
(2013) 03 GAU CK 0075
In the Gauhati High Court
Case No : WP (C) No. 365 of 2002

Ranendu Majumder

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 19, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 320(8)
Penal Code, 1860 (IPC) — Section 307, 323, 34, 427, 448

Citation : (2013) 3 GLT 563

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : S. Deb and Mr. S. Datta, for the Appellant; S. Chakraborty, Addl. GA, for the Respondent

Final Decision : Dismissed

Judgement

Subhasis Talapatra, J.—Heard Mr. S. Deb, learned senior counsel, assisted by Mr. S. Datta, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned Addl. Govt. Advocate for the state respondents. While the writ petitioner was detailed for providing security to one V.K. Baranwal, IRS, deputed as the Central Observer by the Election Commission of India for Sabroom for the period from 28.03.1994 to 05.04.1994, on 01.04.1994 at about 1400 hours the Central Observer and eight other members of the escort party while taking rest at Sabroom Inspection Bungalow, the petitioner alongwith another Rifleman Prananath Sarkar went to a local restaurant by vehicle bearing registration No. TRT-5067 for taking lunch. After taking lunch there, while they were on the way back to the inspection bungalow the petitioner had picked up quarrel with one civilian reportedly a newspaper hawker, namely Dipak Chakraborty. Thereafter, he came back to the said bungalow and took his rifle and went back to Sabroom town alone and started indiscriminate firing without any permission from his Commander namely, N.K. Jerman Baskey. He fired 13 rounds. On complaint of said Dipak Chakraborty, Sabroom P.S. Case No. 13/94

under Sections 307/ 323/ 448/ 427/ 34 of IPC was registered against the petitioner and taken up for investigation. Admittedly, the petitioner was arrested in connection with the said case on 01.04.1994 and was in custody since 12.04.1994. In the meanwhile, the petitioner was placed under suspension by the order vide No. TSR/Pers/88010559/RM/94/1740-43, dated 04.04.1994 (Annexure-A to the writ petition).

2. The order of suspension dated 04.04.1994, the memorandum of proceeding vide No. TSR/Pers/88010559/RM/94/8114, dated 22.08.1994 (Annexure-E to the writ petition) as well as the order of punishment on culmination of the departmental proceeding as passed by the Commandant, 1st Bn., Tripura State Rifles, hereinafter for short "Commandant", vide No. TSR/Pers/DP-1/95/26603-05, dated 15.05.1995 (Annexure-J to the writ petition) have been challenged by this writ petition couched with a prayer for direction to reinstate the petitioner in service with full pay and allowances for the period from 01.04.1994 for all purposes and intent.

3. It was averred in the writ petition that from 13.04.1994 till 19.04.1994 the petitioner was ill and in support of that contention a medical certificate (Annexure-B to the writ petition) has been appended. The petitioner further contended that from 19.04.1994 to 24.06.1994 he was under treatment at Belonia Hospital on receiving serious injuries in a scooter accident. A photocopy of the Bed Head Ticket of Belonia Hospital has been appended at Annexure-C to the writ petition. The petitioner further contended that on 03.05.1994 the petitioner had submitted a prayer to the Commandant through a messenger intimating that he was under treatment. However, ultimately the petitioner sought to resume duties. In para 11 of the writ petition, the petitioner averred that on 20.04.1994 the Commandant, the respondent No. 2 herein, passed an order imposing punishment of seven days' quarter guard. It was also ordered that the so called absence of the petitioner from 13.04.1994 to 20.04.1994 would be regularised by granting him extraordinary leave. It was not understandable to the petitioner that while on suspension how the extraordinary leave could be granted. The petitioner's further grievance as canvassed in the writ petition is that by asking the petitioner to discharge duties as the rifleman during his period of suspension is per contra to the conditions of service. Apart that, it has been stated that he was not allowed subsistence allowance any time during the suspension period, resorting to the arbitrary means. The petitioner having not paid the subsistence allowance for the period from 01.04.1994 could not manage to stay in the headquarters. Even he could not maintain his family. Having been persuaded by such stringency, the petitioner filed previously another writ petition being Civil Rule No. 433/1994 for quashing of the order of suspension.

