HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

Case Number	**W.A. No.240/2018 & WA No.247/2018**
Parties Name	**W.A. No.240/2018** Hindustan Petroleum Corporation Ltd & another Vs. Kailash Chandra **WA No.247/2018** Hindustan Petroleum Corporation Ltd & another Vs. Mangilal
Date of Judgment	**16.03.2021**
Bench	**Division Bench:** Justice Sujoy Paul Justice Shailendra Shukla
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri. J.P. Cama, learned Sr.Counsel with Shri Bharat Chitle and Shri S.R.Kochatta, learned counsel for appellants. Shri. L.C. Patne, learned counsel for respondent.
Law laid down	**Alternative Remedy-Article 226 of the Constitution and Industrial Disputes Act 1947 -**The respondent employees were "workmen" and appellant Corporation is an 'industry' within the meaning of ID Act, 1947. The employer contended that writ petition could not have been entertained and respondents should have been relegated to avail the remedy under the ID Act. The contention is not accepted because (i) the punishment orders under question before the learned Single Judge were based on admitted documents of departmental inquiry. No

disputed questions of facts were involved. Writ petitions were filed way back in 2009-10. Hence, at this stage, it will not be proper to relegate the respondents to avail the remedy under the ID Act.

Judicial Review-Departmental Inquiry- The judicial review is confined to the decision making process and not on the decision. If procedure of inquiry suffers from serious procedural impropriety and perversity, interference can be made. Interference can also be made if punishment imposed is found to be shockingly disproportionate.

The quantum of punishment- Depends on nature of duties and responsibilities, nature of specific allegations/charge, nature of role played and established with regard to each employee etc.

Discrimination in punishment- The respondent/ministerial employees were dismissed from service whereas officers were given smaller punishments. It sought to be justified by arguing that the question of discrimination would arise when charges are exactly similar. The officers were charged for not exercising proper "supervision" and "control". The Court found no difficulty in accepting legal principle but on facts, found that officers were also subjected to disciplinary proceeding for allegation of connivance, creation of document and other charges which were almost similar to that of alleged against the respondent/ministerial employees.

Practice and procedure – Writ appeals are filed by the employer. The respondent/employees did not prefer any writ appeal against the order of Writ Court. It is not open to them to point out flaws in a Writ Appeal filed by the employer in the order of Writ Court, which were not dealt with and

	decided by the Court. **Substituted punishment and grant of back wages and other benefits –** When punishment is found to be excessive and matter is remitted back to the disciplinary authority to impose any other punishment, the other/substituted punishment will govern the benefits arising thereto. **Substituted punishment-** When an extreme punishment is substituted by another punishment, it will relate back to the date of original punishment.
Significant paragraph numbers	**14, 23, 34, 35, 36, 37**

O R D E R
(Passed on 16th March, 2021)

As per: Sujoy Paul, J.

These writ appeals filed u/S.2(1) of Madhya Pradesh Uchcha Nyayalay (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 are directed against the common order dated 7th December, 2017 passed in WP No.5474/2009 (Kailash Chandra Meena Vs. Hindustan Petroleum Corporation Ltd and another) and in WP No.2981/2010 (Mangilal Rathore Vs. Hindustan Petroleum Corporation Ltd and another) decided on 7th December, 2017.

[2] The learned single Judge allowed the writ petitions and set aside the punishment orders of dismissal passed by the disciplinary authority. The matter was remanded back to the disciplinary authority to pass any other punishment order except dismissal, removal, termination or compulsory retirement. The respondents were directed to be reinstated forthwith in service with further direction to pay arrears of salary, increments and other consequential benefits.

[3] The appellants/employer is aggrieved by this order and assailed

it in these Writ Appeals.

