REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITION

CRIMINAL APPEAL NO.1027 OF 2002

Charanjit Lamba …Appellant

Versus

Commanding Officer, Southern Command & Ors. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. This appeal by special leave arises out of an order dated 15th September, 1998 passed by the High Court of judicature at Bombay whereby Criminal Writ Petition No.489 of 1997 filed by the appellant has been dismissed and the

order of dismissal from service on proved misconduct affirmed. The factual matrix giving rise to the disciplinary proceedings against the appellant and his eventual dismissal from service has been set out by the High Court in the order under appeal. We need not, therefore, re-count the same over again. Suffice it to say that the appellant who at the relevant time was serving as a Major in the Indian Army was consequent upon a finding recorded against him in a Court of Inquiry brought up for trial before a General Court Martial (GCM for short) on the following two distinct charges:

> FIRST CHARGE ARMY ACT SECTION 52(f).
>
> SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON
>
> In that he, at field on 30th Jul 92, with intent to cause wrongful gain to himself, improperly claimed Rs.16,589.30 (Rs. Sixteen thousand five hundred eighty nine and paise thirty only) from CDA (Q) Pune on account of moving his household luggage and car to Chandigarh, well knowing that he was legally not entitled to the same.
>
> SECOND CHARGE, ARMY ACT SECTION 45

BEING AN OFFICER BEHAVING IN A MANNER UNBECOMING HIS POSITION AND THE CHARACTER EXPECTED OF HIM

In that he, at Pune, between 03 Sep 92 and Jun 93, improperly failed to pay the final electricity bill dated 03 Sep 92 amounting to Rs.8132.35 (Rs. eight thousand one hundred thirty two and paise thirty five only) to Maharashtra State Electricity Board (MSEB) in respect of H No.12-B Kohun Road, Pune-1 which was allotted to him."

2. Evidence adduced before the GCM eventually led to the appellant being held guilty for improperly claiming Rs.16,589.30 on account of transfer of his household luggage and car to Chandigarh. The GCM found that the family of the appellant had continued to occupy government accommodation at Pune even after his posting to the field area and that the agency who is alleged to have transported the luggage and the car of the appellant did not exist at the given address. The evidence given by the appellant in his defence was also found by the GCM to be unreliable on account of material contradictions in the deposition of the defence witnesses. The GCM on proof of the said charge

sentenced him to forfeiture of ten years past service for purposes of pension. In so far as the second charge, viz. non-payment of electricity bill was concerned, the GCM declared the appellant not guilty. In its opinion the appellant had never refused to pay the electricity bill which was at any rate a matter between him and the Maharashtra State Electricity Board. The GCM took the view that the default of the petitioner could not be termed as conduct unbecoming of an official subject to the Army Act to call for any penal action.

3. Aggrieved by the findings and the sentence awarded to him by the GCM the petitioner filed an appeal before the General Officer Commanding, Maharashtra and Gujarat Area (hereinafter referred to as the 'GOC M & G Area') who happened to be the confirming authority also. The GOC M & G Area, however, took the view that the sentence awarded to the appellant on the first charge was lenient inasmuch as the offence committed by the appellant was serious and involved moral turpitude. It also noted that the appellant

had past convictions to his credit which ought to be kept in view. The finding recorded by the GCM in regard to the second charge framed against the appellant was also found to be untenable by GOC M & G Area as according to him the conduct of the appellant fell within the ambit of Section 4E of the Army Act which made his behaviour unbecoming of an officer. The GOC M & G Area accordingly remanded the matter back to the GCM for re-consideration on the question of sentence to be awarded to the appellant on the first charge and whether the appellant could be held guilty on the second charge. The order made it clear that the GOC M & G Area did not intend to interfere with the discretion vested in the GCM which was free to decide the matter in the manner it liked.

4. The GCM accordingly assembled again to consider the matter and while sticking to the reasons given by it in regard to the first charge found the second charge also to have been proved. The GCM on that basis revoked the earlier sentence and sentenced the appellant to dismissal

from service which order was after confirmation by the competent authority assailed by the appellant before the High Court at Bombay in Criminal Writ Petition No.489 of 1997 as already noticed earlier.

5. Before the High Court several contentions appear to have been urged on behalf of the appellant which were examined and repelled by the High Court while dismissing the writ petition in terms of the order impugned in this appeal. The correctness of the view taken by the High Court on the grounds urged before it has not been assailed before us except in so far as the High Court has held that the punishment of dismissal imposed upon the appellant was in no way disproportionate to the gravity of the offence committed by him.

6. Mr. P.S. Patwalia, learned senior counsel appearing for the appellant argued that the order of dismissal of the appellant from service was in the facts and circumstances of the case disproportionate to the gravity of the charges

framed against the appellant. He relied upon the decisions of this Court to which we shall presently refer to submit that judicial review of the order of dismissal would justify intervention by a Writ Court in cases where punishment was disproportionate to the nature of misconduct proved against the delinquent. The present was according to him one such a case that called for the Court's intervention to either reduce the punishment or to direct the same to be reduced by the competent authority.

7. In **Coimbatore District Central Coop. Bank** v. **Employees Assn. (2007) 4 SCC 669** this Court declared that the doctrine of proportionality has not only arrived in our legal system but has come to stay. With the rapid growth of the administrative law and the need to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by reference to which the action of such authorities can be judged. If any action taken by an authority is contrary to law, improper, irrational or otherwise

unreasonable, a court competent to do so can interfere with the same while exercising its power of judicial review.

