

**Reserved**  
(On 30.08.2018)

**Central Administrative Tribunal, Allahabad Bench  
Circuit Bench at Nainital**

\*\*\*

**Original Application No.331/01156/2017**

**This the 22<sup>nd</sup> day of October, 2018**

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**  
**Hon'ble Mr. Mohd. Jamshed, Member (A)**

R.C. Pandey son of Shri B.K. Pandey r/o 48, Anukampa Bachi Vihar,  
Lohariasal Malla, Uncha Pul Katgharia, Haldwani, Nainital (Uttarakhand)  
..... **Applicant**

**By Advocate: Sri Kishore Kumar proxy counsel for Sri M.C. Pant**

Versus

1. Union of India through Secretary, Ministry of Communication,  
Department of Posts, Dak Vibhag, Sansad Marg, New Delhi.
2. The Chief Postmaster General, Uttarakhand Circle, Dehradun-248001.
3. The Director Postal Services O/o Chief Postmaster General, Uttarakhand  
Circle, Dehradun-248001.
4. The Senior Superintendent of Post Offices, Nainital Division, Nainital.

..... **Respondents**

**By Advocate: Sri P.K. Rai**

**ORDER**

**HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)**

The applicant has filed the present Original Application U/s 19 of  
the Administrative Tribunals Act, 1985 for the following reliefs:-

- a) *To issue order or direction to quash the impugned order dated 14.7.2017 (contained as Annexure No.1 to this Original Application) and in league with the order of punishment from dismissal of service which has been reviewed by the impugned order along with all departmental proceedings including charge sheet and all consequential action along with their effect and operation also after calling the entire records from the respondents and also to call the records of earlier Original Applications mentioned above decided by the Hon'ble Tribunal.*
- b) *To issue order or direction appropriate in nature to treat the applicant in service had it been the impugned orders were*

*never in existence along with all consequential benefits of pay and service and arrears at par to the other similarly situated persons to whom the respondents have awarded lesser punishment.*

- c) To award damages to the applicant in tune of Rs. Two crores on account of arbitrary and malicious act of the respondents and direct to recover the same from the erring officers.*
- d) Any other relief which the court deemed fit and proper in the circumstances of the case."*

2. The brief facts of the case are that the applicant while working as Postal Assistant (in short PA) in SBCO, Almora Head Office was transferred to Haldwani on 27.4.2001 and joined his duties on 8.5.2001. According to applicant one Sri M.C. Suyal, R.D. NSC while working as Counter Assistant at Haldwani Head Office made forged withdrawal in the month of January/February and March 2001. For the alleged act of Mr. M.C. Suyal, a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued against the applicant by the Senior Superintendent of Post Offices, Nainital vide memo dated 29.11.2003 for violation of certain codified departmental rules. The charges framed against the applicant are that he failed to check the withdrawal of Rs. 41,670/-, Rs. 83,340/-, Rs. 16,668/- on 4.1.2001, 23.3.2001 and 23.2.2001 respectively. Further, when he was discharging the duties of PA, SBCO, Haldwani H.O. during the period w.e.f. 8.5.2001 to 31.1.2002, 11.2.2002 to 13.11.2002 and 28.11.2002 to 18.1.2003, it was noticed that certain warrant of payments were shown as 'will follow" , while no such remark had been noted in LOTS by the RD counter PA/Dy PM Haldwani HO. In nut shell, the charge against the applicant is of being negligent in performance of his duty which resulted in loss to the public exchequer. There were total six charges levelled against the applicant, charges No. 1,2 and 4 were proved

fully and charge No. 5 was proved partially while charge No.3 and 6 were not proved.

**3.** Applicant submitted reply on 9.12.2003 and denied the charges levelled against him. Enquiry officer was appointed who submitted its report on 11.8.2006. Thereafter, Disciplinary authority vide order dated 10.11.2006 issued show cause notice to the applicant and granted time to submit his reply. Applicant submitted his reply on 28.12.2006 and disciplinary authority passed the order of dismissal of applicant w.e.f. 18.5.2007. Applicant preferred an appeal before the Appellate Authority i.e. Chief Post Master General, Uttarakhand Circle, Dehradun which was rejected by the Appellate Authority vide order dated 26.3.2008.

