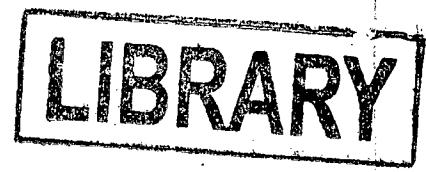


**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



No. O.A.791 of 2012
M.A. 404 of 2012

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Sri Ramendra Roy Chowdhury,
Son of Late Haridas Roy Choudhury,
Aged about 59 years,
Working as Accountant, Office of the
Principal Accountant General (A&E),
West Bengal, Treasury Buildings,
Kolkata – 700 001,
Residing at 114/A, Sitalatala Lane,
Hindmotor, Hooghly,
West Bengal.

.....Applicant.

Versus

1. Comptroller & Auditor General of India,
Indian Audit & Accounts Department,
New Delhi.
2. Principal Accountant General (A&E),
West Bengal,
Kolkata – 700 001.
3. Senior Deputy Account General (Administration),
Indian Audit & Accounts Department,
Office of the Principal Accountant General (A&E),
West Bengal, Treasury Buildings,
Kolkata – 700 001.

..... Respondents.

For the applicant : Mr. S.K. Datta , Counsel

For the respondents : Mr. S.K. Bhattacharyy , Counsel

Reserved on : 30.08.2018

Date of Order : 3 .10.2018

ORDER

Per : Bidisha Banerjee, Judicial Member

The applicant a Senior Accountant in the Office of the Principal Accountant General (A&E), West Bengal, Kolkata by way of this O.A. has sought for the following reliefs:

- 8.(a) An order quashing and/or setting aside the charge sheet dated 18.12.07 and the entire departmental inquiry/proceedings held there under including the report of the Inquiry Officer.
- (b) An order quashing and/or setting aside the order of the Disciplinary Authority dated 29th April 2010 and the order of the Appellate Authority dated 11th May 2011.
- (c) An order directing the respondents to grant all consequential benefits to the applicant.
- (d) An order directing the respondents to produce/cause production of all relevant records.
- (e) Any other order or further order/ orders as to this Hon'ble Tribunal may seem fit and proper.

2. The case of the applicant is as under:

While working as Accountant, AC-V Section, he was served with a Memorandum of Charge Sheet dated 18.12.2007 (Annexure A-1) containing Four Articles of Charges. By a letter dated 3.1.2008 (Annexure A-2) he denied and disputed all the charges and allegations levelled against him and expressed his desire to be heard in person. Vide letter dated 28.1.2008 issued by the Deputy Account General (Admn.) & Disciplinary Authority, the applicant was given an opportunity to appear in person before the Disciplinary Authority on 8th February 2008 at 11.00 a.m. to submit his defence in person only in respect of those articles of charge as were not admitted by him. Sri A. Dasgupta, the Deputy Director (Inspection) as the Inquiry Officer. That at the time of the said personal hearing Sri P. Ganguly was present and he participated in the said proceeding although he was listed as a prosecution witness and as such, the subsequent participation of Sri P. Ganguly as a prosecution witness vitiated the entire enquiry.

3. The gravamen of the indictments against the applicant as evident from charge memo are as follows:

"ARTICLE I

"While functioning in the Office of the Accountant the General (A&E), West Bengal" "deliberately violated Government of India decision 23(1) and (4) under the sub-head "The following acts and omissions amount to misconduct" below Rule 3 of the C.C.S. (conduct) Rules 1964 by forcibly entering into the room of the Accountant General with Shri Ashit Kumar Chowdhury, Sr. Accountant and four outsiders and caused to humiliate the Accountant General on 23rd October 2007 between 3.15 PM and 3.30 PM."

That amount "to failure in maintaining devotion to duty under Rule 3(1)(ii) and an act unbecoming of a Government of Servant under Rule 3 (1) (iii) of Central Civil Services (Conduct) Rules, 1964."

ARTICLE II

"Deliberately violated Rule 7 (i) of Central Civil Services (Conduct) Rules, 1964 and Government of India's Decision 4 below the said Rule 7 by organising unlawful meetings, demonstrations and rallies with the Casual daily rated workers and outsiders in the office during office hours without any permission."

