Central Administrative Tribunal
Principal Bench

TA No.14/2013

Reserved on: 12.05.2016
Pronounced on: 16.07.2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)

Vishva Bandhu Gupta,
B-1/1522, Vasant Kunj,
New Delhi-110070. ... Applicant

(By Advocate: Ms. Kamini Jaiswal and Mr. Abhimannue Shreshtha)

Versus

1. Union of India through
Secretary, Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
Department of Income Tax,
New Delhi.

2. Union Public Service Commission
through its Chairman,
Dholpur House, Shahjahan Road,
New Delhi-110001.

3. Chairman,
Central Board of Direct Taxes,
North Block, New Delhi-110001. ... Respondents

(By Advocate : Shri R. N. Singh, Shri R. V. Sinha and Shri Amit Sinha)

O R D E R

Justice Permod Kohli, Chairman :

This Application has been received by the Principal Bench of the Tribunal on being transferred by the Hon'ble High Court of Delhi vide order dated 01.03.2013.

2. At the outset, Ms. Kamini Jaiswal, learned counsel appearing for the applicant, submits that she intends to argue only on the question of quantum of punishment. Keeping in view the fact that the applicant has already superannuated and is seriously ill, she further submits that a compassionate view must be taken by the Tribunal on the question of punishment awarded to the applicant. The applicant has been dismissed from service on imposition of penalty in disciplinary proceedings. The order of dismissal, his earlier suspension and orders passed by the reviewing authority are in question in the present Application. Additionally, the applicant has sought a direction for payment of retiral benefits. The facts relevant for purposes of the present Application are being noticed hereinafter.

3. The applicant was selected/appointed as Income Tax Officer Group 'A' in Junior Time Scale on successfully qualifying the All India Civil Services Examination in the year 1976. On completion of the period of probation, he was confirmed. He earned promotions and became Deputy Commissioner of Income Tax and posted at Bombay. He sought his transfer on compassionate ground on account of his ill health, being treated at AIIMS, New Delhi. He was accordingly transferred to Delhi and remained posted as officer on special duty till 20.11.1989. Thereafter, the applicant was posted as Deputy Commissioner (Exemptions) at Delhi. His charge included

74 Trusts within his jurisdiction. It is alleged that on 24.02.1990 a news item was published in Hindustan Times reporting that one Shri K. N. Singh, General Secretary of All India Congress Committee, made allegations against Vishwa Hindu Parishad for alleged collection of Rs.700 crores in the name of Ram Janm Bhumi Temple. The applicant, taking cognizance of this news, issued commons to Shri K. N. Singh u/s 131 Income Tax Act, as also to Shri Vishnu Hari Dalmia, Mahant Paramhans of Ram Janm Bhumi Nyas, and Mahant Nrit Das of Mukti Samiti on 02.03.1990. It is further alleged that the issue of summoning the abovementioned persons by the applicant was raised in Parliament, whereupon the applicant was transferred from New Delhi to Tamil Nadu vide order dated 08.03.1990. According to the applicant, the said transfer was punitive in nature and at the instance of the political class. The applicant represented against his transfer to the then Finance Minister on 19.03.1990. It is further stated that Director General of Income Tax (Exemptions) withdrew the summons against the abovementioned persons under pressure of the then Government. The applicant, being not able to work under the situation, proceeded on leave, and thereafter he was given posting as Deputy Commissioner of Income Tax, Madras. The applicant challenged his transfer before the Tribunal at New Delhi in OA No.1025/1990. The said OA was disposed of vide order dated 01.06.1990 with direction to the respondents to treat the OA as

representation/appeal under rule 23(iv)(a) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, and dispose of the same by 31.08.1990. The applicant has further pleaded that instead of complying with the directions of the Tribunal, the respondents placed the applicant under suspension vide order dated 06.06.1990 on the ground of misconduct and misbehaviour, followed by a charge-sheet dated 03.07.1990. Suspension of the applicant was, however, revoked on 21.10.1991, and he was posted at Patiala. In the year 1994, he was again transferred from Patiala to Delhi as Deputy Commissioner of Income Tax. According to the applicant, he has served the department honestly and diligently and also earned letter of appreciation on 31.03.1995 from the then Commissioner of Income Tax. He also earned further promotion as Additional Commissioner of Income Tax with retrospective effect from November, 1994.

