CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 216/2003

Wednesday, this the 19th day of April, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

K Ravikumar,
S/o late K.V.Kunchu Pillai,
(Mailman under order of dismissal)
RMS TV Division, Kayamkulam,
now residing at Kollakasseril House,
Cheravally, Kayamkulam.P.O.,
Alappuzha District. - Party in person

V.

1. Union of India represented by its
Secretary,
Government of India,
Department of Posts,
New Delhi.

2. Member(P),
Postal Services Board,
New Delhi,

3. Director of Postal Services(SR),
O/o the Chief Postmaster General,
Kerala Circle,
Trivandrum.

4. Senior Superintendent,
RMS TV Division,
Trivandrum. - Respondents

By Advocate Mr TPM Ibrahimkhan, SCGSC

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

In this OA, the applicant Shri.K Ravikumar, Mailman(under orders of dismissal) RMS, TV Division, Kayamkulam seeks a direction to the respondents to reinstate him in service, with consequential benefits.

2. The applicant commenced his service as an Extra Departmental Mailman. Vide A-6 document, issued by Senior Superintendent RMS TV Division, dated 5.8.94, he was issued a charge memo under Rule 14 of the CCS(CCA) Rules, 1965. The three charges framed against him related to (1) unauthorized absence, while he was working as Mailman violating provisions of Rule 25 of CCS(Leave) Rules, 1972, (2) to a false declaration about his local and permanent addresses and (3) to engaging himself in dual gainful job. The memorandum consisted of Annexure-I containing statement of articles of charge, Annexure-II containing statement of imputations of misconduct, Annexure-III listing documents based on which the articles of charges were framed and Annexure-IV containing list of witnesses. He was asked to submit within 10 days, a written statement of defense. An enquiry authority was appointed on 27.10.94, followed by second I.A. Proceedings dated 16.3.95 and the third one on 20.1.99. According to the applicant, the enquiry that followed was full of procedural infirmities, the witnesses were biased, he was denied access to many documents and he was not permitted to adduce oral evidence. The enquiry led to A-8 report dated 15.7.1999 prepared by the Deputy Superintendent of RMS TV Division. The applicant submitted A-9 representation dated 26.7.99. After considering this representation, vide impugned A-1 document dated 29.9.99, the Senior Superintendent, RMS Division ordered that the applicant be removed from service with immediate effect. The applicant preferred an appeal before the Director of Postal Services,

vide his representation dated 29.9.1999 (A-10). His appeal petition was rejected by the impugned A-2 document vide order dated 29.6.2000 by the Director of Postal Services. The applicant preferred a revision petition dated 29.8.2000 vide A-11. This was rejected by impugned A-3 order dated 5.4.2002 by the Member, Postal Services Board. Assailing all these impugned orders, he has preferred this application.

3. The applicant seeks the reliefs of quashing of the impugned orders and of reinstatement in service with all consequential benefits. These reliefs rest on the following main grounds:

- The impugned orders were illegal, arbitrary and unjust.
- The procedure prescribed under Rule 14 of the CCS (CCA) Rules (the Rules for short) were not followed.
- Witnesses were not permitted to be examined on the side of the applicant
- Witnesses produced from the other side were biased.
- The applicant was denied access to certain documents called for by him.
- No expert examination was allowed of documents disputed by the applicant
- The punishment was disproportionate to proved misconduct.

4. The respondents resist the applicant by pointing out that,

- all reasonable opportunities were given to the applicant during the inquiry and natural justice rendered to the applicant,
- there was no bias against the applicant, which is evident by the actions of the department in giving him house building advance, transfer to the desired destination etc,.
- the applicant has not specified the infirmities and procedural flaws in the conduct of the Rule 14 inquiry nor did he indicate who were the

biased witnesses,

- the alleged demand vide A-7 document for seeking an expert opinion was never received at all,
- the applicant ought to have challenged the genuineness of the document at the time of inspection of documents during the Rule 14 inquiry,
- the applicant is challenging only three of the many documents produced without referring to the remaining,
- despite being given the opportunity to submit list of witnesses and documents, the applicant did not utilise the same and
- all documents required were given to him.