4. As contended further by the petitioner is that during pendency of that writ petition, a proceeding against the petitioner was drawn up by the memorandum vide No. TSR/Pers/88010559/RM/94/8114, dated 22.08.1994 (Annexure-E to the

writ petition), which was admittedly received by the petitioner on 26.08.1994 on several charges as set out in the Annexure-1 to the said memorandum. The petitioner was asked to submit the written statement and nomination for the defence assistant to present the case within ten days from the date of receipt of the said memorandum. The petitioner filed the statement on 07.09.1994 (Annexure to the writ petition), stating that the subject matter of the purported proceeding and the subject matter of the said writ petition was same, as such the proceeding had to be rescinded. However, he also stated that since the subsistence allowance during the period of suspension was not granted he had been thereby denied his right to life. The petitioner stated that on 23.03.1995, the Commandant, the respondent No. 2 herein, forwarded him a copy of the inquiry report and asked to represent on the inquiry report.

5. It appears from the record that the petitioner did not file any representation, but in the writ petition he contended that the departmental proceeding and the criminal action as stated were based on the same set of allegations, where evidence was bound to be common. The Commandant, by passing the final order, dismissed the petitioner from the service and the said order was communicated under No. TSR/Pers/DP-1/95/26003-05, dated 15.05.1995 (Annexure-J to the writ petition). According to the petitioner, the Commandant has committed serious illegality. Aggrieved thus, the petitioner preferred an appeal to the Deputy Inspector General of Police (P&R), Govt. of Tripura, on 20.06.1995 (Annexure-K to the writ petition), but despite the reminders he did not receive any final order. When the previous writ petition came up for hearing on 27.02.2002, the petitioner's writ petition was dismissed on merit. The petitioner thereafter carried out a writ appeal being W.A. No. 47/2002. By the order dated 22.04.2002 (Annexure-M to the writ petition), the said writ appeal being W.A. No. 47/2002 was disposed of by the following order:

Mr. B. Das, the learned senior counsel submitted that the petitioner will challenge the order of dismissal and in view of the fact that the appellant-petitioner will challenge the order of dismissal passed by the disciplinary authority as well as the appellate authority, the present appeal has become infructuous and therefore, the appellant will not press the same. It appears that the learned single Judge while dismissing the writ petition imposed a cost on the petitioner as well as the Government. It is not clear the basis of imposing such cost alternatively either on the petitioner or to the Government. Therefore, we are of the opinion that the order regarding cost should be set aside and accordingly the judgment and order of the learned Single Judge dated 27.2.2002 is modified to the extent as indicated above and appeal is disposed of as infructuous.

6. It has been further contended by the writ petitioner that before the trial commenced, by the order dated 17.10.2001 the petitioner was acquitted from the liability of the criminal case as per provision of Section 320(8) of the Cr.P.C. meaning that the commission of the offence was admitted by the petitioner and that was compounded by the informant at whose instance the criminal action

commenced. However, it has been provided u/s 320(8) of the Cr.P.C. that the composition of an offence under this Section shall have the effect of acquittal of the accused with whom the offence has been compounded. It has been also recorded in the said order (Annexure-Q to the writ petition) in clear terms that:--

It appears from the record that charges u/s 323/ 506 IPC. were framed against the accused on the basis of the evidence on record. The offences are compoundable. I orally examined the informant-cum-victim Sri Dipak Chakraborty and the accused Sri Ranendu Majumder to which they stated that the dispute has amicably been settled by the intervention of well wishers of both sides and as such the informant-cum-victim was not willing to proceed with the case further. He prayed for disposing the case at this stage without further trial.

On the basis of such order, the petitioner contended further that since the petitioner has been acquitted from the charge and the same set of allegations has been used both in the criminal proceeding and in the departmental proceeding he should be exonerated from the charge as brought against him in the departmental proceeding.

7. Mr. S. Deb, learned senior counsel appearing for the petitioner contended that the punishment as imposed by the impugned order is disproportionate to the charge.

For appreciating the charges as brought against the petitioner those are required to be reproduced:

ARTICLE-I

No. 88010559 Rifleman Ranendu Majumder is charged in that while detailed on escort duty at Sabroom with Central Observer on 1.4.94 at 1400 hrs. had picked up a quarrel with a civilian person without any lawful cause which prejudicial to good order and discipline of the Rifles.