**4.** Applicant filed O.A. No. 473/2009 before this Tribunal which was disposed of by this Tribunal vide order dated 17.6.2015 and remanded the matter back to the respondents to decide his case afresh in view of the findings given by this Tribunal.

**5.** Chief Post Master General, Uttarakhand Circle Dehradun vide order dated 30.11.2015 passed a routine and non-speaking order ignoring the directions of the Tribunal.

**6.** Applicant again approached this Tribunal by filing O.A. No. 30/2016 which was allowed by this Tribunal vide order dated 16<sup>th</sup> May, 2016 and this Tribunal quashed the order dated 30.11.2015 and directed the respondents to reconsider the entire case and pass a

well reasoned and speaking order in the light of observation made in para 4 of this order. Para 4 of the judgment is quoted below:-

*"4. A simple perusal of the direction passed in O.A.No. 473/2009 and the order dated 30.11.2015 passed by the respondent No.2 would reveal that the impugned order dated 30.11.2015 is neither speaking nor a reasoned order. It does not address the plea raised by the applicant. Since the applicant had raised the issue of other employees involved in the episode of embezzlement of Government money given lighter punishment. It would have been appropriate for the respondents to record a comparative analysis of the role, responsibility, accountability and punishment ultimately awarded to each of them and justify the punishments awarded to the applicant. Nothing of this nature has been done while passing the impugned order in compliance of the order dated 17.6.2015 passed in O.A.No. 473/2009."*

7. Thereafter, respondents approached the Hon'ble High Court of Uttarakhand and challenged the order dated 16.5.2016 passed by this Tribunal and Hon'ble High Court vide judgment and order dated 28.11.2016 dismissed the Writ Petition No. 456 of 2016 with following observations:-

*"We would think that the Tribunal has only directed that the matter must be reconsidered in the light of the direction of the Tribunal given in the earlier round. We only make it clear, however, that while the order must indeed contain reasons, which must refer to the case of the discriminatory treatment, it need not be an elaborate exercise and all that is contemplated is that there should be proper application of mind to the case of discriminatory treatment and proper reasons must be given as to why the respondents was given the punishment which he was given."*

8. Thereafter, the respondent has passed the impugned order dated 14.7.2017 which is under challenge in the present O.A.

9. Learned counsel for respondents has filed Counter Affidavit and submitted that Sri K.N. Pandey, the then Deputy Postmaster, Haldwani, HPO was identified as a subsidiary offender in this case. But the said Sri K.N. Pandey retired on superannuation on 31.12.2001 afternoon even

before coming of the case into light on 7/8.1.2003. In this scenario, i) Sri K.N. Pandey could have been proceeded against only under Rule 9 of CCS (Pension) Rules, 1972 that too only with the sanction of the President of India and only till four years after the occurrence of the event.

**10.** Sri D.N. Belwal, the then In-charge/Supervisor, SBCO Haldwani HPO was identified as a subsidiary offender in this case. A charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued against the said Sri D.N. Belwal vide SPOs, Pithoragarh Memo dated 27.6.2003. The official retired on superannuation on 30.6.2003 afternoon. Therefore, the proceedings were converted under Rule 9 and Sri D.N. Belwal expired on 16.4.2007. Therefore, the proceedings have come to cease.

**11.** Sri Sangam Lal, the then Deputy Postmaster, Haldwani, HPO was not identified as an offender in this case. Therefore, the contention of applicant that the department colluded with the aforesaid officials is totally incorrect. On the point of treating the applicant discriminately with respect to Shri J.P. Joshi, the then Supervisor, SBCO, Haldwani, HO, it is submitted that applicant was identified as Co-offender in this case whereas Sri J.P. Joshi was identified as subsidiary offender. The applicant was proceeded against under Rule 14 of CCS (CCA) Rules, 1965 whereas Sri J.P. Joshi was proceeded against the same rule of CCS (CCA) Rules, 1965. Six Article of charges were framed against the applicant whereas four article of charges were framed against Sri J.P. Joshi. Articles 5 and 6 of the charge sheet against the applicant have the same wording of Article 1 and 2 of charges against Sri J.P. Joshi.