5. We have heard the Counsel for both sides and carefully perused the documents.

6. The points formulated for consideration are whether any violation of the procedural requirement was made during the Rule 14 inquiry, and if so whether the applicant pointed out the same either at the appeal stage or revision stage

7. On the point on whether any violation of the procedural requirements was made during the Rule 14 inquiry, the applicant's allegation is that the enquiry was chequered with procedural infirmities, biased witnesses, refusal of access to many documents and of permission to examine witnesses, all causing prejudice to him. In short, the procedure prescribed under Rule 14 of the CCS (CCA) Rules was not followed. In reply, respondents have questioned this averment pointing out that the applicant did not specifically mention the procedural infirmities and flaws that crept into the enquiry. The applicant was not able to rebut this counter in his rejoinder.

8. The applicant has reiterated almost the same points in his grounds that the impugned orders are vitiated by legal malafides, consideration of irrelevant factors and non-consideration of relevant factors. Here again, the respondents

assert that the order are very much legal and all due opportunities given to the applicant. It is seen that these factors were not mentioned specifically in the A-9 representation filed by the applicant as envisaged under Rule 15(2) of the CCS (CCA) Rules. Most part of the representation deals with the appreciation of evidence.

9. However, in the material papers, references available to certain specific allegations of procedural deviations, merit consideration. First is the reference made about time being not given to produce witnesses. On the point of production and examination of defence witnesses, the enquiry report (A-8 document) says, " ... *He was also asked to submit a list of witnesses if any, to be examined on his behalf. .....to a specific question by IA why he had failed to submit the list of defence witnesses even though asked for the same in the second sitting itself as per rules, he had replied that he was under the impression that witnesses could be introduced at any stage as per enquiries in this regard."* The enquiry report also adds *"..But in this case even though the CGS was asked to submit the list of defence witnesses and also a list of defence documents and nominate his AGS, he had partially complied with the request of the IA..... The introduction/examination of defence witnesses in the inquiry was not permitted because, the introduction of them was not in the appropriate stage of the inquiry and not in the manner prescribed in the rules. The submission of list of defence witnesses was delayed by the CGS purposely to fill the gap in the inquiry on his behalf. This has been revealed by the CGS while questioning him..."* It is evident that he was given an opportunity to produce his witnesses but he chose not to avail of the same at the appropriate time. He cannot be allowed to argue on this point at this belated stage. Hence, this averment should fail.

10. Second point is that the I.O. was the complainant as well as the one conducting the enquiry. This point has been raised in the A-9 document which is

a representation against the A-8 document and in A-10 document which is the appeal petition. The appellate authority in his order (A-2 document) dated 29.6.2000, has dealt with this aspect in great detail and found as follows: "*17.Three officials have functioned as Inquiry Officers in this case. It is not clear as to whom the charged Government Servant is referring to in his appeal and raising the various points. However, it seems the appellant is referring to Shri Vasudevan Nair, then ASRM in RMS TV Division and now with Karnataka Circle. This inference is based on the representation dated 15.5.1995 which the appellant is referring to in the appeal. Shri Vasudevan Nair has not functioned as Inquiry Officer in the case; he has conducted preliminary enquiry only in the case. How he could have influenced the case has not been explained by the appellant.*" In the background of this, this point made by the applicant is effectively countered.

11. Thirdly, he avers that his request for sending documents No.50, 54 and 57 for handwriting expert examination were rejected which is unjust. This, he had represented through A-7 document dated 16.4.99. According to the respondents, who invoke Section 47 of the Indian Evidence Act, hand writing of the applicant was recognised and identified by eye witnesses and persons accustomed to his handwriting and they did not find the justification for seeking expert opinion. In any case, the respondents deny the receipt of A-7 document at all. Hence, this contention also fails.