4. The applicant has alleged that while he was posted as Additional Commissioner of Income Tax, he received a letter dated 07.10.1998 from Assistant Commissioner of Income Tax asking him to furnish details about various properties belonging to one Romesh Sharma to CBI. The applicant issued summons u/s 131 Income Tax Act on 09.10.1998 and also sent a letter to the Recovery Officer to attach the helicopter purchased by the said Romesh Sharma to ensure that the same be not used by political parties. It is further stated that Romesh Sharma had made voluntary disclosure of his assets on

31.12.1997 declaring assets worth Rs.51 lakhs under the voluntary disclosure scheme. It is stated that the assets declared did not belong to him. It is further alleged that Romesh Sharma was known as a henchman of underworld don Dawood Ibrahim and had high political connections. He had also grabbed assets worth crores of rupees belonging to various persons, and number of FIRs were registered against him. He is also said to have evaded tax liability. He was arrested and convicted. The applicant has placed on record a certificate issued to Romesh Sharma for voluntary disclosure of income, as also documents said to be part of investigation conducted by CBI.

5. It is further the case of the applicant that being a patient of acute angina and depression and finding it difficult to work, he made an application for leave on 12.10.1998. Leave was sanctioned on medical grounds and came to be extended later. The applicant has alleged that the said Romesh Sharma was close to a senior BJP leader who was elected as Chief Minister of Delhi. The applicant was transferred after issuance of summons to Romesh Sharma to the Income Tax Appellate Tribunal. Romesh Sharma was arrested on 13.10.1998 by CBI and Delhi Police on the allegation that he was the front man of Dawood Ibrahim operating in Delhi. The applicant was again suspended vide order dated 19.06.2000 in contemplation of a departmental inquiry on the allegations of misconduct unbecoming

of a Government servant. He was also served with a memo of charge dated 25.07.2000 containing following articles of charge:

> "Article I
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> That Shri Vishv Bandhu Gupta, while posted as Additional Commissioner of Income Tax in the region of CCIT, Delhi remained unauthorisedly absent from duty from 9.11.98 till the date of his suspension i.e. 19.6.2000 and performed other acts of insubordination related thereto.
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> By his aforesaid conduct, Shri Vishv Bandhu Gupta has shown lack of devotion to duty and has acted in a manner which is unbecoming of a government servant, thereby contravening rule 3 (1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules, 1964 besides violating Rule 25 of the CCS (Leave) Rules, 1972.
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> Article II
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> That Shri Vishv Bandhu Gupta gave statements to the press and on the electronic media irresponsibly without authority and recklessly on sensitive issues and even on matters of government policies constituting acts of indiscipline unacceptable for any government servant.
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> By his acts as aforesaid Shri Gupta not only showed conduct unbecoming of a government servant thereby contravening Rule 3 (1) (iii) of CCS (Conduct) Rules but also violated Rules 9 and 11 of the said Rules."

The applicant has denied the charge of unauthorized absence. It is also alleged that charge-sheet was supplied to him without supporting documents. The applicant accordingly asked for copies of the documents referred to in the charge-sheet. He was informed vide reply dated 22.11.2000 that only inspection of the documents would be permitted during the oral inquiry. He filed his reply to the charge-sheet on 16.12.2000 and also made a representation to the Chairman,

CBDT on 03.04.2001, asking for supply of documents. It is stated that after about 15 months from the date of issuance of the charge-sheet, one Shri V. K. Bhatia, Director, Income Tax (Research), New Delhi was appointed as the inquiry officer, and one Shri P. C. Mohanty, Additional Commissioner of Income Tax as the presenting officer, vide letter dated 22.10.2001. Preliminary hearing in the inquiry was fixed on 06.11.2001. The applicant submitted his supplementary reply to the charge-sheet on 19.12.2001 even in absence of the documents. The applicant also applied for supply of transcript of video cassettes vide his letter dated 20.12.2001 to the inquiry officer. Aforesaid letter was followed by another letter dated 26.01.2002 regarding non-supply of the documents by the presenting officer. During the course of inquiry the presenting officer wrote a letter dated 05.02.2002 informing the inquiry officer that the TV recordings of the applicant's interview on television were the basis for his suspension. These recordings were also placed on record. The applicant has further alleged that oral inquiry was closed without providing the documents to him and giving him an opportunity to meet the case. The inquiry officer submitted his report on 01.03.2002 holding the charges to be proved against the applicant. Copy of the inquiry report was furnished to the applicant asking him to make representation, if any, within fifteen days to the disciplinary

authority. The applicant submitted his representation against the inquiry report.