No other article of charges of the applicant is same as article of charges of Sri J.P. Joshi. Article 1 of the charge against Sri J.P. Joshi was provided by the Inquiry Officer and other charges i.e. Article 2,3 and 4 were not proved. In the case of applicant, Articles 1,2 and 4 were proved. Article 5 was partially proved and Article 3 and 6 were not proved. It is submitted that inquiry officer in both the cases were different and one inquiry cannot be seen as influencing the other inquiry even after both were related to the same stated fraud.

**12.** In the case of D.S. Rana, the then Dy. PM, Haldwani HO, five charges were framed and Article 2,3 and 4 were proved by the IO. The disciplinary authority agreeing with the report of Inquiry officer, imposed a major penalty of "dismissal from service" with immediate effect but on appeal, this punishment was modified to that of "reduction from the LSG grade to the lower grade of a postal assistant in the pay scale of Rs. 4000-100-6000 at initially stage of Rs. 4000/- w.e.f. date of assumption of charge in PA cadre and his seniority in gradation list of PA cadre was fixed at the lowest of the cadre from the date of assumption of charge in PA cadre as a result of this order. The charges levelled against Sri Rana were different to charges levelled against the applicant. Inquiry officer and inquiry report in both the cases were different and comparing the disciplinary action against them would not be justified.

**13.** In the case of Sri Prem Joshi, he was identified as subsidiary offender whereas the applicant was identified as a Co-offender. Only one Article of charge was framed against Sri Prem Joshi which was not proved. However, the Disciplinary Authority disagreed with the findings

of the IO, imposed a punishment of recovery of Rs. 14075/- from the pay of Sri Prem Joshi in six installments of Rs. 2000/- and Rs. 2075/- as seventh installment.

**14.** As regards Sri M.C. Gupta, a charge sheet was issued to Sri Gupta under Rule 14 of CCS (CCA) Rules, 1965 and Sri Gupta retired on 31.7.2003 and his case was converted under Rule 9 of CCS (Pension) Rules, 1972 and Inquiry officer after completing the inquiry under Rule 9, submitted his enquiry report and disciplinary case was decided in the name of President vide Government of India, Ministry of Communication and IT, Department of posts letter dated 13.2.2017, inflicting a punishment of "Withholding of 20% of the monthly pension, otherwise admissible to the said Sri M..C. Gupta for a period of three years. His gratuity, if not otherwise required to be withheld in any case, has been ordered to be released.

**15.** In case of Smt. Ganga Rawat, she was identified as a subsidiary offender. Three charges were levelled against Smt. Ganga Rawat and all were not proved by the Inquiry Officer but the Disciplinary Authority disagreed with the IO w.r.t. Article 1 and 2 and imposed a punishment of recovery of Rs. 8334/- from the pay of Smt. Ganga Rawat in 4 installments. The charges levelled against Smt. Ganga Rawat and the applicant were different.

**16.** On completion of Rule 14 inquiry, Sri Nandan Singh Bisht the then Ledger Assistant, Haldwani HO was 'dismissed from service' with immediate effect. Sri Nandan Singh preferred an appeal which was rejected by the Director, Postal Services vide order dated 22.9.2009.

Thereafter, Sri Bisht filed O.A. No. 488/2010 which was allowed by the CAT, Allahabad Bench vide order dated 20.11.2014. Writ Petition No. 213(S/B) of 2015 was filed by the respondents before High Court of Uttarakhand against the order dated 20.11.2014 passed by CAT Allahabad Bench and the said case is still pending before Hon'ble High Court, Uttarakhand.