12. Fourth is the question of non-availability of Another Government Servant (AGS) to present the applicant's case during the inquiry. According to the Inquiry Report," *His attention was also drawn to sub rule 8(a) of Rule 14 regarding his right to take the assistance of another government servant (AGS).... But in this case even though the CGS was asked to .... nominate his AGS, he had partially complied with the request of the IA.*" Here again is the case of the applicant not availing himself of the opportunities given to him.

13. Fifth point relates to his contention that documents were not made available to him. According to the respondents, there was no denial of relevant documents resulting in denial of justice to the applicant. According to the enquiry report(A-8), he had asked for nine documents and he got marked 30 documents. He had asked for his personal file which was disallowed as he had not indicated the relevance of the same, which is enjoined as per the note to Rule 14(11)(iii) which says the Government servant shall indicate the relevance of his document required by him to be discovered or produced by the Government. These points have not been countered in his rejoinder.

14. Sixth point related to examination of an unsummoned witness. On this, the point made by the applicant in the appeal petition (A-10) is that CW-14 is examined even without issuing summons or notice calling her as a witness. Vide A-2 document passed by the appellate authority this point has also been countered as follows: "*18. From the records, it is seen that CW-14 was properly summoned to attend the inquiry*".

15. The role of the Tribunal in the disciplinary cases has been well laid out by various rulings including those from the Hon. Apex court. (JT 1998(8) SC 603, UOI v. B.K.Srivastava [1998 SC SLJ 74; UOI Vs. Nagamaleswar Rao [1998 (1) SC SLJ 78]; Apparel Export Promotion Council v. A.K.Chopra [AIR 1999 SC 625], Union of India v. Upendra Singh [1994 SCC (3) 357] = JT 1994 (1) 658, (1) 2005 (1) SC SLJ 200 (Damoh Panna Sagar R.R.Bank v. Munnalal Jain). Accordingly, the proposition of the law is that the disciplinary authority is the sole judge of facts. The scope of judicial review is limited and the Tribunal cannot sit as an appellate authority over the findings of the enquiring authority. Judicial review is restricted only to the decision making process and not merit itself. Keeping this in mind, if the pleadings are examined, one prominent point that emerges for attention is the various pleas made by him relating to the appreciation of the evidence. As laid down by the Apex Court, no re appreciation

of evidence is permissible in a proceedings like this. This has been made clear in 2006 AIR SCW 734 by the Hon'ble Apex Court that "*judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.*" Their lordships in the same judgment had referred to an earlier decision in 1995 (6) SCC 749 by extracting the following portion "judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court." More specifically, the Hon'ble Apex Court has frowned upon re appreciation of evidence by C.A.T. as not permissible in 1998 SCC(L&S) 363.

16. In short, we find that no case of procedural deviations as alleged by the applicant has been made out and re-examination of the evidence which has the main thrust of the applicant's case is deprecated by various pronouncements of the Hon'ble Apex Court as referred to above. For the very same reason, we are unable to record an adverse finding about the quantum of punishment.

17. Under these circumstances, the O.A is dismissed. No costs.

Dated, the 19th April, 2006.

GEORGE PARACKEN
JUDICIAL MEMBER

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 216/2003

WEDNESDAY, this the 16th day of September, 2015

CORAM

HON'BLE MR. U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MRS. P.GOPINATH, ADMINISTRATIVE MEMBER

K.Ravikumar, S/o late K.V.Kunchu Pillai,
aged 43 years, Mailman (under order of dismissal),
RMS, TV Division, Kayamkulam
residing at Kollakasseril House, Cheravally,
Kayamkulaam P.O., Allappuzha District -- Applicant

