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S.R. TEWARI

v.

UNION OF INDIA AND ANR.

(Civil Appeal No.4715-4716 of 2013)

MAY 28, 2013

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[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Service Law:

C *Quantum of punishment – Judicial review of – Permissibility – Held: If the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary and thus violative of Art. 14 of the Constitution – If the penalty imposed by the authority, shocks the conscience* D *of the Court, it can substitute its own penalty – In the facts of the present case, the punishment of compulsory retirement on the delinquent officer shocks the conscience of the Court as it does not commensurate with the offence of misconduct which was not of a serious nature – Hence the punishment* E *imposed is substituted to punishment of withholding of two increments for one year without having cumulative effect.*

Judicial Review – Scope of – Court can exercise power of judicial review, if the impugned order suffers from malafide, dishonest or corrupt practices – Court does not have F *expertise to correct administrative decision – Court should exercise such power in furtherance of public interest and not merely on making out of a legal point – Scope of judicial review is limited to the process of making the decision and not against the decision itself.*

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Appellant-an IPS officer, when posted on deputation with Border Security Force (BSF), disciplinary proceedings were initiated against him. Eight charges were framed against him. Inquiry Officer, in its report

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stated that charge No. 3 was fully proved, charge Nos. 4 and 6 were partially proved while rest of the charges were not proved. Disciplinary Authority passed the order of punishment of dismissal from service. Administrative Tribunal directed his reinstatement. High Court, however, set aside the judgment of the Tribunal holding that only charge Nos. 4 and 6 stood proved, and hence directed Union of India to pass fresh orders in respect of those charges. Review petition of the appellant was dismissed by High Court.

During pendency of the present appeal, Union of India, having lost its appeal in this Court, against the order of the High Court, reinstated the appellant and imposed a penalty of withholding two increments for one year without cumulative effect. But on the advice of UPSC, imposed punishment of compulsory retirement. This Court asked the appellant to make representation and asked Union of India to decide the same and to place it before this Court before giving effect to it. Union of India, after considering the representation, imposed punishment of compulsory retirement and also gave effect to the order rather than placing it before this Court. Appellant filed contempt petition.

The question for consideration, therefore, was whether the punishment of compulsory retirement was proportionate to the delinquency proved; and whether Union of India wilfully disobeyed the order of this Court directing it not to give effect to the punishment order immediately and to place the same before the Court.

Disposing of the appeal and the contempt petition, the Court

HELD: 1.1. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary

A **or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from *mala fide*, dishonest or**
B **corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and**
C **procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to**
D **unbudgeted expenditure. [Para 14] [1005-F-H; 1006-A-B]**

Commissioner of Income-tax, Bombay and Ors. v. Mahindra and Mahindra Ltd. and Ors. **AIR 1984 SC 1182: 1983 (3) SCR 773;** *Tata Cellular v. Union of India* **AIR 1996 SC 11: 1994 (2) Suppl. SCR 122;** *People's Union for Civil*
E *Liberties and Anr. v. Union of India and Ors.* **AIR 2004 SC 456: 2003 (6) Suppl. SCR 860;** *State of N.C.T. of Delhi and Anr. v. Sanjeev alias Bittoo* **AIR 2005 SC 2080: 2005 (3) SCR 151 – relied on.**

F **1.2. The court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or**
G **not. The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the**
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process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. [Paras 15 and 17] [1006-D, F-G] A

Air India Ltd. v. Cochin International Airport Ltd. and Ors. **AIR 2000 SC 801: 2000 (1) SCR 505;** *High Court of Judicature at Bombay through its Registrar v. Udaysingh s/o Ganpatrao Naik Nimbalkar and Ors.* **AIR 1997 SC 2286: 1997 (3) SCR 803;** *Government of Andhra Pradesh and Ors. v. Mohd. Nasrullah Khan* **AIR 2006 SC 1214: 2006 (1) SCR 911;** *Union of India and Ors. v. Manab Kumar Guha* **(2011) 11 SCC 535: 2011 (3) SCR 272 – relied on.** B C

1.3. Where the holders of public offices have forgotten that the offices entrusted to them are a sacred trust and such offices are meant for use and not abuse. Where such trustees turn to dishonest means to gain an undue advantage, the scope of judicial review attains paramount importance. [Para 16] [1006-E] D