**17.** It is further submitted that the punishment to every co and subsidiary offenders in this case were awarded on the basis of charges levelled against them, Inquiry officer's report upon the charges, and written representations and facts and records of the case. One decision cannot influence the other decision because the designation and duties assigned and irregularities committed by the offenders, charges against them & Inquiry officer's report etc. are different.

**18.** It is submitted that the Tribunal directed the Department to revisit the matter. It is further submitted that the respondents have passed the order dated 14.7.2017 in accordance with the directions of Hon'ble Tribunal and Hon'ble High Court of Uttarakhand at Nainital and the punishment order is proportionate to the offence committed by the applicant. Principles of Natural Justice have not been violated during the entire proceedings. As such, the department has complied with the directions issued by the Hon'ble Court and Tribunal.

**19.** Learned counsel for applicant has filed Rejoinder reply by which he has reiterated the facts as stated in the O.A. and denied the contents of the counter affidavit. He has also relied upon on the



decision of Hon'ble Supreme Court in the case of **H.L. Gulati Vs. Union of India and others reported in (2015) 12 Supreme Court Cases, 408.**

20. Heard Sri Kishore Kumar proxy counsel for Sri M.C. Pant for the applicant and Sri P.K. Rai, learned counsel for respondents and perused the pleadings available on record.

21. The first OA No.473 of 2009 was decided on 17.06.2009 wherein following direction was passed:-

*"9.In the circumstances, without interfering with the impugned order, we remit back the matter to the appellate authority to revisit its order keeping in view the fact that Sri J.P. Joshi who committed same misconduct as alleged against the applicant in Article 5 of the charge is inflicted with lesser punishment and the amount mentioned in Articles 1, 2 and 4 of the Charges had been withdrawn by Sri M.C. Suayal before the applicant joined the position in which he was supposed to check the withdrawal. The appellate authority would also keep in view the plea raised by the applicant in the present O.A. i.e. certain other employees are inflicted lighter punishments. The appellate authority will pass the order within a period of three months from the date of receipt of copy of this order.*

*10. The O.A. is disposed of accordingly. There shall be no order as to costs."*

22. In compliance of the aforesaid order, the respondents passed another order on 30.11.2015. The relevant portion of the aforesaid order reproduced as below:-

*"..... In this connection, following two points are noteworthy:-*

- A. The disciplinary authority and the appellate authority have decided the case with full wisdom and have exercised quasi-judicial power. After a long gap of thirteen years, it is against the principles of limitation and is also beyond the powers of Chief Postmaster General to review the decision of his predecessor.*
- B. Shri R.C. Pandey being the then ledger clerk of SBCO, it was duty to check ledger and illegible bogus withdrawal done by the Post office staff which he failed to do.*

*The case of ex-employee has been re-examined in the light of omission and commissions committed by*

*him. The plea of ex-employee that the other offenders in the case have not been given severe punishment, does not reduce the quantum of mistakes committed by him. Therefore, his petition is hereby rejected and his punishment of dismissal from service is allowed to continue.*

*Reference is being made to the Directorate to review the punishment of those employees in whose cases it has been alleged that they have not been given severe punishment commensurate to their omissions & commission.*

### **ORDER**

*I, Udai Krishna, Chief Postmaster General, Uttarakhand Circle, therefore after carefully examining the facts/records of the case, reject the petition of Shri R.C. Pandey. "*

**23.** Applicant again filed another OA No.30 of 2016, claiming that compliance of the order of Tribunal dated 17.06.2015 passed in OA No.473 of 2009 has not been done. Tribunal agreed with the contention of applicant and thereafter, issued further directions on 16.5.2016. The relevant portion of this order has already been extracted in **Para-6** of this order.

**24.** Learned counsel for the applicant has submitted that the impugned order is not inconsistent with the directions of this Tribunal passed in OA No. 473 of 2009 and OA No.30 of 2016, which was subsequently reinforced by order of Hon'ble High Court of Uttarakhand, which has already been reproduced in **Para-7** of this order.