(Party –in-Person)

versus

1 Union of India, represented by its Secretary,
Government of India, Department of Posts,
New Delhi.

2 Member (P), Postal Services Board, New Delhi

3 Director of Postal Services (SR),
O/o the Chief Postmaster General, Kerala Circle,
Trivandrum.

4 Senior Superintendent, RMS TV Division,
Trivandrum. ..... Respondents

(By Mr.N.Anil Kumar, Sr.PCGC(R )

This Original Application having been heard on 06.07.2015, this Tribunal on 16.09.2015 delivered the following:

ORDER

BY HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

This O.A. was dismissed by this Tribunal vide order dt. 19.04.2006. Applicant took up the matter before the Hon'ble High Court of Kerala in WP(C) No. 30236/06. High Court remitted the matter to this Tribunal for consideration *de novo* after affording sufficient opportunity for hearing to the applicant and respondents with direction to the parties to appear before the Tribunal on 04.03.2014.

Applicant's case is as under : The proceedings ensued there after show that on 17.3.2014 the applicant appeared in person and submitted that his earlier argument note is available on record and that the same may be considered and appropriate orders may be passed. He prayed for exempting him from personal appearance. Thereafter, in response to a registered letter sent from this Tribunal, applicant appeared in person and the matter was heard finally by us.

Applicant commenced his service as Extra Departmental Mailman. While so, he met with an accident during the course of his duty and he was physically disabled. He made a request for alternate employment but the same was rejected by the Senior Superintendent of RMS, Trivandrum Division vide Annexure A/4 communication dt. 27.07.1986 informing that he may be granted leave till he recovers from his illness. Meanwhile he passed the test for appointment as Group –D and he was allotted to HRO, Trivandrum. However, no posting order was issued. He was proceeded against under ED Rules and was removed from service on the charge that he had availed of leave beyond 180 days. Applicant took the matter before this Tribunal in OA No. 462/1989 and the same was allowed by this Tribunal directing that he be reinstated with back wages. Due to certain problems in the Office regarding dismissal of the applicant, the SRO Mr.S.Rajendra Kurup did not serve the copy of the order removing the applicant from service even after obtaining an acquittance . In this connection he had manhandled the applicant.

Applicant filed a criminal complaint against the aforesaid SRO. The SRO was convicted and sentenced. Criminal appeal also was dismissed. Applicant filed OS 465/1990 before the Munsiff Court, Kayamkulam claiming damages against the department and also the SRO based on the above incidents. The suit was decreed in favour of the applicant awarding damages of Rs. 5075/- against the SRO vide Annexure A/5 judgement of that court. When execution proceedings were initiated against the SRO and his salary was got attached, an appeal was preferred against Annexure A/5 judgment. The appellate court granted stay. The SRO acted with vengeance and with active support of departmental higher ups he went on causing harassment to the applicant. He did not permit the applicant for joining duty. Thereupon applicant filed OA No.77/1991 for injuncting the SRO from preventing the

applicant from joining duty. He also filed OP 3913/1991 before the High Court for police protection for joining duty. Applicant again approached this Tribunal in OA 1008/1991 praying for posting him as Group –D. During the pendency of the OA, the posting which was long due was granted and therefore the OA was closed leaving other issues to be agitated departmentally, directing to pay arrears with effect from 01.01.1998. The SRO again created difficulties and applicant was not allowed to be relieved to join duty. Thereafter respondents were rejecting the claim of the applicant to appear in departmental test for Group –C. Hence he filed OA 709/1994 and the same was allowed by this Tribunal. He was suffering continuing health problems relating to the accident he suffered while working as ED Agent. While so, during the pendency of OA 709/1994 applicant was served with Annexure A/6 charge memo dt. 5.8.1994.

