

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00901/2014

**Reserved on- 22.11.2017.
Date of pronouncement 08.12.2017**

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri J.V. Bhairavia, Member [J]

1. Chandra Deo Singh, [A/c No. 8306845, Ex-Senior Auditor, office of the Controller of Defence Accounts Rejendra Path Patna] S/o late Shyam Lal Singh, at present residing at House No.-142, Road No.-3A, Mohalla-Chitrakut Nagar, Danapur, P.O.- Digha, District- Patna-800012.

.....Applicant

By Advocate : Shri Pradeep Kumar

Versus

1. The Union of India through Secretary, Ministry of Defence (Finance)/ the Financial Advisor (Defence Services), Room No.-140, South Block New Delhi.
2. The Controller General of Defence Accounts, O/o the C.G.D.A, Ulan Batar Road, Palam, Delhi Cantt.-110010.
3. The Dy Controller General of Defence Accounts (AN), O/o the C.G.D.A, Ulan Batar Road, Palam, Delhi Cantt.-110010
4. The Controller of Defence Accounts, O/o the C.D.A, Rajendra Path, Patna-19.
5. The Joint Controller of Defence Accounts (AN), O/o the C.D.A, Rajendra Path, Patna-800019.
6. The Assistant Controller of Defence Accounts (AN), O/o the C.D.A, Rajendra Path, Patna-800019.
7. The Senior Accounts Officer (AN), O/o the C.D.A, Rajendra Path, Patna-19.
8. The Officer-in-Charge, Pay and Accounts Office (Other Ranks) Bihar regimental Centre now I.O.B, Sub Area, Danapur Cantt., District- Patna.

.....Respondents

By Advocate: Shri Bindhyachal Rai.

O R D E R

Jayesh V. Bhairavia, M [J]: In the present O.A, the applicant has sought the following reliefs:-

"[8.i] For quashing and to set aside impugned letter no. AN/XIII/13600 (660)/OA-509/06/Vol.III dated 24th march, 2014 [Annexure 12] issued by the Controller General of Defence Accounts, New Delhi [Respondent 2] affirming the impugned order no. AN/IA/232/IO (Ors)/CDS/PART-II dated 29.08.2005 [Annexure 10] passed by the Controller of Defence Accounts, Patna [Respondent 4] with all consequential retirement benefits including entire arrears of salary.

[8.ii] For any other relief/relief as deemed fit and proper in the facts and circumstances of this case."

2. This is the third round of litigation. The brief facts of the present OA is as follows:-

[i] The applicant while working as S.A. A/c No. 8306845 serving in the 10 /AR Section of MO, Patna, a departmental proceedings was initiated against him. It was the case of the Disciplinary Authority that the applicant was involved in a case of fake credit on account of Bhutan DA and Siyachin Allowance during 1999 and disciplinary proceeding for major penalty under Rule 14 of CCS Rules 1965 were initiated against him by the Disciplinary Authority vide memorandum of charge dated 14.09.1999. However, the memorandum of charge dated 14.09.1999 was cancelled and a fresh memorandum of charge bearing no. AN/IA/232/IO(Ors)/CDS (part) dated 05.09.2001 was served upon him which is reproduced as below:-

Article of charge – I

That the said Sh. C.D. Singh, SA, A/c No. 8306845 while serving in the 10 /AR Section of MO, Patna fraudulently manipulated / modified entries like “Bhutan DA” in favour of some Army Jawans by amending the regimental No. of Army Jawan in his own handwriting during initial punching (edit list), 1st validation totally disregarding the entries available in original contingent bills, payment authority etc during the QE 2/99 of PAO (Ors) BRC, Danapur. This has resulted in fake credits to some Army Jawans to the tune of Rs. 1,68,424 in the QSA for QE 2/99 in respect of Jawans of 15th Bihar Bn of BRC, Danapur which they were not entitled to. On subsequent investigation the records, BRC; the CO, 15th Battalion confirmed that the ultimately benefited Jawans never served the Bhutan area. Sh. Singh purposely benefited the Jawans with some ulterior motives.