Thereby "contravened Government of India's Decision 23 (7) & (8) under the sub-heading "Acts and conducts which amount to misconduct" below Rule 3 of Central Civil Services (Conduct) Rules, 1964."

ARTICLE III

"Deliberately violated Rules 7 (i) of Central Civil Services (Conduct) Rules, 1964 and Government of India's Decision 3 & 4 below the said Rule 7 by gheraoing the Accountant General and other officials, with some casual daily rated workers and outsiders on 15th November, 2007" and thereby "contravened Government of India's Decision 23(3) & (4) under the sub-heading "the following acts and omissions amount to misconduct" below Rule 3 of Central Civil Services (Conduct) Rules, 1964."

ARTICLE IV

"By absenting himself from his work and deserting his post without permission during office hours and took part in unlawful activities including gherao, subverting office discipline in violation of Government of India's Decision 23 (1) under the sub-heading "the following acts and omissions amount to misconduct" below Rule 3 of Central Civil Services (Conduct) Rules, 1964, which attracted Government of India's Decisions 3(ii) below Rule 7 of Central Civil Services (Conduct) Rules, 1964" and thereby "failed to maintain devotion to duty under Rule 3(1)(ii) of Central Civil Services (Conduct) Rules, 1964."

4. The applicant by way of written notes of argument, has pleaded as under:

"The original application is directed against the charge sheet dated 3.1.2008 and the proceeding held thereunder including the Inquiry Report dated 27.10.2009 order of penalty dated 29.4.2010 and the Appellate Order dated 11.5.2011.

2. That the applicant was served with the Memorandum of Charge Sheet dated 18.12.2007 at Annexure-A-1 containing four articles of charges inter-alia alleging that the applicant organized unlawful meetings, demonstration and rallies with the casual daily rated workers and outsiders in the office during office hours without permission and gheraoed the Accountant General with Shri Ashit Kumar Chowdhury, Senior Accountant and four others and caused to humiliate the Accountant General and gheraoed him on 15th November, 2007.

3. That in the said charge sheet there were six relied upon documents and six prosecution witnesses. Applicant submitted his reply dated 3.1.2008 to the said charge memo denying the charges as well as asking for personal hearing and by misconstruing the said reply the applicant was called for personal hearing by order dated 28.1.2008 by the Disciplinary Authority (Annexure-A-3) which was replied to by the applicant (Annexure-A-4) and the Minutes of the personal hearing at Annexure-A-5 wherefrom it appears that one of the prosecution witnesses Shri P. Ganguly was made a party to the said personal hearing which is totally arbitrary and illegal and his deposition in the inquiry was also considered subsequently.

4. Applicant asked for 12 additional documents (Annexure-A-6) and also submitted a list of defence witnesses.

5. On 11.12.2008 the regular hearing of the inquiry was started and on that date the statements of PW2 was taken on record after his confirmation and regarding additional documents 2 and 5 were said to be non-existence and additional document no. 10 was held to be not relevant without assigning any reason by the O.

6. That from the written statement of the Caretaker dated 17.12.2007 who is the prosecution witness No. 3 it appears that none of the allegations except organizing meetings and rally was mentioned in the said report vide Annexure-A-8. The statement of prosecution witness No. 2 at pages 33 and 34 of the OA also did not mention anything save and except the gherao by the applicant and others and the statements of prosecution witness No. 1 only stated about some derogatory slogan shouting vide Annexure-A-8 page 35 and the statements of the prosecution witness Nos. 4 and 6 also did not make any allegation of shouting of slogan by the applicant and the prosecution witness No. 5 also did not state anything about the allegations made save and except gherao vide pages 36 to 39 of the OA and the page 41 of the OA contains the statement of prosecution witness No. 2 and at page no. 43 statements of prosecution witness No. 1 also did not make any specific allegation regarding allegations levelled at Articles 1 and 4 of the charge sheet.

7. That thereafter the Presenting Officer sent his brief directly to the applicant and the applicant made his representation by way of defence brief dated 2.6.2009 at pages 54 to 63 of OA.

8. Inquiry Report dated 27.10.2009 was furnished to the applicant vide Annexure-A-11 pages 64 to 81 of OA and representation to the said report was submitted being dated 18.11.2009 vide Annexure-A-12, pages 82 to 85 of OA.

9. Thereafter penalty order dated 29.4.2010 was passed vide Annexure-A-13, pages 86 to 96 of OA by reducing the rank of the applicant from Senior Accountant for a period of three years.