Krishan Yadav and Anr. v. State of Haryana and Ors. **AIR 1994 SC 2166: 1994 (4) SCC 165 – relied on.** E

2. In the instant case, on charge No.4, the High Court has committed a factual mistake observing that 'M' had been appointed by appellant as a regular teacher with retrospective effect. In fact there is no evidence that appellant had appointed him or regularised him, as 'M' was already in service for a period of 10 years. Same remained the position in respect of charge No.6 as the High Court mis-directed itself as it considered the case as if the charge against the appellant had been taking two vehicles; one his official car and another an escort, though there had been no such charge levelled against the appellant. The High Court while dealing with the review petition on charge No.4, did not consider the fact that the appointment of 'M' as a Head Master, was a F G H

A **unanimous decision of the Board and not that of the appellant alone. The High Court also did not correct the mistake in its original judgment regarding the usage of two vehicles. [Para 12] [1004-G-H; 1005-A-C]**

B **3.1. If the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. [Para 18] [1007-B]**

3.2. In exercise of the powers of judicial review, the C **court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in** D **exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also consider the circumstances under which the misconduct was** E **committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. [Para 19] [1007-H;** F **1008-A-C]**

Ranjit Thakur v. Union of India and Ors. **AIR 1987 SC 2386**; *Union of India and Anr. v. G. Ganayutham (dead by Lrs.)* **AIR 1997 SC 3387**; *State of Uttar Pradesh and Ors. v. J.P. Saraswat* **(2011) 4 SCC 545**; *Chandra Kumar Chopra v.* G *Union of India and Ors.* **(2012) 6 SCC 369**; *Registrar General, Patna High Court v. Pandey Gajendra Prasad and Ors.* **AIR 2012 SC 2319**; *B.C. Chaturvedi v. Union of India and Ors.* **AIR 1996 SC 484**; *V. Ramana v. A.P.S.R.T.C. and Ors.* **AIR 2005 SC 3417**; *State of Meghalaya and Ors. v. Mecken* H *Singh N. Marak* **AIR 2008 SC 2862**; *Depot Manager,*

A.P.S.R.T.C. v. P. Jayaram Reddy **(2009) 2 SCC 681** *Union of India and Ors. v. Bodupalli Gopalaswami* **(2011) 13 SCC 553**; *Sanjay Kumar Singh v. Union of India and Ors.* **AIR 2012 SC 1783**; *Union of India and Ors. v. R.K. Sharma* **AIR 2001 SC 3053 – relied on.**

3.3. While exercising the power of judicial review, Court cannot interfere with the punishment merely because it considers the punishment to be disproportionate. Only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds. [Para 23] [1009-G-H]

3.4. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at, on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible. [Para 24] [1010-A-D]

Rajinder Kumar Kindra v. Delhi Administration **AIR 1984 SC 1805**; *Kuldeep Singh v. Commissioner of Police and Ors.* **AIR 1999 SC 677**; *Gamini Bala Koteswara Rao and Ors. v. State of Andhra Pradesh thr. Secretary* **AIR 2010 SC 589**; *Babu v. State of Kerala* **(2010) 9 SCC 189 – relied on.**

3.5. In the present case, so far as charge No.4 is concerned, the matter was considered by a Board

A consisting of several officers and the appellant could not have been selectively targeted for disciplinary action. Further, no material could be placed on record that BSF had ever formulated a policy for regularisation of a temporary teacher as a regular teacher and in such a B fact-situation, the appellant could not have regularised the services of 'M' as a school teacher, even if he had the experience of 10 years. (This was not even a charge against the appellant nor there was any finding of the Inquiry Officer, nor has such a matter been agitated C before the Tribunal). [Para 25] [1010-E-G]

3.6. The proved charges remained only charge Nos.4 and 6 and in both the cases the misconduct seems to be of an administrative nature rather than a misconduct of a serious nature. It was not the case of the department D that the appellant had taken the escort vehicle with him. There was only one vehicle which was an official vehicle for his use and charge No.6 stood partly proved. In view thereof, the punishment of compulsory retirement shocks the conscience of the court and by no stretch of E imagination can it be held to be proportionate or commensurate to the delinquency committed by and proved against the appellant. The only punishment which could be held to be commensurate to the delinquency was as proposed by the Government of India to withhold F two increments for one year without cumulative effect. In the facts of the present case, the Court directs to substitute the punishment of compulsory retirement to the punishment proposed by the Union of India i.e. withholding of two increments for one year without G having cumulative effect. [Para 26] [1011-B-F]

