

(2013) 04 DEL CK 0439

In the Delhi High Court

Case No : Writ Petition (C) No. 9281 of 2009

Sh. M.L. Aggarwal

APPELLANT

Vs

Cement Corporation of India Ltd. and Another

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A

Citation : (2013) 137 DRJ 158

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Vikram Nandrajog, for the Appellant; Arun Birbal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The facts of the present case show that when organizations want to harass and victimize their employees they will not stop at all. The facts of the present case show such amount of obduracy, lack of bonafides and unfairness on the part of the respondent No. 1-organization that judicial conscience of this Court is shocked. The disquiet in the mind of this Court is extenuated by the fact that the petitioner-employee has been forced to resort to repeated litigations, and admittedly that too in a matter where petitioner is guilty at best of a procedural lapse and the loss to the employer-organization is only for an amount of Rs. 3,175/- (difference/higher price) and which according to the respondent No. 1 is a "huge" amount to justify the extremely extreme/harsh punishment of removal of the petitioner from service. There was an earlier round of litigation in this Court. The learned Single Judge by the judgment dated 6.10.2006 upholding the findings of the enquiry officer of the lapse on the part of the petitioner, however, finding the penalty of removal from services grossly disproportionate remanded the matter back to the disciplinary authority to revisit the quantum of punishment. Both the parties filed appeals and the appeals being LPA Nos. 163/2007 and 231/2007 were disposed of by the Division Bench on

4.4.2008 by directing the disciplinary authority to reconsider the issue of quantum of punishment to be imposed. I would reproduce the relevant paras of the judgment of the learned Single Judge and the Division Bench at a subsequent stage, however, let me firstly briefly state the facts of the case.

2. The petitioner at the relevant time was posted as a General Manager at the Adilabad unit of the respondent No. 1/employer/Cement Corporation of India. He was served with a chargesheet dated 22.8.1986. The sum and substance of the charges against the petitioner was that he accepted an unsolicited offer of M/s. Deep Auto & Allied Industries, Hyderabad for purchasing of buckets for Deep Bucket Conveyor for a sum of Rs. 1,00,005/- and which was without Open Tender Procedure or Limited Tender Procedure. Holding the petitioner guilty of the charges, the disciplinary authority as per the report of the enquiry authority dated 28.12.1988 imposed the punishment by order dated 9.2.1989 whereby the petitioner was removed from service. I need not go into the detail of the findings of guilt of the petitioner because the petitioner has been found guilty, however, the salient aspect is that he is found guilty only at best of a procedural/technical violation, and the value of the order placed was also not a large amount but an amount of Rs. 1,00,005. The buckets which were purchased did not go waste and indubitably were utilized by the employer, and, the total monetary loss caused to the employer/respondent No. 1 was only a sum of Rs. 3,175/- being the higher price. In this regard hereinafter the relevant paras of the judgment of learned Single Judge dated 6.10.2006 and of the Division Bench dated 4.4.2008 are reproduced on the aspect of the guilt of the petitioner and also those observations which showed that the Court remanded back the matter because it considered the punishment of removal from services grossly disproportionate.

3. The relevant paras of the judgment of the learned Single Judge dated 6.10.2006 are paras 12 to 15 and the same read as under:-

12. In view of the above it is not possible to say that the report of the Inquiring Authority is perverse. As stated earlier this Court cannot become an appellate authority and scrutinize the findings and come to a different finding altogether. Therefore, the petitioner's objection to the report of the Inquiring Authority also cannot be accepted.

13. Finally I come to the question of punishment. The petitioner has been removed from service. It is explained by Mr. Raj Birbal, Senior Advocate appearing for the respondent that this punishment is lesser than the punishment of dismissal inasmuch as the dismissal entails the consequences of debarring the employee from future employment. So far as the present petitioner is concerned, the two punishment of removal and dismissal are almost the same since the petitioner at this age is not looking for a new job. The facts disclosed in the inquiry showed that the petitioner violated certain Rules. The possibility that violation was caused on account of misinterpretation of Rules cannot be ruled out. It is true that the petitioner accepted the unsolicited proposal and obtained an indent on the same very day and placed the order on that very day. However,

there is no allegation or any proof that the petitioner obtained any undue advantage out of this deal or that the petitioner caused any pecuniary loss to the respondent. The buckets in question were not perishable products and, Therefore, could be held in store for a long period. The respondents do not allege that the buckets purchased by the petitioner went waste.

