CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

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OA No.060/00775/2017

Chandigarh, this the 20th day of December, 2018

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)

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Gurmail Singh son of Shri Pritam Singh, aged 45 years, Ex-GDS BPM Chabha BO via Kot Mit Singh SO, Amritsar, Punjab, resident of Village Chabba, Tehsil and District, Amritsar (Group-C).

....APPLICANT

(Present: Mr. V.K. Sharma, Advocate.)

VERSUS

1. Union of India, through the Secretary to Government of India, Ministry of Communications & Information Technology, Sanchar Bhawan, Sansad Marg, New Delhi.
2. Postmaster General, Punjab West Region, Sandesh Bhawan, Sector 17-E, Chandigarh-160017.
3. Director Postal Services, Punjab Region, Sandesh Bhawan, Sector 17-E, Chandigarh-160017.
4. Senior Superintendent of Post Offices, Amritsar Division, Amritsar-143001.

....RESPONDENTS

(Present: Mr. Ram Lal Gupta, Advocate.)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. By means of present Original Application (OA) filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is impugning the penalty of dismissal from service imposed by the disciplinary authority vide order dated 20.10.2015 (Annexure A-1), and order dated 08.03.2016 (Annexure A-2), whereby appeal has been rejected and orders of disciplinary authority has been affirmed and order dated 19.11.2016 (Annexure A-3) vide which revision petition has been rejected by the competent authority.

2. The facts are not in dispute.

3. Learned counsel for the applicant submitted that the applicant while working as GDS BPM Chabha BO in account with Kot Mit Singh SO under Amritsar Headquarter, was served with a charge-sheet on 28.01.2014 for allegedly accepting money from the saving bank account holder, but not crediting it to the government account. He was also put off duty on 09.07.2013. A proper procedure was adopted and after conducting an enquiry, the disciplinary authority, after having the inquiry report, inflicted the punishment of removal from service by order dated 20.10.2015 (Annexure A-1). Then the applicant availed the remedy of statutory appeal and revision, which affirmed order of the disciplinary authority. The applicant is before this court, for invalidation of orders on various grounds. Firstly, the respondents have relied upon the statement recorded in the preliminary enquiry and that the applicant has not been given fare

opportunity to defend his claim before the enquiry officer. Thus, it is claimed that the impugned order be set aside.

4. In support of the above plea, learned counsel for the applicant submitted that harsh punishment of removal has been imposed upon the applicant, without considering that the applicant has rendered more than 20 years of service, which is unblemished for a minor offence and where the government has not been put to any loss. To butters his submissions he place reliance upon the decision passed by the Hon'ble Supreme Court in case of ***B.C. Chaturvedi Vs. Union of India & Others***, 1996 (1) SCT 617.

5. The respondents in the written statemen, while resisting the claim, have submitted that there is a clear admission by the applicant before the enquiry officer, as seen from page 56 para 10 of the written statement. It is pleaded that once the admission has been made by the applicant, then he cannot be allowed to place that a proper opportunity to defend in the inquiry proceedings has not been given.

6. They also plead therein that taking a lenient view, punishment of removal has been passed, without there being in disqualification for future employment. However, learned counsel for the applicant argued that a penalty has been imposed.

7. Learned counsel for the respondents vehemently opposed the prayer of the applicant on the quantum of punishment also, and he submitted that once the applicant has admitted his guilt for not crediting the amount, which has been accepted from the depositor, in the government account of the pass book, it is a serious lapse, which

cannot be condoned, and he also relied upon pass book and the official record. Therefore, it is prayed that the OA deserves to be dismissed. He also argued that this court can't sit over as an appellate authority over the finding recorded by the disciplinary authority.

8. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.

9. We are of the view that this petition deserves to be dismissed, as the applicant has not alleged any illegality in enquiry proceedings. Though the applicant has submitted that Smt. Palwinder Kaur, did not support her statement, which she got recorded at the time of preliminary inquiry, about the veracity, but his version has not been supported by Karam Chand, ASPOs South East Sub Division, Amritsar, who participated in the inquiry. Moreover, once admission is made by the applicant himself that the amount of entry of the pass book of the above date has not been entered in government account, then there is no need to go for further inquiry, once the admission is there. Though he has credited that amount subsequently, despite that the inquiry officer has conducted inquiry against the applicant holding the charge levelled against the applicant. Since the applicant has failed to point out illegality in the procedure, therefore, this court does not find any ground to interfere with the penalty imposed by the respondents, because the authority make enquiry and impose penalty has done it as per rules. This court cannot substitute its own opinion for that of the disciplinary authorities.