6. The applicant approached the Tribunal in OA No.3163/2001 challenging the order of suspension dated 19.06.2000 and non-increase of subsistence allowance. This OA was disposed of vide order dated 28.05.2002 with a direction to the respondents to review the order of suspension within one month. The applicant also requested the Chief Commissioner of Income Tax, Delhi for reimbursement of his telephone bills for the period 01.07.2000 to 01.09.2002. Suspension of the applicant was continued vide order dated 06.09.2002 in purported compliance of the Tribunal's order dated 28.05.2002 and he was informed that the Government had decided to continue his suspension. It is stated that the applicant suffered a major heart attack because of the stress, and he was admitted to the Spinal Injuries Hospital, Vasant Kunj, New Delhi and later shifted to Ganga Ram Hospital, where an emergency cardiac bypass surgery was done on 11.09.2002. The applicant has also alleged non-reimbursement of the telephone bills on the ground that the same is not admissible to a suspended officer. The suspension of the applicant was, however, revoked on 27.03.2003 and he reported for duty to the Chief Commissioner of Income Tax on 07.04.2003. He claimed reimbursement of the telephone bills, but the same were not reimbursed to him. The Chief Commissioner of Income Tax vide his

order dated 12.05.2003 directed the applicant to report for duty in the office of Director General of Income Tax (Admn.), Mayur Bhawan, New Delhi, where the applicant joined on 14.05.2003. The applicant was later posted as Additional Director of Income Tax (Recovery) vide order dated 19.05.2003 and he assumed the duty on the same day. The applicant was dismissed from service on 30.05.2003 pursuant to the advice rendered by UPSC on 08.05.2003.

7. The order of dismissal from service dated 30.05.2003 was challenged by the applicant in OA No.2155/2003 before the Principal Bench of the Tribunal. The said OA was allowed vide order dated 04.06.2004 holding that UPSC had based its opinion on certain facts which were not part of the charge. UPSC also made observations regarding conduct of the charged officer (the applicant) to the effect that the department had been unable to enforce any transfer order on him for the last ten years; the applicant's failure to leave a handing over note to his successor after receipt of his transfer orders; and that he had been warned by the disciplinary authority several times on the issue of his making unauthorized statements before the media. These facts were not part of the charge framed against the applicant. The Tribunal accordingly held that the department relied upon the opinion of UPSC while passing the impugned dismissal order. It thus concluded that extraneous factors were taken into consideration

for passing the impugned order. While allowing the OA, the Tribunal concluded as under:

> "36. For the reasons recorded above, we allow the present application and quash the impugned order. It is directed that the disciplinary authority may pass a fresh order in accordance with law."

On account of liberty granted by the Tribunal, respondents passed a fresh order dated 03.09.2004 dismissing the applicant from service.

8. It is stated that without complying with the aforesaid directions of the Tribunal, the respondents passed the second dismissal order on 03.09.2004. The applicant preferred a revision before the Secretary (Revenue), Ministry of Finance against the dismissal order. He was communicated vide letter dated 09.12.2004 that there is no scope for revision under rule 29 of the CCS (CCA) Rules, 1965 of an order passed by the President. However, review under rule 29-A is permissible. The applicant replied to the said letter and requested for treating his aforesaid revision as review under rule 29-A, vide his application dated 22.12.2004. Since the said review remained pending, the applicant filed another OA No.1597/2005 against the order of dismissal dated 03.09.2004 before the Principal Bench of the Tribunal. This OA came to be disposed of vide order dated 29.07.2005 directing the respondents to decide the review of the applicant within a period of four months. It is further

the case of the applicant that the said direction was not complied with and the respondents sought extension of time to decide the review. Extension was granted to decide the review up to 31.07.2006. The Tribunal vide order dated 25.04.2006 directed the respondents to file details regarding the steps taken to comply with its directions. The respondents did file the details of the movement of file from 23.12.2005 to 25.04.2006.