Departmental inquiry against the applicant was conducted with procedural infirmities substantially affecting applicant's opportunity to defend him. The witnesses examined were relatives and friends of higher officials in the department. Applicant was not permitted access to many documents and no permitted to adduce oral evidence. Annexure A/8 inquiry report was submitted. Applicant made Annexure A/9 representation against the inquiry report. Disciplinary authority issued Annexure A/1 order dt. 29.9.1999 removing applicant from service. Though A/10 appeal was preferred the appeal was rejected vide Annexure A/2. The revision preferred by the applicant on 29.08.2000 vide Annexure /11 also was dismissed vide Annexure A/3 order dt. 5.4.2002 by the Member (P), Postal Services Board. Applicant prays for following reliefs:

i. Quash Annexure A1, A2 and A3,
ii. To direct the respondent to reinstate the applicant with all consequential benefits,
iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant,

2. Respondents contesting the matter filed a reply statement: Applicant was exploiting the lenient view taken by the administration in Annexure A/4 which granted him leave without allowance till he recovers from illness. Taking advantage of the situation applicant had taken alternate employment as Advocate clerk under many advocates at the Kayamkulam and Mavelikkara courts during the period of leave. As per the then existing rule ED officials should not absent a period exceeding 180 days

in a year. However, he had come through the examination for the post of Group D. Before announcing the results it was detected that he got admission to the examination suppressing the vital information regarding his absence for more than 180 days as ED Agent and that, therefore, as per Rule- 5 of P&T ED Agents (Conduct & Service) Rules, 1964he had ceased to be in service before appearing for the examination. When the aforesaid provision was invoked, he filed OA before this Tribunal and as per order of this Tribunal he was taken back and was promoted to the cadre of Group –D with all consequential benefits. Even though he was promoted to the grade of Group – D and posted at Kottayam, he continued his dual job of advocate clerk under the advocates. He performed duty only when the court was closed on holidays / vacation. An inquiry was conducted by the Assistant Superintendent, Trivandrum RMS and it was found that the applicant was working as advocate clerk and reported for duty as Group –D only for a period of 106 days during the years 1991, 1992 and 1993 put together. He remained in unauthorised absence from duty for various spells from 21.6.1993 to 12.4.1994, totalling 219 days. Therefore a charge sheet was issued against him and an inquiry was conducted resulting in the removal from service. Appeals and revision were decided against him.

According to the respondents applicant is a vexatious litigant. During the short period of 8 years he had filed 12 cases both against individuals and the department in the Munsif/ Magistrate courts and also before this Tribunal and he continues to do so. He is trying to create an impression that the department is persecuting him unnecessarily.

In para 15 of their reply statement respondents have given a tabulated list of the different cases instituted by the applicant against the department before various courts. Applicant had suppressed facts when he filed OP No. 8923/2001 in the High Court, but applicant's counsel agreed to withdraw the suit filed for identical relief in the Munsif court, Kayamkulam. It is also alleged by the respondents that the applicant had misused letter heads of some advocates and sent forged letters to the Govt. pleader which resulted in the dismissal of the appeal filed by the department. In this connection, respondents have produced Annexure nos. R/1 to R/17 copies of documents.

3 A rejoinder was filed by the applicant refuting the contentions of the respondents. An additional reply statement was also filed by the respondents producing Annexure R/18 & R/19.

4. We have heard the applicant who appeared in person and also Mr. N.Anil Kumar, Sr.PCGC(R ). We have carefully perused copies of the record produced by both sides.

5. The articles of charges framed against the applicant are:

Article –I

That the said Shri K.Ravi Kumar while working as mail Man, SRO RMS 'TV' Dn, Kottayam with effect from 23.8.1991 unauthorisedly absented from duty in Kottayam RMS/1 on 21-6-93, 14-7-93, 2-9-93, 3-10-93, 25-10-93, 12-12-93, 13-12-93, 26-3-94 and 29-4-94 and remained unauthorisedly absent from duty during the period from 14-7-93 to 28-8-93, 2-9-93 to 10-9-93; 24-10-93 to 9-12-93, 12-12-93 to 11-394; 26-3-94 to 12-4-94 violating provisions of Rule 25 of CCS(Leave) Rules 1972, Rule 62 of P&T Manual Vol.III and Rule 92 of P&T Manual Vol.IV and thus acted in a manner quite unbecoming of a Govt. servant contravening Rule 3(1)(iii) of CCS (Conduct) Rules 1964.

