DR. SWARANJIT SINGH v. CENTRAL ADMINISTRATIVE TRIBUNAL CHANDIGARH , (2022-2)206 PLR 001,

PUNJAB AND HARYANA HIGH COURT

Before: Justice G. S. Sandhawalia and Justice Vikas Suri.

DR. SWARANJIT SINGH – Petitioner.

Versus

THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH and others – Respondents.

Civil Writ Petition No.8839 of 2019 (O&M)

(i) Service matter – Wilful misconduct and negligence simplicitor are not inter changeable terms and have different connotations in law – Neither the Adhoc Disciplinary Authority nor the Appellate Authority nor the Tribunal has taken into consideration the past service record of the petitioner or the law settled by the Apex Court, while adjudicating upon the proportionality aspect of the penalty inflicted – Imputed misconduct was the only one happening during the scientific career of the petitioner over the last 3 decades – Incident has happened at the fag end of the career of the petitioner and the punishment of removal of service awarded to the petitioner would be highly disproportionate to the misconduct for which the petitioner was charged, particularly, in view of the fact that the Disciplinary Authority of the same respondent-institute, has adopted different yard-stick for other regular employees in somewhat similar situation – Perusal of the inquiry report and the order imposing penalty have found the petitioner guilty of misconduct on the ground that the petitioner being at a responsible position, was duty bound to look into the work of the first author though no finding has been arrived at that the said default was wilful in character – There is no mention of any material in the report of the Adhoc Disciplinary Authority or the Appellate Authority to indicate that the misconduct imputated to the petitioner was an act of wilful design or that the petitioner had the intention (*mens rea*) to do so and that it was not a case of negligence – It was incumbent upon the Disciplinary Authority to also record a specific finding that the misconduct was wilful in character, while arriving at the conclusion that the petitioner was guilty of the misconduct imputated – Punishment – Doctrine of proportionality – It would be extremely harsh and would rather cause injustice to the petitioner in wiping out his entire retiral benefits, which have accrued to him over a span of 3 decades – Punishment of penalty of removal from serviceis disproportionate to the misconduct imputed in the absence of a categoric finding that the misconduct was wilful in character and is sufficient to shock the conscience of the Court – Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 11.

[Para 27, 28, 29, 31]

(ii) Service matter – Punishment – Different yard-stick for different regular employees – Technical papers – Petitioner co-author alongwith others – Complaint of plagiarism – Paper withdrawn/retracted – For similarly placed co-author of another paper punishing Authority had returned a finding that the paper in question has been plagiarized and published, owing to the negligence of its author Dr. CRS and came to the conclusion that since he had already retracted the paper, the said authority was inclined to take a lenient view and felt that the ends of justice would be met if penalty of 'Censure' was imposed – Petitioner inflicted the penalty of removal from service – Disciplinary Authority should not have applied a different yard- stick for different regular employees, in similar circumstances – Very hard for us to digest the gross variance in choosing not to departmentally proceed against some employees and on the other hand awarding extreme punishment to others, holding similar posts, involving discharge of similar duties, in somewhat similar circumstances imputed, in view of Article 14 of the Constitution of India. [Para 31]

(iii) Service matter – Retiral benefits – Retiral benefits are not just what one accumulates during the length of service to be utilised in the mature years of one's life but they also are earned for the dependant family members to provide them financial security even after the demise of the retired employee. [Para 31]

Cases referred to:

1. 2007 PLRonline 0100 (SC), *Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn.*
2. (2010) 11 SCC 314, *Charanjit Lamba v. Commanding Officer, Army Southern Command*
3. (2016) 6 SCC 303, *Delhi Police, through Commissioner of Police and others v. Sat Narayan Kaushik*
4. (2007) 4 SCC 566, *Inspector Prem Chand v. Govt. of NCT of Delhi*

Mr. D.S. Patwalia, Senior Advocate with *Mr. B.S. Patwalia*, for the petitioner. *Mr. I.S. Sidhu*, for respondent Nos. 3 and 4.

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Vikas Suri, J. – *(Reserved on 20.12.2021. Pronounced on 18.02.2022)* **–** The present writ petition under Articles 226/227 of the Constitution of India, has been preferred to challenge the judgment dated 20.02.2019 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, dismissing the Original Application (OA No.060/377/ 2017), whereby the termination order dated 04.07.2016 (Annexure A-14) of the petitioner and the appellate order dated 22.02.2017 (Annexure A-18) thereagainst were assailed, which have also been challenged herein.