9. The applicant on attaining the age of superannuation retired from service on 31.01.2010 without his review being decided. It is stated that he personally met the Finance Minister on 23.02.2010 and handed over confidential documents to him. He also pleaded about his ill health and financial difficulties, but without any response. He made some RTI queries seeking details of his postings, salary, suspension, dismissal etc., and out of twelve points, information was supplied only for a few, and denied in respect of rest of the queries. He had to prefer appeals. The aforesaid review petition of the applicant was rejected by the respondents on 23.11.2010. The applicant has accordingly filed the present petition seeking the following reliefs:

> "a) Issue an appropriate writ order/orders quashing the order dated 23.11.2010 whereby the Petitioner's Review Petition has been disposed off.
>
> b) Issue an appropriate writ/orders/direction, directing the Respondents to provide all the

arrears, service benefits to the Petitioner, including for the period he had been kept on illegal dismissal and suspension.

c) Issue an appropriate writ/orders/direction, to provide the Petitioner with the status of the officer of the rank on which he would have been on the date of superannuation, if the illegal and mala fide orders of suspension and dismissal would not have been passed against him.

d) Issue an appropriate writ/orders/direction, providing the Petitioner with all the retirement benefits, as he would have been entitled to on the date of superannuation.

e) Pass such other or further order(s) as this Hon'ble Court may deem fit in the peculiar facts and circumstances of the case in favour of the Petitioner."

10. The respondents in their short affidavit filed before the High Court of Delhi gave details of various payments made to the applicant as per the directions of the High Court from time to time.

11. Ms. Kamini Jaiswal, learned counsel appearing for the applicant initially argued that the second dismissal order dated 03.09.2004 has been passed without complying with the earlier directions of the Tribunal. However, we find that the disciplinary authority while passing the second dismissal order did notice the observations of the Tribunal and made the following observations:

"6. The Disciplinary Authority (DA) has carefully considered the advice of the UPSC afresh, in the context of each article of charge along with the statement of imputations of misconduct/misbehaviour in support of the articles of charge annexed to the charge memo,

> disregarding the observations of the UPSC, which were not specific to the charges or imputations annexed to the charge memo dated 25.07.2000.
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> Both the articles of charge, the first article of charge related to unauthorized absence, and the second article of charge alleging that the CO gave statements to the press and electronic media irresponsibly, without authority and recklessly on sensitive issues etc are fond to be fully proved. The misconduct of the officer as held proved is found to be grave and constituting acts of gross indiscipline, which are not acceptable for any Government servant. Such conduct also goes to prove that the officer is incorrigible.
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> 7. Thus, after consideration of all the relevant facts of the case, the report of the Inquiry Officer, the submissions made by the Charged Officer and the advice of the UPSC, the President is of the view that the Articles of Charge against the CO stand proved and is accordingly, pleased to impose penalty of 'Dismissal from Service' on Shri Vishv Bandhu Gupta under Rule 15(4) read with rule 11(ix) of the CCS (CCA) Rules, 1965."

12. We also find that the disciplinary authority has applied its mind while passing the dismissal order second time by ignoring the opinion of UPSC, which was based upon certain facts not included in the memo of charges. Since the validity of the order of dismissal is not now in question and it is only the issue of quantum of punishment, we are confining our opinion only on the quantum of punishment. Otherwise also, there is no serious challenge to the order of dismissal on permissible legal grounds. It is settled legal position that this Tribunal, or for that matter, any court, exercising the power of judicial review, does not sit as a court of appeal over the

conduct of disciplinary proceedings, or even the final order of punishment. Interference in the conduct of disciplinary proceedings and the consequential order that may be passed by the disciplinary authority, is permissible only (i) where the disciplinary proceedings are initiated by an incompetent authority; (ii) such proceedings are in violation of any statutory rule or law; (iii) there has been gross violation of principles of natural justice; and (iv) on account of proven bias and *mala fides*. Reference in this connection may be made to the judgment of the Hon'ble Supreme Court in ***B. C. Chaturvedi*** *v* ***Union of India & others*** [(1995) 6 SCC 749], wherein their Lordships in para 12 held as under:

> "12. 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. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-

> appreciate 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 or 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 each case."

13. With a view to find out the scope for exercising the power of judicial review in the light of the law laid down in the aforesaid judgment, it is deemed necessary to notice findings of the inquiry officer in respect of the charges against the applicant. On the question of unauthorized absence, the inquiry officer opined:

> "8.27 Thus, having considered all relevant aspects of the matter as also the rival contentions and the evidence produced by both sides, there is no doubt in my mind that Shri Gupta's absence from office from 9.11.1998 to 19.6.2000 was wilful and unauthorized. That the absence was unauthorised comes out quite clearly from the foregoing discussion. That the wilful also appears to be true because firstly Shri Gupta did not produce any medical certificates to show that he was not in a position to attend office for a period as long as more than one and a half year. Secondly, even after he was given a shown cause notice by Addl.CIT (Hqrs.) (Admn.) on 4.2.1999 and again on 2.7.1999, he neither sent his leave applications nor did he join his new office to which he was posted. Finally, it would be seen from the subsequent discussions in this report that during the period of his unauthorized absence, Sh. Gupta was constantly interacting with press and was even giving interviews to TV channels in which he was criticizing government policies. This clearly shows that Sh.

