BAR ON TRIBUNAL'S DISCRETION TO EXAMINE THE ADEQUACY OF PUNISHMENT IN DISCIPLINARY CASES

THE SUPREME COURT'S judgment in *Union of India* v. *Parma Nanda*[1] is significant in the context of the central administrative tribunal's (CAT) powers to interfere with the quantum of punishment awarded by the disciplinary authorities.

Parma Nanda, a Time Keeper in Beas Sutlej Link Project was dismissed from service on the charge of fraudulent conduct for self-aggrandisement. He challenged the dismissal order in the High Court of Himachal Pradesh under article 226. During its pendency, a bench of CAT at Chandigarh was constituted under the Administrative Tribunals Act, 1985. Under section 29 the writ petition stood automatically transferred to the tribunal.

The tribunal agreed with the findings of the inquiry officer that the respondent was "the mastermind behind the scheme to defraud the project". Yet while examining the adequacy of penalty, the tribunal entered upon an appreciation of the evidence adduced before the enquiry officer and modified the punishment from dismissal to that of stoppage of increments he had earned for five years, under Rule 11(iv) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965

The Union of India filed a petition for special leave to appeal in the Supreme Court against the decision of the tribunal reducing the penalty imposed on the respondent.

The issue before the Supreme Court revolved around the amplitude of the powers of the tribunal to modify the punishment when the findings were supported by evidence. Could the tribunal interfere with the penalty on the basis that it was "excessive or disproportionate to the misconduct proved"? Jagannatha Shetty J. on behalf of Ahmadi, Kuldip Singh JJ. and himself, examined the issue in the light of scope of judicial review in the pre-tribunal period and the raison d'etre for tribunalisation in service matters.

The Administrative Tribunals Act was enacted by Parliament pursuant to article 323-A(1) of the Constitution for adjudicating disputes with regard to service matters. Section 4 provides, *inter alia*, for the establishment of CAT. Section 14 empowers CAT to exercise powers, authority and jurisdiction of all courts except the Supreme Court in relation to service matters, including conditions of service. Consequently, the powers of the civil courts and High Courts under article 226 are now exercisable by the tribunal.

In the pre-tribunal era, when the High Courts and civil courts were empowered to undertake the judicial review of orders of disciplinary authorities, the Supreme Court had consistently held that in reviewing such orders, the courts are not to act as appellate bodies reviewing findings of facts supported by legal evidence and substituting their own view for that of the disciplinary authorities. The court referred to its decision in *State of Orissa* v.

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1 (1989) 2 SCC 177

Bidyabhushan[2] that if the dismissal order could be supported on any finding as to misconduct justifying the punishment imposed, the court could not consider whether that finding alone would have weighed with the authority's order of dismissal. The court quoted with approval the observations of Shah J:[3]

> In our view the High Court had no power to direct the Governor. . . to reconsider the order of dismissal. . . The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is, not justiciable; nor is the penalty open to review by the Court.

The *Bidyabhushan* holding has been reaffirmed subsequently in *Railway Board* v. *Niranjan Singh*,[4] *State of U.P.* v. *O.P. Gupta*[5] and *Union of India* v. *Sardar Bahadur*.[6]

The court found that though the settled decisional law was clear, the service tribunals were modifying the penalty awarded in the disciplinary proceedings, a discretionary power that they do not have except under certain exceptional circumstances.

The court reiterated that the tribunal's power to interfere with the quantum of penalty could not be equated with appellate powers. However, the court was careful to point out that where the findings of the enquiry officer are arbitrary, perverse, mala fide and not supported by any evidence, the tribunal can modify the quantum of penalty. Additionally, the court carved out another exception when the penalty is imposed under clause (*a*) of the second proviso to article 311 (2), namely where the punishment of dismissal, removal or reduction in rank is imposed as a consequence of criminal conviction, the tribunal can examine the quantum of penalty imposed. If the punishment is excessive or disproportionate to the gravity of the offence leading to conviction, the tribunal may remit the matter to the disciplinary authority for reconsideration or by itself substitute one of the penalties in clause (*a*). This power was exercised by the Supreme Court in *Shankar Dass* v. *Union of India*.[7] This was a case where a cash clerk was convicted of criminal breach of trust under section 409, Indian Penal Code, 1860 in respect of Rs. 500 which he failed to deposit in office under very trying, compelling and adverse circumstances. He was dismissed from service under clause (*a*), second proviso of article 311 (2). The Supreme Court at the end of a 23 year litigational journey found that the power of dismissal was

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2. 1963 (Suppl) 1 SCR 648.
3. *Id* at 665.
4. (1969) 3 SCR 548.
5. AIR 1970 SC 679.
6. 1972 (2) SCR 218. See Mathew J.'s observation that, "If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."
7. AIR 1985 SC 772.

exercised unfairly, unjustly and unreasonably. The penalty of dismissal was characterised by the court as "whimsical" and quashed. The appellant was reinstated in service with full back wages from the date of dismissal until reinstatement. The *Shankar Dass* decision was quoted with approval by Madon J. in *Tulsiram Patel's* case[8] and these decisions have been referred to in the instant judgment.

The observations of Jagannatha Shetty J. that the tribunal may "substitute one of the penalties provided under clause (*a*)" seems to unduly restrict its power of modification of the penalty. Why should the tribunal limit itself to one of the specified penalties? Situations may warrant otherwise, as it happened in the *Shankar Dass* case, wherein the court set aside the dismissal and reinstated the convicted employee. Similarly the tribunal should have flexibility in moulding appropriate relief in disciplinary cases.

Could not the exception have been enlarged to include cases under clause (*b*) of the second proviso where disciplinary enquiry is dispensed with on the ground of non-practicability? Presumably if the disciplinary authority's orders under this provision are mala fide, perverse and arbitrary, the tribunal could examine the adequacy of punishment.

Tribunalisation was introduced in the field of service matters with a view to achieving finality of decisions without delay by persons with expertise. Since tribunals have stepped into the shoes of civil courts and High Courts, the scope of judicial review of disciplinary authority's orders must be akin to that exercised by the courts in the pre-tribunal era. *Panna Nanda*, in reiterating the well settled law that the tribunals are not appellate institutions expected to substitute their wisdom for that of the disciplinary authority in matters of penalty, has come a day not too soon in reminding the tribunals of the amplitude of their powers in assessing the quantum of penalty.

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8. *Union of India* v. *Tulsiram Patel*, (1985) 3 SCC 399.

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