A STATE OF U.P.

v.

SHEO SHANKER LAL SRIVASTAVA AND ORS.

FEBRUARY 24, 2006

B [S.B. SINHA AND P.P. NAOLEKAR, JJ.]

Service Law:

Misconduct—Disciplinary proceedings against a Public Relations C *Officer—Charge—sheet—Authority found the employee guilty of misconduct and ordered his dismissal from service but awarded adequate compensation to him—Challenge to—High Court modified the order directing his retirement from service instead of his dismissal from the service—On appeal, held: Employee refused to hand over keys of the Almirah containing public* D *documents to the Authority—Recovery of documents from Almirah—Errant employee uses indecent language against authority—He refused to cross examine himself—Opposed appointment of a retired officer as an inquiry officer —Disciplinary authority vested with the power to impose punishment—Hence, in the peculiar facts and circumstances of the case, it cannot be said that the order of the Authority in dismissing the errant employee suffered from* E *any infirmity.*

Administrative Law:

Principles of natural justice—Scope of—Held: Principles of natural justice could be excluded where doctrine of necessity applies.

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Quantum of punishment **vis-a-vis** *Judicial Review—Held: In exercise of the power of judicial review, Courts would not normally interfere with the quantum of punishment.*

Doctrines:

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Doctrine of necessity and proportionality—Applicability of in the context of service jurisprudence.

Appellant-employee was working as Private Secretary in the Office of the Lok Ayukta, Uttar Pradesh. When the authority visited the office on a routine

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check for ascertaining pendency and asked the appellant to hand over the key of the Almirah wherein important public documents were kept, he refused to hand over the key and also used indecent language. The Almirah was opened and number of receipts pending for disposal were recovered therefrom. In the departmental enquiry, though the appellant wanted to engage a lawyer, but the authorities declined the request on the ground that the charges levelled against him were simple in nature. The authority initiated disciplinary proceeding against him and found him guilty of mis-conduct and directed his dismissal from service. On appeal, High Court modified the order by converting dismissal of the appellant to retirement from service. Hence the present appeal and the cross appeal.

The employee contended that since the Lok Ayukta/the authority himself was a witness to the occurrence, he could not have taken over the disciplinary proceeding himself; that it was obligatory on the part of the Lok Ayukta to get the departmental proceedings conducted by some other officer; and that it would be evident from the records of the case that the Lok Ayukta made up his mind to punch him right from the beginning and in that view of the matter the order of punishment passed by him is not sustainable.

Allowing the appeal filed by the State, and existing that of the employee, the Court

HELD: 1.1. Since, the Lok Ayukta is the disciplinary authority, the power to impose punishment on the errant employee vested only in him. When the Lok Ayukta appointed a retired Director of Defence Estate as an inquiry officer, an objection thereto was taken by the employee himself stating that no person from outside should be appointed as the Inquiry Officer. In such a situation, the Lok Ayukta had no other option but to take upon himself the burden of holding the departmental proceedings. The employee, therefore, cannot be permitted to raise any contention that the disciplinary proceeding should have been conducted by some other officer, since he waived his right. [664-C-D]

Manak Lal v. *Dr. Prem Chand,* [1957] SCR 575, referred to.

1.2. It is true that the principle of natural justice is based on two pillars : (i) nobody shall be condemned without hearing; and (ii) nobody shall be a judge in his own cause. It is, however, well known that the principles of natural justice can be excluded by a statute. It can also be waived. In a case where doctrine of necessity is applicable compliance of the principles of natural justice would be excluded. [664-E-F]

A *'M.P. State Police Establishment* v. *State of M.P. and Ors.,* **[2004] 8 SCC 788, followed.**

Doctrine of necessity' by Sir William Wade, referred to.

