CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.794/2013

Dated this Monday the 6th day of November, 2017.

Coram: Hon'ble Dr. Mrutyunjay Sarangi, Member (A)
Hon'ble Shri Arvind J. Rohee, Member (J).

N.K.Katgube,
Working as Postal Assistant,
Yavatmal Head Post Office,
Yavatmal-445 001,
R/O Madhao Nagar, Waghapur Road,
Yavatmal-445001 ... ***Applicant.***

(By Advocate Ms.Priyanka Mehandiratta)

Versus

1. The Union of India,
Through the Chief Postmaster General,
Maharashtra Circle, Mumbai- 400001.

2. The Superintendent of Post Offices,
Yavatmal Division,
Yavatmal-445001.

3. The Director of Postal Services,
o/o Postmaster General,
Nagpur Region,
Nagpur-440010 ... ***Respondents.***

(By Advocate Smt. H.P. Shah).

Order reserved on : 21.08.2017
Order delivered on : 06.11.2017.

O R D E R
Per: Arvind J. Rohee, Member (J)

The applicant who is working as Postal Assistant at Yavatmal Head Post Office, District Yavatmal, approached this Tribunal under section 19 of the Administrative Tribunals Act 1985, since aggrieved by the impugned orders treating period of his absence from duty as Dies-non and also imposing

penalty of withholding of next increment for a period of six months with cumulative effect, and the following reliefs are sought:-

> "1 This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders at Annexure A-1 to A-5 with consequential benefits.
>
> 2 The Hon'ble Tribunal may further be pleased to direct the Respondents to treat the period of dies non as duty for all purposes as well as for the purpose of qualifying service.
>
> 3 Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.
>
> 4 Cost of the Application be provided for."

2. The applicant joined the Postal Services sometime in the year 1995 as Postal Assistant. From 08.10.2011 he was posted at Yavatmal Head Post Office in the same capacity. While working there on 11.05.2012 he applied for grant of 2 days casual leave for 12.05.2012 and 14.05.2012 (13.05.2012 being Sunday) to attend his ailing mother. He left the keys of office since he was also looking after the work of Assistant Treasurer in Treasury Branch. He has also submitted relieving report to the Post Master. However, the latter insisted for submission of Medical Certificate. On the next day, i.e. on 12.05.2012, the Applicant submitted medical certificate and leave application from 12.05.2012 to 19.05.2012 and forwarded it to Post Master with his

colleague. It was not accepted and applicant was directed to attend the office. Accordingly the applicant attended the office on expiry of the leave period and submitted the joining report on 19.05.2012 and medical fitness certificate. However, without rejecting the leave application or without issuing him a memorandum or show cause notice or granting him opportunity of hearing, the respondent no.2 issued the impugned order dated 31.05.2012(Annex. A-3) treating the period of his absence from 12.05.2012 to 19.05.2012 as Dies-non. On the same day, the respondent no.2 served a minor penalty chargesheet (Annexure A-4) under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short CCS(CCA) Rules) on the applicant alleging misconduct and misbehavior on his part and remaining absent from duty without sanction of leave and also for violating the provisions of Postal Manual.

3. The applicant submitted reply to the Memorandum on 09.06.2012 and denied the allegations of misconduct and misbehavior with a request to exonerate him by dropping the chargesheet. However, the respondent no.2 did not find favour and passed the impugned order dated 27.08.2012(Annex. A-2) holding the applicant guilty of misconduct and misbehavior and also for violation of the provisions of Postal Manual. Hence in exercise of the powers

vested in him under Rule 12 of the CCS(CCA) Rules imposed the penalty of withholding of the next increment due on 01.07.2013 for a period of 6 months with cumulative effect was imposed on him.

4. Aggrieved by the aforesaid order of penalty the applicant preferred appeal dated 18.09.2012 (Annexure A-8) to the respondent no.3, and after his request dated 10.09.2012 for supply of relied upon documents was declined by the Disciplinary Authority. However, by the impugned order dated 20.11.2012(Annex. A-1), the Appeal was dismissed thereby confirming the order of imposition of penalty passed by the Disciplinary Authority. There being no other remedy available to the applicant for redressal of his grievance, he approached this Tribunal in the present O.A. on 20.11.2013.

