
(2016) 06 DEL CK 0047
In the Delhi High Court
Case No : W.P.(C) 4682 of 2014

Union of India

APPELLANT

Vs

K. Asaiah

RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Central Civil Services (Classification, Conduct and Appeal) Rules, 1965 — Rule 14, 3(i), 3(ii), 3(iii)
Constitution of India, 1950 — Article 226

Citation : (2016) 231 DLT 163 : (2016) 158 DRJ 171 : (2016) 4 SCT 37

Hon'ble Judges : Mr. Sanjiv Khanna and Mr. Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Mr. Sameer Agrawal, Advocate, for the Appellant; Mr. Ravindra S. Garia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Najmi Waziri, J.—This petition impugns the final order dated 02.01.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in OA No. 2218/2012, which quashed and set aside the disciplinary proceedings, including the Memorandum of Charge-sheet dated 30.04.2008 and the order of the Disciplinary Authority ("DA"), which had imposed the punishment of compulsory retirement upon the respondent. The impugned order also quashed the order dated 23.05.2012 passed by the Revisionary Authority that had rejected the respondent's review application. The petitioner was also directed to forthwith reinstate the respondent in service along with all consequential benefits. An opportunity was, however, granted to the Disciplinary Authority to hold fresh inquiry proceedings in accordance with provisions contained in Rule 14 of the CCS (CCA) Conduct Rules, 1965 (1965 Rules) against the respondent from the stage it had been quashed by the Tribunal. However, any such proceeding would have to be untrammelled by the petitioner's earlier assertions in the Article of Charge - that the respondent employee had indulged in unfair practise of manoeuvring and manipulating in

order to get his transfer cancelled by any means.

2. While working as Director, Regional News Unit, Hyderabad, the respondent was transferred as Director, DFP, Guwahati by the Ministry of Information & Broadcasting (in short M/o I&B) by Order No. 176/2005-IIS dated 12.12.2005. The petitioner was conscious that despite this transfer order, the respondent had managed to continue at his Hyderabad post till May, 2006 and hence a letter dated 30.05.2006 (issued by it on 10.06.2006) directed the Air, Hyderabad to relieve the respondent forthwith. On 07.07.2006, the respondent relinquished his charge in Hyderabad, but four days later, on 10.07.2006, he resumed the charge in Hyderabad on the basis of three allegedly fake communications. These communications included two letters from the Secretary(I&B), one of which was endorsed to the Under Secretary (IIS). The third document was an undated telegram, which too communicated that the respondent's request for retention at Air, Hyderabad in his capacity as Director was under active consideration and that he should be retained in the same capacity till further orders.

3. When the respondent did not report at the Guwahati posting and continued to work at Hyderabad, an explanation was sought from Air, Hyderabad. It was then discovered that the three aforesaid fake communications had been the basis of respondent's continuance in Hyderabad.

4. A fact finding inquiry was conducted by the Director General, NSD, Air. His report held that: (i) the respondent failed in compliance of his transfer order to Guwahati; (ii) instead, he had indulged in the unfair practise of manoeuvring and manipulation of his order of transfer getting cancelled by any means; (iii) there was an assumption that the respondent being the sole beneficiary of the aforesaid fake orders, coupled with his evasive replies to the questions asked about the same and since presumably no one else would engineer such a fake communication, a clear suspicion arose towards the respondent. The Inquiry Report further opined that the facts and circumstances indicated that the respondent was also directly or indirectly involved in the origin of the three aforesaid communications to the Station Director, Hyderabad, as it was evident from his previous communications that he wanted to continue in RNS, AIR Hyderabad at any cost. Finally, the report concluded that the respondent had approached the Station Director, Hyderabad immediately after the receipt of the two fake letters, which also clearly show that he was aware that said letters were in the offing.

5. Disciplinary proceedings were initiated against the respondent for breach of Rules 3(i), (ii) and (iii) of the 1965 Rules and an explanation was called for from him as to why disciplinary proceedings should not be initiated against him. The respondent replied through his letter dated 24.07.2007. His explanation was along the lines that he being a first generation scheduled caste officer, some persons were inimical towards him. He suggested that these persons had started creating problems for him, in particular, the then incumbent Director General who was not favourable towards him. Allegations were also made about the

linkage of the said Director General towards a certain organization. It was submitted that in his entire 18 years of service, the petitioner had never committed any irregularity and that while he was trying to get his regular continuous posting and some of his friends and colleagues had promised him help, which he never accepted.

