
(2008) 12 OHC CK 0104
In the Orissa High Court
Case No : O.J.C. No. 8248 of 2001

Panchanan Sahoo

APPELLANT

Vs

High Court of Orissa and Another

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311, 311(2)

Citation : (2008) 12 OHC CK 0104

Hon'ble Judges : Dr. B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : R.K. Rath and N.R. Rout, for the Appellant; P. Panda, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.S. Chauhan, C.J.—This writ petition has been filed challenging the validity of the order dated 22/23.5.2000 by which the Petitioner has been reverted from the rank of Orissa Judicial Service, Class I (Junior) to the Orissa Judicial Service, Class II.

2. The facts and circumstances giving rise to this case are that Petitioner joined the Orissa Judicial Service, Class II on 8.8.1983 being selected by the Orissa Public Service Commission. In due course of time he was promoted to the rank of Orissa Judicial Service, Class I (Junior). Petitioner was placed under suspension vide order dated 6.4.1996 (Annex.-1) pending framing of charges. He was served the charge sheet dated 8.11.1996 (Annex.-2) levelling five charges against him. In support of the charges, statement of allegations were furnished that the Petitioner did not hold the auction properly and did not maintain any record of the auction bid and sold the gold with dishonest motive of making personal gain. Petitioner submitted reply to the charge sheet on 20.1.1997 (Annex. 4) denying allegations. The inquiry was conducted in accordance with law. Large number of witnesses were examined. In the inquiry report dated 28.5.1997 (Annex.-6) all the charges were found proved. Second show cause was served upon the

Petitioner and he submitted the reply to the said show cause on 8.12.1997 (Annex.-7). Considering the same, the impugned order reverting the Petitioner was passed. Hence this writ petition.

3. Mr. N.R. Rout, Learned Counsel appearing for the Petitioner has submitted that auction of the gold (case property) had been conducted strictly in accordance with law and gold had been sold at the prevailing price. The Petitioner had not been made aware of any of the Government order/circular for not conducting such auction sale or for prescribing any particular procedure. The gold was sold in performance of the official capacity in good faith. Therefore, no inquiry could have been conducted in such matter inquiry was not conducted in accordance with law. Preliminary inquiry was conducted behind the back of the Petitioner and when he asked for its papers, the opposite parties did not make supply there of. Therefore the inquiry was in violation of principles of natural justice. After submission of the inquiry report second show cause was served upon the Petitioner along with that inquiry report was not furnished, thus Petitioner could not make proper comments on the inquiry report. The punishment awarded is disproportionate to the delinquency. Therefore, the order of reversion is liable to be set aside.

4. On the contrary, Mr. P. Panda, learned Addl. Standing Counsel has submitted that the preliminary inquiry is conducted only to find out the facts as to whether a regular inquiry is warranted in a particular case. Once a decision is taken to hold a regular inquiry, the preliminary inquiry loses its significance and unless the findings recorded in preliminary inquiry are used against the delinquent in the regular inquiry the papers of the said inquiry are not required to be given to him. Serious charges of dishonesty and corruption were leveled against the Petitioner. That he sold the gold in violation of the Government Circular without having proper auction and without maintaining any record of auction; it could not be determined as who were the auction bidders; the sale was for lesser consideration than actual value of the sold items. Petitioner had indulged in corrupt practice as the gold was sold at a chipper rate without following the procedure prescribed by law for his personal gain.

5. In such an eventuality the only punishment which could have been given to the Petitioner was dismissal from service. However, a lenient view was taken. Thus no interference is required in the matter. The petition is liable to be dismissed.

6. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

7. Petitioner when posted as S.D.J.M., Gunupur in 1995, was served a transfer order dated 12.5.1995. However, before he handed over the charge, he sold the gold (case property) on 22.5.1995 in violation of statutory requirements. A preliminary inquiry was conducted wherein it was held that it was a fit case for holding the regular inquiry. Thus the Petitioner was served the charge sheet

dated 5.11.1996 containing five charges. The substance there of is as under:

1. Petitioner hold an auction sale dated 22nd May, 1995 wherein number of valuable gold and silver ornaments were sold to the private persons in most unusual, illegal, irregular and unauthorized manner in contravention of the express instructions issued by the Ministry of Finance, Government of India and the prevailing practice.

2. In the said auction sale a number of valuable gold and silver ornaments sold to private persons at a shockingly inadequate and low price and at weights much less than those record in the Malkhana Register causing substantial financial loss to the State.

