RESERVED
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 58 of 2016

Saturday, this the 9th day of September, 2017

"Hon'ble Mr. Justice D.P. Singh, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)"

Vijay Shankar Dwivedi S/O Late Shri Vidya Dhar Dwivedi, Engineering Fitter, 1, B.R.D. Air Force, Chakeri, Kanpur

……Petitioner

Ld. Counsel for the Petitioner : **Shri V.A. Singh , Advocate**

Versus

1. Union of India, Through Secretary of Defence New Delhi.
2. AOC-IN-C Head Quarter, Maintenance Command, Indian Air Force, Vayu Sena Nagar, Nagpur-440007.
3. Commanding Officer, 1, B.R.D. Air Force, Chakeri, Kanpur.
4. S.K. Srivastava, Fl/Lt. 1, B.R.D. Air Force, Chakeri, Kanpur.

………Respondents

Ld. Counsel for the Respondents **:** **Shri Amit Jaiswal, Central Govt Counsel.**

Assisted by : Wg Cdr Sardul Singh, OIC Legal Cell

ORDER

"Per Air Marshal Anil Chopra, Member (A)"

1. Being aggrieved with issuance of show cause notice dated 29.02.2000 annexed as **Annexure-10** to the petition, the petitioner preferred Writ Petition No 17460 of 2000 in the High Court of Judicature at Allahabad. During pendency of the Writ Petition, impugned order dated 13.04.2000 dismissing the petitioner from Air Force services was passed by Air Officer Commanding-in-Chief, Headquarters Maintenance Command, Indian Air Force. After establishment of the Tribunal the Writ Petition has been transferred to this Tribunal by order dated 22.04.2016 of the Divisional Bench in pursuance to provisions of Section 34 of the Armed Forces Tribunal Act, 2007 and has been re-numbered as T.A. No. 58 of 2016.

2. We have heard Ld. Counsel for the parties and perused the records.

3. The petitioner was enrolled in the Indian Air Force as Airman on 30.06.1980 at Sirsa. The petitioner married Mrs Usha Dwivedi. It appears that due to distrust between the husband and wife, a number of complaints were made by the lady, involving character of the petitioner. Inquiry proceeded and ultimately the complaints were found to be baseless by the Commanding Officer who recommended no further action in the matter. The petitioner was to retire on 30.06.2000. The wife of

the petitioner filed a complaint under Section 494 I.P.C. for bigamy which was dismissed on 17.09.1997. The petitioner moved application expressing his unwillingness for extension of services which was accepted and the Commanding Officer 1, B.R.D. Air Force issued no objection certificate regarding his discharge scheduled on 30.06.2000. The petitioner was allowed to complete his pre-release course which he completed on 31.01.2000.

4. A court of inquiry was held against the petitioner in which findings were recorded that the petitioner had contracted plural marriage with Smt Sadhna Pathak, even though as per service documents his legally wedded wife is Smt Usha Dwivedi which is illegal as per Hindu Marriage Act. It was recommended that action deemed fit be initiated against the petitioner. It appears that since the complaint filed by the wife of the petitioner (Smt Usha Dwivedi) was dismissed by the competent Court of law by the order dated 17.09.1997. It appears that the respondents did not proceed with this court of inquiry and the matter was dropped.

5. A second court of inquiry was held to investigate as to whether the petitioner was living out with his family (Smt Usha Dwivedi) during his 'living out period' at Bikaner, Sirsa and Kanpur and whether false monetary claims and service privileges were availed by him. On the basis of second court of inquiry, show cause notice dated 29.02.2000 was issued to the

petitioner to show cause as to why he be not dismissed on acts of misconduct. The acts of misconduct enumerated in the show cause notice are thus:

> (a) Obtaining permission of L/Out with family at the following Air Force Stations, knowing well that your wife was not living with you during these periods.
>
> (i) At AF Station Bikaner from 03 Sep 90 to 11 Oct 90, 01 Jan 91 to 22 Dec 91 and 01 Jan 92 to 13 Mar 92.
>
> (ii) At AF Station Sirsa from 23 Mar 92 to 03 Dec 92, 11 Dec 92 to 04 Nov 93, 16 Nov 93 to 28 Feb 94 and 05 May 95 to 18 Dec 97.
>
> (iii) At AF Station Kanpur from 29 Dec 97 to 04 May 98.
>
> (b) Obtaining L/Out allowances at AF Station Bikaner, Sirsa and Kanpur for the respective periods mentioned in sub para 3 (a) above;
>
> (c) Claiming and receiving the Free Railway Warrants (FRW) for your wife, Smt Usha Dwivedi from Bikaner to Sirsa and Sirsa to Kanpur, knowing well that Smt Usha Dwivedi was not residing with you and also allowing Smt Sadhna to travel from Sirsa to Kanpur on the FRW issued for your wife, namely Smt Usha Dwivedi; and
>
> (d) Obtaining the T/A claims, on posting from AF Stn Bikaker to AF Stn Sirsa and from AF Stn Sirsa to AF Stn Kanpur, by showing status of L/Out with family, knowing well that your family was neither staying with you nor travelled with you on the ibid movements on postings.