Thus by his above acts the said Sh. C.D. Singh, SA, A/c No. 8306845 has failed to maintain an absolute integrity and lack of devotion to duty and acted in a manner unbecoming a Govt. Servant and thereby violated the provisions of clause [i] to [iii] of Rule 3 [1] of CCS (Conduct) Rules, 1964.

Article of charge – II

That the said Sh. C.D. Singh, SA, A/c No. 8306845 while serving in 10/AR Section of MO, Patna fraudulently inserted fake Dos II in the DO II transcription sheets in his own handwriting for the casualty like Siachin Allowance in favour of some army Jawans of 15th Battalion of BRC Durng QE 2/99 disregarding the fact that these Dos Pt. II were fake and no such casualties were published by the concerned units / records, a sum of Rs. 2,46,231 was found fakely reflected / credited in QSA of QE 2/99 in respect of some non-entitled Jawans of 15th Battalion, the beneficiaries never served the Siachin area as confirmed by the records BRC; CO, 15th Battalion of BRC, PAO [Ors]. BRC, Danapur and no such casualties were published by them. Sh. Singh has purposely benefited the Jawans with some ulterior motives.

Thus by his above acts the said Sh. C.D. Singh, SA, A/c No. 8306845 has failed to maintain an absolute integrity and lack of devotion to duty and acted in a manner unbecoming a Govt. Servant and thereby violated the provisions of clause [i] to [iii] of Rule 3 [1] of CCS (Conduct) Rules, 1964.

[ii] The Inquiry Officer vide his report dated 13.04.2004 held the article of charges I & II as proved. On the basis of representation of the applicant-delinquent the case was remitted for further inquiry, from the stage of examination of handwriting expert as prosecution witness. After completion of further inquiry, the Inquiry officer submitted his report dated 11.02.2005 wherein he has held that the articles of charges levelled against the applicant are proved.

[iii] The Disciplinary Authority, after taking into consideration the inquiry report and representation submitted by the applicant has imposed the penalty of compulsory retirement with effect from 01.09.2005 upon the applicant with further direction to grant compensation pension after imposing a cut of 5% thereon in terms of Rule 14 of CCS Pension Rules 1972 vide order dated 29.08.2005. (Annexure A/10 refers).

[iv] Aggrieved by the penalty order dated 29.08.2005 issued by the disciplinary authority, the applicant had preferred an appeal before the Appellate Authority, the appeal was considered and rejected on 27.06.2006.

[v] The revision application filed by the applicant was considered in compliance of the order dated 31.07.2008 passed by this Tribunal in OA 509/2006. The said revision application was rejected by the Revisionary Authority on 16.02.2009.

[vi] Aggrieved by the order passed by the Revisionary Authority on 16.02.2009 and order dated 27.06.2006 passed by the Appellate authority, the applicant had filed an OA No. 547/2009 before this Tribunal and the said OA was dismissed vide order dated 05.10.2012. [Annexure 1/2 refers].

[vii] The applicant had filed Civil Writ Jurisdiction case No. 6012 of 2013 before the Hon'ble Patna High Court. The Hon'ble High Court, vide its order dated 03.01.2014 quashed the appellate order dated 27.06.2006 and further held as follows:-

" Thus, while the petitioner's appeal was heard by Shri B.K. Mishra, the order, dismissing the appeal, was made by the successor- in-office as indicated and it is the order, dated 27.06.2006, which stands impugned in this writ petition.

Considering the facts that the appellate authority decided to accord personal hearing to the petitioner, the passing of the impugned order dated 27.06.2006 by a person, who had not heard the petitioner in appeal, cannot be sustained or else, the personal hearing, which had been accorded to the petitioner, would be rendered purposeless, redundant in Otiose. Situated thus, we are clearly of the view that the impugned order dated 27.06.2006, calls for interference by this court in its extra ordinary jurisdiction under Article 226 of Constitution of India and the appeal needs, to be heard, in terms of the prayer of the petitioner by the appropriate authority."