**25.** This is the 3<sup>rd</sup> round of litigation before this Tribunal. Applicant had earlier filed OA No.473 of 2009 and OA No.30 of 2016 before this Tribunal. Both were allowed by this Tribunal and certain directions were given.

26. The directions given in second OA No.30 of 2016 were challenged before Hon'ble High Court of Uttarakhand. A Division Bench of High Court dismissed the Writ Petition vide order dated 28.11.2016 and directed the respondents to pass order in the light of order of this Tribunal. However, the Hon'ble Court directed that some reasons must be given to stated variation in punishments to the other delinquent officials. High Court also said that this exercise need not be elaborate.

27. In the light of order passed by Hon'ble High Court, the Appellate Authority has passed a fresh order on 14.07.2007, which is extracted below:-

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ngjknw rnkud kj Jh vkj-l h-ik. Ms ds ifronu dks fujLr djrk gA"*

**28.** We have carefully gone through the order dated 14.7.2007 passed by Appellate Authority as well as the records of the case. It is clear that the impugned order has discussed the role of applicant and has given brief reasons for variations in punishment. It is pertinent to point out that Appellate Authority i.e. Chief Post Master General, Uttarakhand Circle, Dehradun has also asked Director of the Department to examine the punishments given to the other delinquent officials and to take necessary steps if required.

**29.** The pleas raised by applicant make it abundantly clear that primarily his case depends upon the alleged discrimination in awarding the punishment to other delinquent employees. Pleadings and the documentary evidence etc. have failed to demonstrate his innocence.

**30.** It is pertinent to point out that this Tribunal is not an Appellate Authority of disciplinary decisions pursuant to the disciplinary proceedings. We merely review the manner in which the decision is made. It is the duty of this Tribunal to ensure that delinquent employee receives a fair treatment. The Tribunal has to see whether the inquiry into the charges of misconduct is conducted by observing the principles of natural justice and prevailing rules. Tribunal has to

consider whether conclusions are based on some evidence and whether the authority had the jurisdiction to conduct the inquiry. It can only interfere if it appears that delinquent employee has been dealt with in the manner inconsistent with statutory rules prescribed for conducting the inquiry or whether the conclusions are based on perverse interpretation of evidence or no evidence.

**31.** Ordinarily, the Tribunal does not interfere with the quantum of punishment unless the inflicted punishment shocks the conscience of the adjudicatory authority.

**32.** Learned counsel for the applicant has primarily assailed the proceedings on two counts. First, that he was being punished for the misconduct of other officials posted earlier and second, the punishment awarded to him is disproportionate to his proven charge and discriminatory in the light of punishments awarded to other officials.

**33.** It is pertinent to point out that the award of punishment is essentially within the domain of Disciplinary and Appellate authorities. Tribunal and Court cannot assume the function of Disciplinary Authority and decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of Competent Authority. The adjudicatory authority has very limited jurisdiction to interfere with the punishment imposed by Disciplinary Authorities. We can interfere only in cases where such penalty is found to be shocking to our conscience. In this case we find that punishment is adequate.

**34.** We have perused the records, it is clear that activities of delinquent employees resulted in a financial loss of almost Rs.94,52,388/- to the Department/Government. It is pertinent to point out that stated misdemeanor occurred during the year 2000-2002. Value of this amount in those years was substantial. Admittedly applicant assumed charge in Haldwani, Head Office on 27.4.2001. After an elaborate inquiry, the guilt of several employees including applicant has been established. There is nothing on record to demonstrate that inquiry in the stated misconduct of delinquent employee has been vitiated on any ground.

**35.** The applicant has primarily taken a ground that other employees were not so severely punished. The record does not support the claims of applicant. The record reveals that several charges were framed against various employees. Some were identical to the applicant but others were not identical. The Inquiry Officers were also different, therefore, the question of similar treatment was ordinarily not possible.