Case Law Reference:

1983 (3) SCR 773	relied on	Para 13
1994 (2) Suppl. SCR 122	relied on	Para 14

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2003 (6) Suppl. SCR 860	**relied on**	**Para 14**	A
2005 (3) SCR 151	**relied on**	**Para 14**	
2000 (1) SCR 505	**relied on**	**Para 15**	
1994 (4) SCC 165	**relied on**	**Para 16**	B
1997 (3) SCR 803	**relied on**	**Para 17**	
2006 (1) SCR 911	**relied on**	**Para 17**	
2011 (3) SCR 272	**relied on**	**Para 17**	
AIR 1987 SC 2386	**relied on**	**Para 18**	C
AIR 1997 SC 3387	**relied on**	**Para 18**	
(2011) 4 SCC 545	**relied on**	**Para 18**	
(2012) 6 SCC 369	**relied on**	**Para 18**	D
AIR 2012 SC 2319	**relied on**	**Para 18**	
AIR 1996 SC 484	**relied on**	**Para 19**	
AIR 2005 SC 3417	**relied on**	**Para 20**	
AIR 2008 SC 2862	**relied on**	**Para 21**	E
(2009) 2 SCC 681	**relied on**	**Para 22**	
(2011) 13 SCC 553	**relied on**	**Para 22**	
AIR 2012 SC 1783	**relied on**	**Para 22**	F
AIR 2001 SC 3053	**relied on**	**Para 23**	
AIR 1984 SC 1805	**relied on**	**Para 24**	
AIR 1999 SC 677	**relied on**	**Para 24**	G
AIR 2010 SC 589	**relied on**	**Para 24**	
(2010) 9 SCC 189	**relied on**	**Para 24**	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4715-4716 of 2013. H

From the Judgment & Order dated 15.02.2012 of the High Court of Delhi at New Delhi in Review Petition No. 102 of 2012.

WITH

Conmt. Pet. (C) Nos. 180-181 of 2013.

P.S. Patwalia, Gaurav Pachnanda, Ravi Prakash, Udita Singh, Avni Singh (for Chandra Prakash for the Appellant.

R.P. Bhat, A.T.M. Rangaramanujam, Rekha Pandey, B. Krishna Prasad, G.N. Reddy, B. Debojit for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. Leave granted in SLP(C) Nos. 22263-22264 of 2012.

2. These appeals have been preferred against the judgment and order dated 15.2.2012 of the High Court of Delhi passed in Review Petition No.102 of 2012; and the order dated 1.2.2012 in Writ Petition No. 4207 of 2011. By way of this order the High Court has allowed the writ petition filed by the Union of India – respondent no.1 against the order of the Central Administrative Tribunal (hereinafter called the 'Tribunal'), raising a very large number of grievances. The appellant was running from pillar to post as he had been harassed and penalised for no fault of his own and has been awarded a punishment which is uncalled for. Thus, he had moved the Tribunal, High Court of Delhi and this Court several times.

3. Facts and circumstances giving rise to these appeals and contempt petitions are as under:-

A. The appellant, an IPS Officer of 1982 batch joined the service on 1.9.1982, promoted on the post of Deputy Inspector General (D.I.G.), and subsequently as Inspector General of Police (I.G.) in his cadre of the State of Andhra Pradesh in May 2001. The appellant was on deputation and was posted as I.G., Frontier Head Quarters, Border Security Force (BSF) (North

Bengal) from 23.6.2005 to 14.11.2006. A

B. The appellant was put under suspension vide order dated 13.11.2006 as the disciplinary authority decided to hold disciplinary proceedings. As a consequence thereof, a charge sheet dated 23.3.2007 containing 8 charges was served upon him. The appellant denied all the said charges and therefore, an Inquiry Officer was appointed. The Department examined a large number of witnesses and produced documents in support of its case. The appellant also defended himself and the Inquiry Officer submitted the report dated 23.12.2008 holding him guilty, as charge no.3 stood proved fully while charge nos.4 and 6 stood proved partly. B C

C. The Disciplinary Authority did not agree with one of the findings recorded by the Inquiry Officer on one charge and held that charge no.4 was proved fully. In response to the show cause notice issued to the appellant by the Disciplinary Authority, he submitted a detailed representation against the disagreement note by the Disciplinary Authority on 10.11.2009. D

