*supra*) and M. Gnanamma (*supra*), an Inquiry Officer was duly appointed to conduct an inquiry against the concerned employee on the basis of the charges served on him. In the case of D.C. Aggarwal (*supra*), the order passed by the Disciplinary Authority was held to be vitiated not on account of non-supply of the Inquiry Report, but on account of non-supply of the recommendations made by the CVC, which were stated to have been prepared behind the employee's back and without his participation and were relied upon by the Disciplinary Authority for arriving at a final decision. None of the other decisions cited by the petitioner on this point are of any assistance.

34. The answer to the challenge laid by the petitioner to the competence of the Manager (Training) to issue the impugned order also lies in the CDA Rules. The definition clauses contained in Rule 3(f) defines the "Disciplinary Authority" as the authority specified in the Schedule appended to the Rules and competent to impose penalties specified in Rule 23. Similarly, under Rule 3(g), the "Competent Authority" has been defined as the authority empowered by the Board of Directors or by any general or special rule or order to discharge function or use the powers specified in the Rules.

35. In the present case, Annexure-I appended to the Rules is the Schedule of Delegation of Powers in respect of disciplinary matters under the NTPC CDA Rules. As per the said Schedule, the authority competent to issue the charge-sheet to the petitioner, who at the relevant point in time, was working in the Grade of Rs. 950-1530/1540, has been described as an "Executive not below the rank of Deputy Manager or equivalent" and the very same authority was also competent to impose a minor penalty on the petitioner. At Sr. No. 6 of the Schedule is specified the name of the Appellate Authority who is competent to impose minor and major penalties, excluding removal from service and dismissal and the authority competent to exercise such a power in the case of the petitioner has been described as the Executive/Authority who is next higher to the one, who imposed the penalty.

36. Though an officer holding the post of Deputy Manager was one of the officers who was authorized to impose a minor penalty on the petitioner, the said

punishment was imposed on him by the General Manager. A perusal of the impugned order discloses that it had been communicated to the petitioner by the Manager (Training), who had clearly mentioned in the penultimate para that the said order had the seal of approval of the Competent Authority. In the present case, as per the records of the department produced by learned counsel for the respondents, the General Manager of the project had approved imposition of a minor penalty on the petitioner, and the said decision was only conveyed to him through the Manager (Training), under whom the petitioner was working as a Senior Supervisor.

37. The Schedule of Delegation of Power under the Rules does not contemplate that the Deputy Manager alone or an officer of equivalent rank is authorized to impose a minor penalty on the petitioner. Instead, the said Schedule states that an "Executive not below the rank of Deputy Manager or equivalent" would be authorized to impose minor penalties. Simply because the impugned order was passed by the General Manager would not be a ground to vitiate the same. The General Manager was well empowered to pass the impugned order in respect of the petitioner in accordance with the procedure laid down in Rule 23(b) of the CDA Rules, whereunder no regular inquiry was envisaged. No doubt, in the order of hierarchy, the Deputy General Manager, who the petitioner claims was his Competent Authority, is two steps below the post of General Manager, who had passed the order, but under Rule 24 of the CDA Rules, the General Manager of the project, who is the highest authority in the BTPS, has also been included in the category of "Disciplinary Authority" and he is equally empowered to impose any of the penalties spelt out in Rule 23.

38. The petitioner had alluded to the decision of the Supreme Court in the case of Surjit Ghosh (supra) to urge that in his case, passing of the impugned order by the General Manager instead of the Deputy Manager has resulted in causing him grave injury. What clearly weighed with the Supreme Court in the aforesaid case was that the order of punishment passed against the appellant therein by a higher authority had resulted in depriving him of the remedy of appeal, which is a substantive right under the Rules/Regulations. In the present case, the order passed by the General Manager did not deprive the petitioner of an opportunity to prefer an appeal, as provided under the Regulations. The very fact that the petitioner had exercised his right of appeal, and the said appeal was duly considered by the Appellate Authority, i.e., the Executive Director (NCR) of the respondents/BTPS, who had dismissed the same by passing an order dated 31.3.1992, demolishes the petitioner's argument that he has been deprived of a valuable right of appeal or suffered a grave injury. In fact, it is the respondent, who has raised a grievance that though the order of the Disciplinary Authority had merged in the order passed by the Appellate Authority, the petitioner had failed to take proper steps to assail the said order, in accordance with law. It is a different matter that the court has considered and turned down the said objection at the very outset.