5. Reliefs sought in O.A. as mentioned in para 1 above are based on the following grounds as mentioned in para 5 of the O.A. The same are reproduced here for ready reference:

Grounds:

> *"a) The Impugned orders at A-1 to A-5 are ex-facie illegal and void ab-initio.*
>
> *b) The Respondents have passed the different orders at A-1 to A-4 on misstated, confusing and self contradictory facts in a hurry, simply to harm the Applicant at the instance of leaders of rival Union of Employees and without application of mind .The facts have been submitted in details by the National Union of Postal Employees Postmen, Delhi in the letter dated 27.10.2012 addressed to the Respondent No. I. A copy whereof is produced and annexed herewith at*

Annexure A-9

c) The Charge Sheet dated 31.05.12 is not issued in the prescribed proforma and manner. No prescribed Annexures for the purpose have been enclosed such as : i) Annexure-I Articles of Charges framed ii) Annexure —III -List of documents by which the charges were to be proved iii) Annexure IV- List of witnesses by whom the articles of charge framed were to be sustained. Accordingly the charge sheet and consequential orders passed are illegal and deserve to be quashed on this score only.

d) As per the procedure prescribed for levy of minor penalties Separate and Specific Charges were to be framed in the prescribed Performa,, and conveyed to the Applicant along with statement of allegations. This has not been done .In the statement of imputations, in routine language it has been concluded that the Applicant failed to follow the procedure of handing over the charge, non performance of duties and lack of devotion to duties". In the absence of any specific allegations/charges the entire proceedings are null and void and deserve to be quashed.

e) In the impugned charge sheet, list of witnesses has not been given. Nor any opportunity has been allowed to the Applicant to cross examine the alleged witnesses whose evidences have been taken on records for levy of penalties. Accordingly the entire proceedings are null and void and deserve to be quashed. As per various Instructions and settled law on the subject it is necessary to supply copies of preliminary statements of witnesses, if any, recorded, as far as possible along with Charge Sheet. In fact the request of the Applicant for supply of necessary documents was also turned down by the Respondents. What to say of the authenticity of the statements relied upon when none was present at the time of meeting with the Post Master. As such the cross-examination of those witnesses by the Applicant was all the more necessary which has not been done. Accordingly the entire proceedings conducted behind the back of the Applicant are bad in the eyes of law and deserve to be quashed on this score alone.

f) The Applicant has been subjected to double Jeopardy. The . Respondents have issued "Dies-non" order on 31.5.2012 and simultaneously issued Charge Sheet and later on imposed another severe penalty of withholding increment for six months. This Double jeopardy is specifically debarred in Para 108 of the P & T Manual and the instructions contained in DG P & T No.105/26/81-Vig.III dated 30.3.1981. It is stated

therein that the necessity to award another penalty should arise only when it is considered absolutely necessary to award a higher penalty like reduction whereas in the impugned penalty order at A-2, the Respondent No.2 has himself admitted in the concluding lines that "in view of the satisfactory service records of 16 years of the Applicant he was inclined to take a lenient view.

g) The Respondent No.3 rejected the appeal of the Applicant on frivolous grounds without appreciating the contentions raised by the Applicant therein. His Appeal has been summarily rejected with non application of mind by a cryptic order. h) The Applicant had all along claimed that the Post Master himself insisted that a Medical Certificate be produced. The Applicant never stated/confirmed that the Medical certificate was not genuine .Nor the genuineness of the medical certificate was ever questioned or verified by the Respondents as mentioned in the impugned Appellate order dated 20.11.12(A-1).

i) The most important contention raised by the Applicant made in para 3 of the Appeal of the Applicant claiming that no one from the alleged witnesses relied upon was present at the time of the incidence has not been adjudicated. Accordingly the order at impugned Appellate order is bad in law being not based on facts and evidence on records and the same deserves to be quashed.

j) The Applicant has been made a scape goat by the Respondents. He has been subjected to double jeopardy. Even before a Charged Memorandum is served upon him for initiating minor penalty proceedings, the Respondents have imposed a major penalty of Dies Non upon him, without issuing a show cause notice to him, which is mandatory and per-requisite condition."