Article –II

That the said Shri k.Ravi Kumar, while working as mail Man, SRO RMS 'TV' Division, Kottayam with effect from 23-8-91991 made false declaration about his local and permanent addresses to SRO RMS 'TV'Dn, Kottayam and thereby he failed to maintain absolute integrity and act in a manner unbecoming of a Govt servant contravening Rule 3(1) (i) and 3 (1) (iii) respectively of CCS (Condcut Rules, 1964.

Article –III

That the said Shri K.Ravi Kumar, while working as Mail Man, SRO RMS 'TV' Division, Kottayam during the period from 23-8-1991 to 31-12-93 also undertook employment as a clerk to Shri G.John and Shri Thomas Zachariah, Advocates, Mavelikkara and Kayamkulam courts respectively and thus engaged himself in dual gainful job and thereby he infringed Rule 15 (1) of CCS (Conduct) Rules, 1964.

6. One of the main grounds of challenge of Annexure A/1 to A/3 orders is that the entire disciplinary proceedings initiated against him are vitiated by legal *mala fides*.

7. It is alleged by the applicant that he was not granted adequate opportunity to examine the witnesses on his side on the hypothetical stand that the list of witnesses ought to have been submitted before the close of the department's evidence. The documents called for by the applicant were not made available to him. Yet another

allegation is that many of the documents e.g. the court papers alleged to have been prepared in the handwriting of the applicant as an advocate clerk were not allowed to be sent for hand writing expert even though he had specifically alleged that the hand writing in those records is that of other named advocate clerks. He alleges that the witnesses examined on the side of the respondents were in one way or the other related to the departmental officials. No advocates advocate clerks or other individuals who are associated with the work of court were examined. Besides, according to applicant, the punishment imposed is shockingly disproportionate to the misconduct proved against him.

8. While remanding this OA back to this Tribunal High Court had ordered that this OA has to be considered afresh untrammelled by the findings in the impugned order of this Tribunal and the views expressed in the judgment of that court in the Writ Petition. Nevertheless, we feel that certain observations made by the High Court are worth pondering and are quite relevant in adjudication of this case. As observed by the High Court, what is required is a wholesome look into the matter. The High Court observed:

> "4. At the same time, jurisdiction of the Tribunal also carries with it, the power to review different facets of the quality of the findings regarding the three articles of charges in the given case; and, also as to the proportionality of the ultimate punishment handed down by the employer. We say this in the context of the facts, which we note hereafter. Some time after the last date of the alleged unauthorised absence, petitioner has been declared as having successfully completed his probation. He was thereafter confirmed in service, as if there is no disciplinary action against him. He also had an earlier order from the Tribunal, enabling him to write a competitive examination, on the ground that he has to be taken as a confirmed employee. Obviously, the establishment acted on that order and, ultimately, declared that he has satisfactorily completed his probation. Such declaration comes after the alleged spell of unauthorised absence. If that were so, the allegation of being employed as an advocate's clerk also appears to fall within the period of the unauthorised absence. We say all these in the light of the fact that the petitioner, who was a Mailman, was terminated from service. On a comprehensive purview of the facts and circumstances, we are of the view that this matter requires to be reconsidered by the learned Tribunal, not confining itself to the procedural irregularities in the conduct of the enquiry and the exercise of appellate and revisional power within the establishment. We think that it is appropriate that a wholesome look is made."

9. It is the prime allegation of the applicant that the disciplinary action initiated against him is vitiated by legal *mala fides*. In *DTC* v. *Mazdoor Congress*, AIR 1991 SC 101, His Lordship Sawant ,J. in his concurring judgment observed:

> "There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of individuals, however high-placed they may be. It is also the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be.

> There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolite to leave (have) an aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law".