1.3. The errant employee did not deny or dispute the recovery of the documents from the almirah. In that view of the matter, it was for him, who had knowledge about the documents and which had been kept by him in the almirah, to show that as to how he had dealt with the same. He being the Private Secretary was a man of confidence. He was bound to follow the prevailing practice. It was his duty to place all the complaints and letters received from other departments before the Lok Ayukta. The office of a Lok Ayukta is of great importance. People approach Lok Ayukta with various grievances. They require urgent enquiry. It is not difficult to presume that only because such complaints were received, a practice developed that no almirah should be kept under lock and key. The Appellant must be presumed to have knowledge thereabout. Despite the same he had put his almirah under lock and key. He refused to hand over the key when called upon to do so. Later, he did not cross-examine the only witness to the incident. Neither did he examine himself nor any defence witness. He did not show any remorse and in that view of the matter, in the peculiar facts and circumstances of the case, it cannot be said that the order of punishment passed by the Lok Ayukta suffered from any infirmity. [665-F-G-H; 666-A]

2. It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience. This Court is not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality. [666-D]

V. Ramana v. *S.P. SRTC and Ors.,* **[2005] 7 SCC 338;** *Hombe Gowda Edn. Trust & Anr.* v. *State of Karnataka & Ors.,* **[2005] 10 SCALE 307:2006 1 SCC 430 and** *State of Rajasthan & Anr.* v. *Mohammed Ayub Naz,* **[2006] 1 SCALE 79: [2006] 1 SCC 589, referred to.**

3. The Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. In certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merits judgment, which is yet more than Ex p. Daly requires on a judicial review where the court has to

decide a proportionality issue. [667-A-B] A

Huang and Ors. **v.** *Secretary of State for the Home Department,* **[2005] 3 All ER 435 and** *R.* **v.** *Secretary of State of the Home Department, ex. P Daly* **[2001] 3 All ER 433, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7358 of 2003. B

From the Final Judgment and Order dated 20.03.2001 of the Allahabad High Court in W.P. No. 96 (S.B.) of 1999.

Anuvrat Sharma, Garvesh Kabra, Dr. Indra Pratap Singh and Ravi Prakash Mehrotra (N.P.) for the Appellant. C

Pramod Swarup, Ms. Pareena Swarup and Ameet Singh for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. These two appeals involving common questions of law and fact and arising out of the same judgment were taken up for hearing together and are being disposed of by this common judgment.

Sheo Shanker Lal Srivastava, Appellant in Civil Appeal No.7539 of 2003, was appointed as a Stenographer in the Office of the Consolidation E Commissioner, U.P. in the year 1963. He was deputed to work with the Lok Ayukta in the year 1978. One Arvind Kumar Singhal, Respondent No.3, was appointed as a Typist in the said office in the year 1980. Since 1988 he has been working as a Public Relations Officer. The post of Personal Assistant, which the Appellant was holding was redesignated as Private Secretary. He F was later on given a higher scale of pay of Rs.3,000-4,500/- by way of promotion with effect from 21.07.1995. Owing to certain acts of misconduct, the Appellant had been censured and warned. The Appellant was asked to hand over the key of his almirah but he refused to do so. He also used indecent language. The said almirah was sealed. He was served with an order of suspension. The said seal on the almirah was broken at a later date i.e. G 15.01.1988 and it was opened with a duplicate key. A chargesheet containing six charges was thereafter served upon him.

The Appellant in response to a show cause [illegible] ...se. Upon receiving his explanation, four out of six charg[illegible]

A charges wherefor a departmental proceeding was initiated against him are as under :

"Charge No. 1

On 13.1.98 Deputy Secretary accompanied by Hon'ble Lok Ayukta
B went on round to your room at 10.30 A.M. and he wanted to see if there was any undisposed of matters and documents lying with you and found that in violation of his orders, you had locked your almirah. On making request, you did not open the almirah yourself and when you were asked to give its key, you got enraged and using a very indecent and vulgar language, you refused to hand over the key and
C in a fit of anger crying at the pitch of your voice you said that you may be suspended but you will not give the key and you did not give the key. Therefore, you are guilty of committing indiscipline and misconduct.

D Charge No. 2

When you did not give the key of your almirah then your almirah was opened on 15.1.1998 by making alternative arrangements. The material which was recovered from your almirah has been mentioned in enclosure-1 and in regard to which your guilt has been shown in
E the remarks column of enclosure. In this manner you are guilty of neglecting and suppressing work.."