6. On notice, the respondents appeared and by a common written statement dated 09.01.2015 resisted the O.A. by denying all the adverse allegations, averments, contentions and grounds raised therein. It is stated that Post Master, Yavatmal Head Office vide letter dated 11.05.2012 submitted a report to the respondent no.3 regarding misbehavior by the

applicant. The complaint was investigated and since it was revealed that there was substance in the allegations made against the applicant, a minor penalty chargesheet was issued against him on 31.05.2012. On the same day by separate order the period of absence from 12.05.2012 to 19.05.2012 was treated as Dies-non. During preliminary inquiry, it was found that the applicant was working as Assistant Treasurer at Yavatmal Head office w.e.f. 08.05.2012, since Shri S.P. Patil, regular Assistant Treasurer was then on leave. The applicant worked as Assistant Treasurer till 11.05.2012 and then applied for casual leave for two days on 12.05.2012 and 14.05.2012. For acute shortage of staff, Post Master Yavatmal expressed his inability to grant casual leave to the applicant. Necessary endorsement to this effect was made by him on the leave application (Annexure R-1) of applicant.

7. It was also found that on the same day i.e. on 11.05.2012 between 4:30 to 05:00 PM, the applicant along with Shri Jai Singh Pawar, SPM ZPI TSO, Shri Gulhane and Shri Shirbhate, Postmen, Yavatmal Head Office approached Post Master and called upon him to grant casual leave to the applicant. The Post Master again tried to convince them regarding shortage of staff and assured that as soon as the staff position of Head Office is manageable, the applicant will be granted leave. It is stated that the applicant got

annoyed and by raising his voice extended abuses to the Post Master, throw away the bunch of keys on the table and thereafter he left the office, carrying away the keys with him.

8. On 12.05.2012 the applicant remained absent from duty and he forwarded medical unfit certificate and keys at the hands of Shri Bhirlani, Postman. The Post Master refused to accept the keys and medical unfit certificate and called upon the applicant to attend the office. The applicant although attended the office, failed to carry out his usual official assignments i.e. Bank clearance of 11.05.2012 and 12.05.2012 and also failed to provide postal stamps to the stamp vendors. He also failed to hand over the charge and remained absent from duty till 19.05.2012. It is stated that during preliminary inquiry, statement of the witnesses, Shri S.R. Shukla, Postmaster, Shri Sontakke and Shri Pawar is recorded, who were present at the time of incident which occurred in the evening of 11.05.2012 after casual leave was declined to applicant. The applicant was also interrogated. Thereafter in pursuance of the report of preliminary inquiry, minor penalty chargesheet was served on the applicant. The reply submitted by him was considered and finding that the charge of misconduct and misbehavior is proved against the applicant, minor penalty was imposed on him. It is stated that the

punishment imposed for negligence, unauthorized absence and lack of devotion to duty commensurate with the nature of misconduct and misbehavior of applicant.

9. It is stated that there is no provision to supply copy of relied-upon documents when proceeding for minor penalty chargesheet is filed. However, applicant was allowed to take inspection of those documents.

10. All the grounds raised by applicant are denied. It is stated that under the Rules, leave cannot be claimed as a matter of right and it is the discretion of the Head of the Department to grant the leave on considering the office exigency. On account of shortage of staff to work as Postal Assistant and Assistant Treasurer, the casual leave was declined to the applicant. However, he misbehaved with the Post Master on two occasions, firstly in the evening of 11.05.2012 and then in the morning of 12.05.2012 and failed to hand over charge and to attend the duty from 12.05.2012 to 19.05.2012. The O.A. is, therefore, liable to be dismissed.

11. It is denied that the applicant was subjected to double jeopardy since the period of his absence from duty was treated as Dies-non and penalty of withholding the increment was also imposed on him. According to respondents, the two are distinct since in the former, the period of absence is treated as

break in service, whereas in the latter, punishment is imposed for indulging in misconduct/misbehavior and for violation of the provisions of the Postal Manual. Hence it cannot be said that the impugned order of Dies-non is a punishment. Full opportunity was given to the applicant to defend him and hence both the orders are perfectly legal which calls for no interference by this Tribunal. The procedure prescribed for dealing with the minor penalty chargesheet as per CCS(CCA) Rules was followed and there is no violation of principles of natural justice or procedural rules. The O.A. is, therefore, liable to be dismissed.