10. Thereafter appeal was preferred on 14.6.2012 vide Annexure-A-14, pages 97 to 102 of OA but the same was rejected by Appellate Order dated 11.5.2011 vide Annexure-A-15, pages 103 to 109 of OA without dealing with and/or properly dealing with the points raised in the appeal and other documents and the materials on record as per rules and the Appellate Authority rejected the appeal in a close and bias mind.

11. Hence, it is submitted that the applicant is entitled to the reliefs prayed for in the OA and moreover, it may kindly be considered that the penalty imposed upon the applicant is too harsh which has an adverse effect on the entire service career of the applicant although it was not a case of any corruption and/or any moral turpitude."

5. The respondents in their reply have categorically denied and disputed the contentions raised in the OA.

They have averred as under:

"Vide Memo No. Admn. 117/1PF - 5637 / 2007-08 / 1864 dated 18.12.2007, a disciplinary proceeding under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, was initiated against the Applicant, erstwhile Senior Accountant on the following articles of Charges:

- (i) That Shri Roy Choudhury, erstwhile Sr. Accountant forcibly entered into the chamber of the Accountant General on 23rd October, 2007 between 3.15 P.M. and 3.30 P.M. with Shri Ashit Kumar Chowdhury, Sr. Accountant and four outsiders and humiliated the Accountant General. This Act on the part of Shri Roy Choudhury was an act unbecoming of a Govt. servant as per rules (1) (iii) of the Central Civil Services (Conduct) Rules, 1964.
- (ii) That Shri Roy Choudhury, being the Secretary of the Category III Association was actively instrumental in organising meetings, demonstrations and rallies with a group of Casual Daily-rated workers and outsiders within the office premises and within working hours unauthorisedly and unlawfully on several occasions and all his activities amounted to misconduct as per Rule 3 of the Central Civil Services (Conduct) Rules, 1964 read with the Govt. of India's decisions 23 (7) & (8) below the said rule.
- (iii) That Shri Roy Choudhury 'gheraoed' (forcibly confined) the Accountant General and other officers with a group of casual daily-rated workers and outsiders on 15th November 2007. This act of commission on the part of Shri Roy Choudhury was a blatant infringement of official decorum and decency and an act unbecoming

of a Central Government servant amounting to misconduct as per Govt. of India's decision 23 (3) & (4) below Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

(iv) That Shri Roy Choudhury deserted his section of posting on many occasions without permission and took part in unlawful activities including gherao subverting office discipline in violation of Government of India's decision 23 (I) below Rule 3 of the Central Civil Services (Conduct) Rules, 1964. By the above act Shri Roy Choudhury failed to maintain devotion to duty under Rule 3 (I) (ii) of the Central Civil Services (Conduct) Rules, 1964.

The Charge Sheet containing all the four aforesaid Articles of Charges supported by a Statement of Imputation of Misconduct was served upon Shri Roy Choudhury, on 18.12.2007. Shri Anindya Dasgupta, Deputy Director (Inspection) of the then office of the Principal Director of Audit (Central), Kolkata was appointed as Inquiry Officer to inquire into the charges.

The Inquiry Officer started the inquiry on 14.05.2008 and concluded it on 27.10.2009 by submitting his Inquiry Report. As per the Inquiry Report all the charges were proved beyond doubt.

A copy of the Inquiry Report was forwarded to Shri Roy Choudhury to enable him to make his representation or submission in writing vide letter dated 03.11.2009. The representation of Shri Roy Choudhury was received in the office on 18.11.2009. The contention made by Shri Roy Choudhury were comprehensively repudiated by the Disciplinary Authority in his speaking order imposing penalty as referred to hereinbelow.

The order imposing the penalty of reduction to the lower post of Accountant was then passed by the Disciplinary Authority on 29.04.2010 and served upon the delinquent official on 03.05.2010.

