

(2015) 08 MEG CK 0012

In the Meghalaya High Court

Case No : WA No. 10/2014 in WP(C) No. 361 of 2011

The Union of India and Others

APPELLANT

Vs

Vijay Kumar

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20, 21

Citation : (2015) 08 MEG CK 0012

Hon'ble Judges : U.N. Singh, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Advocate : N. Mozika, CGC, for the Appellant; R. Jha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J—This appeal is directed against the judgment and order of the learned Single Judge dated 26.02.2014 passed in WP (C) No. 361/2011 wherein and where-under, the learned Single Judge quashed the impugned order dated 14.08.2002 for discharging the respondent/writ petitioner from Assam Rifles being incorrigible offender and directed the appellants/respondents to reinstate the respondent/writ petitioner in service within a month.

2. Heard Mr. N Mozika, learned CGC appearing for the appellants/respondents and Mr. R Jha, learned counsel for the respondent/writ petitioner.

3. The succinct fact of the case sufficient for deciding the present writ appeal is recapitulated.

4. The respondent/writ petitioner was inducted in Assam Rifles as a Rifleman/ Water Carrier on 06.07.1992 and after successfully completed training, he was posted at 25th Battalion Assam Rifles as parent Unit and he had served the Unit to the utter satisfaction of all the superior officers in the chain of command and nothing adverse was known to him. On 28.06.2002, the respondent/writ petitioner had been issued with a show cause notice dated 28.06.2002 as to why

action should not be taken against him in terms of Section 4(a) of the Assam Rifles Act, 1941 read with Record Office Instruction No. 4 of 1999 and Para 24 of Chapter VIII of the Assam Rifles Manual. In the said show cause notice dated 28.06.2002, the statements of offence against the respondent/writ petitioner were that on 28.06.1999, 29.03.2000, 14.09.2000 and 01.03.2002, the respondent/writ petitioner had proceeded on leave and overstayed. It is also further alleged in the show cause notice dated 28.06.2002 that the respondent/writ petitioner had been awarded punishments for the said overstaying and incurred 4 (four) red entries in his ACR/Dossier. The said show cause notice dated 28.06.2002 reads as follows:--

2. It is clear from above that you inspite of having been advised many times to improve in your conduct did not show any change for the better. You have thus become an incorrigible offender and a confirmed bad character. Keeping this in view it has become essential to initiate action against you in terms of Sec. 4(a) of Assam Rifles Act, 1941 read with ROI No. 4/99 and para 24 of Chapter VIII of Assam Rifles Manual.

3. You should submit your reply to this show cause notice within 30 days of its receipt, failing which it shall be presumed that you have no grounds to urge against the proposed action and an ex-parte decision shall be taken against you.

Sd/- (A.K. Pathak) Col Commandant

Place: Field Dated: 28 Jun 2002"

5. After conducting the summary court martial proceedings against the respondent/writ petitioner, the respondent/writ petitioner had been discharged from service vide the impugned dismissal order dated 14.08.2002, which reads as follows:--

OFFICE OF THE COMMANDANT 25 ASSAM RIFLES C/O 99 APO

ORDER

File No. I.20001/Rec-2002/Discp/29

Dated: 14 Aug 2002

1. WHEREAS it is considered that conduct of No. 2501555H: Rank Rfn/WC Name Vijay Kumar of which has led him getting four Red Ink entries is such as to render his further retention in the public service undesirable being a incorrigible and having shown no improvement during his service.

2. AND WHEREAS No. 2501555H Rank Rfn/WC Name Vijay Kumar was afforded an opportunity to show cause against the proposed action vide AR letter No. I.20001/Rec-2002/Discp/448 dt 28 Jun 02.

3. AND WHEREAS No. 2501555H Rank Rfn/WC Name Vijay Kumar has submitted his replies vide letter No. I.HQ/20017/06/Rec/Discp/29 dt 27 Jul 2002. The same was considered in terms of ROI 4/99 and was found unsatisfactory by the

competent authority.