As regard Charge No. 3, although the explanation of the Appellant was not accepted, the Lok Ayukta did not intend to proceed therewith.

F The Appellant filed his show cause to the charges on or about 17.08.1998. He was asked to disclose the name of his witness and the documents upon which he intends to rely upon. In the said departmental inquiry, the Appellant intended to engage a lawyer, which was declined, inter alia, on the ground that the department did not engage any lawyer and the charges levelled against him were simple in nature. The Lok Ayukta took over upon himself
G the burden of conducting the disciplinary proceedings against the Appellant himself as the Appellant contended that no outsider should be appointed as an Inquiry Officer. The Inquiry Officer noticed the dilatory tactics adopted by the Appellant. He had been raising new contentions from time to time. One Shri J.C. Upreti, who was the Deputy Secretary of the Office of the Lok
H Ayukta, at all material times, was examined on 14.10.1998. The Appellant did

not cross-examine him as his request to adjourn the proceeding was declined. The Appellant did not examine himself despite several opportunities given to him. The Appellant had raised a contention of bias against the Lok Ayukta himself. The said contention as also the other contentions raised by the Appellant was dealt with by the Lok Ayukta in his report dated 13.11.1998 holding him guilty of both the charges :

> "29. In the above circumstances, both the charges stand fully proved that the documents mentioned in Annexure 1 to the chargesheet were recovered from the almirah of Shri Sheo Shanker Lal Srivastava, Shri Sheo Shanker Lal Srivastava did not give the key to the Lok Ayukta when he demanded the same from him and with great annoyance, using indecent language said in a fit of anger that he will not give the keys and that he should be suspended."

He was served with a second show cause in regard to quantum of punishment. In his second show cause notice, the Appellant again raised the question of non-compliance of the principles of natural justice including bias on the part of the Lok Ayukta, stating :

> "Therefore, it is very humbly requested that your honour may be kind enough to set aside the implementation of the proposed punishment and in this connection, if your honour is still willing to take further steps in the matter then it is humbly prayed that you may set aside the whole inquiry proceedings and may frame the chargesheet afresh and then may, kindly, refer the matter to His Excellency the Governor or to the State Government for appointing an Inquiry Officer so that the applicant may be able to defend himself by cross-examining the witnesses concerned including your honour without fear before an impartial Inquiry Officer."

By reason of an order dated 03.12.1998, the Appellant was directed to be removed from service but taking a compassionate view, he was awarded maximum compassionate allowance in terms of C.S.R. 353. In his order, the Lok Ayukta recorded :

> "Documents pending disposal for years were found in his almirah. It means that he does not want to work by nature. In the same manner, he did not misbehave in the heat of the moment, but because it is his nature. Desiring to look in his almirah or requesting him to give its keys was not a matter on which he would have been enraged. In all

his clarifications, he has stated that the Lokayukta is biased against him and favours another officer while no other officer has any role to play in this connection. He has particularly reiterated in his petition before Hon'ble High Court that an inquiry should be launched against the Lokayukta for his misbehaviour and incapacity and that the Lokayukta starts proceedings on the asking of a particular officer. In his reply also while showing cause against the punishment, he has said nothing new and has again stated that because of the personal bias against the delinquent and the liking for another officer, the Lokayukta is unfairly trying to scuttle the defence of the delinquent in such a manner as if he is preparing his own affidavit against the clarifications of the charged officer. If somebody would have committed such an act in the heat of the moment then he would raised this point in order to get the punishment reduced and would not have persisted on leveling unnecessary charges like this, while the act of leveling of these had no special impact on the charges against the delinquent."