> Gupta's contention regarding being medically unfit to attend office during the period from 9.11.1998 to 19.6.2000 was not correct."
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> "9.29 Earlier, while discussing the charge of remaining unauthorisedly absent from duty, I have pointed out that Shri Gupta filed before me fabricated leave applications which he wanted to pass off as bona fide applications sent by him contemporaneously. The aforementioned false contentions by Shri Gupta and the fabricated leave applications only add to the gravity of the charge levelled against him.
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> 9.30 Rule 3 (1) (ii) of CCS (Conduct) Rules enjoins upon every government servant to maintain devotion to duty. Likewise, Rule 3 (1) (iii) enjoins upon him to do nothing which is unbecoming of a government servant. The aforesaid discussion clearly shows that Shri Gupta has violated both Rule 3(1)(ii) and Rule 3(1)(iii). Further, Rule 25(2) of CCS (Leave) Rules states that wilful absence from duty after the expiry of leave renders a government servant liable to disciplinary action. The aforesaid discussion clearly shows that Shri Gupta remained unauthorisedly and wilfully absent from duty for more than one and a half years. Therefore, he has invited disciplinary action in terms of Rule 25(2) of CCS (Leave) Rules also. In view of this, I hold that the Article of Charge I is proved.

On the second charge also the inquiry officer, on appreciation of evidence including various video recordings of TV channels and news papers, made the following observations:

> "9.22 Considering the testimony of Shri A. S. Narang, Shri Ravi Mathur, Shri Rahul Garg, Shri R. N. Jain, it is clear that there was no truth in Shri Gupta's allegations and the aforesaid reply was clearly slanderous, disrespectful and unfitting."
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> "10.23 As regards, Shri Gupta's interview recorded on the aforesaid Video Cassette, Shri Gupta's contention was that the recording was tampered and edited and the same applied to the transcript of the video cassette as well. However, he failed to respond to my query as to which of the portions of the recording, according to him,

were tampered and whether he gave the interviews to the TV channel is in question or not? The Presenting Officer clarified that two separate recordings received from Zee TV and Aaj Tak were transferred on to one video cassette for the sake of convenience. A copy of this video cassette and a transcript of its recording was taken out by the P.O. and was made available to Shri Gupta. Instead of showing which of the two portions of the recording were fabricated or tampered, as alleged by him, Shri Gupta wants to take cover behind unnecessary technicalities, like getting the video cassette certified by a forensic laboratory, contending that on page 2 of the transcript at one place there is a blank against his name etc. (The P.O. explained that this blank represented some indistinct utterance by Shri Gupta which was not comprehensible).

10.24 In my view, considering the legal appreciation about admissibility of evidence in departmental proceedings, as discussed earlier, as also the fact that the recordings in question were obtained by senior government officers in a bona fide manner from the concerned TV channels in the course of their duty, that prima facie there appears no tampering of the recording and that statements similar to those made by Shri Gupta in the interviews recorded on the video cassette were also made by him in his interview to Business Today and in other press reports, there is no force in Shri Gupta's objections. It may not be out of place to mention here that in answer to one of the questions in his aforementioned interview given to Business Today, Shri Gupta himself stated that the controversy regarding the VDIS circular began after his television interview. This also shows that Shri Gupta was giving interviews in media and was speaking to the press on a number of official matters though he was not authorised to do so."

"10.39 As regards Shri Gupta's contention that he was entitled to a reasonable opportunity to defend himself as per Article 311(2) of the Constitution of India, it is to be stated that throughout the inquiry proceedings before me, every reasonable opportunity has been afforded to him to defend himself by fully following the principles of natural justice. All witnesses produced by the Presenting Officer and relied upon by him has been shown to him and copies of the documents as well as the video cassette have been made available to him. He

> has also been allowed full opportunity to rebut the evidence produced by the Presenting Officer. However, Shri Gupta's contention that the evidence in the form of the video cassette and the press reports produced by the P.O. should not be admitted as admissible evidence has no merit as already discussed by me in para 10.5 earlier. Therefore, there is no truth in Shri Gupta's contention that reasonable opportunity has not been allowed to him to defend himself."