With the above stated observation the Hon'ble High Court, *Patna*, directed the Appellate Authority to accord personal hearing to the petitioner on his appeal and, then, to dispose of the same in accordance with law within three months from the date of judgement and further the petitioner stands reinstated in service, but on account of the fact that he had been under suspension on during the course of disciplinary proceeding, the petitioner, upon his re-instatement, shall be kept under suspension until appropriate order(s), in accordance with law, as has been directed hereinbefore, is passed by the appropriate authority on the petitioner's appeal.

In the said order, the Hon'ble High Court further observed as follows:-

"before parting with the record, we make it clear that this court has not expressed, and shall not be taken to have expressed, any opinion on the correctness, veracity or otherwise of the grievances, which have been raised by the petitioner in his appeal, except that his appeal ought to be decided by the competent authority upon hearing the petitioner in person"

(Annexure 1/3 refers).

[viii] In compliance of the order passed by the Hon'ble High Court, the Appellate Authority had accorded an opportunity for personal appearance and hearing to the applicant on 24.02.2014, the applicant appeared before the Appellate Authority and did not make any oral submission but submitted an application dated 24.02.2014 with a request to consider the said written application. (Annexure 11/2 refers).

[ix] The Appellate Authority, in exercise of power conferred under Rule 27 of CCS(CCA) Rules 1965, had considered the original appeal memo dated 01.10.2005 along with the application dated 24.02.2014 of the applicant and thereafter passed a detailed speaking order on 24.03.2014. [Annexure -12] which has been impugned herein.

3. The applicant had mainly contended that the impugned orders have been passed in violation of principle of natural justice, passed mechanically without application of mind, on extraneous and irrelevant consideration, surmises, conjecture, perverse inquiry report and on suspicion in a preconceived manner. Therefore, the same is required to quashed and set aside. To

substantiate the submission, the learned counsel for the applicant submitted as under:-

[i] That the applicant was not provided the documents which were relied upon by the I.O, though it was demanded which caused prejudice to the applicant.

[ii] Though the applicant was not posted at PAO (Ors) BRC, Danapur during the quarter ending 02/99, in spite of that, he was held responsible for the misconduct.

[iii] The impugned orders are in violation of paragraphs of office manual Part X, Vol. III.

[iv] That the identically situated delinquent, namely Shri D.N. M. Nirala, Ex – AAO.

[v] The opinion of the handwriting expert is not a substantive evidence, the disciplinary authority and the appellate authority failed to appreciate that the opinion of the hand writing expert is based on writings of the applicant on the photo stat copies and photo copies of such documents cannot be substantive evidence.

[vi] The original vital documents amongst listed documents were not provided to the applicant.

[vii] The 2nd stage advice of the CVC was not obtained before the issuance of punishment order dated 29.8.2005.

[viii] The appellate authority failed to consider the submission of the applicant with regard to excessive punishment and in mechanical manner confirmed the order passed by the disciplinary authority. The appellate authority also failed to

appreciate that there was no monetary loss to the respondents department, and in spite of that, an excessive punishment imposed by the disciplinary authority has been confirmed by the appellate authority.

[ix] The impugned orders are illegal, irrational and against the material on record.

The learned counsel further submitted that the documents produced along with this OA establish the fact that the applicant is innocent and in absence of sufficient evidence against the applicant, the disciplinary authority erroneously accepted the inquiry report and believed charges as proved and imposed excessive punishment. The appellate authority also failed to appreciate the grounds raised by the applicant and pass the impugned order dated 24.3.2014.

4. In contra, the respondents had filed the detailed reply and contravened the contention of the applicant. The learned counsel, Shri Bindhyachal Rai appearing on behalf of the respondents submitted as under.

[i] That, after following due procedures stipulated in the CCS (CC&A) rules, 1965, the disciplinary authority has passed the order dated 29.8.2005. The penalty imposed upon the applicant is of compulsory retirement w.e.f. 01.09.2005 with five percent cut on compensation pension is also in accordance with rule no. 40 of pension rules.