**36.** It is pertinent to point out that another employee namely, Nand Singh Bisht was also 'dismissed from service' with immediate effect vide order dated 27.02.2009. His Appeal was also dismissed and punishment of 'dismissal from service' was upheld. However, Allahabad Bench of this Tribunal, vide their order dated 20.11.2014 allowed the said OA and quashed the punishment and appellate orders but respondents are contesting this order by filing Writ Petition No.213(S/B) 2015 (Union of India vs. Central Administrative Tribunal, Allahabad) which is pending. Obviously, the department cannot be

held responsible for the order of Central Administrative Tribunal, Allahabad.

**37.** Another employee, Shri K.N. Pandey, retired on superannuation on 31.12.2001 before the disclosure of entire episode 7/8.1.2003. Evidently, Shri K.N. Pandey could have been proceeded only under Rule 9 of CCS (CC&A) Rules, 1972 that too with sanction of President of India and only till 04 years after the occurrence of the event.

**38.** One Shri D.N. Belwal, the then Incharge/Supervisor, SBCO, Haldwani, HPO, was identified as a subsidiary offender in this case. A charge sheet under Rule 14 of CCS (CC&A) rules, 1965 was issued against Shri D.N. Belwal. The official was retired on superannuation on 30.6.2003. Therefore, the proceedings were converted under Rule 9 inquiry. However, Shri D.N. Belwal, expired on 16.04.2007. Therefore, the proceedings came to an end on account of his death.

**39.** Another employee, Shri Sangam Lal, Deputy Postmaster, Haldwani, HPO was not identified as offender in this case. Therefore, claims of applicant in regard to Shri K.N. Pandey, Shri B.N. Belwal and Shri Sangam Lal are misplaced.

**40.** Several other employees such as Shri J.P. Joshi and etc were found subsidiary offenders and they were proceeded for different articles of charges. Some of them were found established while other could not be proved.

**41.** One Shri D.S. Rana, Deputy Postmaster, Haldwani, HO was also 'dismissed from service'. However, his punishment was modified on Appeal. Five charges were framed against Shri D.S.Rana out of which articles I and V were not found proved by Inquiry Officer while articles II, III and IV were established. Disciplinary Authority inflicted punishment of 'dismissal from service' with immediate effect. But, as stated earlier, his punishment was modified by Chief Postmaster General Uttrakhand Circle, vide order dated 27.3.2008 to that of reduction from the LSG grade to lower grade of a Postal Assistant in the Pay Scale of Rs. 4000-100-6000 at initial stage of Rs.4000 with effect from the date of assumption of charge in PA cadre. His seniority in gradation list of Postal Assistant was fixed at the lowest of the cadre from the date of assumption of charge. This punishment cannot be termed as a minor punishment.

**42.** We have carefully perused the entire records. It is clear that claim of applicant that similarly situated delinquent employees were given minor punishment is not borne out on the record.

**43.** It is also pertinent to point out that ordinarily the delinquent official cannot claim parity in negative i.e. accused or delinquent employees cannot say that he/she should be given lesser punishment, despite establishment of charges of grave misconduct including charges of financial misdemeanor, only on the ground that others have been given lesser punishment. Each inquiry, primarily is concerned with the alleged misconduct of particular persons and if the inquiry has been conducted in the fair manner, consistent with the prevailing departmental rules and observing principles of natural



justice then delinquent employee cannot claim that he should be awarded lesser punishment merely because others have been given lesser punishment.

44. Hon'ble Supreme Court in **Civil Appeal No. 4722 of 1996 State of U.P. Vs. Nand Kishore Shukla and another 1996 SCC (L&S) 867** decided on **11.03.96** held that:-

*"..... It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the Disciplinary Authority to consider what would be nature of punishment to be imposed on a government servant based upon the misconduct proved against him. Its proportionality also cannot be gone into by the court. The only question is whether the Disciplinary Authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the Disciplinary Authority or by the Appellate Authority, the court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him from seeking any appointment elsewhere. Under these circumstances, the High Court was wholly wrong in setting aside the order...."*

45. Further, the Hon'ble Supreme in the case of **Balbir Chand Vs. Food Corporation of India Ltd 1997 (3) SCC 371** has held thus:-