4. NOW THEREFORE in exercise of the powers conferred on me under AR Act 1941 Sec. 4(a) read with Para 24 Chapter VIII of AR Manual and Para 6 of ROI 4/99 the undersigned hereby discharge the said No. 2501555H Rank Rfn/WC and Name Vijay Kumar from the Assam Rifles being incorrigible offender soldier with effect from 27 August 2002 (Afternoon).

Sd/- (A.R. Pathak) Col Comd. 25 Assam Rifles

Received a copy of discharge order No. I.20001/Rec-2002/Discp/029,

6. It is admitted case of both the parties that the respondent/writ petitioner had been discharged from service for incurring 4 (four) red entries for the unauthorized absence under Chapter 6 of the Record Office Instruction No. 4 of 1999. The relevant portion of the Record Office Instruction No. 4 of 1999 prescribing the procedure for discharge/retirement from service of the Assam Rifles personnel is reproduced hereunder:--

"RECORD OFFICE INSTRUCTION NO.4/99

PROCEDURE FOR DISCHARGE/RETIREMENT FROM SERVICE ASSAM RIFLES PERSONNEL

1. A comprehensive instruction, containing all existing orders on the subject has been compiled in the form of this ROI for guidance and strict compliance by all concerned.

2. SUPERANNUATION PENSION/RETIRING PENSION

6. Discharge/Disposal of Undesirable/Inefficient Personnel

Chapter VIII, Rules 24 of the Assam Rifles Manual invests powers to the Commandant of Assam Rifles Battalions to "dismiss" or "remove" any member of the Assam Rifles below the rank of Nb/Sub. This power may be invoked by a Commandant in case where a person has got four red ink entries. As far as practicable, however, discharge under this provision should be avoided as personnel sent on discharge on this account are not eligible for pension. In case it is necessary to send an individual on discharge under this provision, a notice will be served on the individual to give opportunity to explain his case. Complete case will be forwarded to Range HQ alongwith the notice and reply received from the individual, for the approval of the DIGAR. The documents will be sent to this Directorate Records (Doc)/UPAO (And the individual to Depot Coy (No.1 Constr

Coy))."

7. Under the scheme/policy decision of the Assam Rifles i.e. Record Office Instruction No. 4 of 1999, any Assam Rifles personnel who got 4 (four) red entries can be dismissed or remove from service. As far as practicable discharge under this provision should be avoided as personnel sent on discharge on this account are not eligible for pension. It is necessary to send an individual on discharge under this provision a notice shall be served on the individual to give opportunity to explain his case. It is clear in the present case that the respondent/writ petitioner was served with the show cause notice to submit his show cause reply to explain his case. It is admitted case of both the parties that the respondents/writ petitioner had submitted his replies and that there was a summary court martial proceeding. The respondent/writ petitioner had assailed the impugned discharge order dated 14.08.2002 on amongst other grounds that:

"(i) The 4 (four) red entries for the unauthorized absence are not in the heinous category and not relatable to charges akin to lack of integrity, moral turpitude or indiscipline jeopardizing the security of the Unit and the appellants/respondents should not have taken such a drastic view of the acts by issuing the impugned discharge order dated 14.08.2002;

(ii) The source of discharge order is mentioned in Chapter 6 of the Record Office Instruction No. 4 of 1999 which empowers the Commandant to discharge any Assam Rifles personnel below the rank of Naib Subedar in case he receives "4 (four) red entries". The said Chapter has given wide and automatic power and discretion had been entrusted to the Commanding Officer in contrary to the other service Rules. The said power conferred upon the authority is contrary and not inconformity with the service rules;

(iii) The punishment of discharge imposed to the respondent/writ petitioner by issuing the impugned discharge order dated 14.08.2002 is highly disproportionate, which is not tenable in the eye of law;

(iv) The overstaying of leave cannot be considered as serious offence which jeopardizing the interest of the Unit;

(v) Discharging the respondent/writ petitioner from service by issuing the impugned discharge order dated 14.08.2002 is amount to double jeopardy inasmuch as, the respondent/writ petitioner had already imposed punishments for the unauthorized absence for which 4 (four) red entries had been entered in the service record of the respondent/writ petitioner."