On or about 05.02.1999, the Appellant filed a writ petition before the High Court. In its judgment and order dated 20.03.2001, the High Court opined:

"We are of the view, that the Lok Ayukta instead of removing the petitioner from service should have passed an order retiring the petitioner from service. No doubt Lok Ayukta has taken very compassionate view of the matter in relation to the petitioner by directing that the petitioner will be paid the maximum compassionate allowance as admissible under Rule 353. But considering the facts and circumstances of the case, we are of the view that the order of removal passed against the petitioner, may be treated as an order of compulsory retirement from service from the date of the removal of the petitioner. We have taken this view only for the reason that the order of punishment imposed upon the petitioner, does not commensurate with the gravity of the charges. The charge against the petitioner for keeping the necessary files in his almirah and misbehaving against the Lok Ayukta no doubt amounts to an unbecoming act, but the question which calls for consideration is that against such an act of misconduct, whether a persons should be removed from service. We are of the view that justice would have met, if the petitioner retired from service compassionately from the date the order of removal was passed against the petitioner, and he may be given the salary and allowance, during

the period, he remained under suspension." A

These appeals have been preferred by the Appellant as also by the State.

Mr. Pramod Swarup, the learned counsel appearing on behalf of the Appellant, in support of Civil Appeal No.7359 of 2003, would submit that the B Lok Ayukta himself being a witness to the occurrence could not have taken over the disciplinary proceeding himself. Mr. Swarup urged that it would be evident from the records of the case that the Lok Ayukta made up his mind from the very beginning and in that view of the matter the order of punishment passed by him is not sustainable. Our attention was further drawn to the fact that in the show cause notice dated 13.11.1998, the Lok Ayukta had directed C the Appellant to show cause as to why on account of his conduct narrated in the charges, he should not be dismissed from services. It was further submitted that as the principles of natural justice were required to be complied with, it was obligatory on the part of the Lok Ayukta to get the departmental proceedings conducted by some other officer. D

The learned counsel appearing on behalf of the State, on the other hand, submitted that as the charges against the Appellant were proved, the High Court committed an illegality in interfering with the quantum of punishment.

E.

The Lok Ayukta was running a small office. The Appellant was the Private Secretary of the organization. Inspection of the files of the almirah kept in the Appellant's office became necessary as letters had been received from different departments as also reminders thereof, but he instead of bring the same to the notice of Lok Ayukta, was keeping them in the almirah. Upon inspection, 124 old letters of other departments were found in the almirah of F an Assistant and 107 letters relating to other Assistant were found in torn condition from heap of waste papers outside the office.

A practice was started in the office of the Lok Ayukta that no almirah should be kept under lock and key so as to enable the Lok Ayukta to check G up the pending files. Despite having been requested to open his almirah, the Appellant not only refused to do so but also used indecent language. He even refused to hand over the keys and shouted at the top of his voice that he might be suspended but he would not give the keys. In his show cause, the Appellant did not deny recovery of the documents from the almirah. He, however, denied the charge relating to not handing over the keys of the H

A almirah or use of the indecent language. Only one witness viz. Shri Upreti, who witnessed the entire incident, was examined. He, as noticed hereinbefore, was not cross-examined by the Appellant. He merely requested that he should be given a few days time to cross-examine the said witness. His said request was rightly rejected, as he did not assign any reason therefore. The statements of the said witness, therefore, having not been controverted would be deemed B to be admitted.

It is not in dispute that the Lok Ayukta was the disciplinary authority. The power to impose punishment on the Appellant vested only in him. When the Lok Ayukta appointed one Shri S.K. Arora, a retired Director of Defence C Estate, an objection thereto was taken by the Appellant himself stating that no person from outside should be appointed as the Inquiry Officer. In the aforementioned situation, the Lok Ayukta had no other option but to take upon himself the burden of holding the departmental proceedings. The appellant, therefore, cannot be permitted to raise any contention that the disciplinary proceeding should have been conducted by some other officer. D It has not been contended that any other officer working in the office of Lok Ayukta was available for conducting such enquiry.

It is true that the principle of natural justice is based on two pillars : (i) nobody shall be condemned without hearing; and (ii) nobody shall be a judge in his own cause. E

It is, however, well known that the principles of natural justice can be excluded by a statute. It can also be waived.

In a case where doctrine of necessity is applicable compliance of the principles of natural justice would be excluded. F

Referring to the doctrine of necessity, Sir William Wade in his Administrative Law stated :

> "But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to give G way to necessity, for otherwise there is no means of deciding and the machinery of justice or administration will break down;."