2. The facts, in brief, are that the writ petitioner on 01.01.1987 joined the office of respondent No.4-Institute, as Scientist 'B'. Thereafter, on 01.01.1992, the petitioner was promoted to the post of Scientist 'C'. Subsequently, the petitioner was promoted as Scientist 'E-1' and then as

3. Scientist 'E-2' w.e.f. 01.01.1997 and 21.01.2002, respectively. On 21.01.2008, the petitioner was further promoted as Scientist 'F' and was placed as Senior Principal Scientist with respondent No.4-Institute.

4. That on 10.11.2013, an email was received from one Dr. Jim Spain of the Georgia Institute of Technology, Atlanta, Georgia, USA, addressed to respondent No.4 i.e. Director, Institute of Microbial Technology, Chandigarh, wherein the attention was drawn to an incident of potential academic misconduct related to several papers published recently by Dr. Fazlurrahman Khan and his colleagues at IMTECH. The said email had highlighted and raised the concern to investigate four instances/papers published recently by Dr. Fazlurrahman Khan as the first author. It was stated in the said email that on review of publication of Dr. F. Khan, several papers were based on ideas taken from the students of Dr. Jim Spain of Georgia Institute of Technology, Atlanta, Georgia, USA and/or from the research performed by Dr. F. Khan while working for Georgia Tech. The said email also gave instances of impossible results given in different papers/publications, strongly suggesting that the said results cannot be supported with actual data. The concern was raised that publication of the papers by Dr. F. Khan constitutes misconduct and misappropriation of intellectual property of the Georgia Institute of Technology and the results in the said papers may not be supported by verified data. In all the instances highlighted in the said email, Dr. F. Khan was the first author with other co- authors in various combinations. After the fact finding committee's report, 6 papers published were being looked into. A total of 8 authors combined in smaller groups published 6 papers, Dr. F. Khan being the first author in all of them.

5. On receipt of the said email, the petitioner took steps regarding the retraction of the published papers referred to in the email dated 10.11.2013, which action was approved by the Competent Authority and conveyed vide communication dated 29.01.2014 (Annexure A-9). Pursuant to the said request to the Publishing Houses, admittedly, the scientific papers were retracted that had been published by March, 2014.

6. On 10.11.2014, a charge-sheet was served upon the writ petitioner, wherein he was alleged with misconduct and accused of using fake and fabricated data while publishing the afore-mentioned scientific papers. Reply to the charge-sheet dated 20.11.2014 was filed by the petitioner, wherein a stand was taken that the writ petitioner was only supervising the research programme and was not the lead author and that the raw data was wrongly supplied by Dr. F. Khan. It was also highlighted that the papers that were published, wherein Dr. F. Khan was the first author, had in fact been retracted by the Publishing Houses who had been immediately intimated for retraction as soon as the email was received from Dr. Jim Spain. Much stress in the reply was laid to the fact that in the papers complained of, there were other co-authors as well against whom no action was taken and he was being made a scapegoat by the department. The said reply was rejected and inquiry

proceedings were initiated against the petitioner, which culminated in the Inquiry Report dated 11.04.2016 (Annexure A-13).

7. On 04.07.2016, the Adhoc Disciplinary Authority inflicted the penalty of removal from service which shall not be a disqualification for future employment under the Government. The order dated 04.07.2016 (Annexure A-14) inflicting penalty, took into consideration that Dr. F. Khan was working on temporary basis as Research Associate in a Project of which petitioner was the Project Incharge (PI) and as such, it was his responsibility that the experiments shown in the manuscripts were not only performed but reproducible and reliable. Retraction of the papers by the petitioner, after seeking due approval from the competent authority, which was communicated by the controller of Administration of the respondent- institute vide communication dated 29.01.2014, was also taken against the petitioner as admission that the raw data referred in the said publications was incorrect.