8. The respondent/writ petitioner was not denying that 4 (four) red entries had been recorded in his service record for his unauthorized absence and also that there was a summary court martial proceeding after issuing the show cause notice to him. It is also clear from the record that the respondent/writ petitioner never raise any objection in the course of the summary court martial proceeding against him in pursuance of the show cause notice dated 28.06.2002 that the

principles of natural justice had been violated and also that he (respondent/writ petitioner) was not given sufficient opportunity to put up his case of defence.

9. The appellants/respondents filed the affidavit-in-opposition stating that the show cause notice dated 26.08.2002 was issued to the respondent/writ petitioner after he had incurred 4 (four) red entries in his service Dossier to afford the opportunity to explain his conduct. He was advised and counseled by his superior officers on many occasions verbally and in writing to improve his conduct. But the respondent/writ petitioner did not pay any heed to such counseling and continued with his habit of overstaying of leave at home without any reasonable ground at his own without sanction from the authorities. Under the administrative powers vested in the Commandant under the said scheme/policy decision i.e. Record Office Instruction No. 4 of 1999, it is essential for the Commandant to initiate administrative action against the respondent/writ petitioner to ensure maintenance of discipline in the Unit. The respondent/writ petitioner who was tried summarily for the offences and having been found guilty was awarded punishment for four times for the unauthorized absence and was thus identified to be an incorrigible offender unlikely to improve despite warnings, was finally discharged from service w.e.f. 27.08.2002. It is also stated in the affidavit-in-opposition that the order of discharge issued by the Commandant is just and proper in the interest of maintaining discipline in the force and also that the assertion of the respondent/writ petitioner that Section 4 of the Assam Rifles Act, 1941 deals only with the appointment of Riflemen is misleading because the impugned discharge order dated 14.08.2002 clearly stated that Section 4(a) read with Para 24 of Chapter VIII of the Assam Rifles Manual and Record Office Instruction No. 4 of 1999, clarified that the Commandant is vested with the powers to discharge the persons who are incorrigible offenders. The respondent/writ petitioner was afforded opportunity to explain his version before issuing the impugned discharge order dated 14.08.2002. However, the explanation of the respondent/writ petitioner was considered unreasonable and inadequate and did not merit further retention in service and he was therefore discharged from service. It is categorically stated in the affidavit-in-opposition that all the provisions of the Assam Rifles Manual were strictly followed before discharging the respondent/writ petitioner from service by issuing the discharge order dated 14.08.2002.

10. The learned Single Judge had come to a finding that discharging the respondent/writ petitioner for incurring 4 (four) red entries in his service record is highly disproportionate and also that before placing the red entries in the ACR/ Dossier whatever the case may be, the respondent/writ petitioner should have been given the opportunity to be heard and what compelled him to remain absent from duties without leave should have been considered. It is also the finding of the learned Single Judge that Article 20 of the Constitution of India, clearly speaks out that "no person shall be prosecuted and punished for the same offence more than once". But in the case in hand, it appears that the respondent/writ petitioner was put in rigorous imprisonment for the same ground

and subsequently had been discharged from service. After such finding, the learned Single Judge vide the impugned judgment and order dated 26.02.2014 allowed the writ petition by setting aside the impugned discharge order dated 14.08.2002 and directed the appellants/respondents to reinstate the respondent/writ petitioner in service within one month.

11. There is no question of double jeopardy in the present case inasmuch as the action taken by the authority-appellants under the scheme/policy decision of the Assam Rifles i.e. Record Office Instruction No. 4 of 1999 is not for discharging the Assam Rifles personnel by way of punishment for misconducts which had already been punished. The basic idea underlying the Record Office Instruction No. 4 of 1999 for discharge is that recurring nature of punishments for misconduct imposed on an Assam Rifles personnel would render him unsuitable for further retention in service. The respondent/writ petitioner did not complete 10 years of qualifying service to be eligible to get extra ordinary pension as provided under the CCS Pension Rules inasmuch as, his total qualifying service comes to 9 years 7 months and 16 days after deduction of non qualifying period of 187 days i.e. 98 days of imprisonment in Assam Rifles custody plus 89 days of extra ordinary leave as such, not entitled to extra ordinary pension as claimed. Over and above, the respondent/writ petitioner was not discharged from service for the physical infirmities attributable to duty i.e. duty of Rifleman.