3. The auction sale was conducted without issuing any public notice in the news paper and without holding any bid and without preparing any bid-sheet in a most illegal and irregular manner.

4. In the auction sale valuable gold and silver ornaments were sold to private persons of his choice in a most unusual, illegal, unauthorized manner and recorded altogether different names in the sheet prepared by him to conceal the actual state of affairs in order to make extra-legal personal gain.

5. The auction sale was conducted in favour of the private persons with a pre-planned dishonest motive (If making personal gain).

8. Petitioner submitted its reply to the said charge sheet on 20.1.1997 denying all the charges. The inquiry was conducted, a large number of witnesses were examined and the Inquiry Officer submitted the report dated 28.5.1997 running to 24 pages, wherein after considering the en tire evidence, the Inquiry Officer came to the conclusion that all the five charges stood proved against the Petitioner.

9. The Disciplinary Authority agreed with the Inquiry Officer and accepted the same. A show cause notice was served upon the Petitioner to which he replied in detail on 8.12.1997 (Annex.7) running to 19 pages. After considering the same, the High Court made the recommendation to the State Government for reduction in rank, which was accepted by the Government.

10. Learned Counsel for the Petitioner did not dispute the findings recorded by the Inquiry Officer at all, rather arguments had been advanced in a general that the inquiry had been conducted without following the procedure prescribed by law and in violation of principles of natural justice. Copy of the Inquiry Report was not made available along with the show cause notice to the Petitioner and punishment imposed is disproportionate to the delinquency proved. However, he has seriously submitted that as the papers of the preliminary inquiry report had not been made available, the Petitioner could not prepare his defence, therefore, the inquiry stood vitiated.

11. We find no force in the submissions made by the Learned Counsel for the

Petitioner that as the papers of the preliminary inquiry had not been made available, the inquiry stood vitiated.

12. A Constitution Bench of the Supreme Court in *Amalendu Ghosh Vs. District Traffic Superintendent North Eastern Railway, Katihar*, held that a preliminary enquiry held in respect of a particular instance is for the purpose of finding a particular fact and *prima facie*, to know as to who may be the person responsible for negligence/misconduct alleged. Rather, if in view of result of the preliminary enquiry the competent authority is of the opinion that it requires certain disciplinary proceedings against delinquent (s), a regular enquiry may be held under the rules applicable. Nonetheless, a preliminary enquiry cannot be the basis for imposing any punishment upon delinquent (s) for misconduct.

13. In *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, , again a Constitution Bench of the Supreme Court held as under:

...a preliminary enquiry is usually held to determine whether a *prima facie* case for a formal departmental enquiry is made out, and it is very necessary that the two (preliminary enquiry & regular enquiry) should not be confused. Therefore, so far as the preliminary enquiry is concerned, there is no question of its being governed by Article 311 (2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a government...

servant...In short, a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held *ex parte*, for it is merely for the satisfaction of the government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government servant gets the protection of Article 311 and all the rights that the protection implies as already indicated above. There must, therefore, be no confusion between the two inquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article, nor prior to that.

(emphasis supplied)

14. In *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, , the Supreme Court reiterated the similar view.

15. In *Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others*, , the Supreme Court held that a preliminary enquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice or not, remains of no consequence.

16. Thus, in view of the above submission advanced on behalf of the Petitioner that even after repeated demand, papers of preliminary inquiry were not made available to the Petitioner, thus inquiry itself stood vitiated is preposterous. More so, it is no one's case that any finding of the said inquiry was used in the regular inquiry.

17. The question that arises for consideration is regarding the scope of judicial interference in matters of administrative decisions. Administrative action is stated to be referable to the broad area of governmental activities in which the repositories of power may exercise executive, quasi-legislative and quasi-judicial functions.

18. The parameters of the Court's power have been analysed by the Supreme Court in *Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others*, and held that by now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, case on the point. "It is a settled position that if the action or decision is perverse or is such that no reasonable body or persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same."

19. In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, , the Court held that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.

20. In *State of U.P. and Others Vs. Renusagar Power Co. and Others*, it was held that exercise of administrative power will be set aside if there is a manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary.

21. In *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, , the Supreme Court referred to the judgments in the famous "*Wednesbury Case*" *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, (1947) 2

All ER 680 (CA); and Council of Civil Service Unions v. Minister for the Civil Services 1984 (3) All. ER. 935 wherein it had been held that "illegality", "procedural impropriety", "irrationality", "doctrine of proportionality" and "unreasonability" may be the grounds for interference. The Court held:

We are of the view that even in our country in cases not involving fundamental freedoms the role of our courts/tribunals in administrative law is purely secondary and while applying Wednesbury and CCSU principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the courts and tribunals in our country can only go into the matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable.