10. In *Somesh Tiwari* v. *Union of India*, 2009 (2) SCC 592, the Apex Court had examined the vitiating element of malus in fact and in law. *Mala fide* actions generally consist of two kinds, (i) factual mala *fides* and (ii) legal *mala fides*.

Malice in fact occurs when an action is taken out of personal ill will, enmity or vengeance. In *Shearer* v. *Shields*, 1914 AC 808 (HL), Viscount Haldane LC stated :

> "Malice in fact ... means an actual malicious intention on the part of person who has done the wrongful act, and it may be, in proceedings based on wrongs independent of contract, a very material ingredient in the question of whether a valid cause of action can be stated. In other words, 'malice in fact' means an act committed due to personal spite, corrupt motive or malicious intention."

11. In *Pratap Singh* v. *State of Punjab,* AIR 1964 SC 72, the petitioner was a Civil Surgeon whose leave granted was revoked, he was suspended, proceeded with an inquiry and was finally removed from service. He alleged that all these have been initiated against him at the instance of the Chief Minister to wreak personal vengeance as he was not willing to meet the illegal demands of the Chief Minister. The Court held:

> "We are satisfied that the dominant motive which induced the Government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which it bona fide believed he had committed, but to wreak vengeance on him for incurring his wrath and for the discredit that he had brought on the Chief Ministry by the allegations that he had made.... We therefore hold that the impugned orders were vitiated by mala fides, in that they were motivated by an improper purpose which was outside that for which the power or discretion was conferred ton Government and the said orders should therefore be set aside".

Malice in law can be stated to exist when an action is taken or power is exercised without just or reasonable cause or a purpose alien to the statute. To quote Viscount Haldane LC again [see *Shearer*'s case (*supra*)]:

> "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

12. The pleadings of the applicant pointedly state that he had a brush with SRO which resulted in not only a criminal case but also a civil case which ended up in awarding damages in favour of the applicant. According to department, though the matter was taken up in appeal the same was ended in dismissal due to a forged letter addressed to Additional Govt. Pleader Mavelikkara. Respondents allege that the aforesaid forged letter was sent by the applicant using his 'clout with the working of the judiciary and court'. Respondents further state that applicant is in the habit of misusing

the letter heads of some advocates and sending communications to the postal department. Though copies of some of the documents have been produced by the respondents to prove the habit of the applicant, we are not inclined to accept the same unless it is proved to have been authored by the applicant himself. It appears that though some of the forged letters have been referred to the police, the police had closed the cases as not worthy of prosecuting.

13. It is alleged by the applicant that he had not been given adequate opportunity to defend his case. One of the allegations is that though the applicant requested for sending certain disputed documents for analysis by hand writing experts the request was declined. Similarly, his request for examination of the witnesses has not been allowed by the inquiry officer on the flimsy ground that the list ought to have been presented earlier. It is stated by the applicant that the inquiry officer was not a competent person because applicant having been selected to the post of Group C, inquiry officer being a group C employee was not competent to hold the inquiry. We are not fully convinced by this contention of the applicant because the applicant though claims to have been selected for the post of Group C had never joined that post.. However, in the backdrop of the unsavoury legal battle applicant had fought against the SRO, it appears to us that the disciplinary proceeding against the applicant is tainted with some amount of vengeance on the part of the departmental officials.

14. We feel that a look at the 3 different articles of charges framed against the applicant indicates that, but for the period of absence indicated in Article I, the other charges seem to be unsubstantiated and elastic in nature. Furnishing of false address as indicated in the Article II of the charge memo seems to be too trivial in nature and appears to have been ferreted out only to settle score with him. Regarding Article III of the charge sheet, it appears to us that the disciplinary authority has arrived at a decision without any convincing evidence in record. The documents relied on by the respondents in regard to applicant's dual engagement as advocate's clerk are not based on any documents proved with certainty because the request of the applicant for sending them for hand writing expert was not considered by the inquiring authority.