8. The petitioner preferred an appeal on 18.07.2016 (Annexure A-15) to the Director General of the respondent-institute against the order inflicting penalty. As the appeal was not being decided and was pending for a long time, the petitioner approached the first respondent by way of OA/060/00077/2017 seeking directions to the Appellate Authority to finally decide the appeal in a time bound manner. The Tribunal, vide order dated 25.01.2017 (Annexure A-17), disposed of the said Original Application (OA) with the direction to the Appellate Authority to decide the appeal preferred by the petitioner, by passing a speaking/reasoned order within a period of two months from the date of receipt of certified copy of the order. Pursuant to the said order, the Appellate Authority rejected the appeal vide order bearing No.15-45(28)/2016-Vig. dated 22.02.2016 (Annexure A-18). In fact, the correct date of the said order is stated to be 22.02.2017, as stated in Annexure R-1 with the reply dated 16.12.2021 filed by respondent Nos.3 and 4 before this Court. The Appellate Authority also rejected the plea of the petitioner that before the papers were published, they went through the expert body of scientists while referring to the Project and Technology Management (PTM) form and the said papers were also on display on the notice board for 3 days. The Appellate Authority held that the petitioner failed to apply the scientific record and ensure the authenticity of the data being incorporated in the manuscript. The plea of no action having been taken by IMTECH on the authors and first author of retracted papers in the previous years, was not accepted by stating that the petitioner was trying to dilute the issue and it was concluded that as such there was no ground to modify/reduce the penalty imposed by Adhoc Disciplinary Authority and the same was confirmed.

9. Thereafter, the petitioner raised challenge to the orders dated 04.07.2016 and 22.02.2016 (correct date should have been 22.02.2017) by instituting OA No.060/377/2017.

10. Learned Tribunal dismissed the OA vide the order dated 20.02.2019. It was noticed therein that Dr. F. Khan being primarily responsible for violating the disclosure agreement with the Georgia University and the said agreement was between Dr. F. Khan and Georgia University. But the petitioner being a co-author and responsible for supervising the activity of the research group and liaising with journals, was fully responsible for the non conduct of research work in IMTECH before the articles were published, culminating in authenticating

conclusions drawn in the said publications. With regard to the plea raised on parity with others like Dr. R.S. Jolly, Mr. Batra, Mr. J. Pandey and Mr. C.R. Suri against whom no action was taken, the respondents' plea was recorded that except Mr. Batra, all other persons afore-mentioned were Ph.D students. It is clarified that Mr. Batra was only a trainee without a stipend for a short duration. It was also noticed that Dr. Suri, the Chief Scientist, was proceeded against departmentally and as such, the allegations of discrimination urged by the petitioner were not tenable. It was, thus, concluded that the responsibility of the petitioner, as a co-author, would be a primary fact, which cannot be ignored.

11. It may be noticed that the Tribunal has not recorded any discussion with regard to the proportionality of penalty but has concluded that the punishment was awarded while taking into account the gravity of the delinquent act and violation of academic integrity.

12. Aggrieved against the order dated 20.02.2019 passed by the Central Administrative Tribunal, Chandigarh Bench (Annexure P-1), petitioner filed the present writ petition. Vide order dated 02.04.2019, this Court had issued notice of motion on the limited point of exploring the possibility of lesser punishment keeping in view the 30 years long service of the petitioner. The said order reads,

"Noticing that 30 years service of the petitioner will be affected by virtue of relieving order, issue notice of motion limited only to the extent of exploring the possibility of a lesser punishment for 24.09.2019.

At this stage, Mr. Arvind Moudgil, Senior Counsel, Govt. of India accepts notice on behalf of Union of India.".

13. Pursuant to the aforesaid order, respondent Nos. 3 and 4 filed reply dated 16.12.2021 appending therewith Annexure R-1, which are proceedings dated 17.08.2021 and email dated 19.08.2021 (Colly.). A perusal of the proceedings (Annexure R-1), reveals that correct date of the order passed by the Appellate Authority against the penalty imposed by the Adhoc Disciplinary Authority is 22.02.2017 (and not 22.02.2016 as depicted on the said order). It has also been recorded therein that as the appeal against the penalty order dated 04.07.2016 was decided on merits, there does not appear to be any need for any further interference. In other words, the aforesaid respondents have declined to go into the aspect of exploring the possibility of lesser punishment as recorded in the order dated 02.04.2019, passed by this Court while issuing notice of motion.