39. The petitioner's argument that no case of misconduct was made out against him and the charges levelled by the Management were trumped up, would not be a legal plea available to him to assail the impugned order as the writ court is expected to test the impugned order on the anvil of procedural impropriety that goes to the root of the matter or gross perversity, and not that the court is expected to examine the merits of the decision. However, just to satisfy itself, the Court has gone through the Statement of Imputation of misconduct levelled against the petitioner, as enclosed with the memorandum dated 28.12.1990. The statement of imputation narrates the nature of the malafides sought to be attributed to the petitioner that had resulted in his abusing the medical reimbursement scheme of the respondents/company and had caused wrongful pecuniary benefits to himself.

40. The Statement of Imputation mentions that the petitioner had preferred 12 false medical reimbursement claims, to the extent of Rs. 10,154.05 for his dependent wife and two children for the period between September, 1989 to March, 1990. Apart from the details of the prescriptions issued by Dr. Raj Kumar, Deputy Medical Superintendent, Deen Dayal Upadhyay Hospital for the family members of the petitioner against which he had claimed reimbursement, the said Statement also mentions the prescriptions obtained by the petitioner from three other doctors. The Management's version is that the petitioner had secured 11 out of the 12 prescriptions from Dr. Raj Kumar in the names of his wife and children by showing some other patients to the doctor.

41. In the course of arguments, learned counsel for the respondents/BTPS had highlighted that at the relevant point in time, the petitioner's basic pay was Rs. 1,490/- whereas, the medical reimbursement claimed by him during the said period had mounted to Rs. 10,000/-. The records reveal that before issuing a memorandum to the petitioner, the respondents/BTPS had made some discrete inquiries, which included approaching Dr. Raj Kumar, the Deputy Medical Superintendent, Deen Dayal Upadhyay Hospital for certain clarifications with regard to the prescriptions prepared in his hand and submitted by the petitioner for claiming medical reimbursement. In response, Dr. Raj Kumar had written a letter dated 09.07.1992 to the Management confirming having prescribed the medicines to the patients brought by the petitioner but he had gone on to state that the patients brought by him were not the petitioner's family members, but some of his relatives, who he would bring for treatment and being a neighbour, the doctor would oblige him.

42. Based on the information gathered during the inquiry, initially the respondent/Management was inclined to initiate major penalty proceedings against the petitioner. However, in view of the reluctance shown by the Deputy Medical Superintendent to participate in any inquiry, that the Management may initiate against the petitioner, though the Competent Authority was inclined to initiate major penalty proceedings against him, it was decided to water down the same by initiating only minor penalty proceedings against him.

43. While the Statement of Imputation of misconduct leveled against the petitioner refers to prescriptions obtained by the petitioner for self and family members from four different doctors, i.e., Dr. Raj Kumar, Dr. Kamlesh Arora, Dr. A.C. Khosla and Dr. S.P. Mandal, the contents of the final order passed by the Disciplinary Authority reveal that it had taken into consideration the representation made by the petitioner and confined the scope of misconduct to 11 prescriptions obtained by the petitioner from Dr. Raj Kumar, the Dy. Medical Superintendent, Dean Dayal Upadhyay Hospital. This clearly demonstrates application of mind on the part of the Disciplinary Authority, who had apparently examined the facts and evaluated the documents including the petitioner's reply, before passing the impugned order.

44. In this context, it is also relevant to note that the Vigilance Department of the BTPS had opined in the note dated 26.03.1991, that the petitioner had abused the medical reimbursement scheme and considering the gravity of his misconduct, recommended that a penalty of two increments with cumulative effect ought to be imposed on him and additionally, a sum of Rs. 2,867.15 be directed to be recovered on account of the medical claims already paid to him. Despite receiving the said advise, vide letter dated 01.07.1991, the General Manager, BTPS had shown leniency and while condoning the recovery of money from the petitioner, limited his approval to the proposed minor penalty, that was finally imposed on him.

45. In the given facts and circumstances of the case, the contention of the petitioner that the respondent/Management had been harboring some ill-will against him and that the charges levelled against him were a consequence of the said hostility, is not borne out. Nor can it be stated that the respondent/Management was trying to shield the Deputy Medical Superintendent of the Hospital. But for the reluctance shown by Dr. Raj Kumar to participate in any enquiry proceedings against the petitioner, the respondent/Management would have initiated major penalty proceedings against the petitioner. This Court is not inclined to delve any deeper in the matter. Suffice it is to state that the petitioner cannot claim that the charges levelled against him are cooked up or unfounded and a result of ill-will harboured against him.

46. This leaves the last limb of the argument advanced by the petitioner which is that the real effect of imposing a penalty under Rule 23(b) amounts to imposing a major penalty on him, as envisaged under Rule 23(e) and such a penalty could not have been inflicted without following the procedure prescribed under Rule 25 of the Rules that lays down the procedure for imposing major penalties. It is trite that the power of imposing a punishment on an employee is well within the discretion of an employer and ordinarily, the courts do not interfere unless it is found that either the inquiry or the proceedings conducted in the course of the inquiry or the punishment imposed by the Disciplinary Authority/Appellate Authority is vitiated due to non-observance of the principles of natural justice and/or non-adherence to the relevant rules and regulations or in circumstances

where the punishment is found to be completely disproportionate to the proved misconduct of an employee.