12. The applicant then filed rejoinder on 19.01.2016 in which all the adverse averments and contentions made in the written statement are denied and the grounds stated in the O.A. for challenging both the impugned orders are reiterated. Reliance was placed on the circular issued by Director General Post and Telegraph No. 6/28/70-DISC.I(SPB-I) dated 05.10.1975 particularly the provisions of para 3 thereof, which read as under:-

> "*If a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences viz. That the entire period of absence would be treated as unauthorized entailing loss of pay for the period in question under provisio F R 17,thereby resulting in*

break in of disciplinary proceedings, he may not be taken back for duty because he has not been placed under suspension. The disciplinary action should be concluded and the period of absence treated as unauthorized resulting in loss in pay and allowance for the period of absence under proviso to FR 17(1) and thus a break in service. The question weather the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard"

13. It is stated that the impugned order treating absence of the applicant as Dies-non has been finalized before initiation of disciplinary proceedings and before its conclusion. Hence, the order of Dies-non is illegal. It is also stated that no opportunity was given to applicant to cross examine the witnesses. Further, show cause notice was not issued to the applicant before treating period of his absence as Dies-non which is in fact punishment and hence for the same cause applicant was punished twice which is not permissible under law, hence, both orders of Dies-non and penalty of withholding of increment are liable to be set aside.

14. The respondents then filed reply to the rejoinder on 16.08.2016 and denied adverse averments made in the rejoinder and reiterated the grounds stated in the reply to support both the impugned orders.

15. On 02.03.2017 we have heard Ms.Priyanka Mehandiratta, learned Advocate for the applicant and the reply arguments of Smt.H.P. Shah, learned Advocate for the respondents. The matter was then adjourned from time to time and finally closed for orders on 16.08.2017.

16. Respondents have filed written submissions and relied upon certain citations in support their contentions. The applicant has also relied upon decision of Hon'ble Supreme Court in support of his claim.

17. We have carefully gone through the entire pleadings of the parties and documents produced and relied upon by them in support of their rival contentions.

Findings

18. The only controversy involved in this O.A. for decision of this Tribunal is whether the impugned orders of treating the period of absence as Dies-non and imposing minor penalty of withholding of one increment passed by respondent no.2 are liable to be set aside as illegal, improper, incorrect and arbitrary on the grounds raised by the applicant.

19. Before proceedings to consider the rival contentions of the parties, we would like to consider the preliminary objection raised by the applicant that for the same cause the applicant was punished twice, by treating period of his absence as Dies-non

and upon imposing the penalty of withholding of increment and hence the same is not permissible being against the principle of double jeopardy. According to learned Advocate for the applicant, both the orders are, therefore, liable to be set aside. In this respect, it is stated that two distinct orders arising out of separate cause of actions are challenged by the applicant, for which separate O.As should have been filed. However, it is obvious from perusal of record that for both the impugned orders, cause of action arose on 31.05.2012 on which date the order regarding Dies-non is passed and the applicant was served with the minor penalty chargesheet. It is the settled principle of Criminal Jurisprudence that no one should be punished twice for the same offence. This principle squarely applies to the Service Jurisprudence also. As such the employee cannot be held guilty of same charge twice. In other words, he can be punished only once for the charge levelled against him and for same charge, he cannot be punished twice.

20. However in the present case it has been rightly pointed out by the learned Advocate for the applicant that two impugned orders are quite distinct in as much as the order regarding Dies-non relates to treating the period of unauthorized absence resulting in break in service, whereas the other impugned order relates to indulging in misconduct and misbehavior by

the applicant with the superior and for violation of para 62 and 162 of the Postal Manual Vol-I since the applicant failed to hand over the charge of the post of Assistant Treasurer and failed to make any alternate arrangement for doing the necessary duties like banking clearance and supply of stamps to the vendors.

21. This being so for the said misconduct/misbehavior and dereliction in duty, minor penalty chargesheet was filed against the applicant, although it covers the period of 12.05.2012 to 19.05.2012 during which the applicant remained absent from duty, although leave was not sanctioned to him for the said period. It is true that the order of Dies-non results in break in service which affects the pensionery benefits and counting of qualifying service for pension. In this way the order of Dies-non in fact amounts to imposition of punishment. However this has nothing to do with the allegations of misconduct/misbehavior result in violation of the statutory Conduct Rules, for which separate procedure is prescribed under CCS(CCA) Rules and on inquiry punishment prescribed therein can be imposed on proof of the charges levelled against the employee.

22. From the above discussion, we are in agreement with the learned Advocate for the respondents that order regarding Dies-non and imposition of penalty on inquiry in a disciplinary

proceeding are two distinct things and it cannot be said that it amounts to subjecting the employee to double jeopardy especially when there is no specific charge against the applicant that he unauthorizedly remained absent from duty for the period from 12.05.2012 to 19.05.2012 and particularly for the reason that he applied for leave on the ground of self illness since suffering from Inguinal Hernia, which is supported by the medical certificate produced by him.