D. On being sought, the Union Public Service Commission (hereinafter referred to as 'UPSC') gave its advice regarding the punishment on 20.8.2010. The Central Vigilance Commission (hereinafter referred to as 'CVC') also gave its advice in respect of the charges against the appellant on 18.2.2009. After considering all the material, the Disciplinary Authority passed the order of punishment of dismissal from service on 8.9.2010. E F

E. Aggrieved, the appellant challenged the said order of dismissal by filing OA No.3234 of 2010 before the Tribunal. It was contested and opposed by respondent no.1. The Tribunal set aside the order of punishment dated 8.9.2010 vide judgment and order dated 11.2.2011 and directed for reinstatement of the appellant in service with all consequential benefits. G

F. Aggrieved, respondent no.1, Union of India challenged H

A the said order of the Tribunal by filing Writ Petition (C) No.4207 of 2011 before the High Court of Delhi. The High Court vide its judgment and order dated 1.2.2012 set aside the judgment and order dated 11.2.2011, passed by the Tribunal and directed respondent no.1 to pass a fresh order in respect of charge nos.4 B and 6 as in the opinion of the High Court only the said two charges stood proved.

G. Appellant filed Review Petition No. 102 of 2012 against the order dated 1.2.2012, however, the same was rejected vide order dated 15.2.2012.

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H. Aggrieved, respondent no.1 filed SLP(C) No.14639 of 2012, challenging the said order of the High Court of Delhi dated 1.2.2012. However, the same was dismissed by this Court on 9.5.2012.

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I. The appellant challenged the same order of the High Court dated 1.2.2012 by filing these appeals. In the meanwhile, respondent no.1 re-instated the appellant on 23.5.2012 and tentatively formed a decision to impose a suitable penalty on the said two charges in view of the order of the High Court dated E 1.2.2012, **a penalty of withholding two increments for one year without cumulative effect**. The respondent no.1 sought advice from the UPSC, which vide letter dated 13.8.2012 advised that the appellant be compulsorily retired. The advice given by the UPSC was served upon the appellant and he was F asked to make a representation on the same.

In the meanwhile, this Court vide order dated 5.10.2012 asked the appellant to file a detailed representation before respondent no.1, who was asked in turn to pass a speaking G and reasoned order within a stipulated period in respect of the punishment. However, **the order of punishment would not be given effect to immediately and the same would be placed before this Court on the next date of hearing.** In pursuance thereof, the appellant submitted the representation H on 5.10.2012. Respondent no.1 vide order dated 17.10.2012

passed the order imposing the punishment of compulsory retirement. The said order was given effect to and communicated to the appellant vide letter dated 19.11.2012.

J. Thus, the questions that arise for consideration of this Court are whether the punishment of compulsory retirement awarded by the Disciplinary Authority is proportionate to the delinquency proved and whether the respondents in the contempt petitions wilfully violated the order dated 5.10.2012 passed by this Court holding that the punishment should not be given effect to until it is produced before the court at the time of the next hearing.

4. Shri P.S. Patwalia, learned senior counsel appearing for the appellant has submitted that there has been misreading of evidence by the High Court of Delhi that charge nos.4 and 6 have been proved fully. The charges were trivial in nature and could not warrant the punishment of compulsory retirement. The appellant faced departmental proceedings for six years and had been deprived of being considered for further promotion. He is due to retire in December, 2013. The appellant remained under suspension for 11 months and was dismissed from service for about 19 months. He had been granted 'Z' class protection initially which was subsequently scaled down to 'Y' category. The appellant was given the said security/protection even during the period of suspension and dismissal. Even during that period he had been provided with a bullet proof car and PSOs as he had been facing threats from naxalites. Therefore, the punishment so imposed is to be set aside.

In view of the orders passed by this court stating that the punishment order can be passed by the respondents but could not be given effect to without production before the court stood voluntarily violated. Therefore, the respondents in the contempt petitions are liable to be punished for wilful disobedience of the same.

5. Per contra, Shri R.P. Bhatt, learned senior counsel for

A the Union of India has vehemently opposed the appeals and contempt petitions contending that the said charges stood fully proved against the appellant. Being an IPS Officer, he knew his responsibilities and no leniency should be granted. The order passed by this Court has not voluntarily been violated.
B Therefore, the appeals as well as the contempt petitions are liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

C 7. The chargesheet dated 23.3.2007 containing the following 8 charges was served upon the appellant under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 for his alleged misconducts during his tenure in BSF, North Bengal, on the following counts :-

D

(i) Indulged in living with a lady by name Smt. Chandrakala, not being his legally wedded wife.