6. Not being satisfied by the said explanation, the Disciplinary Authority proceeded to issue to the respondent an Office Memorandum on 30.04.2008 under Rule 14 of the 1965 Rules. The Articles of Charge levelled against him read as under: "

... That Shri K. Asaiah, while functioning as Director (News), RNU, All India Radio, Hyderabad during the period 2005-2006 was transferred as Joint Director, Directorate of Field Publicity, Guwahati vide Ministry of I&B's Order No. 176/2005-IIS dated 12.12.2005. He relinquished the charge of the said post on the forenoon of 07.07.2005 vide AIR, Hyderabad's Order No. Hyd.-21(3) KA/2006-S dated 07.07.2006. But within 4 days he resumed the charge again at AIR Hyderabad 10.07.2006 vide his certificate of transfer of charge dated 10.07.2006 on the basis of two fake communications, one stated to have been issued by Secretary (I&B) i.e. D.O. letter dated 07.07.2006 and the 2nd from Under Secretary (IIS), Ministry of I&B (a telegram dated nil) to the effect that his file pertaining to his request for retention at AIR, Hyderabad in capacity as Director was under active consideration and that he would be retained in the same capacity as Director News All India Raio, till further orders. Shri K. Asaiah is the ultimate beneficiary of the above said fake letters and it is clear that he indulged himself in unfair practices of maneuvering and manipulations in order to get his transfer cancelled by any means to continue at RNU, AIR, Hyderabad.

Shri K. Asaiah, Director has thereby disobeyed the transfer orders issued by the Ministry and continued in the same place on flimsy grounds and by misleading the Station Director at All India Radio, Hyderabad. By his above act, Shri K. Asaiah has failed to maintain absolute integrity, shown lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant, thereby violating Rule 3(I) (i), 3(I)(ii) and 3(I)(iii) of Central Civil Services (Conduct) Rules, 1964..."

7. The Memorandum called upon the respondent to state whether he admitted or denied the charges levelled against him. By a letter dated 19.05.2008, the respondent admitted the charges. His letter reads as under:

".... Dated Guwahat, the 19th May 2008

Shri A.D. Roy,

Under Secretary to the Government of India,

Ministry of I & B,

"A" Wing, Shasri Bhawan,

New Delhi Subject: Acknowledgement receipt of Office Memorandum

Sir,

While acknowledging herewith receipt of Office Memorandum issued vide your office letter No. C-13011/27/2006-Vig. Dated 30th April 2008 through which I have been charge sheeted for the anomalies of two number fake letters.

Truly to speak, I submitted both the letters to the SD, Hyderabad keeping in view that my friends will help me in getting the final order from Ministry of I & B. Due to my ignorance (sic) I committed this mistake for giving the fake letters which now I am worried, and I admit to the charges levelled against me.

With humble submission, I now fervently appeal you to examine and excuse me for the mistake I did in this respect

Yours faithfully,

Sd/-

(K. Asaiah)

Director

DFP: Guwahati.."

8. In view of the admission of charges, the Disciplinary Authority sought the advice of the Central Vigilance Commission (CVC). By OM dated 28.08.2008 the CVC advised the Disciplinary Authority to impose a suitable major penalty commensurate with the gravity of the proved charges. While the Disciplinary Authority accepted the aforesaid advice and took a decision to impose major penalty upon the respondent, it nevertheless also sought the advice of the UPSC. By letter dated 10.06.2009, the UPSC opined that a penalty of dismissal from service of the respondent would meet the ends of justice since the respondent had changed his stand a number of times before he finally accepted his guilt. Besides, the conduct of the respondent raised questions about his integrity, reliability and worthiness to continue in the post of Director.

9. However, the Disciplinary Authority was unable to agree with the advice of the UPSC. It reasoned in the file notings:

This is regarding disciplinary proceedings against Shri K. Asaiah, Director (News), RNU, Air, Hyderabad regarding his transfer on the basis of fake letters.

2. Shri K. Asaiah while heading the Regional News Unit (RNU), Air Hyderabad was transferred as Director, DFP, Guwahati, Vide Ministry of I&B's Order No. 176/2005-IIS dated 12.12.2005. But he managed to continue in the said post till May, 2006. Dg Air, News Delhi vide their communication dated 30.05.2006 (issued on 10.06.2006) ordered AIR Hyderabad to relieve Shri Asaiah from the said post. Shri Asaiah relinquished the charge on 07.07.2006. But within 4 days he resumed the charge on 10.07.2006 on the basis of two fake communications, one stated to have been issued by Secretary (I&B) and similar letter of Secretary (I&B) with endorsement to US (IIS) and 3rd is a telegram from US (IIS), Ministry

of I&B, to the effect that his file pertaining to his application for his retention as Director (News), Air, Hyderabad was under active consideration and that he should be retained in the same capacity till further orders.