It was further stated :

> "In administrative cases the same exigency may arise. Where H statute empowers particular minister or official to act, he will usually

be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognized type of *ultra vires*. In one case it was unsuccessfully argued that only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament." A B

In *M.P. State Police Establishment* v. *State of M.P. and Ors.*, [2004] 8 SCC 788, a Constitution Bench of this Court observed that the as office of the Lok Ayukta is held by a former Judge of this Court, it would be difficult to assume that such authority would give a report without any material whatsoever. Although no law was laid down in this behalf, but, evidently those observations are pointers to show that normally a report from such a high officer should not be disbelieved. C

It is not that the Lok Ayukta was not inclined to get the matter inquired into by an outsider. He appointed one Shri S.K. Arora. It is the Appellant himself who raised an objection thereagainst. He categorically stated that no outsider should be appointed as an Inquiry Officer although he took a different stand in his first show cause. He, therefore, waived his right. [See *Manak Lal* v. *Dr. Prem Chand,* [1957] SCR 575 at 581] D

In the aforementioned situation, the Lok Ayukta had no other option but to proceed with the inquiry. Despite the fact that he was the disciplinary authority himself, as well as a witness, he had no other option but to inquire into the charges against the Appellant. Furthermore the Appellant did not deny or dispute, as noticed hereinbefore, the recovery of the documents from the almirah. In that view of the matter, it was for the Appellant, who had knowledge about the documents and which had been kept by him in the almirah, to show that as to how he had dealt with the same. He being the Private Secretary was a man of confidence. He was bound to follow the prevailing practice. It was his duty to place all the complaints and letters received from other departments before the Lok Ayukta. The office of a Lok Ayukta is of great importance. People approach Lok Ayukta with various grievances. They require urgent enquiry. It is not difficult to presume that only because such complaints were received, a practice developed that no almirah should kept under lock and key. The Appellant must be presumed to have knowledge thereabout. Despite the same he had put his almirah under lock and key. He refused to hand over the key when called upon to do so. E F G H

A He did not cross-examine the only witness who was available. He also did not examine himself. He did not examine any defence witness. He did not show any remorse and in that view of the matter, in the peculiar facts and circumstances of the case, we are of the opinion that it cannot be said that the order of punishment passed by the Lok Ayukta suffered from any infirmity.

B Presumably in this view of the matter alone, the High Court did not go into the questions in details. In fact from the impugned judgment it does not appear that the arguments which have been advanced before us were in fact pressed.

C The High Court while accepting that the appellant was rightly held to be guilty of the charges of misconduct, therefore, committed a manifest error in interfering with the quantum of punishment.

It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere D with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

In *V. Ramana* v. *S.P. SRTC and Ors.*, [2005] 7 SCC 338, this Court upon E referring to a large number of decisions held :

> "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 F defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (supra) 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 decision-G making process and not the decision."

[See also *Hombe Gowda Edn. Trust & Anr.* v. *State of Karnataka & Ors.*, (2005) 10 SCALE 307 : [2006] 1 SCC 430 and *State of Rajasthan & Anr.* v. *Mohammed Ayub Naz*, (2006) 1 SCALE 79 : [2006] 1 SCC 589].

H While saying so, we are not oblivious of the fact that the doctrine of

unreasonableness is giving way to the doctrine of proportionality. A

It is interesting to note that the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. [See e.g. *Huang and Ors* v. *Secretary of State for the Home Department* [2005] 3 All. ER 435, wherein referring to *R.* v. *Secretary of State of the Home Department, ex. P Daly,* [2001] 3 All ER 433, it was held that in B certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merits judgment, which is yet more than Ex p. Daly requires on a judicial review where the court has to decide a proportionality issue.

For the reasons aforementioned, we are of the opinion that there is no merit in Civil Appeal No.7359 of 2003, which is dismissed and Civil Appeal No.7358 is allowed. No costs.

S.K.S. Appeal allowed.