
(2014) 09 MAD CK 0328

In the Madras High Court

Case No : W.P. (MD) No. 10186 of 2010 and M.P. No. 1 of 2010

V. Santhosam

APPELLANT

Vs

The Inspector General cum Chief Security Commissioner

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 19(1)(g), 21, 311
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 1 LLN 735

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Judgement

R. Mahadevan, J.—The case of the petitioner is that he was appointed as Constable, on 25.09.1976 and promoted as Upgradation Naik, during the year 1983. Subsequently, on 22.08.1996, he was promoted as Head Constable. Alleging that the petitioner demanded and accepted a sum of Rs. 98,000/-, under the guise of securing employment in Railway Protection Force Department, he was issued with a charge memo by the third respondent, on 04.08.2008, nominating one Mr. T. Selvaraj, the fourth respondent herein, as the Enquiry Officer. Accordingly, he conducted enquiry, concluding that the charges levelled against the petitioner were proved. Based on the enquiry report, the petitioner was issued with a second show cause notice. The petitioner gave his explanation, pointing out the glaring contradictions in the findings both on factual and technical grounds. Without considering the same, the third respondent passed the impugned order, on 23.04.2009, imposing compulsory retirement from service. Aggrieved over the said order, the petitioner preferred an appeal, dated 22.05.2009, elaborately pointing out the contradictions in the enquiry before the second respondent. By proceedings, dated 31.07.2009, the second respondent rejected the appeal filed by the petitioner, thereby confirming the order of compulsory retirement from service. Challenging the same, the petitioner filed Revision Petition before the first respondent, on 03.09.2009.

2. Since the said Revision Petition filed by the petitioner was not disposed of, the

petitioner approached this Court, by filing W.P.[MD]. No. 854 of 2010, seeking a Writ of Mandamus directing the first respondent to consider and dispose of the Revision Petition. This Court, by order, dated 28.01.2010, disposed of the said Writ Petition giving direction to the first respondent to consider and dispose of the Revision Petition filed by the petitioner within a period of eight weeks. In pursuance of the order of this Court, dated 28.01.2010, the first respondent, by proceedings, dated 16.04.2010, rejected the Revision Petition preferred by the petitioner. Questioning the correctness of the above said orders, the petitioner is now before this Court with the present Writ Petition.

3. The learned counsel appearing for the petitioner contended that the third respondent issued a charge memo, on 04.08.2008 and without giving sufficient opportunity to the petitioner to submit his explanation, conducted the enquiry and concluded the same holding that the charges levelled against the petitioner were proved. He further submitted that the punishment of compulsorily retirement imposed on the petitioner is not in consonance with the alleged misconduct on his part and hence, he prayed for interference with the orders impugned.

4. The learned counsel, in support of his contentions, placed reliance upon the following decisions:

(i) S.K. Ganguly Vs. Union of India reported in 1985 (50) FLR 159. The relevant portions are extracted hereunder:

"7.... But, in my view, the principle, recognized by different decisions of the Courts of law, is that the writ Court can certainly reappraise evidence and scan the same to find out if the conclusions, reached by the Disciplinary Authority, are reasonably based on such course of action finds support from the principle, laid down in State of Assam Vs. Mohan Chandra Kalita and Another,

8. In view of the above lacunae, in the findings of the Disciplinary Authority, I cannot but hold that such findings are perverse, being either based on no evidence or being contrary to evidence or being vitiated by non consideration of relevant evidence with the result that his conclusions cannot be said to be conclusions of a reasonable mind. It is not a case of screening evidence for the purpose of determining its sufficiency or adequacy. The decisions in the case of State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, , and Jyotirmoy Bose Vs. Union of India (UOI) and Others, cited by Mr. Sen, do not affect or alter the position but do basically support the said approach....."

(ii) State of Gujarat Vs. Umedbhai M. Patel, . Paragraph 11, is reproduced as under:

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public

interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

(iii) M. Prasad Vs. Union of India reported in 2007 (1) LLN 592. Paragraph 19 would run thus:

"19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under sub-rules are required to be strictly followed. It is now well-settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

(iv) Union of India (UOI) and Another Vs. S.S. Ahluwalia, reads thus:

"8.... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty. In the present case the penalty imposed upon the respondent was very small, namely, 10 per cent deduction from pension for one year. Thus there was hardly any occasion for the High Court to interfere with the order of penalty passed by the competent authority. However, having regard to the facts and circumstances of the case and specially to the fact that the penalty was a small one being 10 per cent deduction from the pension for one year only, we do not want to interfere with that part of the order of the learned Single Judge and also of the Division Bench."