14. It is pertinent to note that in the relief claimed, neither the inquiry report nor the findings of the inquiry officer have been called in question in any manner whatsoever. Thus, the charges having been proved against the applicant, the submissions of Ms. Jaiswal as regards exercise of equitable jurisdiction and considering her prayer for a lesser punishment is required to be examined.

15. Absence from duty is a serious matter and falls in the category of grave misconduct. In ***State of Punjab & others*** *v* ***Sukhvinder Singh*** [1999 SCC (L&S) 1234], a constable who remained absent for 25 days was dismissed from service. High Court set aside the order of dismissal and directed his reinstatement without back wages treating the period of absence as leave. Hon'ble Supreme Court, however, set aside the judgment of the High Court, holding that the absence from duty is a misconduct, with the following observations:

> "5. The High Court was right in noting that the respondent was a member of a disciplined force and that absence from duty was unbecoming of a member of such force. It was in that light that the High Court should have looked at the repeated acts of the

> respondent's absence from duty. The fact that the respondent is a member of the Scheduled Caste is neither here nor there for the purposes of considering whether or not he is guilty of misconduct and breach of discipline, nor the fact that he had gone to give his pay to his mother and was detained on account of her illness. It is necessary that members of the police forces should attend the duties which they have been allocated and not absent themselves. This is a paramount public interest that must overweigh private considerations. The High Court was, therefore, in patent error in looking benignly at the numerous acts of absence of the respondent."

Similar view has been expressed by the Apex Court in ***Mithlesh Singh v Union of India & others*** [(2003) 3 SCC 309] and observed as under:

> "8. Rule 147(vi) deals with the case of absence without proper intimation. A mere application for grant of leave cannot be construed to be a proper intimation for absence. Rule 104 indicates various modalities governing grant of leave. There is prohibition on any member of the Force to leave Station even on holidays without specific permission of the authority empowering to grant casual leave. These modalities have been enumerated in Rule 104 clearly bring out the essence of discipline, which is required to be observed. Absence from duty without proper intimation is indicated to be a grave offence warranting removal from service. Therefore, mere making an application for leave cannot be construed to be of any consequence in the background of the strict requirement of giving proper intimation. Even if it is accepted that there was intimation, that by no such imagination can be construed to be a proper intimation for diluting the requirement of obtaining permission before absenting from duty. Stress is on the expression "proper". It means appropriate, in the required manner, fit, suitable, apt. The mere making of a request of leave, which has not been accepted is not a proper intimation. It cannot be said that the said word is a surplusage. The intention of legislature is primarily to be gathered from the

language used, and as a consequence a construction which results in rejection of words as meaningless has to be avoided. It is not a sound principle of construction to brush aside word(s) in a statute as being inapposite surplusage; if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the interpretation of statutes the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The Legislature is deemed not to waste its words or to say anything in vain. The authorities were, therefore, justified in holding that he was guilty of the offence of absence from duty without proper intimation.

9. The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same. Reference may be made to a few of them. [See: *B.C. Chaturvedi vs. Union of India and Ors.* (1995) 6 SCC 749, *State of U.P and Ors. vs. Ashok Kumar Singh and Anr.* (1996) 1 SCC 302), *Union of India and Anr. vs. G. Ganayutham* (1997) 7 SCC 463, *Union of India vs. J.R. Dhiman* (1999) 6 SCC 403, *Om Kumar and Ors. vs. Union of India* (2001) 2 SCC 386).

10. We find from the factual position, which is undisputed that the appellant was posted at Tarantaran in Punjab, a terrorist affected area and was, at the relevant time, working in the Railway Protection Special Force. Any act of indiscipline of such an employee cannot be lightly taken. In *Ashok Kumar Singh's* case (supra), the employee was a police constable and it was held that act of indiscipline by such a person needs to be dealt with sternly. As noted by the Division Bench of the High Court, penalty of removal of service is statutorily prescribed. It is for the employee concerned to show that how penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show, as to how the punishment could be characterized as disproportionate and/or shocking. On the contrary as established in the discipline proceedings, the appellant left the arms and ammunition unguarded and not in any proper custody. This aggravated the aberrations. Therefore, the order of

> removal from service cannot be faulted. There is no reason to interfere with the orders of the Division Bench of the High Court."