Above all, as pointed out by the High Court in the judgment in WP(C ) 30236/06, the applicant had been declared as having been successfully completed his probation even while it was alleged that he was unauthorisedly absent. He was thereafter confirmed in service also. Even during the pendency of the disciplinary proceedings he was allowed by this Tribunal in OA 709/94 to appear for departmental examination. It appears that the department had been oblivious to the factors like the appointment and confirmation of the applicant in Group D and also his successful participation in Group C examination conducted on 21.5.94. These aspects strongly persuade us to come to the conclusion that the disciplinary proceedings in pursuance of Annexure A/6 charge memo was issued by the department only to wreck vengeance against the applicant for having obtained a favourable decree for damages against the SRO and also for instituting criminal proceedings against the latter for assaulting the applicant.

15. It is settled law that the role of the court/ tribunal in matters of disciplinary proceedings is very limited. The Apex Court in *B.C.Chaturvedi* v. *Union of India and Others* 1996 SCC (L&S) 80 held :

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/ Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court / Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court / Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case. "

The same position has been reiterated in *R.S. Saini* v. *State of Punjab and Others* (1999) 8 SCC 90 wherein it was observed by the Apex Court that :

> " If there is some evidence to reasonably support conclusions of inquiring authority, it is not the function of the court to review evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate its findings. Adequacy or reliability of evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings. "

In *Damoh Panna Sagar Rural Regional Bank and Another* v. *Munna Lal Jain* (2005) 10 SCC 84, it was held by the Apex Court:

> "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 for that of the administrator. The scope of judicial review is limited to the deficiency in decision –making process and not the decision. The court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the court, in the sense that it is in defiance of logic or moral standards. Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/ tribunal, there is no scope for interference. Further , to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. When a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. 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. In the case at hand, the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. "

In yet another case, the Apex Court held :

> " 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 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. However, to shorten litigations 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. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision."
>
> (see *Union of India and Another* v. *K.G.Soni* 2006 SCC (L&S) 1568)

16. Now, coming to the order imposing penalty in Annexure A/1 which was repeated in Annexure A/2 Appellate Order and A/3 Revisionary authority's order, we feel that the punishment of removal from service was indeed too harsh for the misconducts levelled against the applicant in Annexure A/6 charge memo,. True, the applicant had to undertake litigation with the respondent department at each and every stage of his employment. That is probably because of his flair for court proceedings as an advocate clerk - before he was confirmed in service as Group –D. According to applicant, his subsequent association with courts and advocates was not as an advocate clerk but as litigant for filing his own cases. His absence from duty, according to him, was on account of the injuries he had sustained during the course of his employment as an ED Mailman. The Department had initially permitted him to remain on leave without allowance till he gets cured of the illness. Though this is slightly an over statement of the situation for his absence even after having been regularised as Group –D, the removal from service was a punishment totally disproportionate to the charge. Suffice

it to say that an element of *mala fide* bordering with vindictiveness is writ large in the disciplinary proceedings initiated against the applicant.

17. In the circumstances, we are of the view that the impugned Annexure A/1 to A/3 orders require to be quashed and set aside. We do so. In the result, the O.A. is allowed. Annexure A/1, A/2 & A/3 are quashed and set aside. The entire disciplinary proceedings based on Annexure A/6 charge memo also are quashed and set aside. The applicant shall be reinstated in service in the post from which he was deemed to have been removed from service. The period of unauthorised absence mentioned in the charge memo shall be treated as 'leave not due'. The Group –C post to which he became eligible to be appointed shall be conferred to the applicant soon after he is reinstated, from the date on which such appointment became due to him. The entire period of service he remained out of employment as a result of Annexure A/1 to A/3 orders shall be counted for increments and pension, but without any back wages. It is made clear that the present order will not entitle the applicant to claim any further damages or any future promotions he would have been entitled to during the interregnum. Parties shall suffer their own costs.

(P.GOPINATH)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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