(ii) Allowed unauthorized interference by Smt. Chandrakala in the official functioning of North Bengal Frontier causing
E premature release of four constables from the Quarter Guard.

(iii) Complete disregard to the rules and without jurisdiction, reviewed punishment awarded and mitigated
F the sentence awarded to No. 86161306 Constable Prakash Singh by Frontier Headquarter, BSF South Bengal.

(iv) Favoritism and manipulation in the selection of Headmaster, BSF Primary School Kadmatala even though
G the candidate did not possess essential qualification and was not eligible.

?(v) Assisted enrolment of a person in BSF from his native district, UP by fraudulent means.

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(vi) Misuse of official vehicle, arms and ammunition and BSF personnel during the marriage of his son in Feb. 2006 at his native place in Balia, UP. A

(vii) Retaining of four BSF Constables for Personal work.

(viii) Attachment of Shri Prakash Singh, constable with North Bengal Frontier despite contrary remarks of the PSO, North Bengal Frontier. B

8. The Inquiry Officer held that out of the 8 charges levelled against the appellant, charge nos.1, 2, 5, 7 and 8 were not proved at all. Charge no.3 was proved fully and charge nos.4 and 6 stood partly proved. C

The Inquiry Officer dealt with the said charges as under:

I. Charge No.3 stood **proved only to the extent** of passing an order in a case lying outside the jurisdiction of the Commanding Officer. D

II. Charge 4 proved **partly** to the extent of wrong selection of Head Master and Teacher in BSF Primary School Kadmatala by the Commanding Officer **without any favouritism and manipulation**. E

III. Charge No.6 stood partly proved to the extent of using BSF vehicle for private journey outside jurisdiction upto Balia **without prior permission of the Competent Authority**. F

9. The Disciplinary Authority dealt with two of the charges differently:

Charge No.3: The appellant though not competent to review the punishment awarded to one Sri Prakash in his capacity as a prescribed officer and thus, it clearly **established the misconduct** on the part of the appellant and the charge stood proved against him. G

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A **Charge No.4:** Shri S.S. Majumdar did not fulfil the eligibility criteria and **was not recommended by the Selection Board** for the post of Head Master and thus, he **had been favoured by the appellant** who appointed him as Head Master. Thus, this charge stood proved.

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10. All the proved charges were re-examined by the Tribunal. After re-appreciating the evidence, the Tribunal dealt with charge no.3 observing that entertaining a review petition is a quasi-judicial function. It may be without jurisdiction and the order passed can be corrected in further proceedings but it C does not amount to misconduct. The Tribunal took note of the finding on charge no.4 that the order of appointment of a primary school teacher as well as Head Master in BSF School had been **without favouritism/manipulation** in the selection process as recorded by the Inquiry Officer and came to the D conclusion that the selection was made **by the Board** having various members and **not by the appellant alone** and it also took note of the fact that Shri Majumdar was not appointed as a primary school teacher by the appellant, rather he had been working in the school for 10 years. Other teachers who had E been working for more than 7 years were also considered. Instead of adducing any documentary evidence the Department only examined witnesses in the inquiry. The appellant was competent to decide the eligibility criteria for the post of Head Master. There was **no favouritism or manipulation** on the F part of the appellant. The Tribunal further took note of the subsequent developments as under:-

> "It is rather strange that the same very respondents, who were harping upon irregular appointment of Majumdar as Headmaster, the same being against the education code, G when the applicant issued them show cause notice for termination of services, directed him to withdraw the same and permit all of them to continue in service. So much so, it was specifically ordered that Majumdar would be continued in service."