ARTICLE-II

No. 88010559 Rifleman Ranendu Majumder is charged in that while detailed on escort duty at Sabroom on 1.4.94 with Central Observer had left the command of the escort Commander by way of taking of his service SLR around 1500 hrs. without any authority which is gross misconduct and prejudicial to the good order & discipline of the Rifle.

ARTICLE-III

No. 88010559 Rifleman Ranendu Majumder is charged in that while detailed on escort duty at Sabroom on 1.4.94 around 1500 hrs. had used criminal force by resorting to indiscriminate firing aiming at the members of public without any authority which is gross misconduct and prejudicial to good order and discipline of the Rifles.

ARTICLE-IV

No. 88010559 Rifleman Ranendu Majumder is charged in that while he was on escort duty at Sabroom town on 1.4.94 at 1500 hrs. had came out of the Camp with his service SLR without authority did not forthwith deliver up his SLR when he was asked to do so by the escort Comdt. which is pre-judicial to good order and discipline of the Rifles.

ARTICLE-V

No. 88010559 Rifleman Ranendu Majumder is charged in that while he was on escort duty at Sabroom on 1.4.94 at 1500 hrs. with Central Observer had misused his authorised service SLR and fired 13 rounds with intention to kill innocent members of public which amounts to his gross misconduct for pre-judicial to good order and discipline of the Rifles.

8. It is apparent from the statement of articles of charge that not only for his gross misconduct and the act prejudicial to the good order in discipline to the rifle for the incident of firing as occurred on 01.04.1999, the petitioner was also charged for firing, aiming at the members of the public without any authority and for non-depositing his arms (the SLR) as per direction of the escort commandant and also taking out his authorised service SLR and misusing his authorised service SLR by way of firing 13 rounds. It cannot be stated that the accusation in the criminal action and the articles of charges as framed against the petitioner are identical or based on the same evidence. By filing the affidavit, the state respondents categorically stated that the finding of the inquiry authority is unambiguous and supported by adequate evidence. For appreciation, the said finding is reproduced hereunder.

From the evidences adduced, it transpires that the delinquent Rm. Ranendu Majumder was not on duty, but was on rest on the date and time of occurrence. He picked up the quarrel with P.W. 1 for no justifiable reason for a police personnel having been trained in a disciplined force like Tripura State Rifles. Secondly, his duty was either to report to his party Comdr. about what has happened or to report to local P.S. had he gathered anything against R W. 1. Instead he took to his service weapon without taking any permission from his party Comdr. (PW 4) and had misused the weapon by resorting to firing indiscriminately in the open market/Motor stand area which is, no doubt, a gross misconduct on the part of a member of disciplined force. All the 4 articles of charges framed against him have been proved.

In view of this, I am of the opinion that taking of lenient view to permit him to continue in discipline force will have no doubt, far sighted adverse effect on the formation concerned.

Submitted to the Commandant T.S.R. 1st Bn. for favour of final order.

9. The Commandant, after giving due opportunity to the petitioner for making the representation, passed the final order on 15.05.1995 (Annexure- R/10 to the counter affidavit), dismissing the petitioner from the service and treating the

period of suspension and absence as dies-non.

10. It would be apparent from the counter affidavit as filed by the respondents that the inquiring authority examined as many as nine witnesses (PWs. 1 to 9) who were at the place of occurrence at the time of the incident and none of those witnesses stated anything to debase the charge. On the contrary, they supported the charge. Even in the petitioner's representation in the form of appeal as filed to the Deputy Inspector General of Police (P&R), Govt. of Tripura, Agartala on 20.06.1995 (Annexure-K to the writ petition) what the petitioner assigned as the ground is that he was implicated in a false criminal case while discharging his duties. While the said criminal action was pending, the departmental proceeding as drawn up against him by the respondent No. 2 on the same set of charge was required to be stayed. The petitioner further contended that his prayer for suspending the further proceeding of the departmental action was not heeded to by the respondent No. 2 rather he directed to proceed with the inquiry. Ultimately the petitioner had been dismissed from service. The petitioner simply stated that the impugned order of dismissal has to be quashed on releasing full pay and allowances and treating the period of suspension as spent on duty for all purposes and intent. According to the petitioner, no order in the appeal was received by him. But, in the counter affidavit, the respondents have categorically stated in para 26 that the Deputy Inspector General of Police (AP), Tripura passed the order on appeal vide No. 379/F.2(71)/DAP(TSR/95, dated 14.03.1996 (Annexure-R/U to the counter affidavit), observing that:--

I find no reason to quash or change the final order passed by the Commandant, 1st Bn. T.S.R. under his order dated 15.5.95. His petition is therefore rejected.