12. The Apex Court in *Union of India and others Vs. Corporal A.K. Bakshi and another*, (1996) 2 AD 422 : AIR 1996 SC 1368 : (1996) 3 JT 310 : (1996) 2 SCALE 394 : (1996) 3 SCC 65 : (1996) 2 SCR 986 : (1996) 1 UJ 705 held that the policy for discharge envisages that in cases where an airman has been awarded such punishments six times, he is to be treated as a habitual offender and action for his discharge from service should be taken against him under Rule 15(2)(g)(ii). The basic idea underlying the policy for discharge is that recurring nature of punishments for misconduct imposed on the airman renders him unsuitable for further retention. The action taken for discharge is not by way of punishment for the misconducts for which he has already been punished. Para 10 of the SCC in Corporal A.K. Bakshi's case (Supra) reads as follows:--

"10. According to the High Court, the provisions of Rule 18 are attracted in cases where a person is discharged on the basis of the Policy for Discharge for the reason that the action for discharge has been taken on the basis of six punishments which have been imposed on him. We find it difficult to endorse this view of the High Court. The punishments referred to in the Policy for Discharge are punishments that have been imposed for misconduct under the relevant provisions of the Act and the Rules. The Policy for Discharge envisages that in cases where an airman has been awarded such punishments six times, he is to be treated as a habitual offender and action for his discharge from service should be taken against him under Rule 15(2)(g)(ii) of the Rules. This action for discharge is not by way of punishment for the misconducts for which he has already been punished. The basic idea underlying the Policy for Discharge is that

recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. The punishments that have been imposed earlier being part of the record of service have to be taken into consideration for the purpose of deciding whether such person is suitable for retention in the Air Force. The discharge in such circumstances is, therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct falling under Rule 18 of the Rules. We are, therefore, unable to agree with the High Court that termination of services on the basis of the Policy for Discharge does not constitute discharge under Rule 15(2)(g)(ii) but amounts to removal for misconduct under Rule 18 of the Rules."

13. In the case in hand also the respondent/writ petitioner had been discharged from service for incurring 4 (four) red entries. The Assam Rifles personnel who had incurred 4 (four) red entries is to be treated as habitual offender or incorrigible offender and after such finding, the respondent/writ petitioner had been discharged from service. As stated above, the discharging of the respondent/writ petitioner under the impugned order dated 14.08.2002 is not by way of punishment for the misconduct for which he had already been punished. The Apex Court in *Vidya Parkash Vs. Union of India (UOI) and Others*, AIR 1988 SC 705 : (1988) 1 JT 284 : (1989) LabIC 1205 : (1988) 1 SCALE 313 : (1988) 2 SCC 459 : (1988) 2 SCR 953 : (1988) 1 UJ 588 held that the objection as to the violation of natural justice during the court martial proceeding cannot be raised subsequently before the High Court or Supreme Court and also that the dismissal from service for an unauthorized absence cannot be held disproportionate nor illegal. Paras 6, 14 & 15 of the SCC in *Vidya Prakash's* case (*Supra*) read as follows:--

"6. The writ petition was heard by a Division Bench of the High Court at Delhi and it was dismissed on March 3, 1986 holding inter alia that no objection was taken before the Summary Court Martial that the appellant was not allowed to be represented by his counsel. It was also held that in the writ petition no objection was taken as to the competence of Major P.S. Mahant to act as a Judge in the Summary Court Martial nor objection was made to the effect that Captain K.J. Singh ordered him to keep his mouth shut. It was also observed that besides Major P.S. Mahant who was presiding over Summary Court Martial there were two other members. The appellant, it was held, had earlier been convicted four times and entries were made in the red ink. The appellant was absent from duty without any leave and he pleaded guilty before the court martial proceedings and as such there was no illegality in the order of dismissal made in the court martial proceedings.