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And then recorded the following finding: A

> "We accept the contention of the learned counsel for the applicant that the respondents are blowing hot and cold in the same breath. The applicant, at the most, could be jointly held responsible for making selection of Majumdar B on the post of Headmaster, even though he was the best amongst the lot to the extent that his appointment was against the educational qualification criteria mentioned in the advertisement itself, but for that, as mentioned above, **he alone could not be held responsible."** (Emphasis C added)

On charge no.6, the Tribunal took note of the facts as under:

> "The charge has been **partly proved** by them **completely ignoring the explanation furnished by the applicant.** D There is thus, an apparent error both on facts and law. The respondents completely ignored the defence projected by the applicant. Even though, prima facie, we are of the view that the explanation furnished by the applicant required acceptance, but once, while doing so we will be E appreciating evidence, we may not do the same." (Emphasis added)

And further held as under:

> "On this charge, therefore, the course open may have been F to remit the matter to the concerned authorities, but in the peculiar facts and circumstances of this case, we refrain from doing so, as even if the charge to the extent it stood proved, the same requires to be ignored inasmuch as, once the applicant was entitled to take the vehicle and G PSOs to Balia, not obtaining prior permission **would not be a serious issue at all."** (Emphasis added)

11. The High Court while dealing with charge no.3 concurred with the Tribunal that entertaining the review petition H

A against the order of punishment could have been without jurisdiction but there was no finding by the Inquiry Officer that it was intentional. Therefore, there could be a judicial error which could be set aside or corrected in appeal or in any other proceedings but it did not amount to misconduct. The same
B could not be a subject matter of enquiry as it was not a misconduct for want of malafide or any element of corruption or culpable negligence on the part of the appellant. In such circumstances, it would not be permissible to consider it as a misconduct.

C So far as the appointment of Shri Majumdar as a Head Master of the school is concerned, the High Court held that the appellant was guilty of favouritism shown to Shri Majumdar.

Charge No.6 related to the allegation of using the vehicle
D from Patna to Balia. The High Court also took note that the appellant was granted 'Y' category security, due to threats from Naxalites. However, he was not entitled to an escort vehicle for his journey from Patna to Balia without permission. And in view of the above, the High Court modified the findings recorded by
E the Tribunal.

12. We have reconsidered the case within permissible limits. The case remained limited to the charge nos. 4 and 6 only as all other charges have lost the significance at one stage or the other, and we have to advert only to the said charges.
F

The Inquiry Officer, the Disciplinary Authority, the Tribunal and the High Court have considered all the facts involved herein. On charge no.4, the High Court has admittedly committed a factual mistake observing that Shri S.S. Majumdar had been
G appointed by appellant as a regular teacher with retrospective effect. In fact there is no evidence that appellant had appointed him or regularised him as Shri Majumdar was already in service for a period of 10 years. Same remained the position in respect of charge no.6 as the High Court mis-directed itself as it
H considered the case as if the charge against the appellant had

been taking two vehicles; one his official car and another an escort, though there had been no such charge levelled against the appellant. A

The High Court while dealing with the review petition on charge no.4, did not consider the fact that the appointment of Shri S.S. Majumdar as a Head Master, was a unanimous decision of the Board and not that of the appellant alone. The High Court also did not correct the mistake in its original judgment regarding the usage of two vehicles. B

13. In *Commissioner of Income-tax, Bombay & Ors. v. Mahindra & Mahindra Ltd. & Ors.*, AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held: C D

> "It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same." E

14. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the F G H

A grounds of illegality. irrationality and procedural impropriety. before it interferes The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead B to unbudgeted expenditure. (Vide: *Tata Cellular v. Union of India,* AIR 1996 SC 11; *People's Union for Civil Liberties & Anr. v. Union of India & Ors.*, AIR 2004 SC 456; and *State of N.C.T. of Delhi & Anr. v. Sanjeev* alias Bittoo, AIR 2005 SC 2080).

C 15. In *Air India Ltd. v. Cochin International Airport Ltd. & Ors* , AIR 2000 SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The D court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not.

16. There may be a case where the holders of public offices have forgotten that the offices entrusted to them are a sacred E trust and such offices are meant for use and not abuse. Where such trustees turn to dishonest means to gain an undue advantage, the scope of judicial review attains paramount importance. (Vide: *Krishan Yadav & Anr. v. State of Haryana & Ors.*, AIR 1994 SC 2166).

F 17. The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial G review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. (Vide: *High Court of Judicature at Bombay through its Registrar v. Udaysingh s/o Ganpatrao Naik Nimbalkar & Ors.*, AIR 1997 SC 2286; H *Government of Andhra Pradesh & Ors. v. Mohd. Nasrullah*

Khan, AIR 2006 SC 1214; and *Union of India & Ors. v. Manab Kumar Guha,* (2011) 11 SCC 535).