Petitioner's Submissions:

[4] Shri Cama, learned Sr.counsel assisted by Shri Chitle and Shri Kochatta, learned counsel submits that the respondent employees were holding post in ministerial cadre. By issuing separate charge sheets, the respondent employees and three more officers namely Subhas C. Das, Prateek Katware and Alok Shrivastava were subjected to disciplinary proceedings. By taking this Court to the charge sheets served to said three persons namely Subhas C. Das, Prateek Katware and Alok Shrivastava, learned Sr.counsel submits that nature of allegations mentioned in their charge sheet are different than the charges levelled against the present respondents. Putting it differently, it was argued that the allegations against present respondents were that they, in utter violation of 'standard procedure', accepted cheques from co-operative banks. The respondents manually altered the dates of Bank Deposit Slips (BDS) to later dates and deposited with bank on/after such altered/revised BDS dates and bring the ERP period for many such exclusive BDS, reprints were taken at later dates and such reprinted BDS were deposited with banks subsequently. This has resulted into financial loss to Corporation in terms of non and delayed receipt of money against supplies made to certain dealers.

[5] The charges levelled against present respondents were read out in juxtaposition to the charges levelled against aforesaid three officers. It was strenuously contended that allegations against the said officers were relating to lack of supervision/control. The charges against those officers were that they failed to ensure that the cheques issued by co-operative banks are not accepted. The nature of duties of present respondents and that of officers were different. The main role is

played by present respondents. The officers merely failed to properly supervise or control the said activity and, therefore, by no stretch of imagination it can be said that charges against the present respondents were similar qua the charges levelled against said three officers.

[6] The order of learned Single Judge dated 7th December, 2017 was assailed by contending that:-

(i) The learned Single Judge has merely reproduced the punishment orders of such officers and formed an opinion that the charges levelled against the respondents as well as said three officers were almost similar in nature. In absence of comparison of charges, such a finding based on punishment orders could not have been given.

(ii) A minute scrutiny of charges levelled against the respondents shows that the nature of charges are distinct and different and, therefore, question of imposing same punishment does not arise. In support of this contention, reliance is placed on ***Indian Oil Corporation Ltd. & another Vs. Ashok Kumar Arora (1997) 3 SCC 72, Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad (2010) 5 SCC 775 and State of M.P. Vs. Babulal (2013) 12 SCC 372***. The punishments imposed on different employees/officers are based on the nature of allegations levelled against them which are related with their nature of duties and role played by them. Neither charges nor duties were exactly similar/identical. Therefore, the interference by writ court was wholly unwarranted.

(iii) The writ court in exercise of power under Article 226 of Constitution of India could not have substituted its view in place of the view of disciplinary authority in the matter of imposition of punishment. It is the prerogative of disciplinary authority to decide the quantum of punishment which cannot be interfered with unless it

is shockingly disproportionate.

(iv) The direction to reinstate the respondents with back wages is bad in law and runs contrary to the judgment of Supreme Court reported in ***N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal & Ors. (1980) 3 SCC 457***.

(v) In view of seriousness of allegations which were found to be proved, the past unblemished record of respondents is of no relevance. Reliance is placed on ***State of Punjab Vs. Ramsingh (1992) 4 SCC 54***.

(vi) The conclusion of learned Single Judge that the findings of enquiry officer were perverse is not based on any reasons. Had it been a case of perverse findings, the only course available was to set aside the punishment order based on such perverse report and in that event there was no occasion to remand the matter back to disciplinary authority to impose any other punishment.

(vii) The appellant Corporation is an 'industry' as per Sec.2(j) of Industrial Disputes Act, 1947 whereas the respondents are 'workmen' within the meaning of Sec.2(s) of the said Act. The appropriate remedy for the respondents was to raise an industrial dispute and writ Court committed a mistake in entertaining the writ petition despite specific objection taken by the employer. Reliance is placed on ***U.P. State Bridge Corporation Ltd. & Ors. Vs. U.P. Rajya Setu Nigam Karamachari Sangh (2004) 4 SCC 268***.

Respondent's Submissions:

[7] Shri L.C. Patne, learned counsel for respondent, on the other hand, supported the impugned order. He submits that the writ Court rightly came to the conclusion that findings of enquiry officer were perverse. Shri Patne has taken pains and repeatedly contended that if all the charge sheets issued to the employees/officers are examined in juxtaposition, it will be clear that charges are exactly identical. By taking this Court to the charge sheets issued to the present respondents, Shri Patne urged that the description of Bank Deposit Slips (BDS) are duly mentioned in the charge sheets. The proceeding of enquiry (page 74) shows that his findings are based on three BDS which were not subject matter of charge sheet. Although learned Single Judge has not given any finding in this regard, this Court can examine this aspect.