47. The CDA Regulations in the instant case are explicit. A bare reading of the scheme under the Regulations would show that a clear demarcation has been made between minor and major penalties and the quantum of punishment to be imposed in the case of minor lapses/delinquencies, vis-a-vis major lapses/acts of omission and commission. Rule 5 of the Rules has defined certain acts of omission and commission that would be treated as "misconduct" and Rule 23 has defined the penalties to be imposed if misconduct is established. Taking into consideration the nature of the acts of omission and commission on the part of an employee, the punishments prescribed under Rule 23 for minor lapses that do not have a perpetual effect, have been placed under the sub-head, "minor penalties", as against the punishments prescribed for acts of misconduct, which have serious ramifications, that have been placed under the sub-head, "major penalties". In other words, the punishments/penalties falling in the first category have been treated as minor penalties and punishments inflicted for acts of misconduct falling in the second category, have been treated as major penalties.

48. There can be no hard and fast rule that stoppage of increment with or without cumulative effect ought to be treated as a major penalty, necessarily requiring a regular inquiry before inflicting such a penalty. It would have to depend on the relevant rules and regulations governing the service conditions of an employee. In the present case, the rules and regulations are unambiguous and unequivocal. The punishment of withholding increments of pay with or without cumulative effect have been placed under the head of "minor penalties". The Court is not inclined to accept the submission of the petitioner that "the punishment of withholding of increments" ought to be treated at par with "reduction to a lower stage of time scale" which is a "major penalty". These are two different penalties placed under the two different heads of Rule 23, the former under the head of "minor penalties", the latter under the head of "major penalties". The said punishments are therefore not interchangeable.

49. In the absence of a specific regulation, perhaps it could have been argued by the petitioner that withholding of two increments with cumulative effect ought to be treated as a major penalty due to the perpetual effect it had on the tenure of his service. But when the rules of service state otherwise, it cannot be contended that withholding of two increments with cumulative effect would be equivalent to a punishment of reduction to a lower grade or post in the time scale, thus bringing it in the ambit of "major penalties" for the reason that withholding of the increments would not have the immediate effect of reducing the pay to a lower stage in the time scale. Rather, the pay would remain the same during the period specified in the order.

50. Furthermore, the decisions referred to by the petitioner to substantiate the above argument will not be of any assistance to him for the reason that the said decisions have been rendered in the context of the relevant Regulations

governing the service conditions of the concerned employees. In case of Kulwant Singh Gill (supra), the Supreme Court was considering the effect of Rules 8 and 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, whereas in the case of Jagjiwan Chand (supra), the Supreme Court was called upon to analyse Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 and the Rajasthan Civil Services Rules to decide as to whether withholding grade increment with cumulative effect is a major penalty. In fact, in the case of M.P. State Agro Industries Development Corporation Ltd. (supra) cited by counsel for the respondents, the Supreme Court had clearly observed that to draw a distinction between two sets of penalties, one would have to examine the extant Rules and Regulations.

51. There being no provision in the Regulations of the respondents of holding an inquiry before inflicting a minor penalty on an employee of the respondents, the petitioner cannot be heard to state that the respondents/Management had erred in failing to adhere to the prescribed procedures before imposing a penalty on him. This Court is therefore of the opinion that before imposing a minor penalty on the petitioner as prescribed under the CDA Regulations, the respondent/BTPS was not under any obligation to follow the procedure prescribed under Rule 25, meant for imposing major penalties and having regard to the Regulations governing his service conditions, nor can the punishment imposed on him, be treated as a "major penalty".

52. It may also be relevant to note that the petitioner has failed to lay the factual foundation in the writ petition as originally filed or in the amended petition, to justify his argument that the scope of penalties listed under Rule 23(b) of the CDA Rules would take it out of the ambit of "minor penalties" and place it under the ambit of "major penalties", even though such an opportunity came his way when he had filed an amendment application in the year 2009 that was dismissed and aggrieved by the dismissal order dated 17.9.2009, he had preferred an appeal that was partly allowed by the Division Bench on 7.1.2010, whereunder he was duly permitted to add prayer (b), which is for declaring Rule 23(b) as contrary to law.

53. In view of the aforesaid discussion, it is held that the impugned order dated 30.7.1991 passed by the Disciplinary Authority and subsequently, upheld by the Appellate Authority vide order dated 31.3.1992, does not warrant any interference. The present petition is accordingly dismissed, while leaving the parties to bear their own costs.