16. Insofar as the question of quantum of punishment is concerned, the Hon'ble Supreme Court taking note of various earlier judgments, in ***Jai Bhagwan v Commissioner of Police*** [(2013) 11 SCC 187], held as under:

> "10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior Courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when Courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court."

17. Learned counsel appearing for the applicant heavily relied upon two judgments of the Apex Court reported as ***Ishwar Chandra Jayaswal v Union of India and others*** [(2014) 2 SCC 748] and ***Collector Singh v L.M.L. Ltd.*** [(2015) 2 SCC 410].

18. In ***Ishwar Chandra Jayaswal*** (supra) a doctor was removed from service for demanding and accepting meagre amounts of Rs.26, Rs.34 and Rs.18 from some skilled workers. The Hon'ble Supreme Court while converting the punishment from one of removal from service to compulsory retirement, observed:

> "6. The Appellant before us is presently 75 years of age. At the time when the articles of charge had been served upon him, he had already given the best part of his life to the service of the respondent Indian Railways. It has been contended before us that the three charges that have been sustained against the appellant reflected only the tip of the iceberg; however, there is no material on record to substantiate this argument of the respondents. In the present case, the appellant has served the respondents for a period of twenty-three years and removal from service for the two charges levelled against him shocks our judicial conscience. Part III of the Railway Servants (Discipline & Appeal) Rules, 1968 contains the penalties that can be imposed against a railway servant, both minor penalties as well as major penalties."

In the case of ***Collector Singh*** (supra), the charged officer who was serving with a company was dismissed from service on the allegation that he threw jute/cotton waste balls hitting the face of a Foreman in the company, and on objecting to the same, he is alleged to have abused him with filthy language and threatened with dire consequences outside the premises of the factory. The charged officer later on tendered apology. It was under the above circumstances that the Hon'ble Supreme Court observed as under:

> "12. Coming to the case at hand, we are of the view that the punishment of dismissal from service for

the misconduct proved against the appellant is disproportionate to the charges. In ***Ram Kishan v Union of India*** [(1995) 6 SCC 157], the delinquent employee was dismissed from service for using abusive language against superior officer. On the facts and circumstances of the case, this Court held that the punishment was harsh and disproportionate to the gravity of the charge imputed to the delinquent and modified the penalty to stoppage of two increments with cumulative effect. The Court held as under:-

> "11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straitjacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.
>
> 12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order."

Reference may also be made to the decisions of this Court in ***Rama Kant Misra v State of Uttar Pradesh*** [(1982) 3 SCC 346] and ***Ved Prakash Gupta v Delton Cable India (P) Ltd.*** [(1984) 2 SCC 569]".

19. Ms. Jaiswal accordingly argued that since the applicant is suffering from heart ailment, a compassionate view should be taken and his punishment may be altered from one of dismissal from service to a lesser punishment, to enable him to earn pensionary benefits.

20. We have heard the learned counsel for the parties at length. It is said that the best passion is compassion. However, compassion does not permit transgression. It is settled law that the judicial interference in the matters of disciplinary proceedings has limited scope as held by the Apex Court in ***B. C. Chaturvedi v Union of India*** (supra) and various other judgments. The charge against the applicant is definitely grave and of serious nature, at least, the first charge of unauthorized absence from duty for the period from 09.11.1998 to 19.06.2000, i.e., for a period of more than 19 months. The applicant was a senior Class-I officer in the Income Tax Department. His absence from duty has been duly established in the inquiry, and in any case, he has not been able to successfully challenge the findings on this charge. Even if the second charge, i.e., going to media is ignored, unauthorized absence from duty, that too of an officer of the rank of Additional Commissioner of Income Tax, is unpardonable. We are unable to persuade ourselves to accept the submission of Ms. Jaiswal that the penalty of dismissal from service in this case is harsher and disproportionate to the charge and be altered so as to enable the applicant to earn his pension. It would definitely create a bad precedent if merely on the ground of ill health the penalty is altered to enable the charged officer to earn pension despite his grave service misconduct and misdemeanour.

21. For the above reasons, we do not find any ground for our judicial interference in the impugned order of punishment of dismissal from service. Since dismissal from service is upheld, consequential relief for payment of retiral benefits is impermissible in law.

22. This Application accordingly fails and is hereby dismissed, but without costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/