14. Heard learned counsel for the parties and with their able assistance perused the materials available on record.

15. Learned Senior Counsel for the petitioner has strenuously urged that the petitioner has been singled out and has been meted out a different treatment than the other co-authors with Dr. F. Khan as the first author, while dealing with imputation of misconduct regarding the retracted publications. While referring to the letter dated 10.11.2013 (Annexure A-6) received from Dr. Jim Spain, Georgia Institute of Technology, Atlanta (USA) to the Director, IMTEC, four investigations had been asked for. Attention has been drawn to the chart given in the information submitted to the Inquiry Authority (IA) by the petitioner vide the

communication dated 05.02.2015 (Annexure A-12). The said chart is reproduced hereunder:

No.	Matters Raised	Location in the Letter	Authors / Signatories
1	IMTECH Dissertation of Dr. F. Khan: Problem with his Ph. D. dissertation at IMTECH showing "*Impossible Results",* data in Thesis is fraudulent.	Page 2, para 7 Page 3, para 1	Fazlurrahman Khan, certified by Dr. R.S. Jolly as Supervisor, IMTECH.
2	IMTECH publication with Dr. Khan, as the first author. Dr. Jim Spain notes "*Impossible Results"* in Dr. F. Khan's paper on Atrazine degradation. *Letters in Applied Microbiology 49:721- 729*	Page 3, para 2	Fazlurrahman Khan, M. Batra, J. Pandey, C.R. Suri, R.K. Jain (all from IMTECH)
3	Publication of Dr. F. Khan with 3 IMTECH and other authors. Dr. Jim Spain notes the "*Impossible Results"* of degradation of Dichloroaniline isomers. 2011 *Microbiology 157(3):721-726*	Page 3, para 2	Fazlurrahman Khan, (other authors: J. Pandey, G. Pandey, R.K. Jain, all 3 associated with IMTECH earlier)
4	Papers with had no authentic or genuine data with Dr. Khan as the first author. Requested for retraction of papers. This is the subject matter of this Inquiry.	Page 3, para 3 Page 5, list of 6 papers.	Fazlurrahman Khan, various combinations of 6 other Authors, Dr. SS Cameotra.

16. From the above, it is sought to be pointed out that no action had been taken against the other co-authors with Dr. F. Khan (as the first author), but for proceeding against the petitioner, as such, an argument of discrimination has been sought to be raised therefrom.

17. It has been argued that for similar imputation of misconduct, the Disciplinary Authority has taken different views depending upon who is the delinquent officer and as such, the action against the petitioner is discriminatory in nature and thus, liable to be set aside. To substantiate this argument, our attention has been drawn to the punishment order dated 24.09.2018 along with the forwarding letter dated 01.10.2018 (Annexure MA-2). In the said order, an earlier instance of Dr. C.R. Suri, Chief Scientist has been given, who is also a co-author of one of the published papers in question, as mentioned at serial No.2 in the chart above and now no action has been taken against the said regular employee. On the basis of parity, an argument has been raised that in the said case, the imputation of misconduct was that there was duplication of data in the paper submitted with reference to the US Collaborator, North Western University, Illinois, US(NWU). It was also imputed therein that figures and text published in the Journal, Applied Physics Letters, had been plagiarized and published in the Journal of MCF, owing to the negligence of its corresponding author i.e. Dr. C.R. Suri, who did not exercise the due diligence and care in ascertaining the status. On the aforesaid being highlighted by the Editorial Board of MCF Journal, Dr. Suri had written for retraction of the said paper. The Punishing Authority after noticing the relevant facts, came to the conclusion that since Dr. Suri had already retracted the paper, the said authority was inclined to take a lenient view and felt that the ends of justice would be met if penalty of 'Censure' is imposed. It may also be noticed here that the Punishing Authority had returned a finding that the paper in question has been plagiarized and published,

owing to the negligence of its author Dr. C. R. Suri, who did not exercise due diligence and care before he sent the said papers to the Journal of MCF. The relevant portion of the order dated 24.09.2018 reads as under:

"NOW THEREFORE, the VP, CSIR has considered the representation dated 17.05.2018 of Dr. C.R. Suri and has passed an order that– "I have carefully gone through the reply/representation dated 17.05.2018 of the Charged Officer, Dr. C.R. Suri, Chief Scientist, CSIR- IMTECH and the documents on record and found that Dr. Suri had published the paper entitled "A Novel bacterial isolate Stentrosphosmonas maltophila as a living factory for synthesis of gold nanoparticles" in Scientific Journal of Microbial Cell Factories (MCF). The said paper had similar figures and text as that of the paper entitled 'Facile biosynthesis of phosphate caped gold nanoparticles by a bacterial isolate Stentrosphosmonas maltophila' published earlier in the Journal, Applied Physics Letters. Thus the said paper had been plagiarized and published in the Journal of MCF, owing to the negligence of its author Dr. Suri who did not exercise due diligence and care before he sent the paper to MCF.