Shri Roy Choudhury preferred an appeal under Rule 23 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, vide his letter dated 14.06.2010 addressed to the Principal Accountant General (A&E), West Bengal, the Appellate Authority. By his order bearing No. PAGS: CON: 2011: 18 dated 11.05.2011, the Appellate Authority confirmed the punishment imposed by the Disciplinary Authority on Shri Roy Choudhury, opining at the same time, in categorical terms that "In fact, the Disciplinary Authority would not have erred had he inflicted on the Government servant a harsher penalty. I do not find any reasonable ground or just cause to set aside the Disciplinary Authority's decision to impose the said penalty or to exonerate him from any of the charges brought against him." In other words, considering the gravity of the charges brought against him, which have been proved beyond doubt, the penalty imposed on Shri Roy Choudhury is a lenient one and deserved neither to be set aside nor to be reduced.

The applicant has not file a revision petition under Rule 29 of CCS (CCA) Rules, 1965 to the Comptroller & Auditor General of India.

6. In regard to the allegation about presence of a witness during hearing it has been contended that "the Applicant out of his own volition presented himself for the hearing on 08.02.2008. The Applicant failed to explain as to what induced him to appear personally on 08.02.2008 before the Disciplinary Authority. When an Inquiry is proposed to be held under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, the Disciplinary Authority is not denuded of the powers to inquire into the truth of any imputation of misconduct or misbehaviour, though the Disciplinary Authority is empowered to appoint an Inquiring Authority. In this particular case, another officer was appointed as the Inquiry Officer and thus there cannot be any doubt about the intention of the Disciplinary Authority in granting the personal hearing on 08.02.2008, pursuant to the expressed written request of the Applicant and attended by the Applicant out of his own volition. In those circumstances, the allegation of the procedure being vitiated by the presence of Shri P. Ganguly during the non-procedural personal hearing is an after-thought and a deliberate attempt to mislead this Hon'ble Tribunal."

7. In regard to non-supply of additional documents the respondents have stated that "the documents listed at Serial Nos. 2 and 5 in the letter of the demand of the Applicant dated 15/07/2008, did not exist at all and is nothing but an act undertaken to mislead this Hon'ble Tribunal. The additional document at Serial No. 10 of regarding allotment of duties of AAOS was found to be not relevant to the case by the Inquiry Officer and no injustice was done through the classification of some of the additional documents called for as irrelevant to the case. The additional document at Serial No. 12 had been provided with the Memorandum of Charge vide item No. 2 of Annexure III, receipt of which was acknowledged by the Defence Assistant vide Daily Order Sheet dated 22.12.2008." In this connection, it has been submitted that in the case of State of Tamil Nadu – Vs- K.V. Perumal, reported in 1996 AIR SCW 3052: (1996) 5 SCC 474, the Hon'ble Apex Court pronouncement it was held inter alia that the Inquiry Officer / Disciplinary Authority is not bound to supply each and every document that may be asked by the charged employee, but only relevant documents" and that the Hon'ble Court has observed that "It was the duty of the respondent to point out how each and every document was relevant to the charges or to the inquiry being held against him and whether and how their non-supply has prejudiced his case." The Applicant herein has miserably failed to substantiate his contentions in this regard.

8. Further the respondents have contended that "the then Accountant General, was the Statutory Appellate Authority and his direct involvement in the procedure as a Witness would have vitiated the enquiry proceedings and the Group Officer in Charge of Administration was well within his powers to hold the inquiry under Rule 14 of the relevant Rules of 1965".

"The Presenting Officer representing the Prosecution was well within the ambit of his obligations to hold a view favourable to the Prosecution. The Presenting Officer's written brief in respect of the delinquent absenting himself frequently and regularly for long hours from his desk to organize

unlawful agitational activities during office hours and within the office premises, cannot be made a point of contention by the Applicant."

"The acts of the Applicant in spearheading and participating in obstreperous gatherings, rallies through the corridors of the office premises on as many as ten occasions in the months of October and November 2007, confining the Head of the Office and other Senior Officers with the aid of persons who were not employees of the office on the 15th day of November 2007 and also that the delinquent / Applicant herein had deserted his desk in the office on several occasions to mastermind, organize and participate in activities contrary to the orders in force were borne out by reports and records produced before the Inquiry Officer. The Inquiry Officer who recorded the evidence of the witnesses, watched their demeanour and after recording of evidence was over, generally examined the charged officer was eminently fit to draw inferences from the evidence recorded by him. The Applicant herein is silent about the extraneous matters that were considered by the Disciplinary Authority. Further that "as to the rider about regaining seniority, the existing rule position is that imposition of the penalty of reduction to lower post is ab a bar to promotion to higher post from which the employee is reduced unless the condition of restoration is specified and it is open to the Disciplinary Authority to prescribe the conditions of restoration in the case of deserving candidates."

