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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 2nd OF FEBRUARY, 2023**

WRIT PETITION No. 14961 of 2013

BETWEEN:-

**SHAIENDRA RAJPUT S/O LATE SHRI NANHE SINGH
RAJPUT, AGED ABOUT 34 YEARS, FOREST GUARD,
BEAT HARRADHANA, R/O WARD NO. 33, H.NO. 339,
VIVEKANAND WARD KALPATHA, BETUL (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI A.S. HUSSAIN - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
SECRETARY, DEPARTMENT OF FOREST,
MANTRALAYA, VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. CHIEF CONSERVATOR OF FOREST, NORTH
BETUL (GENERAL) FOREST DIVISION, BETUL,
DISTRICT BETUL (MADHYA PRADESH)**
- 3. DIVISIONAL FOREST OFFICER, NORTH BETUL
(GENERAL) FOREST DIVISION, BETUL, DISTRICT
BETUL (MADHYA PRADESH)**
- 4. THE ENQUIRY OFFICER, SUB DIVISIONAL
OFFICER, BETUL, DISTRICT BETUL (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI PIYUSH BHATNAGAR - PANEL LAWYER)

.....

*This petition coming on for hearing this day, the court passed the
following:*

ORDER

This writ petition under Article 226 of the Constitution of India is filed by

the petitioner being aggrieved of order of termination dated 28.03.2012 (Annexure P-2) vide which petitioner's services were dispensed with on finding the charges proved in Departmental Enquiry and he was accordingly, dismissed from service. This order was passed by the Divisional Forest Officer, North Betul (General) Forest Division, Betul (M.P.) on 28.03.2012 against which petitioner had preferred an appeal to the Chief Conservator of Forest which too came to be decided and dismissed vide order dated 05.03.2013 (Annexure P-1).

2. Shri A.S. Hussain, learned counsel for the petitioner submits that petitioner was appointed as 'Beat Guard' vide order dated 05.03.2009. He was placed under suspension on 19.07.2010 and was terminated from service on 28.03.2012.

3. It is fairly submitted that he is only on the question of proportionality of punishment, inasmuch as, charges were found to be proved. He places reliance on a decision of a coordinate Bench of this Court at Gwalior in **Ram Singh Gamad Vs. The State of Madhya Pradesh and others** (Writ Petition No.4231 of 2007, decided on 14.09.2022), whereby the coordinate Bench of this Court quashed the order of punishment of termination and remanded the matter to the disciplinary authority to decide the question of punishment afresh.

4. Shri Piyush Bhatnagar, learned Panel Lawyer for the State, in his turn, submits that the charges against the petitioner directly hinges on his dishonest intention and thus doubtful integrity, inasmuch as, first charge is that petitioner was responsible for illegal felling of 43 trees under his beat, causing loss of Rs.1,21,508/- to the State. Second charge is that it was found that two illegal aara machines were established for illegal felling and processing of teak wood but, petitioner did not brought this fact to the notice of the higher authorities. It is submitted that under such facts and circumstances, no indulgence is required

when findings in the Departmental Enquiry are not challenged either to be perverse or are contrary to the record.

5. It is submitted by the learned counsel for the petitioner that charge No.1 in regard to illegal felling of trees, is not made out, inasmuch as, vide Annexure P-15, petitioner submits that he has already deposited cut trees but, that is not considered in the departmental enquiry.

6. After hearing learned counsel for the parties and going through the record, it is well settled law that scope of interference in the quantum of punishment or in the matter of Departmental Enquiry is limited. The Supreme Court in **Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, AIR 1997 SC 1030**, so also in case of **Tripura Gramin Bank and others Vs. Tarit Baran Roy and another, (2001) 10 SCC 70**, has held that High Court in cases of Departmental Enquiries and findings recorded therein, does not exercise the powers of appellate Court/authority. The jurisdiction of the High Court in such cases, is very limited, for instance, where it is found that a domestic enquiry is vitiated because of non observance of principles of natural justice, denial of reasonable opportunity; or findings are based on no evidence and / or the punishment is totally disproportionate to the proved misconduct of an employee.

7. It is held in **State of Punjab Vs. Surjit Singh Conductor, (1996) 8 SCC 350**, that imposition of punishment is within the power and jurisdiction of the authority and civil Courts have no jurisdiction to substitute the punishment imposed by such authority.

8. As far as the issue of proportionality is concerned, order of coordinate Bench in **Ram Singh Gamad (supra)** is of no assistance to the petitioner

because in that case, coordinate Bench reached to a finding that the fact alleged against the petitioner therein was that he had issued posting orders of Shiksha Karmis, which were in the nature of transfer and the petitioner was having no jurisdiction to Shiksha Karmis. It is also mentioned that one of the orders of attachment was recalled by the petitioner. Thus, coordinate Bench observed that neither there is any allegation nor any finding to the effect that the posting / attachment orders were issued with dishonest intentions, where the honesty / integrity of the petitioner was not at stake and only his administrative action was under challenge, out of which, one order of attachment was already withdrawn by the petitioner much prior to initiation of departmental enquiry, Court held that dismissal from service of the petitioner is disproportionate to the misconduct committed by the petitioner.

9. However, in the present case, facts are different. There are direct allegations of illegally felling of trees and not informing the authorities in regard to operation of two aara machines. When these facts are taken into consideration and examined in the light of law laid down by the Supreme Court in the case of **Union of India v. K.G. Soni, (2006) 6 SCC 794** has held as under:-

"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 *Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)]* 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 the decision-making process and not the decision.