Dr. Suri in his representation inter-alia contended that the papers published in the Journals are the research outcome of his work that was carried out under out joint Indo-USA collaborative research programme with Prof. G.S. Shekhawat, NWU, IL, USA. He has contended that he had not done this deliberately but happened due to the communication gap. He further pleaded that once it was brought to the notice he had retracted the paper as his own. However, he has not denied the allegations against him. The publication of same paper in two different Journals is an act of self-plagiarism, which is also a scientific impropriety and violation of scientific ethics. He cannot be absolved on the ground of communication gap and on the basis of his other meritorious work done by him. As a scientist, he has to take utmost care while dealing with publication of such important research outputs. Since he had already retracted the paper, I am inclined to take a lenient view and I feel that the end of justice would be met if penalty of 'Censure' imposed upon him.

I order accordingly." [emphasis supplied]

18. The next limb of the argument raised is that a perusal of the penalties provided under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'CCS Rules, 1965') goes to show that 'Censure' is the least of the punishment given under the head "Minor Penalties" and the one inflicted upon the petitioner is the most severe but one of the punishment under the head "Major Penalties". A perusal of the proviso to Rule 11 would also go on to show that the penalty mentioned in clause (viii) is to be given where imputation of very serious misconduct and misdemeanours like possession of assets disproportionate to source of income or acceptance from any person of any gratification, other than the legal remuneration as a motive or reward for doing or forbearing to do any official act is established. Rule 11 of the CCS Rules, 1965 reads as under:

"PART V – PENALTIES AND DISCIPLINARY AUTHORITIES

Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

(i) *Minor Penalties* **–**

(ii) censure;

(iii) withholding of his promotion;

(iv) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iii a) reduction to lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

(v) withholding of increments of pay;

(vi) *Major Penalties* –

(vii) save as provided for in clause (iii) (a), reduction to a lower stage in the timescale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(viii) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period –

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay , grade, post or service;

(ix) compulsory retirement;

(x) removal from service which shall not be a disqualification for future employment under the Government;

(xi) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Provided that, in every case in which the charge of possession of assets disproportionate to

known-sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

Explanation.—The following shall not amount to a penalty within the meaning of this rule, namely :-

(vii) (i) to (vi) ……. xxx xxx …….

(viii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

to (ix) ……. xxx xxx ”

19. It has also been urged on behalf of the petitioner that the Adhoc Disciplinary Authority relied on the inquiry report, wherein it has been duly noticed that the petitioner had himself corresponded with the publishers and requested retraction of the papers. However, the observation that the petitioner being the Project Investigator (PI) and corresponding authority, he was duty bound to check the authenticity of the data vis-a-vis the experiment conducted in the lab and for the said lapse, has to bear the full responsibility, while recommending punishment.

20. It has also been submitted that the petitioner has rendered about 30 years of service with MTCC/IMTEC and was to superannuate on 31.01.2019. During his service, he not only had a clean record but had also brought several laurels to CSIR. Amongst that were over 130 publications/ papers, 30 book chapters, edited 2 books, had been Ph.D Guide for 7 students (awarded doctoral degree) and 6 then working as on 05.02.2015. It is further submitted that the petitioner received very high citation (CI:4333, h index 33) and Citation index is 5911, with one paper crossing 1055 citations alone. Petitioner was also the Editor of the book: NanoBioMedicince – Medical Nano Biotechnology, Studium Press, LLC, USA and his Chapter in INTECH, NY, USA was cited 7630 times. Further, on 70th Foundation Day of CSIR (26th September, 2012), two of his publications were adjudged ‘Best Publications’ of CSIR amongst 70 best publications by the DG, CSIR.

21. Per contra, learned counsel for the respondent-Institute (CSIR- IMTECH) has opposed the pleas raised on behalf of the petitioner. While referring to the reply filed to the OA, it has been urged that the petitioner was the Project Leader (P.L.) and no other regular employee of IMTECH was involved in the retracted publications.