18. The question of interference on the quantum of punishment, has been considered by this Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution.

In *Ranjit Thakur v. Union of India & Ors.,* AIR 1987 SC 2386, this Court observed as under:

> *"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 the 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.*** *In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."* (Emphasis added)

(See also: *Union of India & Anr. v. G. Ganayutham (dead by Lrs.),* AIR 1997 SC 3387; *State of Uttar Pradesh & Ors. v. J.P. Saraswat,* (2011) 4 SCC 545; *Chandra Kumar Chopra v. Union of India & Ors.,* (2012) 6 SCC 369; and *Registrar General, Patna High Court v. Pandey Gajendra Prasad & Ors.,* AIR 2012 SC 2319).

19. In *B.C. Chaturvedi v. Union of India & Ors.,* AIR 1996 SC 484, this Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the

court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also **consider the circumstances under which the misconduct was committed**. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority.

20. In *V. Ramana v. A.P.S.R.T.C. & Ors.*, AIR 2005 SC 3417, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that **it is not commensurate with the gravity of the charges and if the court comes to the conclusion** that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, **in order to shorten the litigation, in exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof.**

21. In *State of Meghalaya & Ors. v. Mecken Singh N. Marak*, AIR 2008 SC 2862, this Court observed that a Court or a Tribunal while dealing with the quantum of punishment has

to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review. (See also: *Depot Manager, A.P.S.R.T.C. v. P. Jayaram Reddy,* (2009) 2 SCC 681).

22. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide: *Union of India & Ors. v. Bodupalli Gopalaswami,* (2011) 13 SCC 553; and *Sanjay Kumar Singh v. Union of India & Ors.,* AIR 2012 SC 1783).

23. In *Union of India & Ors. v. R.K. Sharma,* AIR 2001 SC 3053, this Court explained the observations made in *Ranjit Thakur* (supra) observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in *Ranjit Thakur* (supra) are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.

A 24. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the B finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and C which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: *Rajinder Kumar Kindra v. Delhi Administration,* AIR 1984 SC 1805; *Kuldeep Singh v. Commissioner of Police & Ors.,* AIR 1999 SC 677; *Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh thr. Secretary,* AIR 2010 SC 589; D and *Babu v. State of Kerala,* (2010) 9 SCC 189).

Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible.

E 25. So far as charge no.4 is concerned, the matter was considered by a Board consisting of several officers and the appellant could not have been selectively targeted for disciplinary action. Further, no material could be placed on record that BSF had ever formulated a policy for regularisation F of a temporary teacher as a regular teacher and in such a fact-situation, the appellant could not have regularised the services of Shri Majumdar as a school teacher, even if he had the experience of 10 years. (This was not even a charge against the appellant nor there was any finding of the Inquiry Officer, G nor has such a matter been agitated before the Tribunal).

It is evident from the record that as per letter dated 4.4.2013 sent by the Government of India to the appellant through the Chief Secretary, Andhra Pradesh, the proposed punishment is as under:

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"A penalty of withholding two increments for one year without cumulative effect, be imposed on the appellant as a punishment under Rule 6 of the All India Services (Discipline and Appeal) Rules, 1969." A

26. The proved charges remained only charge nos.4 and 6 and in both the cases the misconduct seems to be of an administrative nature rather than a misconduct of a serious nature. It was not the case of the department that the appellant had taken the escort vehicle with him. There was only one vehicle which was an official vehicle for his use and charge no.6 stood partly proved. In view thereof, the punishment of compulsory retirement shocks the conscience of the court and by no stretch of imagination can it be held to be proportionate or commensurate to the delinquency committed by and proved against the appellant. The only punishment which could be held to be commensurate to the delinquency was as proposed by the Government of India to withhold two increments for one year without cumulative effect. It would have been appropriate to remand the case to the disciplinary authority to impose the appropriate punishment. However, considering the chequered history of the case and in view of the fact that the appellant had remained under suspension for 11 months, suffered the order of dismissal for 19 months and would retire after reaching the age of superannuation in December 2013, the facts of the case warrant that this court should substitute the punishment of compulsory retirement to the punishment proposed by the Union of India i.e. withholding of two increments for one year without having cumulative effect. B C D E F

In view thereof, we do not want to proceed with the contempt petitions. The appeals as well as the contempt petitions stand disposed of accordingly. G

K.K.T. Appeals & Contempt Petitions disposed of.