15. To put it 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 the 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.

16. The above position was recently reiterated in *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain* [(2005) 10 SCC 84 : 2005 SCC (L&S) 567].

10. Similarly, on the aspect of proportionality, the Supreme Court in the case of **Om Kumar v. Union of India, (2001) 2 SCC 386**, has held as under:-

"70. In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of India* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was 'shockingly' disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in *Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806].

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14

applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

11. Similarly, the Supreme Court in the case of **Mithilesh Singh v. Union of India, (2003) 3 SCC 309** has held as under:-

"9. The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. Reference may be made to a few of them."

(See: B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S)80 : (1996) 32 ATC 44] , State of U.P. v. Ashok Kumar Singh [(1996) 1 SCC 302 : 1996 SCC (L&S) 304 : (1996) 32 ATC 239], Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Union of India v. J.R. Dhiman [(1999) 6 SCC 403 : 1999 SCC (L&S) 1183] and Om Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039].)

12. The Supreme Court in the case of **Moni Shankar v. Union of India, (2008) 3 SCC 484**, has held as under:-

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the

premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.

(See State of U.P. v. Sheo Shanker Lal Srivastava [(2006) 3 SCC 276 : 2006 SCC (L&S) 521] and Coimbatore District Central Coop. Bank v. Employees Assn. [(2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68])."

13. The Supreme Court in the case of **Kerala State Beverages (M&M) Corpn. Ltd. v. P.P. Suresh, (2019) 9 SCC 710** has held as under:-

"C. Judicial Review and Proportionality

26. The challenge to the Order dated 7-8-2004 by which the respondents were deprived of an opportunity of being considered for employment is on the ground of violation of Articles 14, 19 and 21 of the Constitution of India. Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] held that the interference with an administrative action could be on the grounds of "illegality", "irrationality" and "procedural impropriety". He was of the opinion that "proportionality" could be an additional ground of review in the future. Interference with an administrative decision by applying the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] principles is restricted only to decisions which are outrageous in their defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it.

27. Traditionally, the principle of proportionality has been applied for protection of rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

28. In **Om Kumar v. Union of India [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039 : AIR 2000**

SC 3689], this Court held as follows: (SCC pp. 399-400, para 28) as follows: (SCC pp. 399-400, para 28).

"28. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality."

(emphasis in original)

In this case, M. Jagannadha Rao, J. examined the development of principles of proportionality for review of administrative decision in England and in India. After referring to several judgments, it was held that the proportionality test is applied by the Court as a primary reviewing authority in cases where there is a violation of Articles 19 and 21. The proportionality test can also be applied by the Court in reviewing a decision where the challenge to administrative action is on the ground that it was discriminatory and therefore violative of Article 14. It was clarified that the principles of *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] have to be followed when an administrative action is challenged as being arbitrary and therefore violative of Article 14 of the Constitution of India. In such a case, the Court would be doing a secondary review.

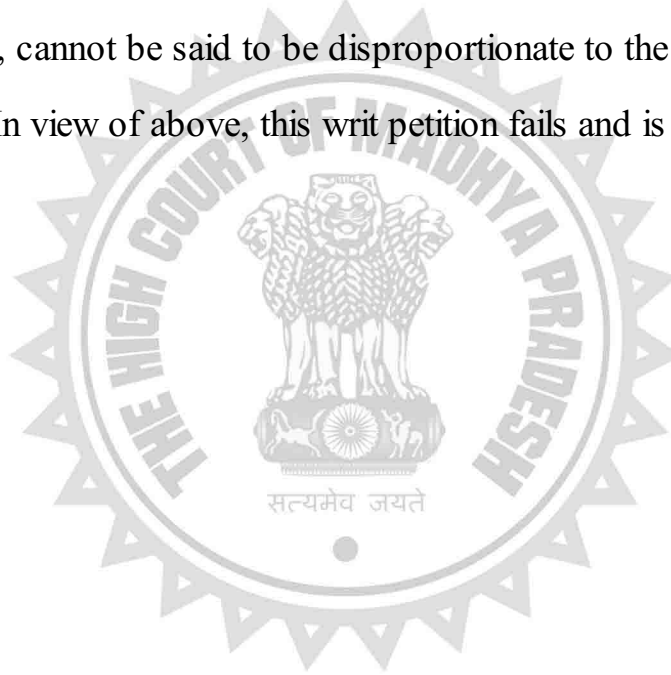
29. While exercising primary review, the Court is entitled to ask the State to justify the policy and whether there was an imminent need for restricting the fundamental rights of the claimants. In secondary review, the Court shows deference to the decision of the executive.

30. Proportionality involves "balancing test" and "necessity test" [*Coimbatore District Central Coop. Bank v. Employees Assn.*, (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68] Whereas the

balancing test permits scrutiny of excessive and onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the necessity test requires infringement of human rights to be through the least restrictive alternatives. [Judicial Review of Administrative Action (1955) and Wade & Forsyth: Administrative Law (2005); Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68]."

14. It is evident that when integrity of the petitioner was in question and the misconduct has been proved in the Departmental Enquiry then, in the matter of such case of dishonest intention impinging on the integrity, punishment of dismissal, cannot be said to be disproportionate to the alleged misconduct.
15. In view of above, this writ petition fails and is dismissed.

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(VIVEK AGARWAL)
JUDGE