14. The petitioner is guilty of misconduct and has to be suitably punishment for the misconduct. However, the nature of misconduct is more in the nature of violation of practice and procedure than in the nature of corruption. In view of what is stated in the foregoing paragraphs, it appears that the extreme penalty of removal from service is shockingly disproportionate to the offence. The punishment can be reconsidered by the Disciplinary Authority.

15. In view of the above, the impugned order of punishment dated 9.2.1989 is quashed and the Disciplinary Authority of the respondent Corporation is directed to consider afresh the punishment to be imposed on the petitioner and pass a fresh punishment order within two months hereof. With the punishment order quashed, the petitioner, for the purpose of pay and allowances, etc., will be relegated to the same status as obtained immediately preceding the order of punishment, subject however to the punishment eventually imposed.

(emphasis added)

4. A reading of the aforesaid paras shows that whereas the learned Single Judge accepted the findings of the enquiry officer and the appellate authority holding the petitioner guilty, at the same time the learned Single Judge noted that at best there was violation of certain procedural rules. Learned Single Judge also noted that there is no allegation of corruption against the petitioner and nor is there any issue that the petitioner obtained any undue advantage of the order placed for buckets. Learned Single Judge also noted that not only the petitioner did not obtain any undue advantage, but also the buckets in question were not perishable products (could be held in a store for a long period) and that the buckets did not go waste and were used by the organization. Learned Single Judge has clearly observed in para 14 that nature of misconduct is more in the nature of violation of practice and procedure than in the nature of corruption. Ultimately, the learned Single Judge has therefore held that the facts did not justify the extreme penalty of removal from services which was shockingly disproportionate to the infraction.

5. The Division Bench by the judgment dated 4.4.2008 after affirming the findings of the learned Single Judge with regard to the guilt of the petitioner made the following relevant observations in paras 19 to 21 of the judgment and which read as under:-

19. The question whether in the facts and circumstances of the present case, we would be justified in interfering and applying the doctrine of proportionality and whether in the exercise of power of judicial review under Article 226/227 of the Constitution, we could substitute our own judgment for the judgment of the

disciplinary authority, we think not. The doctrine of proportionality has to be applied in appropriate cases as depth of judicial review will depend entirely upon the facts and circumstances of a particular case. Thus, for instance, punishment of removal from service imposed on a Constable for having betrayed public trust by aiding the criminals and helping them to jump bail, could not be held to be wholly disproportionate and calling for invocation of doctrine of proportionality. [See The Commissioner of Police and Others Vs. Syed Hussain, At the same time, it cannot be lost sight of that a Govt. servant who is convicted for parking his scooter in a no parking area should be dismissed from service [see Shankar Das v. UOI]. Right to impose the penalty carries with it a duty and. Therefore, the disciplinary authority entrusted with the power to punish must act with extreme care and circumspection. Extreme penalty of removal or dismissal from service ought appropriately to be handed out only if the offence committed carries with the offending public servant is unceremoniously thrown out of service. On the other hand, if the offence is a mere lapse or fault on the part of the govt. servant, the punishing authority must, in all justice, impose a penalty proportionate to the offence committed. In any event, quantum of punishment is best decided by the disciplinary authority or the Administrative Tribunal concerned.

20. In the present case though we are of the view that there was monetary loss to the Corporation but the same was neither intentional nor it resulted in some monetary benefit to the appellant. Whatever monetary loss was caused to the Corporation, was only of a meagre amount, which too was caused due to some procedural fault on the part of the appellant, and also no element of corruption was alleged. The learned Single Judge dealt with the issue of quantum of punishment and has given her reasons for holding the punishment to be disproportionate and shocking to the conscience of the Court. The reasons recoded by her are as follows:

13. Finally I come to the question of punishment. The petitioner has been removed from service. It is explained by Mr. Raj Birbal, Senior Advocate appearing for the respondent that this punishment is lesser than the punishment of dismissal inasmuch as the dismissal entails the consequences of debarring the employee from future employment. So far as the present petitioner is concerned, the two punishment of removal and dismissal are almost the same since the petitioner at this stage is not looking for a new job. The fact disclosed in the inquiry showed that the petitioner violated certain rules. The possibility of violation was caused on account of misinterpretation of rules cannot be ruled out. It is true that the petitioner accepted the unsolicited proposal and obtained an indent on the same very day and placed the order on that very day. However, there is no allegation or any proof that the petitioner obtained any undue advantage out of this deal or that the petitioner caused any pecuniary loss to the respondent. The bucket in question was not perishable products and, Therefore, could be held in store for a long period. The respondent do not allege that the bucket purchased by the petitioner went waste.

14. The petitioner is guilty of misconduct and has to be suitably punished for the misconduct. However the nature of misconduct is more in the nature of violation of practice and procedure than in the nature of corruption. In view of what is stated in the foregoing paragraphs, it appears that the extreme penalty of removal from service is shockingly disproportionate to the offence. The punishment can be reconsidered by the Disciplinary Authority.

21. The aforesaid reasons reflect an angle which is required to be considered by the Disciplinary Authority. It is not clear from the order of the Disciplinary Authority as to whether the aforesaid relevant materials and factors were considered while imposing the punishment of removal on the writ petitioner. We, therefore, remit back the matter to the Disciplinary Authority for reconsideration of the issue of quantum of punishment to be imposed on the writ petitioner by taking notice of all relevant factors and taking all the angles into consideration, including those mentioned by the learned Single Judge. We also make it clear that we do not intend to express any opinion ourselves on the merits of the issue of quantum of punishment in any manner, except for leaving it to the best judgment of the Disciplinary Authority, who, we are confident, would take all materials including the nature of misconduct into consideration for passing a fresh order of punishment in accordance with law. The Disciplinary Authority shall pass an order within four weeks from the date of receipt of a copy of this order. We also hold that if the writ petitioner is still aggrieved, he will have the liberty to file an appeal in accordance with law. We modify the order of the learned Single Judge to the aforesaid extent only.

(emphasis added)

6. A reference to para 19 of the Division Bench judgment shows that if the offence for which the employee is charged is a mere lapse of fault on the part of the government servant the punishing authority must in all fairness impose a penalty proportionate to the offence committed. In para 20, the Division Bench has referred to paras 13 and 14 of the judgment of learned Single Judge and in para 21 it has directed the disciplinary authority to consider the observations made in paras 13 and 14 of the judgment of learned Single Judge. The Division Bench has therefore in effect approved the observations of the learned Single Judge in paras 13 and 14 of the judgment and directed the disciplinary authority to consider imposition of punishment in the light of observations made by the learned Single Judge in paras 13 and 14 of the judgment i.e. there is no charge in the nature of corruption against the petitioner and the misconduct is actually in the nature of violation of practice and procedure. Also, the extreme penalty of removal from services was found to be shockingly disproportionate to the offence.

7. Pursuant to the judgment of learned Single Judge and the Division Bench, the disciplinary authority has passed an order reiterating the punishment of removal from services. The order of disciplinary authority dated 4.6.2008, and which has been upheld by the appellate authority vide order dated 29.9.2008/31.12.2008, reads as under:-

ORDER

Whereas in pursuance to the directions passed by the Hon''ble High Court of Delhi (Dn. Bench) on 4.4.2008 on LPA No. 163/2007 filed by CCI VS M.L. Aggarwal and LPA No. 231/2007 filed by Sh. M.L. Aggarwal Vs. CCI, the undersigned has gone through the following documents in details for re-consideration of the issue of quantum of punishment to be imposed on Shri M.L. Aggarwal by taking notice of all relevant factors and taking all the angles into consideration, including those mentioned by the Ld. Single Judge:

- i) Charge Sheet issued to Shri M.L. Aggarwal vide Ref. No. CCI/VIG/ADO/1101/86 dated 22.8.1986 and reply thereto.
- ii) The records of proceedings, statement of witnesses and documents produced during the inquiry proceedings.
- iii) Inquiry Report dated 28.12.1988 submitted by the Inquiry Authority.
- iv) Punishment order dated 9.2.1989 passed by the then Disciplinary Authority imposing punishment of removal vide its order issued vide Ref. No. CCI/VIG/ADO/1101/86 dated 9.2.89.
- v) Conduct Discipline and Appeal Rules applicable to the employees of the Corporation.
- vi) Order dated 6.10.2006 passed by the Hon''ble Single Judge in Writ Petition No. 638/89 of Shri M.L. Aggarwal in the Hon''ble High Court of Delhi.
- vii) Order dated 4.4.2008 passed by the Hon''ble Dn. Bench in LPA 163/07 and LPA 231/07 filed by the Corporation and also by the Writ Petitioner Shri M.L. Aggarwal.

And whereas the undersigned on careful consideration of all the above documents in detail and application of mind has come to the conclusion that Shri M.L. Aggarwal who was working as General Manager of Cement Corporation of India Ltd., Adilabad Cement Plant was occupying a very high position in the hierarchy. Shri M.L. Aggarwal has accepted an unsolicited offer of M/s. Deep Auto and Allied Industries, Hyderabad with the intention to cause undue favour to the firm in the matter of procurement of Buckets of the value of Rs. 1 lakh in violation of the Purchase Policy of the Corporation.

And whereas during the inquiry it is proved on record that the aforesaid offer was made without there being issuance of any NIT or any indent for the supply of the said material of users Department.

And whereas during the inquiry proceedings Shri Aggarwal tried to explain the aforesaid purchase without calling for tender on the ground that it was only a repeat order. However, on careful perusal of the records, the Inquiry Officer has rightly recorded that the aforesaid purchase does not fall in the category of repeat order as it was not conforming to the requirements as laid down in the

approved Purchase Policy of the Corporation.

And Whereas on going through these documents on record has also been observed that there was no requirement or urgency of the said material and the whole case has been processed by the subordinate officers, as desired by Shri Aggarwal bypassing the rules/procedures etc. for which no appropriate defence or explanation has been submitted by him in the inquiry proceedings. In the absence of any bonafide explanation for reasons for subverting the rules and procedure, I am of the opinion that the nature of violation of the Rules and Procedures have neither been done unintentionally nor for any bonafide purpose. As such it is conclusively proved that the act of Shri Aggarwal was for malafide intention.

And Whereas Shri Aggarwal by these acts exhibited lack of honesty and integrity. Shri Aggarwal was chief Executive of the Unit. As such, it was incumbent on him to discharge his duties to protect the interest of the Corporation with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming on his part.

And Whereas the undersigned is of the view that in the instant case, honesty and integrity is more important than the quantum of financial loss and it was expected that the Unit Chief who is the custodian of the public property should act with above board honesty.

Now, therefore, having regard to the findings of the Inquiry Authority and all the above documents as stated above and taking into consideration the facts, records and circumstances of the case, the undersigned is satisfied that good and sufficient reason exists for imposing on Shri Aggarwal the penalty of Removal from the services.

Accordingly, the penalty of Removal from services imposed by the then Disciplinary Authority vide Order No. CCI/VIG/ADO/1101/86 dated 9.2.1989 is hereby confirmed to meet the ends of justice.

In case, Shri M.L. Aggarwal intends to file an appeal against this order, he may prefer the same to the Appellate Authority i.e. the Board of Directors of the Corporation at its Registered Office at SCOPE COMPLEX, CORE-V. 7 Lodhi Road, New Delhi-110 003 within one month from the date of receipt of this order.

8. Learned counsel for the respondent No. 1 made emphatic arguments to support the order of disciplinary authority confirming the punishment of removal from services by arguing that the Division Bench in the judgment did not say that the disciplinary authority could not again impose the penalty of removal from services. It is further argued that there is loss of trust in the petitioner who was occupying a senior position of General Manager and once trust is lost penalty of removal from services is appropriate. Learned counsel for the respondent No. 1 has also raised an alternative argument that if this Court set asides the order of punishment, then, in view of the judgment of the Supreme Court in the case

of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, the petitioner should not be automatically allowed back wages for the period for which he did not work with the respondent No. 1. It is argued relying upon para 19 of the judgment in the case of J.K. Synthetics (supra) that once the fault of the employee is confirmed no back wages at all can be granted. Para 19 of the judgment in the case of J.K. Synthetics (supra) reads as under:-

19. But the cases referred to above, where back-wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11A of the Industrial Disputes Act (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and

not for other benefits like increments, promotions etc.