3. When the resumption of charge by Shri K. Asaiah, as Director (news), Air, Hyderabad on 10.07.2006, without any directions from the Ministry, came to the notice of the Ministry and further investigations revealed existence of two fake communications mentioned above. Shri S.K. Arora the then, Secretary I&B vide his note dated 2.8.06 confirmed that the communications were fake. IIS section in this regard have requested the police authorities to lodge an FIR but no confirmation has been received.

4. Simultaneously a fact finding enquiry was also conducted into the matter by Dg, NSD, Air who submitted his report. Since the misconduct of Shri Asaiah was Prime Facie proved in the inquiry report the case was referred to CVC for their advice in the matter. CVC vide their Om dated 26/2/2008 advised for initiation of major penalty proceedings.

5. In the light of the facts mentioned above and the advice tendered thereon by CVC, Shri K. Asaiah was charge-sheeted for major penalty vide this Ministry's Om No. C-13011/27/2006-Vig dated 2/4/2008 with the approval of the disciplinary authority i.e. Hon"ble IBM.

6. Shri K. Asaiah vide his letter dated 19/5/2008 admitted the charge levelled against him and fervently appealed to excuse him for his mistake. Shri Asaiah in his letter has stated that "truly to speak, I submitted both the letters to SD, DFP, Hyderabad keeping in view that my friends will help me in getting t he final order from Ministry of I&B. Due to my ignorancy I committed this mistakes for giving the fake letters which now I am worried, and I admit the charges levelled against me".

7. Where the charge is admitted by the charged employee, it is not necessary to hold an inquiry and the disciplinary authority should immediately proceed to assess the guilt of the employee and decide t he quantum of punishment to meet the requirements of the case.

8. After the acceptance of the charge by Shri Asaiah the case was referred to UPSC with a tentative view to impose one of the major penalties on Shri Asaiah.

9. Now UPSC vide their letter dated 10.6.2009 have advised that ends of justice would be met in this case if the penalty of dismissal from service is imposed on Shri Asaiah. UPSC have observed that the charged officer has changed his statements a number of times till he finally accepted the guilt. This raises question about his sense of integrity and reliability and his worthiness to continue on a responsible post like that of Director and therefore dismissal from service is justified on him.

10. The recommendation of UPSC for imposing the penalty of dismissal from service is unexpected and surprising. The penalty does not seem to be

commensurate with the misconduct.

11. UPSC while examining the case have missed out on the fact that Shri Asaiah has tendered an unconditional apology. This fact alone would have made sufficient ground for non imposition the extreme major penalty on him apart from the gravity of the misconduct in this case. It has to be noted that a free and voluntary confession (as in this case), is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. The apology by Shri Asaiah is sincere and not merely an attempt to escape punishment.

12. The object and purpose of awarding punishment to an employee is to put the employee to a disadvantage in his service prospects and to deter him/other employee from reoccurrence of such acts thereof. However, the penalty must be commensurate with the gravity of misconduct. It should not be too lenient not too severe. As severe punishment is likely cause frustration and eventually, prove counter productive.

13. In deciding the quantum of punishment the disciplinary authority should take into account the circumstances in which the misconduct was conduct, the modus operandi adopted, the motives operating on his mind and the magnitude and character of the offence or misconduct. The disciplinary authority should also harmonise the various interest involved such as the employee concerned and the members of his family and length of service of an employee (because if an employee has been serving the organisation for a fairly long time, it would normally indicate that he is a good employee. It also indicates that he is interested in long term employment and, therefore, can be worthy of future trust.

14. The question, however, is that what is the effect of an apology on a case. The instruction regarding this envisage that "an admission or apology should normally lead to a lenient view provided that (i) employee has other wise a good record of service (ii) misconduct was not committed with malafide intention, (iii) he shows regret. However, it must be remembered that an apology is an act of contrition and unless it is offered at the earliest opportunity and in good grace, it is short of penitence. Even awarding less punishment to an employee who has admitted the charge does not result in discrimination. The disciplinary authority should keep all the above stated factors in mind and exercise his discretion in selecting the most appropriate penalty to meet the required situation. The exercise of this discretion (of disciplinary authority), it has been held is a matter of prudence and not of law.