(v) G. Pushkala Vs. High Court of Judicature at Madras and V. Navaneethan Special Officer Vigilance Cell High Court, are extracted thus:

"32. A perusal of the entire materials placed on record would show that the husband of the complainant by name Mr. Ganapathy Subramanian was an accused in C.C. No. 2056 of 1996 on the file of the Court of VII Metropolitan Magistrate, Madras for an offence under Section 138 of the Negotiable Instruments Act and to bail out her husband from criminal prosecution, the complainant borrowed a sum of Rs. 10,000/- from the wife of the delinquent officer, by executing a promissory note dated 14.6.1999, for which D.W. 1 was the witness, agreeing to repay the same within three months with interest at 24% p.a. which, according to the complainant, was repaid by her. According to the complainant, at the relevant time, the delinquent officer was misbehaving with her. If there is truth in her contention and complaint, the complainant should not have sought the help of the delinquent officer and received money from his wife. No prudent man would seek the help of anybody, if there is genuine reason to believe that such a person is causing any kind of harassment to him. When such a serious complaint of sexual harassment has been made by the complainant against the delinquent officer, if it is really true, in the firm view of this Court, she should not have approached the delinquent officer, which raises a strong suspicion about the genuineness and veracity of her complaint, which was not erased by the complainant. This aspect also favours the strong and consistent defence raised by the delinquent officer that only to avoid payment of the debt towards him, this false complaint has been lodged by the complainant against him.

45. The entire reading of the Enquiry Officer's Report depicts his pre-concluded mind and trying to supply reasons to substantiate the same, which was approved by the Appointing Authority. The entire findings of the Enquiry Officer, which were carried on by the Appointing Authority went on hypothesis and without appreciating the materials placed on record in their proper perspective, leading to miscarriage of justice.

47. From the above discussion, we are satisfied that the allegations levelled against the delinquent officer by the complainant in her complaint do not attract any one of the above conditions prescribed by the Apex Court in the above Judgment, to punish the delinquent officer such as (a) physical contact and advances; (b) a demand or request for sexual favours; (c) sexually-coloured remarks; (d) showing pornography; (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. There is no physical contact and advances

made by the delinquent officer towards the complainant and the writings on Exs. P.2 and P.3 cannot be considered as a demand or request for sexual favours as the said material is meant only for inclusion in the Dissertation for his M.L. We find that there are no sexually coloured remarks made against the complainant by the delinquent officer or showing any pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Therefore, initiation of disciplinary proceedings against the complainant is not at all warranted since no fundamental right of the complainant or her right to live with gender equality enshrined under Articles 14, 15, 19(1)(g) and 21 of the Constitution is violated. Therefore, we hold, as rightly contended on behalf of the delinquent officer, that the complainant misused Exs. P.2 and P.3, which were in her possession, with ulterior motive to avoid repayment of the loan obtained by her from the wife of the delinquent officer on a promissory note executed by her on 14.6.1999 to get relief to her husband from the criminal case in C.C. No. 2056 of 1996 on the file of the Court of VII Metropolitan Magistrate, Madras for the offence under Section 138 of the Negotiable Instruments Act. Therefore, we hold that the framing of charges, conduct of enquiry and passing the impugned order of compulsory retirement on the delinquent officer are all illegal and liable to be quashed. Accordingly, we order that the delinquent officer is entitled to be reinstated into service with all attendant benefits including continuity of service and backwages. Therefore, W.P. No. 29024 of 2003 filed by the delinquent officer is entitled to be allowed. In the result, as has already been observed supra, W.P. No. 10157 of 2000 filed by the complainant is dismissed as infructuous and W.P. No. 29024 of 2003 filed by the delinquent officer is allowed. The delinquent officer is ordered to be reinstated into service with all attendant benefits, with continuity of service and backwages. If, by this time, the delinquent officer attained the age of superannuation, he shall be treated as retired in usual course after attaining the age of superannuation. No costs."

(vi) State of Uttaranchal and Others Vs. Kharak Singh, The relevant portions are reproduced hereunder:

"12.... A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the Enquiry Officer himself has acted on the Investigator, Prosecutor and Judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.

13. Another infirmity in the report of the enquiry officer is that he concluded the enquiry holding that all the charges have been proved and he recommended for dismissal of the delinquent from service. The last paragraph of his report dated 16.11.1985 reads as under:-

"During the course of above inquiry, such facts have come into light from which it is proved that the employee who has doubtful character and does not obey the order, does not have the right to continue in the government service and it is

recommended to dismiss him from the service with immediate effect."