9. Let me first address the issue as to whether the counsel for respondent No. 1 is justified in contending that the disciplinary authority and the appellate authority were again entitled to impose the punishment of removal from service of the petitioner i.e. whether the disciplinary authority and the appellate authority could in spite of the observations made by the learned Single Judge in the judgment dated 6.10.2006 and the Division Bench in the judgment dated 4.4.2008 pass the same order that was passed earlier for removal of service.

In my opinion, this argument urged on behalf of the respondent No. 1 is wholly misconceived. This is for the reason that if the penalty of removal from services had to be sustained and which could have been again passed by the disciplinary authority, there was no need at all for the Single Bench or Division Bench to have remanded the matter to reconsider the issue of punishment. The matter was remanded for reconsideration only and only because the punishment of removal from service was shockingly disproportionate. If that be so, I fail to understand the argument that the disciplinary authority and the appellate authority again could visit the petitioner with the penalty of removal from service.

10. The argument urged on behalf of the respondent No. 1 that the petitioner was a senior person and therefore having suffered loss of trust the petitioner was rightly visited with the punishment of removal from services, is an argument which is one which sounds legally appropriate but in substance is not legally appropriate. This I say so because there has to be some reasonable co-relation of facts in entirety for an employee to lose trust of an employer. Of course, if it is an issue of corruption or of huge monetary loss, an employer can lose trust, however, in the present case neither there is any charge of corruption or misappropriation against the petitioner and at best the petitioner is only guilty of technical violation of procedures. Even the loss to the organization is not a gargantuan amount but only of Rs. 3,175/- as contended on behalf of the respondent No. 1. Surely the amount of Rs. 3,175/- (being difference/higher price) cannot under any circumstance be said to be such huge amount that an employer can be said to have lost trust in an employee. It is not as if the employer is a small employer having a business of a few lacs of rupees. We are talking of an organization being the Cement Corporation of India which had huge turnover of hundreds of crores of rupees. For such an employer to contend that there is loss of trust towards an employee for an amount of Rs. 3,175/- is quite clearly nothing but victimization and which is an aspect I will deal with subsequently.

Therefore, I reject the argument urged on behalf of respondent No. 1 that the Division Bench by the judgment dated 4.4.2008 did not prevent the disciplinary authority and the appellate authority again to impose the punishment of removal from service. I have already reproduced the relevant paras of the judgment of the learned Single Judge as approved by the Division Bench and which showed that in the earlier round of litigation this Court quite clearly found the

punishment to be shockingly disproportionate. Once the penalty was shockingly disproportionate there is no question of the same punishment again being imposed upon the petitioner.

Accordingly, I set aside the orders of the disciplinary authority dated 4.6.2008 and the appellate authority dated 29.9.2008/31.12.2008 which imposed the punishment on the petitioner of removal from services.

11. Now let me turn to the argument that if the petitioner is found guilty of procedural lapse, and the petitioner is at best to be imposed a lesser punishment than removal from services, then is the petitioner entitled to back wages. For this period the back wages would be from 9.2.1989 when the petitioner was removed from services pursuant to the first order passed by the disciplinary authority till 31.1.1996, the date of superannuation of the petitioner viz a period of roughly about seven years.

12. When we refer to the observations made by the Supreme Court in the case of J.K. Synthetics (supra) in para 19 reproduced above, no doubt there are observations in the paragraph that if a person is found guilty, and at best the punishment of removal from service is found to be disproportionate and therefore punishment is reduced, then, back wages have not to be granted, however, the Supreme Court in the next para 20 in the judgment in the case of J.K. Synthetics (supra) observed as under:-

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc will be the same as those applied in the cases of an illegal termination.