10. So far as the challenge to the proceedings in the disciplinary proceedings are corned the petitioner has failed to assail

the action of the respondents on any established ground for judicial review. The parameters thereof have been laid by the Apex Court in the judgments placed by the respondents before us. Noteworthy is the pronouncement of the Apex Court reported at ***Government of Andhra Pradesh Vs. Mohd. Nasrullah Khan*** (2006) 2 SCC 373, wherein, placing reliance on earlier pronouncements of the court on the issue raised before us, the Apex Court held as follows:-

> "11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.
> 12. We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In Union of India v. Parma Nanda MANU/SC/0636/1989 : (1989) II LLJ 57 SC , K. Jagannatha Shetty, J., speaking for the Bench, observed at page SCC 189 as under:
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> > "27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

13. Again, the same principle has been reiterated by this Court in B.C. Chaturvedi v. Union of India and Ors. : (1996) ILLJ 1231 SC : AIR 1996 SC 484 K. Ramaswamy, J., speaking for the Court, observed at page SCC 759 as under:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion, which the authority reaches, is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of each case.
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> 14. As already said, in the present case there is no allegation of violation of principles of natural justice or the inquiry being held inconsistent with the mode of procedure prescribed by the rules or regulations."

11. The parameters of judicial review by the Courts in a writ petition under Article 226 of the Constitution of India also fell for consideration before the Supreme Court in the judgment reported at (2001) 1 SCC 182 ***Kumaon Mandal Vikas Nigam Ltd. Vs. Girja***

Shankar Pant & Ors. The observations of the court in para 19 shed valuable light on the objection raised by the respondents and may usefully be adverted to. The same reads as follows:-

> "19. While it is true that in a departmental proceeding, the disciplinary authority is the sole Judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the Court, it is a well-neigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above however do find some support from the decision of this Court in the case of Apparel Export Promotion Council v. A.K. Chopra MANU/SC/0014/1999: (1999)ILLJ962SC."

12. So far as the scope and manner of judicial review of disciplinary action raising an issue of proportionality of a punishment imposed upon a person is concerned, the principles are well settled. The judgment of the Supreme Court in (1995) 6 SCC 749 ***B.C. Chaturvedi Vs. Union of India & Ors.*** is an authority with regard to the principles which apply. In para 18 of the judgment, the Supreme Court laid down the law as follows:-

> "18. .....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 or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould 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."

13. In (2000) II LLJ 648 SC ***Union of India & Anr. Vs. G. Ganayutham (Dead) by LRs.***, the court summed up the legal position in para 31 which reads as follows:-

> "31. In such a situation, unless the Court/ Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B. C. Chaturvedi's case AIR 1995 SCW 4374 that the Court might, - to shorten litigation - think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B. C. Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different). For the reasons given above, the case cited for the respondent, namely. State of Maharashtra v. M. H. Mazumdar MANU/SC/0485/1988 : (1988)IILLJ62SC cannot be of any help.
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> 32. For the aforesaid reasons, we set aside the order of the Tribunal which has interfered with the quantum of punishment and which has also substituted its own view of the punishment. The punishment awarded by the departmental authorities is restored. In the circumstances, there will be no order as to costs."

14. These decisions were examined and the principles reiterated by the court in the judgment reported at (2006) 6 SCC 794 ***Union of India Vs. K.G. Soni*** wherein the court stated as follows:-

> "14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.
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> 15. To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for

> interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

15. In (1987) 4 SCC 611 ***Ranjit Thakur Vs. Union of India & Ors.,*** the court was considering the legality of punishment which was imposed upon the petitioner upon trial by a court martial. The court held that judicial review was directed against the decision making process while the choice of quantum of punishment was within the jurisdiction and discretion of court martial. It was held that the sentence must suit the offence and the offender, and should not be so disproportionate to the offence so as to shock the conscience of the court and amount to conclusive evidence of bias. On application of the doctrine of proportionality which has derived its shades from the Wednesbury test, it was observed that if the decision of the court martial as to sentence is outrageous defiance of logic, the sentence would not be immune from correction. Para 25 of the judgment deserves to be considered in extenso which reads as follows:-

> "25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council Of Civil Service Unions v. Minister For The Civil Service (1984) 3 W L R 1174 Lord Diplock said:

> ...Judicial Review has, I think, developed to a stage today when without re-iterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community..."

16. In view of the above, we are left with no other option but to dismiss this OA. Ordered accordingly. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 20.12.2018.

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