[8] It is further urged that there is no iota of finding by Inquiry Officer that all the BDS were manipulated or altered by present respondents. If the allegations of alteration is taken out from other set of allegations, the present respondents are sailing in the same boat and are similarly situated qua the three said officers. Hence, imposition of a severe or higher punishment on the respondents was totally impermissible.

[9] It was pointed out that while imposing lesser punishment on said three officers, the learned Disciplinary Authority opined that misconduct committed by them were very serious and a punishment of dismissal could have been imposed on them but a lenient view was taken by considering their “young age”. Criticizing this finding, learned counsel for the respondents submits that the said three officers were aged between 51-57 years, whereas both the respondents were within 40 years of age when they were punished. In

any case, present respondents were admittedly younger in age than the said officers. Hence, such compassion based on young age should have been extended in favour of present respondents.

[10] During the course of hearing learned counsel for the respondents urged that departmental inquiry suffered with procedural impropriety also but learned Single Judge has not considered this aspect despite the fact that written submissions were filed and such defects were specifically pointed out. Shri Patne by taking this Court to the findings of Inquiry Officer in cases of *Subhas C. Das, Alok Shrivastava* and *Prateek Katware*, contended that their role was more serious in comparison to the role of ministerial employees/ respondents. The allegations against them were not confined to supervisory duties/lack of control etc alone. Indeed, it relates to violation of "standard norms" and accepting the cheques from Cooperative Bank, acting with connivance and even altering the BDS etc. It cannot be said that their charges were so different which must result into imposition of lesser punishments. The respondents were held guilty on the basis of deposition of aforesaid three officers, who themselves were delinquent employees. The allegation of misleading and concealing the documents were also found proved against the said officers. The respondents were subjected to discrimination in the matter of imposition of punishment and, therefore, Writ Court has rightly interfered. In support of these submissions, reliance is placed on ***Bongaigaon Refinery & Petrochemicals Ltd & Ors. Vs. Girish Chandra Sarma 2007(7) SCC 206*** *and* **Rajendra Yadav Vs. State of MP & Ors. 2013(3) SCC 73.**

[11] Parties confined their arguments to the extent indicated above.

[12] We have heard the parties at length and perused the record.

F I N D I N G S

Regarding alternative remedy under the Industrial Disputes Act, 1947:-

[13] Based on the judgment of Supreme Court in ***U.P. State Bridge Corporation Ltd.*** (supra) it was canvassed that the learned Single Judge erred in entertaining the writ petition whereas proper remedy was to relegate the respondents to avail the remedy under the Industrial Disputes Act. In ***U.P. State Bridge Corporation Ltd.*** (supra) it was held that certified standing orders although constitute statutory terms and conditions of service, they do not constitute "statutory provision in strict sense". The dismissal/removal of an employee in contravention of standing orders would be a contravention of statutory provisions enabling the workman to file a writ petition for their enforcement. In para 14 of the judgment, it was held that where there are disputed questions of fact, High Court exercising extra ordinary jurisdiction under Article 226 of the Constitution should refuse to entertain the petition. In the instant case, no disputed questions of facts were involved because there was no quarrel regarding genuineness of the record of departmental enquiry produced before the Court. The appellant Corporation is amenable to writ jurisdiction of this Court was also not in dispute. On the basis of admitted documents certain legal questions cropped up which were decided by learned single Judge.