8. This Court referred with approval to the decision of the House of Lords in **Council of Civil Service Union** v. **Minister for Civil Service (1985 AC 374)** where Lord Diplock summed up the grounds on which administrative action was open to judicial review by a Writ Court. Lord Diplock's off-quoted passage dealing with the scope of judicial review of an administrative action may be gainfully extracted at this stage:

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

9. The doctrine of proportionality which Lord Diplock saw as a future possibility is now a well recognized ground on which a Writ Court can interfere with the order of punishment imposed upon an employee if the same is so outrageously disproportionate to the nature of misconduct that it shocks conscience of the Court. We may at this stage briefly refer to the decisions of this Court which have over the years applied the doctrine of proportionality to specific fact situations.

10. In **Bhagat Ram** v. **State of Himachal Pradesh (1983) 2 SCC 442** this Court held that if the penalty imposed is disproportionate to the gravity of the misconduct, it would be violative of Article 14 of the Constitution.

11. In **Ranjit Thakur** v. **Union of India & Ors. (1987) 4 SCC 611**, this Court was dealing with a case where the petitioner had made a representation about the maltreatment given to him directly to the higher officers. He

was sentenced to rigorous imprisonment for one year for that offence. While serving the sentence imposed upon him he declined to eat food. The summary court martial assembled the next day sentenced him to undergo imprisonment for one more year and dismissal from service. This Court held that the punishment imposed upon the delinquent was totally disproportionate to the gravity of the offence committed by him. So also in **Ex-Naik Sardar Singh** v. **Union of India & Ors. (1991) 3 SCC 213** instead of one bottle of brandy that was authorized the delinquent was found carrying four bottles of brandy while going home on leave. He was sentenced to three months rigorous imprisonment and dismissal from service which was found by this Court to be disproportionate to the gravity of the offence proved against him.

12. The decision of this Court in **Hind Construction & Engineering Co. Ltd.** v. **Workmen (AIR 1965 SC 917)** dealt with a situation where some workers had remained absent from duty treating a particular day as a holiday.

They were for that misconduct dismissed from service. This Court held that the absence of the workmen could have been treated as 'leave without pay' and they could also be warned and not fined. Reversing the order of punishment this Court observed:

> "It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner.

13. Reference may also be made to **Management of the Federation of Indian Chambers of Commerce and Industry** v. **Workman, Shri R.K. Mittal (1972) 1 SC 40)** where the employer had issued a legal notice to the federation and to the international chamber of Commerce which brought discredit to the petitioner-employer. A domestic inquiry was held in which he was found guilty and his services terminated. This Court held that the punishment was disproportionate to the misconduct alleged observing:

> "The Federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation."

14. We may refer to the decision of this Court in **M.P. Gangadharan & Anr.** v. **State of Kerala & Ors. (2006) 6 SCC 162**, where this Court declared that the question of reasonableness and fairness on the part of the statutory shall have to be considered in the context of the factual matrix obtaining in each case and that it cannot be put in a straitjacket formula. The following passage is in this regard apposite:

> **"34.** The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a straitjacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. We are not unmindful of the development of the law that from the doctrine of Wednesbury unreasonableness, the court is leaning towards the doctrine of proportionality……"

15. That the punishment imposed upon a delinquent should 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 of a misdemeanour are entitled to claim but the same is recognized as being a part of Article 14 of the Constitution. It is also evident from the long time of decisions referred to above that the courts in India have recognized 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. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where

the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same.

16. The question then is whether the present is indeed one such case where the High Court could and ought to have interfered with the sentence imposed upon the appellant on the doctrine of proportionality. Our answer is in the negative. The appellant was holding the rank of a Major in the Indian Army at the time he committed the misconduct alleged and proved against him. As an officer of disciplined force like the Army he was expected to maintain the highest standard of honesty and conduct and forebear from doing anything that could be termed as unbecoming of anyone holding that rank and office. Making a false claim for payment of transport charges of household luggage and car to Chandigarh was a serious matter bordering on moral turpitude. Breach of the rule requiring him to clear his

electricity dues upon his transfer from the place of his posting was also not credit worthy for an officer. The competent authority was therefore justified in taking the view that the nature of the misconduct proved against the appellant called for a suitable punishment. Inasmuch as the punishment chosen was dismissal from service, the competent authority, did not in our opinion, take an outrageously absurd view of the matter. We need to remember that the higher the public office held by a person the greater is the demand for rectitude on his part. An officer holding the rank of Major has to lead by example not only in the matter of his readiness to make the supreme sacrifice required of him in war or internal strife but even in adherence to the principles of honesty, loyalty and commitment. An officer cannot inspire those under his command to maintain the values of rectitude and to remain committed to duty if he himself is found lacking in that quality. Suffice it to say that any act on the part of an officer holding a commission in the Indian Army which is subversive

of army discipline or high traditions of the Army renders such person unfit to stay in the service of the nation's Army especially when the misconduct has compromised the values of patriotism, honesty and selflessness which values are too precious to be scarified on the altar of petty monetary gains, obtained by dubious means.

17. In the result this appeal fails and is hereby dismissed.

.....J.
(DALVEER BHANDARI)

.....J.
(T.S. THAKUR)

New Delhi
July 6, 2010