23. So far as the impugned order of treating the period of absence as Dies-non is concerned, the same is covered under the provisions of Rule 27 of CCS (Pension) Rules, which states about effect of interruption in service. It is stated that such interruption will entail forfeiture of past service. Certain exceptions are also mentioned therein. In the present case according to respondents leave was not sanctioned to the applicant and still he remained absent. The above Rule 27 is referred in Fundamental Rule 17-A(iii) which reads as under:-

> "**F.R.17-A.** Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorized absence-
>
> (i) …….
> (ii) …….
>
> (iii) in the case of an individual employee, remaining absent unauthorizedly or deserting the post,
>
> shall be deemed to cause an

> interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examination, for which a minimum period of continuous service is required.
>
> EXPLANATION 1.-.....
>
> EXPLANATION 2.-In this rule, the term "Competent Authority" means the "Appointing Authority"."

24. Although impugned orders do not result in subjecting the applicant to double jeopardy, as stated and discussed earlier, still for passing the order of Dies-non, a procedure is prescribed as mentioned in DGP&T letter dated 05.10.1975. As mentioned earlier, there is nothing on record to show that before passing the order of Dies-non, show cause notice was issued to applicant calling his explanation as to why period of his absence should not be treated as Dies-non i.e. break in service and not to count the said period as qualifying service for pension. It is obvious that straightaway the impugned order is passed without making any inquiry. The preliminary inquiry in fact relates to the charge of misconduct/misbehavior by the applicant, which culminated in filing minor penalty charge-sheet against him. Further the impugned order of Dies-non has been passed without waiting for a decision of disciplinary proceeding initiated against the

applicant. We are, therefore, satisfied from record that the impugned order of Dies-non has been passed in violation of the above referred provisions of the circular dated 05.10.1975. Further in this respect it may be mentioned here that although impugned order of Dies-non would not affect pensionary benefits, except that it will not count as qualifying service meaning thereby the period of absence will be treated as break in service. Hence there is material ambiguity in the impugned order. For this reason also, the impugned order of Dies-non does not meet the test of judicial scrutiny.

25. On this point the learned Advocate for the applicant relied on the decision rendered by CAT Ernakulam Bench on **O.A No. 314/2009, N Sayyed Mohd. Koya VS The Administrator, Union Territory of Lakshadweep and others decided on 12.01.2010.** In that case the order regarding Dies-non was under challenge. However, in that case leave was sanctioned to the applicant therein since his absence was not treated as unauthorized. In the present case, however the leave was not sanctioned to the applicant, although he was not chargesheeted for unauthorized absence and it is only mentioned in charge-sheet that he remained absent without sanction of leave. Perhaps the authority was satisfied with the reason given by the applicant for his absence which is supported by a medical certificate issued by

the competent authority, still leave was not granted for shortage of staff. In any event, in the present case the impugned order of Dies-non does not sustain. The same is, therefore, liable to be quashed.

26. We have come across a direct decision on the issue of Dies-non, and effect of the order of Dies-non, viz. **Mahesh Kumar Shrivastava Vs. State of M.P. And others, 2007(3) M.P.L.J. 525, Writ Petition No.381/2004 decided on 05.07.2007.** In that case the petitioner's period of absence of 240 days was declared as Dies-non under Rule 10 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, which prescribes minor and major penalties. Considering this it has been held in Para 12 as under:-

> "12. It is clear from the aforesaid Rule 10 that major penalty includes reduction of lower time of scale of pay. In the case of dies non when the pension of an employee will be affected then certainly in my opinion it would amount to major penalty and for that purpose as per the provision of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 a regular departmental enquiry is necessary and since in the present case no regular departmental enquiry is being conducted, hence, the order of dies non is bad in law."

27. It is obvious from record that in the present case regular departmental inquiry was not initiated to hold the applicant guilty of unauthorized absence from duty, resulting in passing

the order of Dies-non, which is held to be a major penalty. The inquiry proceeding pertaining to misconduct has nothing to do with the punishment of Dies-non. The term Dies-non is also explained in the aforementioned decision of High Court of M.P. as continuity of service but the period is not to be counted for leave, salary, increment and pension. Perhaps for this reason Dies-non was held to be a major penalty which cannot be imposed without holding a regular departmental inquiry. As stated earlier the respondents should have deferred passing of the order of Dies-non, till the conclusion of the inquiry initiated against the applicant for misconduct in which there is reference about his absence from duty. However, without waiting for its decision the impugned order of Dies-non has been passed without giving any chance to the applicant to show cause. Hence principles of natural justice are badly violated in this case. For the above reasons also the impugned order of Dies-non is liable to be set aside.