6. The petitioner submitted reply to show cause notice stating therein that the allegations against the petitioner suffer from vice of arbitrariness and are result of bias harbored by Flt Lt S.K. Srivastava against him. The petitioner had arrayed Flt

Lt S.K. Srivastava as Opposite Party No. 4 in the petition. During the pendency of the Writ Petition preferred against show cause notice, the impugned order of dismissal dated 13.04.2000 was passed in exercise of powers under Section 20 (3) of the Air Force Act in conjunction with Rule 18 of the Air Force Rules, 1969. The appeal preferred under Section 26 of the Air Force Act, 1950 by the petitioner against the impugned order of dismissal was rejected by Chief of the Air Staff vide order dated 29.08.2000.

7. Submission of the Ld. Counsel for the petitioner is that the impugned order passed on administrative ground is untenable in absence of observance of regular procedure to try an offence having regard to the gravity of the misconduct

8. Further submission of Ld. Counsel for the petitioner is that no satisfaction has been recorded by the appropriate authority to indicate as to why the regular proceedings of Court Martial have not been carried out within the period of limitations. It is submitted that the allegations are stale and vague and there is nothing on record to support the charges.

9. Ld. Counsel further submitted that no reason has been disclosed in the impugned order of dismissal which makes out a case of non application of mind while passing the impugned order. He submitted that the procedural safeguards provided under the Air Force Act, 1950 and Rules and Regulations thereunder have been violated. Ld. Counsel further submitted

that the order of dismissal is in violation of Section 20 of the Air Force Act, 1950. He submitted that the petitioner could not have been dismissed on administrative grounds on charges.

10. In rebuttal Ld. Counsel for the respondents submitted that the petitioner has been dismissed under Section 20 (3) of the Air Force Act, 1950 in conjunction with Rule 18 of the Air Force Rules, 1969. His submission is that dismissal or removal under Section 20 (3) of the Air Force Act, 1950 is not a punishment for the purpose of Section 73 of the Air Force Act, 1950. Ld. Counsel for the respondents submitted that the petitioner has misinterpreted the provisions of Section 20 (3) of the Air Force Act. His submission is that Section 20 (3) of the Air Force Act (supra) read with Rule 18 of Air Force Rules (supra) empowers the appropriate authority to discontinue the service of persons who by their acts of commission or omission make themselves liable to be dismissed/removed from service. He submitted that the powers exercisable under Section 73 (supra) and Section 20 (supra) are independent and a person can be dismissed under Section 20 (3) of the Air Force Act without taking resort to Court Martial. He submitted that a person subject to the Act other than an officer could be dismissed or removed under sub section (1) or sub section (3) on being informed of the particulars of cause of action against him and allowing him reasonable time to state reasons he may have to urge. Precisely, his submission is that the order of dismissal on

administrative grounds is based on tangible procedure and requires no interference by the Tribunal.

11. We have given our anxious consideration to the rival contentions of Ld. Counsel for the parties.

12. So far as the argument of Ld. Counsel for the petitioner that the order of dismissal suffers from vice of bias is concerned, no doubt the petitioner has arrayed Flt Lt S.K. Srivastava as opposite party No. 4 in the petition against whom allegation of bias has been urged, but the petitioner in his petition has only made a bald averment that Flt Lt. S.K. Srivastava had warned him several times that he would not permit the petitioner to enjoy his service benefits. In para 33 of the petition the petitioner has stated that 'actually first Writ Petition No 140443 was filed against the action of Flt Lt S.K. Srivastava and he could not get success in the first writ petition'. In the absence of averments which would have led to harbouring bais against the petitioner by an officer of the rank of Flight Lieutenant, we are at loss to understand why action would have been taken by the officer to deny post retiral benefits to the petitioner. Besides, the order of dismissal has been passed by the Air Officer Commanding-in-Chief who, by no stretch of imagination, can be said to be influenced by Flt Lt S.K. Srivastava. Thus, this submission of Ld. Counsel for the petitioner has no legs to stand and is rejected.

13. The petitioner has claimed that since limitation for trial by Court Martial has expired, he cannot be dismissed from service on administrative grounds. He further claims that the allegations are stale and there is nothing on record to support the charges.