[ii] The applicant was provided due opportunity to defend his case during the disciplinary proceedings. The applicant has submitted the defence statement, all the documents relied upon by the IO were made available to the applicant which is evident in the disciplinary proceedings and to substantiate this submission, the copies of relevant minutes of the proceedings are annexed with the reply of the

respondents. The disciplinary authority has also considered the reply of the applicant and after considering it, passed an order dated 29.8.2005. There is no violation of principle of natural justice, there is no procedural lapses, there is no irregularities in disciplinary proceedings as well as considering the appeal by the appellate authority. Therefore, this application deserves to be dismissed.

[iii] It is further contended by the respondents that in compliance of the Hon'ble Patna High Court's order, the appellate authority had provided opportunity of personal hearing to the applicant. However, he declined to submit any oral defence and chose to submit written application in support of his appeal. The appellate authority considered every factors of submissions of the applicant, the appellate authority has scrutinized all the material on record, the reason stated by the disciplinary authority for accepting the report of I.O which was found to be supported by documentary evidence, it was also found that the charges levelled against the applicant are proved on the basis of documentary evidence and considering the gravity of misconduct, the disciplinary authority had imposed punishment of compulsory retirement with 5 % cut in pension. The said conclusion of the disciplinary authority was found to be just and appropriate in terms of CCS (CCA) Rules, 1965 as well as Rule 14 of the Pension rules and speaking order, the appellate authority has passed the order. Therefore, the applicant is not entitled for any relief.

5. The applicant has filed rejoinder in response to the written statement filed by the respondents and reiterates the submissions made in the OA. The learned counsel for the applicant further submitted that the punishment imposed is excessive, disproportionate and irrational. The conclusion arrived at by the disciplinary authority and the appellate authority is against the law laid down by the Hon'ble Apex court in the case of S.R. Tiwary vs. Union of India [

Annexure 13/1 of rejoinder] as well as judgment passed in LPA No. 580 of 2016 in CWJC No. 15264 of 2015 [Annexure 17/1].

6. The respondents had countered the rejoinder by filing the reply dated 6.11.2017 and reiterate their earlier submissions. The learned counsel for the respondents submitted that the order of penalty as well as subsequent orders thereon issued by the appellate and the reviewing authority needs not to be interfered with in terms of the decision of Hon'ble supreme Court in UOI vs. Dwarika Prasad Tiwary reported in SSC (L&S) 135. Therefore, the contentions of the applicant are far from the truth and not tenable and accordingly, the law laid down by the Hon'ble Apex Court, no interference is called for in the facts and circumstances of the present case.

7. Heard the parties. We have carefully gone through materials on record and rival submissions. The applicant has mainly submitted that the disciplinary authority has erroneously believed charges as proved, though irregularities were involved in the disciplinary proceedings and its conclusions were brought to the knowledge of both the authorities. However, without considering the applicant's defence, the impugned orders of compulsory retirement w.e.f. 1.9.2005 with further direction to grant compensation pension after imposing a cut of 5 % thereon vide order dated 29.8.2005 and the same was affirmed by the appellate authority in its order dated 24.3.2014. For adjudication of the issues involved in the present case, it will be appropriate to examine the grounds taken by the appellate authority in affirming the findings and conclusion arrived at by the disciplinary authority. Therefore, it is apt to consider the reasons and findings stated by the appellate authority in its order dated 24.3.2014 [Annexure 12]. The same are as below:-