Even though the writ petitioner has filed a rejoinder to the counter affidavit, but did not spend any word regarding the said statement. However, in para-4 the proportionality of the punishment has been called in question by stating that:

...I got as many as 14 (fourteen) rewards as against no punishment. Under the Regulation 856 of Police Regulations of Bengal, 1943 as applicable to Tripura Police, punishment of dismissal etc. is considered appropriate where (he offence connotes moral turpitude but in my case there is no allegation that the offence alleged connotes moral turpitude, even if the allegation are said to be undisputed and therefore the punishment of my dismissal from service is contrary to the regulation.

However, the petitioner also stated that the above submission was in addition to the fact that he had projected in the writ petition.

11. What the petitioner contended that during suspension, he was not required to be in the Headquarters of the Battalion or Company is per contra the provisions of Sections 17(3) of the Tripura State Rifles Act, 1983, which provides that:

unless otherwise ordered, a member of the Rifles under suspension shall not

leave the headquarters of the Battalion, Company or platoon as may be specified by the superior officer, and such member under suspension shall attend all the Roll Calls at such Headquarters.

12. Mr. S. Deb, learned senior counsel appearing for the petitioner has made elaborate submission on the proportionality of the punishment and the authority of this Court under Article 226 of the Constitution of India in intervening with the quantum of punishment. This Court finds that the petitioner did not take part in the proceeding and he was consistently taking a stand that the proceeding was invalid in the eye of law. Law in this regard has been well crystallised in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, that the departmental proceeding can be allowed to proceed further while the criminal investigation or trial is pending even on the same set of facts unless it is demonstrated that the case was as such that if the departmental proceeding had not been stayed, the person concerned would suffer serious detriment in terms of the fair trial. For elucidation, the following passage, is extracted:

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case,

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

Mr. Deb, learned senior counsel for the petitioner also referred the following decisions:

(1) Associated Provincial Picture Houses Ltd. Wednesbury Corporation, reported in 1947 (2) All ER 680.

(2) Council of Civil Service Unions & Ors. Vs. Minister for the Civil Service, reported in 1984 (3) All ER 935.

(3) CCSU Vs. Minister for the Civil Service (Lord Scarman), reported in 1984 (3) All ER 949.

(4) Brind & Ors. Vs. Secretary of State for the Home Department, reported in 1991 (1) All ER 720.

(5) R Vs. Secretary of State for the Home Department, ex parte Daly, reported in 2001 (3) All ER 433.

(6) Huang & Ors. Vs. Secretary of State for the Home Department, reported in 2005 (3) All ER 435.

(7) Huang (FC) (Respondent) v. Secretary of State for the Home Department (Appellant) and Kashmiri (FC) (Appellant) v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals), [2007] 4 All ER 15 .

13. The principles considered in those decisions by and large have been considered by the Apex Court in Union of India and another Vs. G. Ganayutham (Dead) by LR., and Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, . In Ganayutham (supra), the Apex Court held as under:

32. Finally, we conic to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment Imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain Ranjit Thakur Vs. Union of India (UOI) and Others, .

33. In Ranjit Thakur Vs. Union of India (UOI) and Others, this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts. Wednesbury and CCSU tests were satisfied. In another case, in B.C. Chaturvedi Vs. Union of India and others, a three Judge Bench said the same thing as follows:

18. ...The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusions 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 by directing the disciplinary authority/

appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof.

Similar view was taken in *Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora*, , that the Court will not intervene unless the punishment is wholly disproportionate.