[14] The division bench of this Court recently in the matter of ***M/s.Satyam Cinexplex Ltd Vs. State of MP & Ors.*** passed in ***WP No.4694/2014 dated 9/2/2021*** opined that if a writ petition was entertained long back and there exists no disputed questions of fact, it will not be proper to relegate the claimant to avail the alternative remedy. In the instant case, writ petitions were filed by respondents in the year 2009 and 2010 respectively. In absence of any disputed

questions of fact, we are not inclined to interfere with order of learned Single Judge and relegate the respondents to avail the remedy under the I.D Act, 1947. In the matter of **Satyam Cineplex Ltd.** (supra) this Court has held as under:-

> "**15**. Before dealing with rival contentions on merits, it is apposite to decide the question of availability of alternative remedy. Indisputably, an alternative remedy is available to the petitioner against the impugned order. However, it is noteworthy that this petition despite availability of that remedy was entertained by this Court way back on 28.07.2014. The question involved in the present matter is legal in nature and no factual inquiry is required. In our opinion, after almost six years from the date present petition was entertained, it will not be proper to relegate the petitioner to avail the alternative remedy. We find support in our view from the judgment of this Court reported in ***1995 MPLJ 969 (Chambal Ghati Shiksha Prasar Samiti vs. State of M.P.)***. After considering the judgment of Supreme Court reported in ***1970 (2) SCC 355 (Hriday Narain vs. ITO Bareilly),*** this Court came to hold as under:
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> > *"There is no dispute with the proposition that when an alternate remedy is available then normally aggrieved party should be relegated to his ordinary remedy provided under the statute. But there is another well known principle of law enunciated by the Supreme Court. In Hirday Narain v. Income Tax Officer, Bareilly, (1970) 2 SCC 355 : AIR 1971 SC 33, the Supreme Court has held in categoric terms that if a petition is entertained and during the pendency of the petition the remedy for seeking alternate remedy expires then the petitioner should be heard on merits and the parties should not be relegated to remedies under the statute."*
>
> *(Emphasis Supplied)*
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> In this view of the matter, we are not inclined to relegate the petitioner to avail the alternative remedy."
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> (emphasis supplied)

Scope of interference in departmental enquiry and punishment:-

[15] This is trite that the judicial review of disciplinary proceedings is related to the legality of decision making process and not on the decision. If enquiry suffers from serious procedural impropriety,

findings of enquiry officers are perverse, interference can be made. The writ court is not obliged to sit as an appellate Court to reweigh or re-appreciate the evidence. If punishment is shockingly disproportionate, interference can be made. (See ***B.C.Chaturvedi Vs. Union of India & Ors (1995) 6 SCC 749, Apparel Export Promotion Council Vs. A.K.Chopra (1999) 1 SCC 759, Bank of India & Ors. Vs. T.Jogram (2007) 7 SCC 236, State of U.P. & another Vs. Man Mohan Nath Sinha & another (2009) 8 SCC 310, State of Karnataka & another Vs. N.Gangaraj (2020) 3 SCC 423 and Praveen Kumar Vs. Union of India & ors. (2020) 9 SCC 471.)***

[16] The learned Single Judge has interfered in the matter by holding that:-

(i) Charges levelled against the petitioner as well as three officers were almost similar in nature;

(ii) The respondents/clerical officers were served with extreme punishment of dismissal from service whereas senior officers who were equally responsible were leniently dealt with by imposing punishment of reduction of pay etc. which amounts to discrimination.

(iii) Findings of enquiry officer are perverse. It was not a case of misappropriation or syphoning of funds on the part of respondents;

(iv) Punishment imposed on respondents were shockingly disproportionate and were not commensurate to the misconduct of the respondents.

[17] So far as finding of learned Single Judge regarding "perversity" is concerned, we find force in the argument of Shri. Cama, learned

Sr.Counsel for appellant that "perversity" is a conclusion which must be founded upon specific reasons.

[18] Learned Single Judge has certainly not assigned any reasons whatsoever on the basis of which the conclusion of "perversity" was drawn. In the event enquiry was found to be perverse, the punishment order was required to be set aside and in that event question of remanding the matter back to the disciplinary authority did not arise. We find no difficulty in accepting this contention. To this extent, we are unable to countenance the findings of learned Single Judge regarding perversity of findings.

[19] While passing impugned order, learned Single Judge has not acted as an appellate authority and has not undertaken the exercise of re-appreciating or reweighing the evidence. Indeed, on the basis of findings on record, opined that respondents were subjected to step motherly treatment.

[20] Before dealing with the correctness of findings aforesaid given by learned Single Judge, we deem it apposite to take note of the test laid down by Hon'ble Supreme Court for the purpose of deciding similarity of charges and proportionality of punishment. In the case of ***Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad (2010) 5 SCC 775*** it was laid down as under:-

> "14. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment **unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal**. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties

assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts.

15. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination."

(Emphasis Supplied)

[21] In ***Indian Oil Corporation Ltd. Vs. Ashok Kumar Arora (1997) 3 SCC 72***, the similar view was taken and the Apex Court came to hold that if a delinquent employee is the main actor, he cannot claim parity in the matter of imposition of punishment with other co-delinquents whose roles were distinct and different.

[22] The said principles were further summarized in ***Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh (2013) 12 SCC 372***. The relevant paras on which Shri Cama placed reliance read as under:-

"19.3 Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious

> charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."
>
> (emphasis supplied)

[23] It cannot be doubted that the imposition of punishment depends upon nature and duties of each delinquent employee, role allegedly played by them, gravity of charges, loss caused, past record etc. If there are similarity of allegations which were established in the enquiry, the punishment should be similar and commensurate to the misconduct. If the charges established against delinquent employees are similar and some of them are inflicted with severe punishment of dismissal from service whereas others were put to a comparatively advantageous position, it will be a fit case for interference by the Court in exercise of power under Article 226 of the Constitution.

[24] On the first blush, the argument of learned Sr.Counsel for appellants seems to be attractive that the nature of allegations against three officers were different and were related to and confined to non performance of supervisory duties and control only. However, on deeper scrutiny, this argument has lost much of its shine.

[25] A comparative table shows that the allegations against present respondents and aforesaid officers were regarding violation of following provisions of standing order:-

Relating to respondents	**Relating to Officers**
31. MISCONDUCTS:	**A. MISCONDUCT**
31(4): Theft, fraud or dishonesty in connection with the Corporation's business or property or theft of	1. .....fraud, forgery, embezzlement, misappropriation, dishonesty in connection with the business or

another workmen's property within the premises of the Corporation. 31(5): Habitual negligence or neglect of work. 31(9): Commission of any act subversive or discipline or good behaviour on the Corporation's premises, or in the course of duty;------ affected the discipline or administration of the Corporation/establishment. 31(20): Wilful Falsification, defacement or destruction of any records of the Corporation. 31(38) Breach of any Standing Order or any law applicable to the establishment or any rules made thereunder.	property of the Corporation..... 6. Acting in any matter prejudicial to the interest of the Corporation. 10. Neglect of work or negligence in the performance of duty..... 11. Willful damage to any property of the Corporation..... or willful falsification, defacement..... of any record of the Corporation. 20. Breach of rules duly notified or violation of procedures laid down in connection with the Corporation's business. 22. Commissioning of any act subversive of discipline or good behaviour. 31. Violation of conduct rules made by the Corporation.

[Extracted from the charge sheet of Shri Subhas C. Das dated 29/12/2005 and the respondents]

[26] It appears that respondent ministerial employees were governed by Standing Orders whereas officers's were governed by Disciplinary and Appeal Rules. A comparative reading of the provisions reproduced hereinabove shows that the provisions allegedly violated by all of them are almost same.

[27] Shri Cama, learned Sr.Counsel has strenuously and even at the cost of repetition contended that the present respondents were the actual persons responsible who have altered the cheques whereas the officers only failed to stop the said illegal practice adopted by the respondents. Thus, officers are merely responsible for not exercising "control" and "supervision" properly. Had it been so, in the light of aforesaid judgments of Supreme Court, there would have been no difficulty in interfering with the order of learned Single Judge. However, a microscopic reading of charges levelled against the officers, enquiry officers report and punishment orders show that the officers were not found guilty related to lack of supervision/control

only.