" 12 (i) *Shri C.D. Singh was posted in the IO Cell, CDA, Patna during the period of processing of data pertaining to the period 2/99, which was responsible for validating / feeding of date of EDP Centre. Shri C.D. Singh was dealing with the validation work of PAO (Ors) BRC on regular intervals. Thus, his contention that he has not dealt with the work of PAO (Ors) BRC is not tenable. The appellant is trying to mislead with regard to the date of preparation of prosecution documents i.e. validation lists (31.3.1999 & 19.4.1999) initial edit list (dated 5.4.1999) and control chart (dated 16.2.1999) and quoting number of items reflected against his name on 16.2.1999 in the control chart. The aforementioned validation lists pertain to data processed for QE 2/99. Thus, his submission that the control chart dated 16.2.1999 is of much earlier date than the dates of generation of Edit and validation lists by EDP Centre has no meaning but it is an afterthought. It is evident from the control chart dated 16.2.1999 which is a corroborative evidence, that the appellant was assigned with the work related to validation work in respect of PAO (Ors) BRC Danapur during the quarter ending 02/99 and he was responsible for the validation work done and the false insertions made with regard to Siachin allowance and Bhutan DA without any authority.*

(ii) *As per the provisions contained in Office Manual - X, the Bhutan DA bills were to be audited by AR/OR section of CDA, Patna and payment authorities issued to concerned PAO for crediting them in the IRLA. However, due to back-log / rush of work it was decided vide CDA, Patna Office Note dated 18.1.1999 to dispense with the practice of issue of Payment Authorities on account of Bhutan TA/DA to any PAO. Accordingly, payment authorities were issued by AR/OR Section to local IO Group only, which in turn took action to credit them in the IRLAs of the individuals. Due to change in the procedure as contained in office note dated 18.1.1999, the original modules of contingent bills and Misc vouchers for Bhutan DA were not prepared as may be evident from the Annex-III of the charge sheet that the original contingent bills do not find place in the list*

and as such, the question of their submission as prosecution documents does not arise.

(iii) Further, due to change in procedure vide CDA, Patna Office Note dated 18.1.1999, PAO (Ors) BRC Danapur vide letter No. L/V/liason dated 22/1/1999 returned all the payment authority. After punching in EDP Centre, the original payment authority was neither available in EDP Centre, IO Section, AR/OR Section, BRC Danapur nor seized by the administration. However, original office copies of payment authority were produced during the departmental proceedings. As regards decision contained on D.O sheet No. 12 dt. 16/6/2003 i.e not to mark fresh exhibit, the same was taken with the consent of the appellant and his Defence Assistant only. Further, as may be evident from DO Sheet No. 10 dated 1.5.2003 and DO Sheet No. 11 dated 30.5.2003 and CDA Patna letter No. AN/IA/132/|I.O/Ors/CDS/Part I dated 30.5.2003, the requisite original documents were produced and inspected by the appellant. Hence the contention that the appellant was not provided with the said documents which caused prejudice to him, is not correct.

(iv) Being a composite / linked case, the complete case was referred to the CVC for first stage advice since Shri D.N. Mehta Nirala, Ex, AAO (a Group B Officer) was also involved in the case after serving the initial memorandum of charge dated 14.9.1999 upon the appellant. As per provisions contained in Govt. of India instruction below Rule 14 of the CCS (CC&A) Rules, 1965 as enumerated in GOI, MHA No. 11012/2/79-Estt (A) dated 12.3.1981 and OM No. 11012/8/82-Estt (A) dated 8.12.82, the Disciplinary Authority has inherent power to review and modify the article of charge or drop some of the charges or all the charges. As the initial memorandum of charges issued under signature of Dy. CDA (AN) was not found adequate and exhaustive, it was cancelled vide order dated 5.9.2001 in conformity with the DG P&T instruction No. 114/324/78-Disc-II dated 5.7.1979 below Rule 15 of CCS (CCA) Rules, 1965, which is self explanatory. A fresh memorandum of charges dated 5.9.2001 was issued under the same rule i.e Rule 14

of CCS (CCA) Rule, 1965 and it did not obliterate the merit of the case and the appellant was afforded all possible opportunities to defend his case during the departmental proceedings. Further, the 2nd stage advice was not obtained before issue of penalty order dated 29.8.2005 as the same had been dispensed with vide CVC letter No. 09/VGL/15 dated 16.4.2004 and 004/VGL/43/2506 dated 3.8.2004.