13. The aforesaid para therefore shows that where the Court reaches at a conclusion that there was a petty misconduct and the same is used as a camouflage to get rid of the employee or victimize him, then, in such cases the principles related to back wages etc will be the same as those applied in the cases of an illegal termination. In my opinion, the present case clearly falls within the parameters of the observations made in the aforesaid para 20 because I find that not only the misconduct is petty in that there is no pecuniary benefit to the petitioner by the impugned acts and nor the respondent No. 1 suffered a huge monetary loss. Also, the fact that the petitioner is being victimized is ex facie clear because the authorities in spite of the observations of not only the learned Single Judge but also the Division Bench of this Court stating that the punishment is shockingly disproportionate in the facts of the present case and have blatantly again passed orders of removal of the petitioner from service. The height of victimization of the petitioner goes to the extent that even in this Court

on behalf of respondent no. 1 it is sought to be very emphatically canvassed that the Division Bench did not direct that the petitioner could not be visited with the penalty of removal from service. As already stated in very first para of the judgment I find all this extremely disconcerting and disturbing. As already stated above, if punishment of removal from service was not to be interfered with it by giving a lesser punishment then why at all would the learned Single Judge and the Division Bench remanded the matter back to the disciplinary authority to reconsider the punishment. The totality of the facts with respect to their being no corruption, no misappropriation, no monetary loss to the respondent No. 1 and only violation of practice/procedure and the disciplinary authority and the appellate authority re-imposing the penalty of removal from services upon the petitioner leaves no manner of doubt that this is a clear cut case of victimization of the petitioner.

14. Accordingly, in terms of the observations of the Supreme Court in para 20 of the judgment in the case of J.K. Synthetics (supra) I find that it cannot be argued that the petitioner will not be entitled to back wages. Of course, in order to ensure compliance of equities I am only directing that the petitioner will only get 1/3rd of the salary from 9.2.1989 till 31.1.1996 when he would have been superannuated from services of course with the observations that this 1/3rd salary payment is not only for actual payment to the petitioner but for the purpose of all terminal benefits the pay of the petitioner will be taken to be the normal pay which existed as on 9.2.1989. This is of course subject to the orders that will now be passed by the departmental authorities.

15. That leaves me with the issue that should I myself impose the punishment in this case or should I once again remand the matter back to the disciplinary authority to impose the punishment. I have thought long and hard on this. My first reaction was that I should impose the penalty myself considering that the petitioner has been harassed now for around 24 years. However, I do not want to do so in view of the observations which have been made by the Division Bench in the earlier judgment dated 4.4.2008 especially in paras 16 and 19 of the judgment as per which Courts will not substitute their judgment for punishment which the disciplinary authority may impose in the facts of the case. Of course, I hasten to add that though unfortunately because of the legal position I am remanding the matter on the quantum of punishment to the departmental authorities of the respondent No. 1, however, in view of the fact that departmental authorities have not cared to obey the earlier judgments passed by this Court, I make it clear that the disciplinary authority will only consider the imposition of that punishment upon the petitioner which would not be a major penalty of removal from services. Also, in view of observations made in the earlier judgment of learned Single Judge dated 6.10.2006 and of the Division Bench in the judgment dated 4.4.2008 and in today's judgment the disciplinary authority should in fact consider as to whether the petitioner should at all be imposed with the major penalty and without in any manner constricting the disciplinary authority and partly as a guiding factor I would feel that some

monetary penalty be imposed upon the petitioner which the disciplinary authority thinks proper in the facts of the present case.

16. In view of the above, writ petition is allowed. Impugned orders of the disciplinary authority dated 4.6.2008 and the appellate authority dated 29.9.2008/31.12.2008 are set aside. The imposition of major penalty against the petitioner of removal from services is quashed. The matter is remanded back to the disciplinary authority to impose any other punishment upon the petitioner than removal from services. Petitioner will be entitled to 1/3rd of the salary for the period from 9.2.1989 till 31.1.1996 without payment of any interest on such and which amount be now paid to the petitioner within a period of two months from today. The departmental authority will now pass appropriate orders of imposition of penalty upon the petitioner within a period of three months from today. In view of the facts as stated in the present petition and which show gross victimization of the petitioner, the writ petition is allowed with costs of Rs. 25,000/-.