[28] Indisputably, charge that in utter violation of standard procedure, delinquent employees accepted the cheques of co-operative bank is common against respondents and said officers. Whether case of officers is distinguishable is a relevant question. In the order of punishment of Shri. Subhas C. Das dated November, 10, 2008, the disciplinary authority considered the findings of enquiry officer in sufficient detail and opined as under:-

> "In utter disregard of the aforesaid guidelines, it was established during the enquiry that during the ERP period, Shri Subhas C Das accepted instruments issued by Coop. Banks and accounted the same in the name of other banks which were updated in ERP like New Bank of India and SBI, etc. The Presenting Officer had produced copies of the various **Cash Receipts prepared by the delinquent Officer**, wherein the t**ransaction originator was Shri Subhas C Das**, (Exhibit M4 – M19 dated 20/09/06) which clearly establishes that despite having adequate knowledge and information, the delinquent Officer had deliberately used the instrument code of other banks for the instruments which were actually drawn on M.P. Rajya Sahakari bank, with a view to conceal his aforesaid illegal/irregular acts.
>
> However, it is evident from the above that Shri Subhas C Das had failed to discharge his duties properly and made false and incorrect statements to his Supervisor with a deliberate attempt to mislead and conceal the aforesaid irregularities."
>
> (emphasis supplied)

[29] In specific terms it was held that even cash receipts were *prepared* by the delinquent officers namely Subhas C. Das. He was held to be "*transaction originator*". He was found to be deliberately using the instrument code of other bank for the instruments which were actually drawn on M.P. Rajya Sahakari Bank with a view to conceal his illegal/irregular acts. A clear finding was given that Subhas C. Das has made false and incorrect statements to his

supervisors with a deliberate attempt to mislead and conceal the aforesaid irregularities. In this view of the matter, we are unable to persuade ourselves with the argument of Shri. Cama that the officer was only charged and found guilty of non supervision or lack of control.

[30] Coming to the case of another officer Shri Prateek Katware, it is apt to mention that in order dated 5/11/2008, the disciplinary authority considered the findings of enquiry officer in great detail. It was found as under:-

> "Shri Prateek Katware also **prepared cash receipts** using erroneous codes of other banks though the instruments were drawn on Co-op. Banks in utter disregard of the Corporation's Policy.
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> Shri Prateek Katware did not attempt to bring out the aforesaid irregularities into light by pointing out the same to his supervisors which **clearly gives an inference regarding his role and connivance with others in facilitating the dealers to fraudulently avail unauthorized credit.** It is evident from the above that Shri Prateek Katware had failed to discharge his duties properly and used erroneous codes in JDE while preparing CRs and generating BDS with a deliberate attempt to mislead and conceal the aforesaid irregularities and hence his aforesaid plea of non connivance/ignorance in respect of the financial irregularities at Manglia Depot are devoid of any merit."
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> (emphasis supplied)

[31] Pertinently, against this officer also there exists a specific finding that he had prepared cash receipts using erroneous codes deliberately, fraudulently and with connivance, facilitated the dealers to avail unauthorized credit. The specific defence of Shri Katware regarding non connivance/ignorance was found to be devoid of substance. All the charges levelled against Shri Katware vide charge sheet dated 29/12/2005 were found to be proved. He was dealt with leniently on the ground that he is an officer of young age.

[32] Shri Alok Shrivastava is another officer against whom the allegation is that he violated provisions of the Disciplinary and Appeal Rules. The charges against this officer is also found to be proved.

[33] In view of aforesaid charges of violation of Discipline and Appeal Rules, findings of enquiry officer and acceptance by disciplinary authority, it is clear that the argument of appellants that the allegations against officers were only about lack of "supervision" or "control" is wholly unacceptable. Putting it differently, the allegations against officers were also relating to lack of integrity, fraudulent activity, connivance, ignorance etc. In addition, Subhas C. Das was even held to be *"transaction originator"*. Inspite of this, Shri Das and Shri Katware were inflicted with small punishments on the basis of their "young age". Shri Patne, learned counsel during the course of hearing pointed out that present respondents were much younger in age than the said officers. This contention of Shri Patne was not refuted by the other side.