(emphasis supplied)

Though there is no specific bar in offering views by the enquiry officer, in the case on hand, the enquiry officer exceeded his limit by saying that the officer has no right to continue in the government service and he has to be dismissed from service with immediate effect. As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing/disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.

14. A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply affidavit filed by the department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e. Forest Conservator), he rejected the same but has not pointed the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent."

(vii) G. Jayakumar Vs. The Joint Registrar of Co-operative Societies, Common Cadre Service Committee President, Vellore District, Vellore, The Special Officer, Ussoor Primary Agricultural Co-operative Bank Limited, Ussoor, Vellore District, Vellore and Additional Registrar (Credit), Office of the Registrar, Kilpauk, Chennai-600010 . Paragraph 15 would read thus:

"15. To examine the veracity and legality of the above orders passed by the respondents, it is to be seen that a clear circumspection of the case would reveal that the impugned orders passed by the first and third respondent are a mere extraction of the enquiry officer's report and the same are also without any discussion on the part of the respondents and had been passed mechanically, without giving an independent findings. Though the enquiry officer's report had been placed before the disciplinary authority, yet each and every charge levelled against the petitioner-delinquent have not been discussed in detail by them. The

charges have not been dealt with by the disciplinary authority "in toto" and the findings of the enquiry officer, have not been analysed, and ultimately, the first respondent has come to the conclusion that 13 out of 23 charges having been proved, is a major factor to be taken into account before passing the order of punishment and without giving their own reasonings by passing a speaking order, orders have been passed by the respondents in a casual way. In "stricto-sensu", it is the hallmark and ordained principle in the service law jurisprudence that the disciplinary authority, while dealing with the punishment, ought to have assigned appropriate reasonings, which is the heart-beat of the decision as may be rendered while arriving at a final conclusion in the disciplinary proceedings. Such reasonings should be supported by material documents, and the authorities have to apply their mind in respect of each and every charge, so as to arrive at a conclusion either to accept the report of the enquiry officer or to reject the same by giving valid reasons, and only then appropriate punishment should have been imposed. Similarly, the appellate/revisional authority should also deal with the matter in the manner as prescribed under the statutes/Rules, etc."

(viii) C. Kanagaraj Vs. The Government of Tamil Nadu and Others, . Paragraph 9 is extracted hereunder:

"9. At the outset, it is to be stated that this is a clear and classic case of No Evidence. It is pertinent to note that the findings of the Enquiry Officer as incorporated in the impugned order passed by the First Respondent dated 3.12.2008 makes it abundantly clear that the Enquiry Officer has rendered such finding of holding that the charges leveled against the Petitioner have been proved by mere presumptions and assumptions and without pointing out any evidence available on record. The yet another factor to be borne in mind of this Court is to the order passed by the Disciplinary Authority dated 21.2.2002, wherein the Disciplinary Authority has not pointed out a single piece of material or evidence in arriving at the conclusion that the charges leveled against the Petitioner have been proved and on the other hand, the Disciplinary Authority mainly placed reliance on the Enquiry Officer's report without application of independent mind and arrived at the conclusion to the effect that the charges leveled against the Petitioner have been proved, in an arbitrary and mechanical fashion."

(ix) V. Ravichandra Vs. Indian Bank and Others, Paragraphs 82 and 85 are reproduced hereunder:

"82. The management has sought to punish the petitioner on tenuous grounds and substantially based on surmises and conjectures. It bears repetition to state that the petitioner had no role in allegedly having duplication of a loan entry, as well as in issuing two tokens ostensibly for one transaction. One cannot stop wandering at the naivety of the management in believing the story of the sub-staff that the same credit voucher was sent twice by the Manager, perhaps by oversight, and that, though he could record the name in the token register correctly for the first time, later when it was sent back, the same name was

misspelt, when both the names are absolutely different. Having said that, till the single voucher with two tokens as was contended by the management, or two vouchers with two distinct token numbers as was contended by the petitioner, came to him in the cabin, the petitioner admittedly had not even been aware of the transaction. The management has reconstructed the whole alleged misconduct on the part of the petitioner with hind sight based on a correction in the entry in the day book effected by the petitioner.