(v) The preliminary enquiry report was considered as privileged document in terms of para 6 of Govt. of India, Ministry of Home Affairs OM No. 30/05/61-AVD dated 25.8.1961. The said report was meant for the disciplinary authority to decide as to whether a *prima facie* case existed for institution of disciplinary proceedings or not. The departmental proceedings instituted against the appellant. The reasons for denial were duly communicated to the appellant during the disciplinary proceedings.

(vi) The contention that Shri D.N. Mehta Nirala, AAO has been exonerated is not based on record as the charges in the two cases are different and cannot be correlated. The charges levelled against the applicant and those against Shri Nirala were totally different. While the charges levelled against the applicant were of fraudulent insertion/fake entries like Bhutan DA in edit list and fake DO -II in Dos -II transcription sheet for Siachin Allowance in favour of Jawans of 15 Battalion of BRC resulting in fake credit to the tune of Rs. 4,14,655, the charges levelled against Shri Nirala were that he failed to supervise and curb the unlawful activities of the applicant. As such, the exhibit documents may be same, but the findings of the IO in the two cases cannot be correlated as the charges levelled against them were totally different.

(vii) The issue regarding the qualification of the GEQD is not relevant. The opinion of the Handwriting Expert has not been taken as substantive evidence but as corroborative evidence only. As regards his contention that opinion is on the basis of alleged photo copies of writings on photo state copies of vital documents, the undersigned finds that the documents forwarded to the GEQD were

original copies of documents bearing handwriting of the appellant. As such, the contention of the appellant is neither relevant nor tenable.

13. *Whereas the records of the case reveals that insertions were made in the Dos II transcription sheet Batch No. 4 for the QE 2/99. The top sheet / covering memo under which the batch was transmitted by PAO (Ors) BRC to the EDP originally had 36 items. Consequent upon insertion of 7 items, the number of items was amended as 43 on the top sheet, out of which 5 insertions were found to be fake. The handwriting on the Dos II transcription sheet reveals that fraudulent insertions were made by a person other than who prepared the original Dos II transcription sheet and the circumstantial evidence shows that the insertions were made after the batch was sent by PAO and before data was punched by EDP. It is further seen that the regimental numbers of Jawans in the initial validation / 1st validation list of contingent bills and Misc. Vouchers were amended to give undue financial benefit. Consequent on verification, these insertions amendments were proved to be fraudulent during inquiry and handwriting was found to be that of Shri C.D Singh, which is corroborated by the report of GEDQ, Kolkata.*

14. *Whereas the undersigned further finds that the alleged charges as contained in charge sheet dated 5.9.2001 had been proved during the departmental proceedings which was concluded after observing the laid down procedure as contained in CCS (CC&A) Rules, 1965 and during the said proceeding, the appellant had been afforded ample opportunity to defend his case. The disciplinary authority viz. CDA Patna taking into account all factors relevant to the case, imposed the penalty of compulsory retirement with effect from 1.9.2005 with further direction to grant compensation pension after imposing a cut of 5 % thereon vide order bearing No. AN/IA/232/IO (Ors)/CDs/Part II dated 29.8.2005.*

15. *And Whereas the undersigned, after considering appeal dated 1.10.2005 and written application dated 24.2.2014 submitted by*

Shri C.D. Singh on his personal appearance before the undersigned on 24.2.2014 and taking into account the overall facts of the case, has observed that there is no infirmity in the disciplinary proceedings instituted and concluded against Shri C.D. Singh and that there are no justified grounds for interfering with the order dated 29.8.2005 of the disciplinary authority viz. CDA Patna and therefore, the appeal dated 1.10.2005 and application dated 24.2.2014 have no merit and are liable for rejection."

8. We have carefully gone through the order passed in appeal filed by the applicant. We find that the appellate authority has considered all the aspect of the matter. The appellate authority also offered an opportunity of personal hearing to the applicant which the applicant declined and submitted that his appeal may be disposed of on the basis of his written submissions. We notice that the appellate authority has considered all the contentions raised by the appellant in his appeal. The said authority has affirmed the order of the disciplinary authority with a detailed order with placing reliance on the documentary evidence, which indicates full application of mind and we do not find any illegality in the appellate authority's order.