14. But, in *Mukul Kumar Choudhuri (supra)*, the Apex Court has further developed the law stating that it is not open to the High Court to examine the findings recorded by the inquiry officer as a Court of appeal and reach its own conclusions and that the judicial review cannot be directed against decision but to the decision-making process. In absence of any procedural illegality or irregularity in the process of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference. On revisiting *Ganayutham (supra)*, the Apex Court in *Mukul Kumar Choudhuri (supra)* held as under:

16. In *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, , this Court elaborately considered the proportionality in the administrative law in England as well as in our own country. The Court considered some important English decisions, viz., *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation*: (1947) 2 All ER 680 (CA); *Council of Civil Service Unions Vs. Minister for Civil Service*: (1984) 3All ER 935 (HL); *R. v. Goldstein*: (1983) 1 All ER 434 (HL) and *R. Vs. Secretary of State for the Home Dept., ex. p, Brind*: (1991) 1 All ER 720 and few decisions of this Court, viz., *Ranjit Thakur Vs. Union of India (UOI) and Others*, ; *State of Maharashtra Vs. M.H. Mazumdar*, ; *Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others*, ; *Tata Cellular Vs. Union of India*, ; *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, and summed up position of proportionality in administrative law in England and India thus:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Associated Provincial Picture Houses Ltd. Y. Wednesbury Corporation*: (1947) 2 All ER 680 test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the *Associated Provincial Picture Houses: Ltd. v. Wednesbury Corporation* (1947) 2 All ER 680 test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3Xa) As per R.V. Secy. of State for the Home Deptt., ex p. Bugdaycay: (1987) 1 ALL ER 940 (HL), Brind and Smith, as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation: (1947) 2 All ER 680 and CCSU principles as slated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

17. Dealing with the question of proportionality with regard to punishment in disciplinary matters, the Court said:

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor Council of Civil Service Unions Vs. Minister for Civil Service: (1984) 3 All ER 935 (HP tests are satisfied. We have still to explain "Ranjit Thakur".

33. In Ranjit Thakur this Court interfered with the punishment only after coming

to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B.C. Chaturvedi Vs. Union of India and others, a three-Judge Bench said the same thing as follows:

18. ...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 authority/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.

Similar view was taken in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, that the Court will not intervene unless the punishment is wholly disproportionate.

34. In such a situation, unless the Court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi case that the Court might - to shorten litigation--think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C. Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the respondent, namely, State of Maharashtra v. M.H. Mazumdar cannot be of any help.

15. In Mukul Kumar Choudhuri(supra) the Apex Court has further approved the principle of Ganayutham (supra) where there was no such contention before the Apex Court that any fundamental freedom is affected or that the Court should go into the question of "proportionality". There was no contention even that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there was no finding by the appellate authority in the case in hand. Even there was no ground taken before the appellate authority regarding the procedural impropriety. Thus the decision was one which no sensible person who weighed the pros and cons could have arrived at nor was there a finding, based on material nor the punishment is outrageous in defiance of logic to attract the principles broadly laid down in Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corpn.: (1947) 2 ALL ER 680 (CA) nor in Council of Civil Service Unions Vs. Minister for Civil Service: (1984) ALL ER 935 (HL).

16. In this case, the punishment considering the gravity of the misconduct of the petitioner as a member of the disciplined force cannot be held to be outrageous

in defiance of logic or shockingly disproportionate. Thus, the principle as laid in *Ranjit Thakur Vs. Union of India (UOI) and Others*, cannot have any focal relevance in the case in hand. Moreover, the plea as insisted for the petitioner that he has been acquitted from the criminal charge, does not have any persuasive substance as it is apparent that "acquittal" is within the meaning of Section 320(8) of Cr.P.C. purporting that on composition, the offence has been compounded. Therefore, it is not a case that a criminal Court on culmination of the trial gave a finding that on appreciation of the evidence, equal to the evidence of the departmental proceeding, the petitioner was acquitted or discharged for wanting in evidence. Apart that, the appellate order has not been challenged in the writ petition, despite the fact the same has been brought in the records by the respondents. As such, this Court does not find that this case can be fitted in that category of the case as depicted in *B.C. Chaturvedi Vs. Union of India and others*, . For the reasons as stated, the writ petition is bereft of merit and accordingly the same is dismissed. However, there shall be no order as to costs.