28. Now under Rule 16 of CCS(CCA) Rules, procedure for imposition of minor penalty is prescribed. The same reads as follows:

> *"a) informing the Govt. Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken and giving him reasonable opportunity of making*

such representation as he may wish to make against the proposal;

b) holding an inquiry in the manner laid down in the sub rules(3) to (23) of rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary"

29. There is nothing on record to show that the applicant in reply to the minor penalty chargesheet made a request to hold full fledged inquiry as prescribed under Rule 14 of the CCS(CCA) Rules for major penalty charge-sheet. Had he made any such request then in that event, there was no option left with the Disciplinary Authority but to convert the minor penalty charge-sheet into major penalty charge-sheet and to hold a detailed inquiry as prescribed under Rule 14 of the CCS(CCA) Rules. However, since no such request was made, Disciplinary Authority followed the provisions of Rule 16(a) of the CCS(CCA) Rules before holding the applicant guilty of the charge.

30. In this respect, learned Advocate for the applicant stated that no opportunity was given to the applicant to cross examine the witnesses during preliminary inquiry or during pendency of minor penalty proceeding. However, there is no such provision, especially when a minor penalty charge-sheet was filed on the basis of the preliminary inquiry. The applicant was served with the report of

the preliminary inquiry and also he was allowed to go through the documents referred therein, which is substantial compliance and it cannot be said that principles of natural justice were violated in this case. The record further shows that adequate reasons are recorded by both the authorities based on material on record, while holding the applicant guilty of the charge of misconduct, misbehavior and violation of the provisions of the Postal Manual and dereliction in duty.

31. So far as this aspect of the case is concerned, it may be mentioned that scope of judicial review while considering the orders passed by the authorities in a disciplinary proceeding is well settled. It is limited in the sense that there cannot be reappreciation of the evidence by the Tribunal to come to a different conclusion. It is only required to be seen if the prescribed procedure is followed by the Inquiry Officer and the Disciplinary Authority before holding the delinquent employee guilty of the charge levelled against him and that a charge-sheet has been issued by the competent authority and it does not suffer from any malice or bias. In the present case we do not find any lacunae on the part of the respondents right from filing the minor penalty charge-sheet till the applicant is held guilty.

32. During the course of arguments certain

minor discrepancies from record were brought to our notice by the learned Advocate for the applicant regarding the incident dated 11.05.2012 and 12.05.2012. However, on its basis alone, it cannot be said that the initiation of minor penalty proceedings and imposition of penalty has in any way resulted in violation of any statutory provision or principles of natural justice, since the applicant's representation to the charge-sheet was considered alongwith the statement of witnesses recorded during preliminary inquiry. Thus based on the evidence of the witnesses recorded during preliminary inquiry and the statement of the applicant, he was held guilty of misconduct/misbehavior and also for violation of the provisions of para 62 and 162 of the Postal Manual.

33. So far as this aspect of the case is concerned, during the course of the arguments, the learned Advocate for the respondents has relied upon the following decisions. We feel it appropriate to consider and make a brief references to it before concluding.

a) **Government of India and Another vs Gorge Phillipe, 2007 (2), Supreme Court law report, Civil Appeal No.4998/2006 decided on 16.11.2006.**

It was a case of compulsory retirement on account of overstayal of study leave while working as Scientific Officer in BARC the Tribunal set aside the impugned order and High Court modified the order and

directed reinstatement of the applicant without back wages. On appeal the Hon'ble Supreme Court held that the applicant having violated the condition of leave and the terms of the undertaking of leave, the compulsory retirement was not disproportionate. The law laid down therein para no.9 regarding the scope extent and power of judicial review vested in the Tribunal is elaborately stated in following words:-

> *"9. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some penalty unless they find that there has been a substantial noncompliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice of the punishment is shockingly disproportionate to the grave-men of the charge. The scope of judicial review in matters relating to disciplinary action against employee has been settled by a catena of decisions of this Court and reference to only some of them will suffice. In B.C. Chaturvedi vs. Union of India, (1995)6 SCC 749:[1985(5)SLR 778 (SC)], it was observed as under in para 18 of the reports:-*
>
> *18.A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact findings authorities*

have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority to the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately would the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

b) **Damoh Panna Sagar Rural Regional Bank and Another vs. Munna Lal Jain, 2005 Supreme Court Services, Law Judgments.**