22. On the factual aspect, reference to the affidavit of Vikram Singh, Controller of Administration, Institute of Microbial Technology, Chandigarh dated 08.01.2019 along with its Annexures MA-1 and MA-2 needs to be made here. A perusal of the record would go on to show that the said affidavit seems to have been filed pursuant to the information

sought by the Tribunal. Paragraph No.3 of the said affidavit reads as under:

“That a perusal of the statement MA-1 would show that except Dr. R.K.Jain, Dr. R.S. Jolly, Dr. C.R. Suri, all other persons mentioned therein were students, undergoing Ph.D. M. Batra was only a trainee without even a stipend for a very short duration. Dr. Suri, Chief Scientist was proceeded against departmentally on the complaint made by the applicant regarding a matter pertaining to the allegation of plagiarizing by Mr. Khan.

It is thus, submitted that the name of the applicant regarding being discriminated in the matter of departmental proceedings is not substantiated by the perusal of the statement in Annexure MA-1 and the Department proceeded/acted against all the individuals under the disciplinary authority of the department, who were found to have indulged in plagiarism.”

23. From the above, the stand of the contesting respondents that petitioner was the only regular employee co-author with Dr. F. Khan (as the first author) with regard to the publications in question stands demolished. In fact, a perusal of the document MA-1 with the aforesaid affidavit is an admission on behalf of the respondents that Dr. R.K. Jain, Dr. R.S. Jolly and Dr. C.R. Suri, all Chief Scientists, were regular employees of the respondent-Institute. The punishment order of Dr. C.R. Suri appended as M.A.-2 (Collectively) with the aforesaid affidavit has already been referred to and discussed hereinabove.

24. The Hon’ble Apex Court in *Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn.,*[1] 2007 PLRonline 0100,(2007) 4 SCC 669,while explaining the doctrine of proportionality, has observed as under:

“17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of proportionality”.

18. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that “proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [*Judicial Review of Administrative Action* (1995), pp. 601-05, para 13.085; *see also* Wade & Forsyth: *Administrative Law* (2005), p. 366.]

20. In *Halsbury's Laws of England* (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded"."

25. The Hon'ble Apex Court has also given a word of caution that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority and the jurisdiction of a writ Court or Administrative Tribunal is limited to find out whether the punishment is so outrageously disproportionate as to the suggestive of lack of good faith. The relevant observations in the matter of *Charanjit Lamba v. Commanding Officer, Army Southern Command,*[2] *(2010) 11 SCC 314*, read as under:

"19. That the punishment imposed upon a delinquent should be commensurate to the nature and generally of the misconduct, is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those form quality (*sic*) of a misdemeanour are entitled to claim but the same is recognised as being a part of Article 14 of the Constitution. It is also evident from the long line of decisions referred to above that the courts in India have recognised the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a writ court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith."

26. In the matter of *Delhi Police, through Commissioner of Police v. Sat Narayan Kaushik,*[3] (2016) 6 SCC 303,the Hon'ble Apex Court laid down as to what is required to be taken into consideration before interfering in the quantum of the punishment in an appropriate case. The relevant part of the judgment in that regard reads as under:

"15. Coming to the first two submissions of the learned counsel for the appellant, we are of

the view that the High Court, in exercise of its writ jurisdiction, has power to interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left, etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of the punishment."

27. A perusal of the record would further go on to show that neither the Adhoc Disciplinary Authority nor the Appellate Authority nor the Tribunal for that matter, has taken into consideration the past service record of the petitioner or the law settled by the Hon'ble Apex Court, while adjudicating upon the proportionality aspect of the penalty inflicted. It is also borne from the record that the imputed misconduct involving Dr. F. Khan, it was the only one happening during the scientific career of the petitioner over the last 3 decades. Moreover, it may also be noticed here that the said incident has happened at the fag end of the career of the petitioner and the punishment awarded to the petitioner would be highly disproportionate to the misconduct for which the petitioner was charged, particularly, in view of the fact that the Disciplinary Authority of the same respondent-institute, has adopted different yard-stick for other regular employees in somewhat similar situation. On the one hand, the Disciplinary Authority considered retraction of the publication as a mitigating factor to take a lenient view in the matter while imposing penalty of 'Censure' on one Dr. C.R. Suri, who is the same person, who was also a co-author with Dr. F. Khan (being the first author), which has been the bone of contention in the disciplinary proceedings against the petitioner. On the other hand, retraction of publications is given the colour of default having been established. With regard to penalty imposed upon the petitioner, it is sought to be justified on behalf of the contesting respondents with a feeble submission that in the present case, the petitioner had admitted his guilt before the Inquiring Authority. However, no such admission or any other material in that regard could be pointed out from the record. Admission of a fact, especially of misconduct imputed has serious consequences and as such, the same cannot be inferred or assumed from attending circumstances. An admission necessarily has to be conscious and categoric, more particularly if it is to form basis for penal action.