14. Chapter 6 of the Army Act specifies the offences and also the punishments for such offences. Section 39(a) specifies that to be absent without leave constitutes an offence and Section 17(e) of the said Act provides dismissal from

service as one of the punishments for such an offence. The appellant undoubtedly absented himself from duty without taking any leave from the lines as required under the Army Act. The appellant was charge-sheeted for the said offence and he was tried by a summary court martial convened by the Commanding Officer and after giving him due opportunity it was held that the appellant was previously punished also for the offence of absence from duty on four occasions and there was a red ink entry. Considering all this in the summary court martial proceedings he was convicted and sentenced to the punishment of dismissal from service. The submission that the punishment is disproportionate to charge is wholly unsustainable. The summary court martial constituted by Major P.S. Mahant after considering the evidences has found the appellant guilty of the alleged charge and awarded the said punishment in accordance with the provisions of the Army Act. As such the said order of dismissal cannot be challenged as disproportionate to the charge or as one tainted with illegality.

15. It has been urged on behalf of the appellant that he raised an objection to Major P.S. Mahant to preside over the summary court martial. It has also been urged that at the time of taking evidence of the witnesses, the appellant was asked to keep his mouth shut and as such the appellant could not cross-examine the witnesses examined on behalf of the prosecution, thereby the principles of natural justice have been violated. It appears that the appellant has not filed any objection before the summary court martial objecting to the presiding of the court martial proceedings by Major P.S. Mahant nor any such objection had been taken in the writ petition moved before the High Court. It is for the first time in the appeal which the appellant filed before the Chief of the Army Staff (Competent Authority), Army Headquarters, New Delhi that he raised an objection to the presiding of Major P.S. Mahant as Judge of the court martial proceedings. It has been rightly held by the High Court that this is an afterthought and as such this submission cannot be permitted to be made by the appellant after the court martial proceedings were completed and the order of dismissal from service was made. As regards the other objection that he was directed by Capt. K.J. Singh to keep his mouth shut, it is also without any substance inasmuch as it appears from the summary of the evidences recorded that the appellant in fact cross-examined the prosecution witnesses. It is also evident from the judgment of the Delhi High Court that the appellant admitted his guilt of absenting from duty without taking any leave."

14. The erstwhile Gauhati High Court (Division Bench), incidentally the judgment authored by this Court (Justice T.N.K. Singh) held in *Ravindra Yadav Vs. Union of India (UOI) and Others*, (2009) 3 GLR 919 : (2006) 4 GLT 381 that question of violation of the principles of natural justice will have no force in the case where the delinquent himself participated in the disciplinary proceeding and did not raise any objection in the course of disciplinary proceeding. Discharging from service after four red entries is not illegal. Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service* (called CCSU case) summarize the principle of judicial review of administrative action as based upon one or the other of the

following, viz. legality, procedural, irregularity, and irrationality. He, however, opined that "proportionality" was as "future possibility". According to my opinion (this Court), Lord Diplock for the first time opened the window of "proportionality" in the judicial review of administrative action. Now, the Apex Court in a catena of cases held that "proportionality" is one of the basis for judicial review of the quantum of punishment imposed on the delinquent/employee by the disciplinary authority. While exercising the power of judicial review of the quantum of punishment basing on "proportionality" the court is applying Wednesbury Principle as secondary reviewing authority and also the court will not apply "proportionality" as a primary reviewing court. Therefore, the court could exercise right of secondary review based only on Wednesbury Principle. Lord Bridge explained the primary and secondary review in Brind Case [(1991) 1 AC 969: (1991) 1 All ER 720: (1991) 2 WLR 588 (HL) as follows:

"The primary judgment as to whether the particular competing public interest justifying the particular restriction imposed falls to be made by the Secretary of State to whom parliament has entrusted the discretion. But, we are entitled to exercise a secondary judgment by asking whether a reasonable Secretary of State, on the material before him, could reasonable make the primary judgment."