In this case also the scope of Judicial Review in the matter of imposition of punishment is stated, Normally there cannot be imposition of punishment imposed by the authorities in a Disciplinary Proceedings, when it is held that the order passed is illegal, improper of arbitrary. It is further held that unless the punishment by the Disciplinary Authority or the Appellate Authority shocks the conscience of Court/Tribunal, there is no scope for interference. In other words where a punishment imposed is shockingly disproportionate, it would be appropriate to direct the concerned to

impose the lighter penalty. However, in exceptional and rare cases to shorten litigation, court may modify the orders and impose the lighter punishment.

34. In the present case since the punishment of with-holding of increments is only imposed which is found to be fully justified by the two authorities, it cannot be said that it is shockingly disproportionate to the gravity of charge so as to interfere with it.

c) **Bank of Patiala and Others vs. S. K. Sharma, 1996 Supreme Court Cases, Civil Appeal No.5129 of 1996 decided on 27.03.1996.**

In this case scope of Principles of natural justice while conducting the departmental proceedings is elaborately stated. A distinction was made between substantial provisions and procedural provisions by holding that in case of procedural provisions which is not of substantial or mandatory character, if no prejudice is caused to the person, no interference of the court was called for. It is further held that even in case of mandatory procedural provisions, if it is in the interest of the person proceeded against and not in public interest, then also non-compliance with such to requirement would not vitiate the action.

35. In the present case there is nothing on record to show that there is any violation of mandatory or procedural rules and we do not find any

force in the contentions of the learned Advocate for the applicant that he was not allowed to cross examine the witnesses. This is so because this question could have been raised during enquiry proceedings or in the representation made to the Disciplinary Authority to hold the full fledge/regular enquiry for major penalty.

d) State of Uttar Pradesh and Others vs. J. P. Saraswat, 2011 Supreme Court cases, Civil Appeal No.2436 of 2011 decided on 11.03.2011.

In this case also scope of judicial review in departmental inquiry while imposing the punishment is stated. It is held that judicial review is permissible in very rare cases, where punishment is so disproportionate to the established charge that it appeared unconscionable or activated by malice. In the aforesaid case it is also considered that if charge-sheet itself is challenged, then examining the correctness of the charges, particularly at the stage of framing of charges, was held beyond the jurisdiction of the Tribunal and it will not be within its competence. In para no.6 it has been held as under:-

> *"The Central Administrative Tribunal examined the correctness of the charges against the respondent on the basis of the material produced by him and quashed the same. Allowing the appeal of the Union of India, the Supreme Court.*
> *Held:*
> *In the case of charges framed in a*

disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to say law. At this stage, the tribunal has jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes or court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

e) **Shri Deokinandan Sharma vs. Union of India and Others, 2001 SCC, Civil Appeal No.5811 of 1999 decided on 11.04.2001**

In this case it was alleged that the Inquiry Officer had not afforded reasonable opportunity to the applicant to defend him, although it was revealed that this objection was not raised before the authority and the same was raised for the first time before the Supreme Court. In such circumstances of the case, the same was not allowed and hence there is no scope for judicial review.

36. From the above discussion it is obvious that no case for judicial review is made out by the applicant so as to interfere with the penalty of withholding of increment imposed by the authorities.

37(a). In the result, the O.A. is partly allowed.

(b) The impugned order dated 31.05.2012 (Anexure A-3) of treating the period of absence of the applicant from 12.05.2012 to 19.05.2012 as Dies-non is set aside.

(c) Consequently the Respondent No.2 is directed to grant the leave admissible to the applicant for the said period from 12.05.2012 to 19.05.2012 by obtaining requisite application from him.

(d) However, the prayer challenging the impugned orders dated 27.08.2012 (Annexure A-2) and 20.11.2012 (Annexure A-1) for imposing penalty of withholding of increment for a period of six months with cumulative effect is disallowed. As such the penalty imposed will stand.

(e) In the facts and circumstances of the case, the parties are directed to bear their respective cost of this O.A.

(Arvind J. Rohee)
Member (J)

(Dr.Mrutyunjay Sarangi)
Member (A).

g.m./H/Vyc.