15. In this case it is pertinent to point out that the time of misconduct Shri Asaiah was visible shaken by his family problems and he was trying hard to get his transfer cancelled. The motive behind committing such misconduct was obviously to bargain some time so that he can get his transfer orders from the hqrs. The modus operandi of the misconduct was that of a naive and a person acting in haste and utter frustration. The misconduct of Shri Asaiah does not have material implications. There are times in once life when driven by

circumstances a person can resort to actions, which in his normal state of mind, would have never thought of. Had Shri Asaiah been in his peace of mind, he would have easily known that his misconduct will come forth sooner or later as he was a very senior officer and the sqrs cannot be mislead about his place of posting for too long. The innocence of Shri Asaiah also comes to forth by the fact that he has tendered an unconditional apology at the first available opportunity after the charge-sheet was served on him. He would have easily denied the charge and resorted to inquiry proceedings etc in order to delay the pronouncement of justice. Shri Asaiah is a long serving senior Govt. Officer.

16. Punishment it is said must be geared to a social goal, at once deterrent and reformatory.

17. The misconduct of Shri Asaiah while taking into account the facts and circumstances, in the light of the unconditional apology tendered by him deserves a lenient view in the case by the disciplinary authority. It is therefore proposed to disagree with the recommendations of the UPSC for imposition of dismissal of Shri K. Asaiah. It is further proposed that ends of justice would be met if a major penalty of "Reduction to lower grade/service/post or to a lower time scale may be imposed on Shri Asaiah."

18. Wherever there is disagreement with the recommendation of UPSC the file is to be referred to DOP&T for their advice in the matter.

19. The file is now submitted for kind approval of disciplinary authority for the following.

i. To disagree with the advice of UPSC for imposition of major penalty of dismissal of Shri Asaiah.

ii. To impose a major penalty of "Reduction to lower grade/service/post or to a lower time scale on Shri Asaiah.

iii. To refer the file to DOP&T for their advice in the matter...."

10. Accordingly, the opinion of the Department of Personnel and Training (DoPT) was sought. The latter examined the matter and suggested that compulsory retirement would be the appropriate punishment in the case. The DoPT's advise was based on the following grounds:

".....(i) The date of retirement of the official is just 3? years away - July 2014.

(ii) Dismissal from service will result in loss of pension. At the age of 57-58, the prospect of retirement with no pension appears to be a harsh one.

(iii) This is not a case of corruption where the official has earned illegal gratification. He indulged in unfair practices of manoeuvring and manipulations in order to get his transfer order cancelled by any means to continue at AIR, Hyderabad.

(iv) However, as UPSC has pointed out it is a question of his integrity and

reliability and his worthiness to continue on a responsible post like that of Director and hence compulsorily retiring the charged official may be appropriate..."

11. the Disciplinary Authority passed the order dated 02.06.2011 the petitioner was compulsorily retired. The said communication records, inter alia, as under:

".... Whereas with the approval of disciplinary authority the case was referred to DOP&T for their advice in the matter proposing the penalty of "Compulsory Retirement".

Whereas DOP&T vide their ID note dated 15.4.2011 has advised for imposition of penalty of compulsory retirement of Shri K. Asaiah, in view of the fact that Shri Asaiah will be reaching normal superannuation age in July 2014 and the case against him is not connected with taking any bribe. And whereas the Disciplinary Authority, after careful consideration of the relevant records, the facts and circumstances of the case and the advice tendered by DOP&T has come to the conclusion that DOP&T's advice dated 15.04.2011 is appropriate and that the same be accepted. Accordingly, the penalty of "compulsory retirement" is imposed on Shri K. Asaiah, Director, NSD, Air, New Delhi..."

12. The respondent sought a review of the above order. The Reviewing Authority concluded that since the respondent had already admitted to the charges levelled against him through his letter dated 19.05.2008, no further inquiry was required and no further evidence was brought forth by the respondent to substantiate his plea that the fake letters were handed over by his juniors and ISS Officers and News Reader and Translators.