6. No rejoinder has been filed to controvert, deny or dispute the statements made in the reply.
7. Ed. Counsels were heard and materials on record were perused.
8. We noted that the Inquiring officer has recorded the following in his report:

(extracted to the extant found relevant and germane to the lis)

ARTICLE-I

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During examination in chief. (Reply to Q No-16) and cross examination (Reply to Q No- 10), Shri Ramendra Roy Chaudhury, the CO confessed that he was a member of the delegation and entered AG's chamber on 23.10.2007 along with five others.

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- 2) CO replied during cross examination (Q No- 8) that he had no knowledge whether outsiders attended the Gate meeting on 23.10.2007 or not.

But Shri Pradip Kumar Roy (DW-2), President of Co-ordination Committee of Central Government and BSNL Non Regular Workers Union, West Bengal during cross examination (Q No- 5) intimated that about 100 non regular workers of different central Government offices attended the gate meeting on 23.10.2007. These workers were no doubt outsiders. Moreover, Tapash Ghosh, (DW-3) and Secretary of Central Government and BSNL Non Regular Workers Union, West Bengal and one of the most important Defence witness stated that about 200 workers attended the meeting. Defence witnesses Shri Pradip Kumar Roy, the President of the meeting on 23.10.2007 and Tapash Ghosh were themselves outsiders. Shri Ramendra Roy Chaudhury, CO were well aware of all these facts but gave absolute false reply.

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5) Regarding the question by whom permission was obtained for entering into the AG's chamber, the CO intimated during cross examination that either Mr. Sinha or Mr. Chattapadhyay but he could not recollect the exact name (Q No-12).

Since no permission was at all given to him by anybody to enter inside AG's chamber along with outsiders, it was not possible for him to recollect the exact name.

On analysis of above five points, it is evident that the charged Officer was stating false reply repeatedly since he was guilty and had not the courage to give the honest reply.

It is, therefore, proved that Shri Ramendra Roy Chaudhury, CO participated a big rally on 23.10.2007 after gate meeting and entered into the AG's chamber forcibly along with a good number of outsiders at about 3:15 PM without permission and shouted at him for over 15 minutes and created a ugly atmosphere into the chamber of Accountant General.

The Charge is therefore established.

ARTICLE-II

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Care Taker Shri J.P. Prasad (PW-2) who was in charge to see the security of the Office stated vide his daily report (Sl. No-3 of Annexure-III) and deposition (SPW-2) about leading role of the Charged Official participating in these meetings, demonstration and rallies on the above mentioned dates. Certificate of Sr. Accounts Officer Administration proved that no permission was obtained for these meetings, gathering, rally and demonstration (documentary evidence, Sl. No-5 of Annexure-III)

Deposition of Shri B.K. Mukherjee (PW-6) the then Sr. Deputy Accountant General (Admn.) O/o the Pr. Accountant General (Audit) proved his aggressive role on 01.11.2007. Depositions of Shri B.K. Mukherjee (PW-6) the then Sr. Deputy Accountant General (Admn.) O/o the Pr. Accountant General (Audit) and Sourya Chatterjee (PW-5) the then Deputy Director of

Pr. Director of Audit Central, Kolkata office proved his aggressive and leading role on 02.11.2007.

After the events on 02.11.2007 the Office Authority became compelled to lodge the complaint to the Deputy Commissioner of Police (Head Quarter) Lalbazar (documentary evidence-SI. No 6 of Annexure-III).

The charge is, therefore, established.

Article – III

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The leading role of Shri Ramendra Roy Chaudhury, CO in this gherao by blocking of corridor and the entrance to the AG's Secretariat and the chamber of the AG along with noisy demonstration, derogatory slogan and chasing AG during leaving office has been established by the deposition of Shri Sourya Chatterjee, the then Deputy Director, O/o the P.D.A.C, Kolkata, (PW-5), Shri P.K. Ganguly Sr. A.O. (PW-1), Shri A.K. Sinha, AAO (PW-3) & Shri Samir Kumar Chattopadhyay, PS to AG (PW-4).