*".....It is further contended that some of the delinquents were let off with a minor penalty while the petitioner was imposed with a major penalty of removal from service. We need not go into that question. Merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they should also be given the lesser punishment lest the same mistaken view would be repeated. Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the matter and taken appropriate decision according to law...."*

46. The same view was reiterated by the Hon'ble Supreme in the case of **B.C. Chaturvedi Vs. UOI 1995 (6) SCC 749** and it was held as under:-

*"Service Law – Writ – Power under Article 226 of the High Court – To impose appropriate punishment – The High Court/Tribunal while exercising the power of judicial review, cannot normally come to its own conclusion on penalty and impose some other penalty. (Constitution of India, Article 226). No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible."*

47. Recently, the Hon'ble High Court of Delhi in the case of **Union of India (UOI) and Ors Vs Ram Dass Rakesh** has decided on quantum of punishment. The relevant portion of the judgments is quoted below :-

*"...5. When we apply these principles to the present case, our conclusion would be that the approach of the learned Tribunal is not correct in law. No doubt, in the first blush it appears that allegations against all three officials are of similar nature, which related to non-payment of 8 money orders to the payees. However, **the role of the three officials, it is natural, would be different. Depending upon that if the disciplinary authority in the case of other two officials decided to impose a particular punishment, that would not mean that same punishment is to be meted out to the respondent as well.** Before the disciplinary authority of the respondent the charge against the respondent for misappropriation of a sum of Rs. 12,000/- is proved. The charge in itself is a very serious charge and punishment of dismissal on such a charge should not have been interfered with unless the penalty is shockingly disproportionate to the proven charge. Even if one proceeds with the assumption that other two officials are given lesser punishment wrongly, that would not mean that lesser punishment should have been given to the respondent as well, who had committed grave misconduct, and when such a case is treated in isolation, even as per the Tribunal, the misconduct justified imposition of this kind of penalty. **The concept of discrimination would be alien in such a situation...**"*

48. Coming back to the facts of the present case, it is evident that applicant has been found guilty of grave misconduct. Department suffered the loss of more than Rs.94 Lacs on account of misconduct of delinquent employees including applicant. We are convinced that inquiry was conducted in accordance with the prevailing Departmental Rules as well as observing principles of natural justice.

**49.** We also believe that his punishment order is proportionate to offence committed by applicant. The other delinquent employee named by applicant had different roles. Some of them were awarded the same punishment as that of applicant. They are on different stages of litigation. Roles of other delinquent employees were found subsidiary. All charges of each employee were not identical, therefore, the applicant cannot claim any discriminatory treatment.

**50.** Learned counsel for the applicant has relied upon the judgment of Apex Court in the case of H.L. Gulati vs. UOI & Ors. reported in 2014 (12) SCC 408. The facts mentioned in the judgment of H.L. Gulti's case (supra) are completely different from the case of the applicant. In the case of H.L. Gulati, the Apex Court was not convinced of charge of grave misconduct. The Court held that delinquent employee was guilty of merely grave negligence. In the present case, the Disciplinary Authority had concluded that the applicant is a guilty of grave misconduct which resulted in the loss of Rs. 94,52,388/- to the State Exchequer. As stated earlier the value of this money in the year 2000 to 2002 was substantial.

**51.** The Appellate Authority was also convinced the gravity of misconduct and has approved the punishment of 'dismissal from service'. We have also concluded that inquiry was conducted in accordance with Rules. The principles of natural justice have been observed during the inquiry. The question of discriminatory treatment to applicant because of award of different punishment to other delinquent employees has not been borne out on the record. This

Tribunal believes that conclusions of Disciplinary Authority as well as Appellate Authority are based on evidence.

**52.** In the light of the aforesaid discussion, the Original Application is liable to be dismissed and is accordingly, dismissed with no order as to costs.

**(MOHD. JAMSHED)**  
MEMBER (A)

**(JUSTICE BHARAT BHUSHAN)**  
MEMBER (J)

Sushil