[34] In view of foregoing analysis, it is clear like noon day that the charges levelled and proved against the present respondents and the officers are arising out of same transactions and are almost similar in nature. An officer must shoulder higher responsibility qua subordinate ministerial employee. If an officer who is held to be *"transaction originator"* is dealt with leniently by incorrectly treating him to be a person of "young age", and respondents were inflicted with severe punishment of dismissal from service, it certainly shocks the consicence of the Court. Hence, we are unable to hold that learned Single Judge has committed any error in holding that respondents were subjected to discriminatory treatment in the matter of imposition of punishment and the punishment of dismissal imposed on them was shockingly disproportionate. In ***B.C.Chaturvedi*** (supra) it was held

that if punishment is shockingly disproportionate, Court can certainly interfere with the punishment order. Same view is taken by Apex Court in ***Apparel Export Promotion Council Vs. A.K.Chopta (1999) 1 SCC 759***, ***Union of India Vs. Narain Singh (2002) 5 SCC 11***, ***State of U.P. Vs. Jaikaran Singh (2003) 9 SCC 228***, ***Regional Manager, Rajasthan SRTC Vs. Sohan Lal (2004) 8 SCC 218***, ***V. Ramana Vs. A.P.SRTC (2005) 7 SCC 338***, ***State of Meghalaya Vs. Mecken Singh N. Marak (2008) 7 SCC 580***, ***Kendriya Vidyalaya Santhan Vs. J. Hussain (2013) 10 SCC 106***, ***Union of India Vs. P. Gunasekaran (2015) 2 SCC 610***, ***Krishna District Coop. Central Bank Ltd. Vs. K. Hanumantha Rao (2017) 2 SCC 528*** and ***Pravin Kumar Vs. Union of India (2020) 9 SCC 471***.

Regarding reinstatement & other benefits:-

[35] The ancillary question is whether while rightly setting aside the punishment of dismissal and while remanding the matter for reconsideration, the learned Single Judge was justified in directing reinstatement with back wages. We do not think learned single Judge followed right course. In a matter of this nature where punishment of dismissal is set aside and matter is remanded back to the disciplinary authority to impose any other punishment (mentioned in para 17 of impugned judgment) the only course open to the learned Single Judge was to observe that the substituted penalty imposed by the disciplinary authority shall take place of punishment of dismissal from due date and all benefits arising out of said substituted punishment will ensue. To this extent, we find considerable force in the argument of learned counsel for appellants that learned Single Judge has gone wrong in directing reinstatement with salary, increments and other benefits. These benefits will depend upon the nature of substituted punishments. We find support in our view from ***(2015) 2 SCC 610***

Union of India and Ors. Vs. P. Gunasekaran. Para 25 reads thus:-

> "25. The last contention is with regard to date of effect of the punishment. According to the respondent, even assuming that compulsory retirement is to be imposed, it could be only with effect from the date of order viz. 28-2-2000. We are unable to appreciate the contention. The respondent stood dismissed from service as per order dated 10.6.1997. It was that punishment which was directed to be reconsidered. Consequent thereon only, the punishment was altered/substituted to compulsory retirement. Necessarily, it has to be from the date of dismissal from service viz. 10-6.1997."
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> (emphasis supplied)

[36] So far judgment of Apex Court in ***Managing Director, Uttar Pradesh Warehousing corporation & another Vs. Vijay Narayan Vajpayee (1980) 3 SCC 459*** is concerned, it will be of no assistance to appellants in view of above findings wherein we have held that substituted punishment will decide the other benefits arising thereto. Hence, this judgment cannot be pressed into service. Even otherwise, in para 18 of this judgment, the Apex Court opined that High Court should not "ordinarily" grant back wages.

[37] Shri L.C. Patne, learned counsel during the course of arguments urged that learned Single Judge failed to interfere on the procedural part of enquiry which was bad in law. Suffice it to say that respondents have not assailed the order of learned Single Judge. These aspects cannot be gone into in the writ appeals filed by Corporation.

[38] In view of the foregoing analysis, the order of learned Single Judge dated 7th December, 2017 to the extent findings of enquiry were held to be perverse, back wages and other consequential benefits were granted to respondents is set aside. The substituted punishment imposed by disciplinary authority shall govern the financial and other

benefits to the respondents employees from due date. Rest of the findings given by learned Single Judge are upheld. The Disciplinary Authority shall take final decision regarding punishments within 30 days from the date of communication of this order.

[39] The writ appeals are **partially allowed** to the extent indicated above.

(Sujoy Paul)
Judge

(Shailendra Shukla)
Judge

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