85. In the light of my discussion above concerning the role of vigilance, in the first place the misconduct attributed to the petitioner has not been categorised as the vigilance grade offence. Despite that though the disciplinary authority has persisted with his request to permit him to impose a minor punishment by taking into account the totality of circumstances, the CVO, in my considered view, having no role to play, has insisted on and persisted with his so-called advice in peremptory language to impose the major punishment. Though the management has stated that the disciplinary authority has got sufficient leverage to exercise its jurisdiction and in fact by exercising the said discretion, he eventually handed out the punishment to the petitioner, the order dated 28.08.2006 of the disciplinary authority does not reveal any reasoning as to how he persuaded himself to change his mind based on the advise of the CVO."

5. The learned Standing Counsel appearing for the respondents 1 to 3 submitted that the petitioner without raising any objection, took part in the enquiry and when the same had gone against him, he alleged mala fides against the Enquiry Officer and that the petitioner had also been given due opportunity to put forth his case before the authorities concerned and hence, the plea of violation of principles of natural justice, is untenable. Therefore, he prayed for the dismissal of the writ petition.

6. The learned Standing Counsel, in support of his contention, makes reliance upon the following Judgments:

(i) Nand Kumar Verma Vs. State of Jharkhand and Others, . Paragraph 34 is reproduced as under:

"34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so

for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs."

(ii) *Rajesh Gupta Vs. State of Jammu & Kashmir and Others*, . Paragraph 20 reads as follows:

"20. The principles on which a government servant can be ordered to be compulsorily retired were authoritatively laid down by this Court in the case of *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, . In Paragraph 34, the principles have been summed up as follows:

"34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government. (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary--in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before [pic]taking a decision in the matter--of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."

(iii) *S.R. Tewari Vs. Union of India (UOI) and Another*, . Paragraphs 32 to 34, are extracted hereunder:

"32. So far as charge no. 4 is concerned, the matter was considered by a Board

consisting of several officers and the appellant could not have been selectively targeted for disciplinary action. Further, no material could be placed on record that BSF had ever formulated a policy for regularisation of a temporary teacher as a regular teacher and in such a fact-situation, the appellant could not have regularised the services of Shri Majumdar as a school teacher, even if he had the experience of 10 years. (This was not even a charge against the appellant nor there was any finding of the Inquiry Officer, nor has such a matter been agitated before the Tribunal).

33. It is evident from the record that as per letter dated 4.4.2013 sent by the Government of India to the appellant through the Chief Secretary, Andhra Pradesh, the proposed punishment is as under:

"A penalty of withholding two increments for one year without cumulative effect, be imposed on the appellant as a punishment under Rule 6 of the All India Services (Discipline and Appeal) Rules, 1969."

34. The proved charges remained only charge nos. 4 and 6 and in both the cases the misconduct seems to be of an administrative nature rather than a misconduct of a serious nature. It was not the case of the department that the appellant had taken the escort vehicle with him. There was only one vehicle which was an official vehicle for his use and charge no. 6 stood partly proved. In view thereof, the punishment of compulsory retirement shocks the conscience of the court and by no stretch of imagination can it be held to be proportionate or commensurate to the delinquency committed by and proved against the appellant. The only punishment which could be held to be commensurate to the delinquency was as proposed by the Government of India to withhold two increments for one year without cumulative effect. It would have been appropriate to remand the case to the disciplinary authority to impose the appropriate punishment. However, considering the chequered history of the case and in view of the fact that the appellant had remained under suspension for 11 months, suffered the order of dismissal for 19 months and would retire after reaching the age of superannuation in December 2013, the facts of the case warrant that this court should substitute the punishment of compulsory retirement to the punishment proposed by the Union of India i.e. withholding of two increments for one year without having cumulative effect."

(iv) Deputy Commissioner, KVS and Others Vs. J. Hussain, . Paragraphs 14 and 16 would run thus:

"14. Thus, in our view entering the school premises in working hours i.e. 11.30 a.m. in an inebriated condition and thereafter forcibly entering into the Principal's room would constitute a serious misconduct. Penalty of removal for such a misconduct cannot be treated as disproportionate. It does not seem to be unreasonable and does not shock the conscience of the Court. Though it does not appear to be excessive either, but even if it were to be so, merely because the Court feels that penalty should have been lighter than the one imposed, by itself

is not a ground to interfere with the discretion of the disciplinary authorities. The penalty should not only be excessive but disproportionate as well, that too the extent that it shocks the conscience of the Court and the Court is forced to find it as totally unreasonable and arbitrary thereby offending the provision of Article 14 of the Constitution. It is stated at the cost of the repetition that discretion lies with the disciplinary/appellate authority to impose a particular penalty keeping in view the nature and gravity of charge. Once, it is found that the penalty is not shockingly disproportionate, merely because in the opinion of the Court lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty.