9. We notice that the disciplinary authority under rule 14 of CCS (CCA) Rules, 1965 had initiated the disciplinary proceedings and after following the principles of natural justice, the said authority concluded that the charges levelled against the applicant were proved and considering the gravity of misconduct, the penalty of compulsory retirement w.e.f. 1.9.2005 with further direction to grant compensation pension after imposing a cut of 5 % thereon in terms of rule 40 of CCS (Pension) Rules, 1972 has been passed and the same has been affirmed by the appellate authority. The penalty imposed cannot be considered to be excessive or disproportionate in view of provision of statutory rules. The Penalty imposing a cut of 5 % on compensation pension is also in

accordance with the provisions of Rule 40 of CCS (Pension) rules, 1972, and the said decision of the disciplinary authority as well as appellate authority are the end result of a disciplinary proceedings undergone under the existing statutory rules. Therefore, we are of the opinion that the impugned decision imposing the penalty of compulsory retirement with further cut of 5 % on compensation pension against the applicant cannot be termed as without authority of law.

10. In view of this fact, the contention of the applicant that the decision of imposing penalty of compulsory retirement with cut of 5 % on compensation pension is without support of any provision of law is not tenable in view of the reasons stated hereinabove. The decision of the disciplinary authority for imposing punishment including a cut of 5 % on compensation pension is in accordance with provisions of statutory rules and the said action is within the permissible authority to do so under the law and therefore, it cannot be said that the said decision of imposing penalty is without any authority of law. Under the facts and circumstances of the present case, the case law relied upon by the learned counsel for the applicant i.e. the judgment passed by Hon'ble Apex court in the case of State of Jharkhand vs. Jitendra Kumar Srivastava reported in (2013) 12 SCC 210 and judgment passed by Hon'ble High court of Patna in LPA No. 580 of 2016 in the case of Indian Bank through CMD and Others vs. Kaushal Kishore Thakur are not helpful to the plea of the applicant. On the contrary, the very said judgment recognise the proposition that the concerned administrative / disciplinary authority can restrict the pension or gratuity of the concerned Government employee if permissible under the statute. As stated hereinabove, according to the provisions of the rule 40 of CCS (Pension) Rules, 1972, *a Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such*

penalty, pension or gratuity or both at a rate not less than two-third and not more than full compensation pension or both admissible to him on the date of his compulsory retirement. Therefore, the decision of the disciplinary authority and order passed by the appellate authority is in accordance with the provision of law and cannot be said to be arbitrary or passed without any authority of law. Therefore, no interference is called for.

10. It would not be out of place to state here that judicial review is not directed against the decision but is confined to the decision-making process. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

It is also well settled in law as per various judicial pronouncements of the Hon'ble Supreme court that the quantum of punishment lies within the domain of the disciplinary authority. The court can intervene only in case where the findings is perverse and is based on no evidence, or when the punishment is so disproportionate as to shock the judicial conscience. [S.R. Tiwari vs. U.O.I, 2013 (6) SCC 602], [B.C. Chaturvedi vs. U.O.I , 1995 (6) SCC], [2017 (1) SCC (L&S) 780, Management of SBI vs. Smita Sharad Deshmukh and another].

11. In the present case, it is noticed that the applicant, failed to show us with reference to the facts of the case that the case of the applicant satisfies any of the aforementioned grounds so as to entitle this Tribunal to interfere with the quantum of punishment and hence in our considered view, the punishment of compulsory retirement with 5 % cut on compensation pension, inflicted upon

the applicant by the competent authority, having regard to the nature of proved charges, appears to be just and proper and does not call for any interference.

12. In view of the foregoing discussions and judicial rulings on the subject by Hon'ble Apex Court, we find no merit in the present OA; hence, the same is accordingly dismissed. No order as to costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

/mks/