13. The respondent impugned both, the order of compulsory retirement and the order of the Reviewing Authority, through the aforesaid OA which resulted in the present order. The Tribunal has examined the respondent's letter of 19.05.2008 as well as findings recorded by the Disciplinary Authority. The Tribunal reasoned that the respondent's letter dated 19.05.2008 was not sufficient to establish an unequivocal acceptance of guilt; that on the basis of evidence it was difficult to hold that respondent himself was involved in forgery of the letters; that there was indication that others were involved in the matter. The respondent being the ultimate beneficiary of the fake letters, had indulged in the said forgery and manipulation was a mere assumption (*M/s Siemens Ltd. v. State of Maharashtra & Ors.*, 2006 AIR SCW 6380). The Tribunal reasoned that mere suspicion cannot be allowed to take place of proof even in domestic inquiries (*Union of India v. H.C. Goel*, AIR 1964 SC 364 and *Nand Kishore v. State of Bihar*, AIR 1978 SC 1277). Further the memorandum was issued by a pre-determined mind. On the question of the letter dated 19.05.2008, the Tribunal further observed that the said letter has to be read along with the earlier communication of the respondent dated 24.07.2007 wherein the respondent had alleged that he was being trapped being a Scheduled Caste officer. Reference has been made to the dictum of the Supreme Court in *Jagdish Prasad Saxena v. The State of Madhya Bharat*, AIR

1961 SC 1070 on the question of admission of guilt, and observed that the admission when open to doubt, removal of Government servant on the basis of alleged admission without holding a formal inquiry would be bad in law. Reference was also made to the judgment of the Madras High Court in *R. Govindarajan & Ors. v. The Presenting Officer & Ors.*, Writ Petition No. 14116/1996, decided on 23.11.2009 that admissions when ambiguous that cannot be accepted as admission. Reference was made to the evidentiary value of the admissions as noticed in *Kishori Lal v. Chaltibai*, AIR 1959 SC 504 to the effect that they were not conclusive, unless they constitute estoppels and it was open to show that the admission was mistaken or was untrue. Similarly, when admissions were explained, they would not be conclusively binding unless they amount to estoppels. Lastly, the admission was only a piece of evidence to be depending upon circumstances in which the same was made. Reliance was placed upon *Nagubai Ammal v. B. Shama Rao*, 1956 SCR 451 and *Rakesh Wadhawan v. Jagdamba Industrial Corpn.*, (2002) 5 SCC 440. The Disciplinary Authority has also failed share the contents of the report. Hence the charge sheet itself was null and void *Bimla Kanta Mukherjee v. State of West Bengal*, 1989 (11) CHN 35 and *Subrata Bhattacharya v. Bharat Process and Mechanical Engineers & Ors.*, 1984 (11) CHN 185.

14. The respondent had, unquestionably, in his reply vide letter dated 24.07.2007 expressed apprehension that he was being targeted by some persons who are inimical to him. He had also expressed apprehension that the communications may have been forged by others. This was the initial response. Thereafter, the respondent was served with memorandum/charge sheet dated 30.04.2008 and a month thereafter the respondent had written the letter dated 19.05.2008, which is quoted above, wherein he, after reconsideration, had accepted the allegations and charges against him. He had accepted that he had submitted the two forged letters as his friends would help him in getting the final orders from the Ministry. He accepted the mistake in giving fake letters due to his ignorance. He was worried and had admitted to the charges levelled against him.

15. On the aspect of whether the respondent's letter of 19.05.2008 is an admission of his guilt or of the charges levelled against him, we find that the said communication is unambiguous, explicit and affirmative. The said letter reads as under: "Due to my ignorancy (sic) I committed this mistake for giving the fake letters which now I am worried, and I admit to the charges levelled against me...". In the preceding paragraph, the respondent admits that he had been charged for anomalies of two number fake letters. Clearly, the respondent was aware that he was admitting to the charges, regarding the two fake letters. The respondent was a senior officer, we would accept was aware and conscious of what he was writing and admitting. There is no reference to any other prior letter, in the letter dated 24.07.2007. The petitioner had about 10 months to ponder over his stand taken in the earlier communication dated 24.07.2007. Indeed, the Tribunal has recorded the advice of the UPSC in the impugned order,

which reads as under:

"The UPSC, vide its letter dated 10.6.2009 observed that the applicant had changed his stand a number of times till he finally accepted his guilt..."