16. In the present case, it cannot be imputed that the departmental authorities while imposing the punishment acted in a manner which manifests lack of reasonableness or fairness. In *Karnataka Bank Ltd. Vs. A.L. Mohan Rao* (2006) 1 SCC 63, charge against the delinquent employee was that he had colluded with one of the Branch Managers and enabled grant of fictitious loan. The High Court interfered with the punishment of dismissal and ordered reinstatement on sympathetic ground even when he found misconduct was proved. This Court reversed the judgment of the High Court. Repeatedly this Court has emphasized the courts should not be guided by misplaced sympathy or continuity ground, as a factor in judicial review while examining the quantum of punishment."

(v) *Ishwar Chandra Jayaswal Vs. Union of India (UOI) and Others*, . Paragraphs 7 and 8 are extracted hereunder:

"7. We have already noted that it has not been established that the Appellant had, as a matter of habit or on a wide scale, made illegal demands from Railway servants desirous of obtaining a Fit Certificate. However, since two of the three charges have been proved, we are of the considered opinion that the imposition of compulsory retirement i.e. Penalty 6(vii) would have better and more appropriately met the ends of justice. While this would have instilled sufficient degree of fear in the mind of the employees, it would also not have set at naught several years of service which the Appellant had already given to the Respondent-Indian Railways. We think that deprivation of retiral benefits in addition to loss of service is entirely incommensurate with the charge of the Appellant having taken very small sums of money for the issuance of Fit Certificate to other Railway employees.

8. It is in these premises that the Appeals are accepted and the impugned Order dated 11.10.2010 is set aside. The Appellant shall be deemed to have compulsorily retired under Part-III Penalty 6(vii) of the aforementioned Railway Rules with effect from 22.1.1991. If he is entitled to retiral or other benefits on the said date, the Respondents shall make necessary payment within three months from today. This decision is restricted to the facts of the present case."

(vi) *Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Another*

Vs. Rajendra Singh, . Paragraphs 16 to 18 would read as under:

"16. This, according to us, would be the harmonious reading of Obeettee (P) Ltd. and Rajendra Yadav cases.

The principles discussed above can be summed up and summarized as follows:

(a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

(b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

(c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;

(d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable.

17. It is made clear that such a comparison is permissible only when the other employee(s) who is given lighter punishment was co-delinquent. Such a comparison is not permissible by citing the cases of other employees, as precedents, in all together different departmental enquiries.

18. Applying these principles to the facts of the present case, we may observe that, no doubt the charges in respect of two sets of employees were identical. Though the other set of employee accepted the charges on the first day of enquiry, a factor which is to be kept in mind, that even those employees had denied the charges in the first instance and accepted these charges only in the departmental enquiry, that too after realizing that similar charges had been

proved against the respondents herein in the departmental enquiry. Therefore, it was not a case where those employees had expressed the unconditional apology in the first instance. This may be a mitigating circumstance for the appellants herein. At the same time, we are of the opinion that all these aspects are to be considered by the appellate authority. The High Court did not look into all these aspects and mandated the appellate authority to pass orders imposing a specific penalty only. This direction of the High Court is, accordingly, set aside and the matter is remitted back to the appellate authority to take a decision imposing appropriate penalty on the respondents herein. We are confident that the mitigating circumstances pointed out by the respondents herein would be given due consideration by the appellate authority, keeping in view the ratio of Rajendra Yadav's case as well. It would be open to the respondents herein to make representation in this behalf to the appellate authority on the basis of which the respondents want to contend that they should be given same treatment as meted out to other three employees. Such a representation will be given 15 days from today. Appellate Authority shall pass appropriate orders deciding the appeals afresh within 2 months from today."

(vii) Union of India (UOI) and Others Vs. Major S.P. Sharma and Others, . Paragraph 56 is reproduced hereunder:

"56. On assessing the materials contained in link file and the notings showing the suggestions and recommendations up to the level of defence ministry and the Prime Minister, it cannot be held that the impugned order of termination of services have been passed without any material available on record. There is no dispute that order of termination passed against the Army personnel in exercise of "pleasure doctrine", is subject to judicial review, but while exercising judicial review, this court cannot substitute its own conclusion on the basis of materials on record. The Court exercising the power of judicial review has certain limitations, particularly in the cases of this nature. The safety and security of the nation is above all/everything. When the President in exercise of its constitutional power terminates the services of the Army officers, whose tenure of services are at the pleasure of the President and such termination is based on materials on record, then this court in exercise of powers of judicial review should be slow in interfering with such pleasure of President exercising constitutional power. In a constitutional set up, when office is held during the pleasure of the President, it means that the officer can be removed by the Authority on whose pleasure he holds office without assigning any reason. The Authority is not obliged to assign any reason or disclose any cause for the removal."