22. In Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, ; the Supreme Court held that the Court can exercise the power of judicial review if there is manifest error in the exercise of power or the exercise of the power is manifestly arbitrary or in a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. 21. In People's Union for Civil Liberties and Another Vs. Union of India (UOI), , while dealing with the same issue, the Supreme Court observed that judicial review is permissible if it is found that formation of belief by the statutory authority suffers from mala fide, dishonesty or corrupt practice. The order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the Legislature or is based on the grounds extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder.

23. In State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo, , the Supreme Court held that judicial review of an administrative action is permissible only on the grounds of illegality, irrationality and procedural impropriety.

24. The principles applied In judicial review of administrative decisions have also been considered by the Supreme Court in Tata Cellular Vs. Union of India, , held that in such a case the Court should keep in mind that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made; the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible; and quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

25. In M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, , it was held by the Supreme Court:

Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

26. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , the Supreme Court held as follows:

Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

27. In *Krishan Yadav and another Vs. State of Haryana and others*, , the Supreme Court observed that it is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are a sacred trust. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. Thus, in such a fact situation, scope of judicial review attains paramount importance.

28. In *B. Ramanjini and Others Vs. State of Andhra Pradesh and Others*, , the Supreme Court enlightened what approach the Courts should adopt while dealing with matters relating to cancellation of examination and after referring to *Bihar School Education Board (supra)* observed that in such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other.

29. In *Union of India (UOI) and Others Vs. Tarun K. Singh and Others*, while deciding the similar case the Supreme Court held that "in view of the allegation of malpractice, the departmental authorities has held an enquiry into the matter and the result of that enquiry has revealed gross irregularities and illegalities", thus no interference was warranted with the order passed by the statutory authority.

30. In *Zora Singh*, , the Apex Court while dealing with the issue of scope of judicial review, held as under:

The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some

of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari the superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.

(Emphasis added)

31. In Govt. of A.P. and Others Vs. Mohd. Narsullah Khan, ; the Apex Court held that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.

32. In State of Orissa and Others Vs. Md. Illiyas, ; the Apex Court held that where a Statutory Authority had reached a subjective satisfaction that an office bearer has fully abused the powers, rights and privilege vested in him and had acted in a manner prejudicial of the interest of the inhabitants of public at large, the Court should be very slow in interfering with such orders.

33. Regarding re-appreciation of evidence by the High Court, the Supreme Court in the case of High Court of Judicature at Bombay through its representative.

34. High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, clearly held as follows:

In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based, on evidence, Tribunal is devoid of power to re-appreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

35. The Supreme Court in Rae Bareilly Kshetriya Gramin Bank Vs. Bhola Nath Singh and others, ; held as follows:

The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court

examined the evidence as if it is a court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained.

36. In *R.S. Saini v. State of Punjab* AIR 199 SC 3579; the Supreme Court observed as follows:

Before advertng to the first contention of the Appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising Writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

37. In the case of *Lalit Popli Vs. Canara Bank and Others*, , the Supreme Court observed as follows:

While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

38. The decisions referred to herein above, clearly highlight the parameters of the Court's power of judicial review of administrative action or decision. The jurisdiction of the Courts in such a matter is very limited. The order can be set-aside if it is based on estraneous grounds or there are no grounds at all for passing it or the grounds are such that no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fide, dishonesty or corrupt practice. In other words the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority, can be raised/ examined nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation

of principles of natural justice. Judicial review is permissible against the decision making process and not against the decision itself. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 of the Constitution with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference that the Court should intervene.

39. The next question which deserves attention is the issue of interference on the quantum of punishment. The same has been considered by the Supreme Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. (Vide *Bhagat Ram Vs. State of Himachal Pradesh and Others*, ; *Ranjit Thakur Vs. Union of India (UOI) and Others*, ; *Union of India and others Vs. Giriraj Sharma*, ; *S.K. Giri Vs. Home Secretary, Ministry of Home Affairs and others*, ; *Bishan Singh and others Vs. State of Punjab and another*, ; and *B.C. Chaturvedi Vs. Union of India and others*,).

40. In *Ranjeet Thakur (supra)*, the Apex Court observed as under:

But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

41. In *B.C. Chaturvedi (supra)*, after examining various earlier decisions of the Supreme Court, the Court observed that in exercise of the powers of judicial review, the Court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an Authority "shocks the conscience" of the Court, it would appropriately mould the relief either directing the Authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, Court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced him to do so, though he had no intention to do so. (Vide *Giriraj Sharma (supra)*). The Court may further examine the effect, if order is set aside or substituted by some other penalty.