28. Thus, in view of the above, we are of the considered opinion that the Disciplinary Authority should not have applied a different yard- stick for different regular employees, in similar circumstances. Even otherwise, a perusal of the inquiry report and the order imposing penalty have found the petitioner guilty of misconduct on the ground that the petitioner being at a responsible position, was duty bound to look into the work of the first author though no finding has been arrived at that the said default was wilful in character.

29. Even otherwise, there is no mention of any material in the report of the Adhoc Disciplinary Authority or the Appellate Authority to indicate that the misconduct imputated to the petitioner was an act of wilful design or that the petitioner had the intention (*mens rea*) to do so and that it was not a case of negligence. Learned counsel for the respondent-institute could not refer to any thing to the contrary, from the material available on the

record. It was incumbent upon the Disciplinary Authority to also record a specific finding that the misconduct was wilful in character, while arriving at the conclusion that the petitioner was guilty of the misconduct imputated.

29. In the present case, no such finding of being wilful in character has been given. Wilful misconduct and negligence simplicitor are not inter changeable terms and have different connotations in law. In that regard reliance can be placed upon the judgment of Hon'ble Apex Court in *Inspector Prem Chand v. Govt. of NCT of Delhi,*[4] (2007) 4 SCC 566,the relevant portion of which reads as under:

"12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India* v. *J. Ahmed*[3] whereupon Mr Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11)

"*11*. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pearce* v. *Foster*[4]). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws* v. *London Chronicle* (*Indicator Newspaper*[5])]. This view was adopted in *Shardaprasad Onkarprasad Tiwari* v. *Divisional Supdt., Central Rly., Nagpur Division, Nagpur*[6] and *Satubha K. Vaghela* v. *Moosa Raza*[7]. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

'*Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct*'."

(emphasis supplied)

13. The Tribunal opined that the acts of omission on the part of the appellant were not a mere error of judgment. On what premise the said opinion was arrived at is not clear. We have noticed hereinbefore that the Appellate Authority, namely, the Commissioner of Police, Delhi, while passing the order dated 29-8-2003 categorically held that the appellant being a raiding officer should have seized the tainted money as case property. In a given case, what should have been done, is a matter which would depend on the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor."

30. No other point was urged by counsels for the parties.

31. In light of the above discussion, it is also very hard for us to digest the gross variance in choosing not to departmentally proceed against some employees and on the other hand

awarding extreme punishment to others, holding similar posts, involving discharge of similar duties, in somewhat similar circumstances imputed, in view of Article 14 of the Constitution of India. Even otherwise, in view of the peculiar facts and in the manner proceedings have been conducted by the respondent-Institute, it would be extremely harsh and would rather cause injustice to the petitioner in wiping out his entire retiral benefits, which have accrued to him over a span of 3 decades. As such, the punishment imposed upon the petitioner is disproportionate to the misconduct imputed in the absence of a categoric finding that the misconduct was wilful in character and is sufficient to shock the conscience of the Court. We cannot lose sight of the fact that retiral benefits are not just what one accumulates during the length of service to be utilised in the mature years of one's life but they also are earned for the dependant family members to provide them financial security even after the demise of the retired employee.

32. Resultantly, the impugned order dated 20.02.2019 passed by the Tribunal (Annexure P-1) is hereby set aside and the penalty imposed is modified to that of "compulsory retirement" as provided in clause (vii) of Rule 11 of the CCS Rules, 1965 with effect from the date punishment was inflicted i.e. 04.07.2016 (vide Annexure A-14) by the Adhoc Disciplinary Authority.

33. The writ petition is partially allowed in the above terms.

Sd/ – G. S. Sandhawalia, J.

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