7. I have considered the above submissions and perused the records carefully.

8. A perusal of the records would go to show that the petitioner was issued with a charge memo dated 04.08.2008, alleging that he had received a sum of Rs. 98,000/- in two occasions from the mother of the said Nagendran. In the said charge memo itself, an Enquiry Officer was appointed, which is unknown to law. After conducting the enquiry, he filed the report stating that the charges levelled

against the petitioner were proved. The Disciplinary Authority, having considering the report filed by the Enquiry Officer and also the materials available on record, agreed with the finding of the Enquiry Officer and imposed the penalty of compulsory retirement from service with immediate effect.

9. Aggrieved over the same, the petitioner preferred an appeal to the second respondent, the Appellate Authority, and the said appeal was also dismissed, stating that the Disciplinary Authority had rightly held that the charges levelled against the petitioner were proved and that the penalty imposed on the petitioner commensurated with the misconduct committed. Challenging the same, the petitioner filed a revision petition before the first respondent, the Revisional Authority, and the said revision was also rejected, observing that the case of the petitioner was dealt with leniently by the Disciplinary Authority, as he had not been dismissed or removed from the services and that by virtue of the punishment of compulsory retirement, the petitioner was able to get all his terminal benefits.

10. Viewing this case in a different angle, this Court finds that the petitioner had been charged for the aforesaid misconduct and he had been issued with a charge memo, dated 04.08.2008. However, the Disciplinary Authority, while calling for the explanation from the petitioner as to the misconduct committed by him, by way of a charge memo, is not justified in appointing an Enquiry Officer therein. According to the petitioner, the Disciplinary Authority had already preconceived the issue and appointed the Enquiry Officer, to conduct an enquiry regarding the misconduct alleged to have been committed by the petitioner.

11. On perusal of the voluminous typed set of papers filed by the petitioner, this Court finds that during the enquiry, the petitioner was not given sufficient opportunity to prove his case beyond reasonable doubt, either by examining the witnesses or by cross-examining them, in the manner known to law. It is the definite stand of the petitioner that he had been working at a different place, when the alleged misconduct was said to be committed by him and the Enquiry Officer also failed to look into that aspect. In no time, we can conclude that the petitioner had committed such misconduct as alleged by the Department, but, before that, it has to be seen as to whether the principles of natural justice have been complied with, by affording due opportunity to the petitioner, during the enquiry.

12. A deep analysis of the materials available on record and the orders impugned herein, would make one aspect clear that when the explanation was called for by the Department from the petitioner, by issuing a charge memo, an Enquiry Officer was appointed to conduct enquiry into the alleged misconduct committed by the petitioner, which in the opinion of this Court, is so serious. This flaw had not been rectified neither by the Appellate Authority nor by the Revisional Authority. Normally, a charge memo is issued calling for the explanation of the person concerned and on dissatisfaction with the explanation/reply, the Department can proceed further to conduct an enquiry, by appointing an Enquiry

Officer, to go into the correctness of the alleged misconduct committed by him. This basic principle had been violated in the case on hand, which would pave way for holding the entire exercise as against the principles of natural justice. On this single ground alone, this Court finds that the enquiry conducted as against the petitioner, is not in accordance with law and it warrants interference at the hands of this Court.

13. Accordingly, the impugned orders passed by the respondents, are hereby set aside and the matter is remitted back to the third respondent for fresh consideration. The third respondent shall complete the disciplinary proceedings afresh, within a period of three months from the date of receipt of a copy of this order, after affording due opportunity of personal hearing to the petitioner, so as to avoid the allegations of violation of principles of natural justice. The petitioner is also at liberty to put forth his case before the third respondent by adducing oral as well as documentary evidence, as per law. At present, the petitioner would have attained the age of superannuation and therefore, the third respondent shall also consider the plea of the petitioner for his terminal benefits.

14. In fine, this writ petition is allowed to the extent indicated above. Consequently, the connected miscellaneous petition is closed. No costs.