42. In *G. Ganayutham (supra)*, the Apex Court has considered the entire law on the subject and compared the Indian Law with English, Australian and Canadian

Laws, and held that in case the Court comes to the conclusion that the punishment awarded is disproportionate or the Disciplinary Authority was irrational in imposing the punishment, the punishment cannot be quashed as even then the matter has to be remitted back to the appropriate authority for reconsideration and it is only in very rare cases that the Court might to shorten the litigation think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority. In *Aniltej Singh Dhaliwal (supra)*; *U.P. State Road Transport Corpn. and Others Vs. A.K. Parul*, ; and *Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others*, , the Apex Court has taken the same view.

43. In *V. Ramana Vs. A.P.S.R.T.C. and Others*, ; the Supreme Court reconsidered the whole issue, compared the Indian Law with English Law on judicial review and after placing reliance on large number of judgments, came to the conclusion that every administrative order should be rational and reasonable and the order should not suffer from any arbitrariness. The scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, it may, in exceptional and rare cases, itself can impose appropriate punishment by recording cogent reasons in support thereof.

44. In the case of *State of Meghalaya and Ors. v. Mecken Singh N. Marak* AIR 2008 SCW 4726, the Supreme Court has observed that a Court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of 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 therefore. 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.

45. In *Municipal Committee, Bahadurgarh Vs. Krishan Behari and others*, , the Supreme Court held as under:

In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated

may be small or large; it is the act of misappropriation that is relevant.

46. Similar view has been reiterated in *Ruston and Hornsby (I) Ltd. v. T.B. Kadam* AIR 1975 SC 2025; *U.P. SRTC v. Basudeo Chaudhary*, (1997) 11 SCC 370, *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourarara Sangha Etc.*, ; *Karnataka State Road Transport Corporation Vs. B.S. Hullikatti*, ; and *Regional Manager, RSRTC v. Ghanshyam v. Sharma*, (2002) 1 LLJ 234 SC .

47. In *Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh*, ; and *U.P. State Road Transport Corporation Vs. Vinod Kumar*, ; the Supreme Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal.

48. In view of the above, we do not find any cogent reason to review the decision of the Statutory Authorities to reduce the Petitioner in rank. In fact a very lenient view had been taken, otherwise, it was a fit case for imposition of punishment of dismissal.

49. We also do not find any force in the submission made by the Learned Counsel for the Petitioner that as inquiry report was not made available along with the second show cause notice, the punishment order is bad.

50. In paragraph-9 of the writ petition, Petitioner himself has admitted that inquiry report had been made available to him. Therefore, Learned Counsel for the Petitioner cannot, be permitted to argue contrary to the pleadings. More so, a 17 pages reply to the said show cause notice had been filed by the Petitioner. There such a plea had not been taken. Even if it is so, and for the sake of argument if it is assumed that said report was not made available, it cannot be fatal by any means unless the Petitioner satisfies the Court as what prejudice has been caused to him by non furnishing the said report.

51. Unless in a given situation the aggrieved party makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/inquiry/ selection/ result. (Vide *Jankinath Sarangi Vs. State of Orissa*, ; *Sunil Kumar Banerjee Vs. State of West Bengal and Others*, ; *Major G.S. Sodhi Vs. Union of India (UOI)*, ; *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, ; *Krishan Lal Vs. State of Jammu & Kashmir*, ; *Rajendra Singh Vs. State of Madhya Pradesh and others*, ; *State Bank of Patiala and others Vs. S.K. Sharma*, ; *S.K. Singh Vs. Central Bank of India and Others*, ; *Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827)*, ; *State of U.P. Vs. Shatrughan Lal and Another*, ; *State of A.P. Vs. Thakkidiram Reddy and Others*, ; *State of U.P. v. Harendra Arora and Anr.*, 2001 SC 2319; and *Debotosh Pal Choudhary Vs. Punjab National Bank and Others*,).

52. In the instant case, Learned Counsel for the Petitioner could not successfully assail the findings of fact recorded in the inquiry. Inquiry had been conducted giving strict adherence to the principles of natural justice and statutory

requirements. Punishment so imposed is too lenient and cannot be held even to be commensurate to the established misconduct of sale of gold in a illegal manner for personal gain.

53. Petition lacks merit and hence dismissed.

B.N. Mahapatra, J.

54. I agree.