The Constitution Bench E.P. Royappa Vs. State of Tamil Nadu and Another, AIR 1974 SC 555 : (1974) LabIC 427 : (1974) 1 LLJ 172 : (1974) 4 SCC 3 : (1974) 2 SCR 348 held that where punishments in disciplinary cases are challenged, question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury Test. The Apex Court in Union of India and another Vs. G. Ganayutham (Dead) by LRs., AIR 1997 SC 3387 : (1997) 7 JT 572 : (2000) 2 LLJ 648 : (1997) 5 SCALE 606 : (1997) 7 SCC 463 : (1997) SCC(L&S) 1806 : (1997) 3 SCR 549 Supp : (1997) AIRSCW 3464 : (1997) 8 Supreme 269 had summed up position relating to "proportionality" in paras - 31 and 32 which read as follows:

"31. The current position of proportionality in administrative law in England and India can be summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one on 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 Wednesbury: (1948) 1 KB 223: (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 1985 AC 374 principles.

(3) (a) As per *Bugdaycay*: 1987 AC 514: (1987) 1 All ER 940, *Brind*: (1991) 1 AC 696: (1991) 1 All ER 720 and *Smith: R. v. Ministry of Defence, ex p Smith*: (1996) 1 All ER 257 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 *Wednesbury* and CCSU principles as stated 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.

Punishment in disciplinary matters: *Wednesbury* and CCSU test

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 CCSU tests are satisfied. We have still to explain *Ranjit Thakur Vs. Union of India (UOI) and Others*, AIR 1987 SC 2386 : (1988) CriLJ 158 : (1987) 4 JT 93 : (1988) 1 LLJ 256 : (1987) 2 SCALE 773 : (1987) 4 SCC 611 : (1988) 1 SCR 512 : (1989) 1 SLJ 109 ."

15. The Apex court in *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, AIR 2003 SC 1571 : (2003) 96 FLR 1067 : (2003) 2 JT 78 : (2003) 2 LLJ 181 : (2003) 2 SCALE 42 : (2003) 4 SCC 364 : (2003) SCC(L&S) 468 : (2003) 1 SCR 1034 : (2003) 2 SLJ 65 : (2003) AIRSCW 944 : (2003) 2 Supreme 93 held that unless the punishment imposed by the disciplinary authority or by the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed. Para-12 of the judgment in *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, AIR 2003 SC 1571 : (2003) 96 FLR 1067 : (2003) 2 JT 78 : (2003) 2 LLJ 181 : (2003) 2 SCALE 42 : (2003) 4 SCC 364 : (2003) SCC(L&S) 468 : (2003) 1 SCR 1034 : (2003) 2 SLJ 65 : (2003) AIRSCW 944 : (2003) 2 Supreme 93 (supra) is quoted as under:

"12. To put it differently, unless the punishment imposed by the disciplinary authority or by the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed."

16. The Apex Court in *State of Rajasthan and Another Vs. Mohammed Ayub Naz*, AIR 2006 SC 856 : (2006) 1 CTC 361 : (2006) 108 FLR 841 : (2006) 1 JT 162 : (2006) 1 LLJ 742 : (2006) 1 SCALE 79 : (2006) 1 SCC 589 : (2006) SCC(L&S) 175 : (2006) 1 SCR 138 : (2006) 2 SLJ 179 : (2006) AIRSCW 197 : (2006) 1 Supreme 37 reiterated that the scope of judicial review of the quantum of punishment is circumscribed and also that the role of administrative authority is primary and that of court is secondary, to be exercised only on well settled Wednesbury principles. Further the Apex Court in para 10 of the SCC in *State of Rajasthan and Another Vs. Mohammed Ayub Naz*, AIR 2006 SC 856 : (2006) 1 CTC 361 : (2006) 108 FLR 841 : (2006) 1 JT 162 : (2006) 1 LLJ 742 : (2006) 1 SCALE 79 : (2006) 1 SCC 589 : (2006) SCC(L&S) 175 : (2006) 1 SCR 138 : (2006) 2 SLJ 179 : (2006) AIRSCW 197 : (2006) 1 Supreme 37 held that:

"10. This Court in *Om Kumar and Others Vs. Union of India*, (2000) 3 JT 92 : (2000) 7 SCALE 524 : (2001) SCC(L&S) 1039 : (2000) 4 SCR 693 Supp while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was

the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the by the High Court on reduction of punishment of removal was not called for."

17. The Apex Court is of the view that the court's interference with the quantum of punishment cannot be a routine matter. The court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety. Para 10, 11 and 15 of the Dwarka Prasad Tiwari's case (supra) reported in Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari, (2006) 9 JT 18 : (2006) 10 SCALE 233 : (2006) 10 SCC 388 : (2007) 1 SCC(L&S) 135 : (2006) 8 SCR 217 Supp reads as follows:--

"10. The scope of interference with quantum of punishment has been the subject-matter of various decisions of this Court. Such interference cannot be a routine matter.

11. Lord Greene said in 1948 in the famous Wednesbury case: Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA) that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service: 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL) (called the CCSU case) summarized the principles of judicial review of administrative action as based upon one or the other of the following viz. illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

15. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case: Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA) the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

18. The Apex Court in Canara Bank Vs. V.K. Awasthy, AIR 2005 SC 2090 : (2005) 4 CompLJ 249 : (2005) 2 ESC 225 : (2005) 105 FLR 630 : (2005) 4 JT 40 : (2005) 2 LLJ 461 : (2005) 6 SCC 321 : (2005) SCC(L&S) 833 : (2005) 61 SCL

144 : (2005) 3 SCR 81 : (2005) 2 SLJ 463 : (2005) AIRSCW 2005 : (2005) 3 Supreme 492 held that the interference with the quantum of punishment cannot be a routine matter. Paras 21, 22 and 23 of the SCC in Canara Bank's case (Supra) read as follows:--

"21. Coming to the question whether the punishment awarded was disproportionate, it is to be noted that the various allegations as laid in the departmental proceedings reveal that several acts of misconduct unbecoming of a bank official were committed by the respondent.

22. It is to be noted that the detailed charge-sheets were served on the respondent-employee who not only submitted written reply, but also participated in the proceedings. His explanations were considered and the inquiry officer held the charges to have been amply proved. He recommended dismissal from service. The same was accepted by the disciplinary authority. The proved charges clearly established that the respondent employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the Bank. In the appeal before the prescribed Appellate Authority, the findings of the inquiry officer were challenged. The Appellate Authority after analyzing the materials on record found no substance in the appeal.

23. The scope of interference with the quantum of punishment has been the subject-matter of various decisions of this court. Such interference cannot be a routine matter."

19. From the ratio decidendi of the cases discussed above, it is clear that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court or tribunal, there is no scope for interference. In Vidya Prakash's case (Supra), the Apex Court clearly held that dismissed from service for unauthorized absence from duty for the fifth times is not illegal. In the present case, the respondent/writ petitioner had incurred 4 (four) red entries for unauthorized absence and also the respondent/writ petitioner despite of counseling in writing and orally failed to show any improvement and continued with his habit of misconducts. This being the situation, there is absolutely no reason for coming to our finding that the quantum of punishment imposed to the respondent/writ petitioner for discharging from service by issuing the impugned discharge order dated 14.08.2002 is shockingly disproportionate and also decision of the appellants/respondents suffers from procedural impropriety.

20. For the foregoing discussions, we are of the considered view that sufficient materials had been made out for interfering with the impugned judgment and order of the learned Single Judge dated 26.02.2014. Thus, the impugned judgment and order of the learned Single Judge dated 26.02.2014 is set aside and the writ appeal is allowed.

21. In the result, Writ Petition No. 361/2011 is dismissed.