Shri Sourya Chatterjee, the then Deputy Director, O/o the P.D.A.(C), Kolkata (PW-5) was present there as a member of D.P.C. Shri P.K. Ganguly, Sr. AO, Admn. (PW-1) being AO of Administration was at the outer chamber of AG to help AG for the DPC meeting. The chamber of both Shri A.K. Sinha, AAO (PW-3) and Samir Kumar Chattopadhyay, PS to AG (PW-4) being adjacent to AG's chamber their depositions were very acceptable and reliable.

“It is proved from the statements of two defence witnesses (DW-2 and DW-3) produced by the CO himself that most of the participants in the gate meeting were non-regular workers/labourers/outsiders who had no relation with category-III Association and with the O/o the Accountant General (A&E) W.B. From this gathering more than 100 workers assembled at the outer chamber of AG. Shri Ramendra Roy Chaudhury CO helped these outsiders to make the Gherao programme successful and also led these outsiders.”

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“Defence witnesses (DW-1, DW-2, DW-3 and DW-4) themselves confessed that there were about/more than one hundred workers/labourers/participants. This mob was so furious that it was not at all possible for AG and other officers to go out. Actually AG and other officers could not go out till police personnel rescued them. Even after rescued by Police personnel, the unruly mob led by Shri Ramendra Roy Chaudhury chased the Accountant General in a riotous manner upto the south gate till the car carrying him left office gate (deposition of PW-5, Shri Sourjo Chatterjee).”

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“During examined himself, a question put in by DA (question no-10) and the response of CO is quoted verbatim:-

DA: - How do you follow the codes of office discipline regarding leaving your work spot?

CO:- According to my habit, I usually leave my work spot with the permission of the Section-in-Charge at that time.

From the above question and answer it is felt that CO thought that separate code of discipline has been set up for him."

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"Deposition of Shri J.P. Prasad (PW-2) proved that in many occasions these rally/meeting/demonstration were organized between 1-45 PM and 3-30 PM which were no doubt beyond recess hour. Besides, it is proved from the replies of the CO vide question no 28, 44 and replies of DW-2 vide question no 6 and 14 during cross examination that CO was out of section at least for several hours on 23.10.2007 and 15.11.2007. Moreover, no permission was obtained from the Office authority for organizing these meeting/rally/demonstration as is evident from the documentary evidence (SI No. 5, Annexure-III).

Thus his failure to maintain devotion to duty is established."

9. It is trite and settled law that scope of interference in disciplinary proceedings is very limited.

In B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749, the Hon'ble Apex Court on the scope of judicial review has held as under:

"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 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 it 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."

10. Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a Competent Authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case."

11. In **Ranjit Thakur v. Union of India & Others, 1989(1) SLJ 109 (SC)=(1987) 4 SCC 611**, the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

"... It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

12. In the instant case we noted, as enumerated supra, observance of rules of natural justice and procedural law, a conclusion based on evidence and a punishment not disproportionate to the offence alleged.

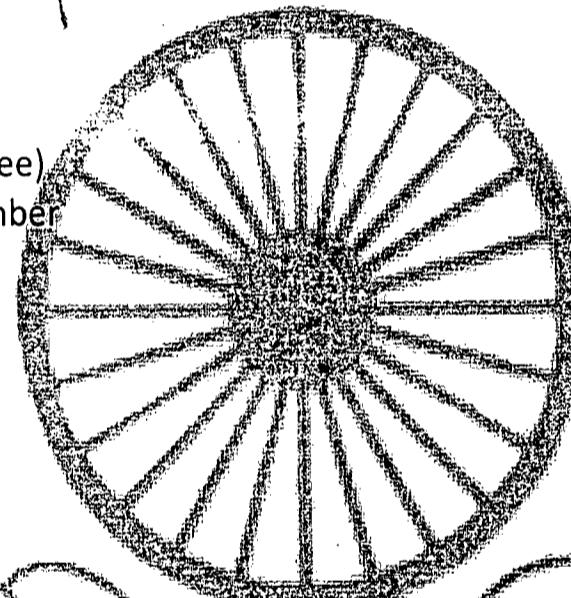
13. The applicant has failed to make out a case meriting interference. No extenuating circumstances prevail that would merit quashing of penalty order or the order on appeal.

14. In the aforesaid backdrop the O.A. is dismissed. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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गणतान्त्रिक देश