16. After writing the letter dated 19th May, 2008, the respondent did not at any time to revert back to his original position. He did not withdraw or retract the letter dated 19.05.2008. He never wrote or alleged that he was forced or compelled to write the letter. It was only after the punishment of compulsory retirement was imposed that he decided to challenge the proceedings. Such conduct would show that the respondent had deliberately changed his stand subsequent to the passing of the order of punishment. Had the respondent retracted or withdrawn his letter dated 19th May, 2008, the Disciplinary Authority could have conducted a detailed inquiry. The penalty order was passed only on 2nd June, 2011. During this period from 19th May, 2008 to 2nd June, 2011 the respondent had maintained silence. He did not communicate that his admission was wrong or that it should not be accepted.

17. Thus we agree with the petitioners that the letter of 19.05.2008 was written after the respondent had given the matter some careful consideration. The admission is clear. Therefore, the contention of the learned counsel for the respondent that the letter of 19.05.2008 was issued in the context of the earlier letter and should be construed accordingly, is untenable.

18. The Supreme Court in *Awadh Kishore Das v. Ram Gopal and Ors.*, (1979) 4 SCC 790 has held that "It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted." Later in *Divisional Manager, United India Insurance Co. Ltd. and Anr. v. Samir Chandra Chaudhary*, (2005) 5 SCC 784, the Supreme Court held:

"Admission is the best piece of evidence against the persons making admission. As was observed by this Court in *Avadh Kishore Das v. Ram Gopal and Ors.*, AIR 1979 SC 861 in the backdrop of Section 31 of Indian Evidence Act, 1872 (in short the "Evidence Act") it is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof placing it on the person making the admission or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. As observed by Phipson in his *Law of Evidence* (1953 Edition, Para 678) as the weight of an admission depends on the circumstances under which it was made, these circumstances may always be proved to impeach or enhance its credibility. The effect of admission is that it shifts the onus on the person admitting the fact on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must

be taken to be established. An admission is the best evidence that an opposing party can rely upon, and though not conclusive is decisive of matter, unless successfully withdrawn or proved erroneous."

19. Since the admission of the respondent is unqualified and is the best evidence against him, we are of the view that the aforesaid letter of 19.05.2008 is a straightforward, clear and explicit admission of the charges. It is not open to any other interpretation. Hence no further investigations or proceedings were required. Indeed, a departmental inquiry would have been an empty formality and an academic exercise. The factum that the respondent was the beneficiary and that the respondent did not withdraw or retract the letter are additional and supporting factors, which affirm and avow the self incriminating admission.

20. The power of judicial review under the Act, i.e. Administrative Tribunals Act, 1985 would not be so exercised that it begins to examine the correctness of the decision of the Disciplinary Authority. The Tribunal does not sit in appellate jurisdiction and would not extend itself to substitute its own decision instead of that of the decision making authority. The exercise in judicial review is to examine whether there was any error in the decision making process and whether all relevant facts were considered i.e. whether the decision is one which could shock the conscience of the Tribunal or was in defiance of common sense, logic or moral standards. The ratio of the Supreme Court in *Chairman & Managing Director, United Commercial Bank and Ors. v. P.C. Kakkar*, (2003) 4 SCC 364 is a guiding principle. Relevant parts read as under :-

"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 the *Wednesbury*'s case 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."

21. From the preceding discussion, we have seen that decision making process did not suffer from any error, indeed the Government has been rather considerate in not awarding a harsh punishment to the respondent i.e. his dismissal from service.

22. We also do not agree with the finding of the Tribunal that the Disciplinary Authority had acted with a pre-determined mind in issuing the charge-sheet or passing the penalty order. This factum is not proved or established at all. The charge-sheet speaks for itself. Before issuing the charge-sheet, a fact finding inquiry was held and the respondent was asked to reply. In fact, the Disciplinary Authority has, contrary to the opinion expressed by the Union Public Service Commission, decided to take a lenient view. This shows the objectivity and

application of mind by the Disciplinary Authority.

23. In the aforesaid context we would note that the petitioner has considered and dealt with the respondent's case with quite some sympathy, compassion and recorded reason, in so far as it rejected the advice of the UPSC of dismissal of the respondent from service; keeping in view that he had only three and a half more years to complete his tenure of service and dismissal would deprive him of pensionary and other benefits. It is in these circumstances, that the penalty of compulsory retirement was imposed instead of dismissal from service as suggested by the UPSC. The said decision was fair and needed no interference.

24. In view of the aforesaid discussion, we feel that the Tribunal has misdirected itself with respect to the context in which the letter dated 19.05.2008 was written. The impugned order cannot be sustained and is, accordingly, set aside. The writ petition is allowed. O.A. No. 2218/2012 will be treated as dismissed. No orders as to costs.