14. Now coming to the second limb of argument of Ld. Counsel for the petitioner that no satisfaction has been recorded by the appropriate authority as to why regular proceedings of Court Martial have not been carried out, Rule 18 of the Air Force Rules confers a statutory right on the appropriate authority to dismiss a person subject to the Act after informing him of the particulars of the cause of action against him and after allowing him reasonable time to state reasons he may have to urge against his dismissal or removal from the service. Section 20 of the Air Force Act and Rule 18 of the Air Force Rules are reproduced as under:

> *"20.* ***Dismissal, removal or reduction by the Chief of the Air Staff and by other officers*** *(1) The Chief of the Air Staff may dismiss or remove from the service any person subject to this Act, other than an officer.*
>
> *(2) The Chief of the Air Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.*
>
> *(3) An officer having power not less than a air officer in charge of a command or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a warrant officer.*
>
> *(4) On active service, an officer commanding the air forces in the field may reduce to a lower rank or to the ranks any*

warrant officer or non commissioned officer under his command.

(5) The Chief of the Air Staff or an officer specified in sub-section (3) may reduce to a lower class in the ranks any airman other than a warrant officer or a non commissioned officer.

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his substantive rank as a non-commissioned officer, or if he has no such substantive rank, to the ranks.

(7) The exercise of any power under this section shall be subject to the other provisions contained in this Act and the rules and regulations made thereunder".

* * *

***"18. Dismissal or removal of a person subject to the Act other than an officer**.-*

(1) Save in a case where a person subject to the Act other than an officer is dismissed or removed from the service on the ground of conduct which had led to his conviction by a criminal court or a court-martial, no such person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20 unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

(2) Notwithstanding anything contained in sub-rule (1), if in the opinion of the officer competent to order the dismissal or removal of such person, it is not expedient or reasonably practicable to comply with the provisions of sub-rule (1), he may, after certifying to that effect, order the dismissal or removal.

(3) All cases of dismissal or removal without complying with the procedure prescribed in sub-rule (1) shall, without delay, be reported to the Central Government".

15. The tenure of service of a person subject to the Act is contained in Chapter IV of the Act. Section 18 of the Act

provides that tenure of service under the Act shall be subject to pleasure of the President. For convenience sake, Section 18 of the Act is reproduced as under:

> *"18. **Tenure of service under the Act**. – Every person subject to this Act shall hold office during the pleasure of the President".*

16. The fundamental right of Armed Force personnel may be modified or curtailed in pursuance of provision contained in Article 33 of the Constitution of India. Under Section 18 of the Act, the Presidential pleasure in relation to Air Force is wholly untrammeled and the President has unqualified power to dismiss an officer. Thus, the contention of Ld. Counsel for the petitioner that the respondents were debarred to pass the impugned order of dismissal without taking recourse to Court Martial proceedings cannot be accepted.

17. The charges against the petitioner are of obtaining financial benefits to which he legally was not entitled to. A show cause notice was issued to him and after considering his reply, the appropriate authority on being satisfied that the petitioner was not a fit person to be retained in service, has passed impugned order of dismissal. A conjoint reading of the aforesaid provisions of the Act and the Rules (supra) makes it abundantly clear that the petitioner has not been prejudiced with regard to issuance of show cause notice and the punishment inflicted thereon.

18. Ld Counsel for the petitioner also commented on the punishment of dismissal imposed upon the petitioner and submitted that in the facts and circumstances of the case, the punishment imposed upon the petitioner is too excessive and disproportionate to the charges. Submission of Ld. Counsel for the petitioner is that the application of the petitioner for discharge from Air Force services was accepted and the Commanding Officer issued no objection certificate regarding his discharge scheduled on 30.06.2000. The High Court had passed orders directing the respondents to send the petitioner for pre release course, which order in fact was complied with and under orders of the Incharge of Pre Release Course Centre dated 11.02.2000, the petitioner reported to his unit on 12.02.2000, as such, there was no reason for the respondents to dismiss the petitioner on administrative grounds.

19. So far as the factual matrix on record is concerned it is not a disputed question of fact that the applicant had served for more than 19 years in the Indian Air Force with spotless service. He had moved application for discharge which was acceded to and he was sent for pre release course albeit under orders of the Court.

20. In a case reported in AIR 1992 SC (417) **Ex Naik Sardar Singh vs. Union of India & Ors** their Lordship of the Supreme Court have held as under :-

> *"This principle was followed in Ranjit Thakur v. Union of India, (1987) 4 SCC 611: (AIR 1987 SC 2386) where this court considered the question of doctrine of proportionality and it was observed thus (at p.2392 of AIR): "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the conclusive province of the court-martial, if the decision of the count even as to sentence is outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.*
>
> *(Emphasis supplied)*

21. It is true that quantum of punishment is within the jurisdiction and discretion of the court martial, but their Lordships held that it should neither be vindictive nor harsh. The approach should be judicious and punishment should be not so disproportionate to the offence as to shock the conscience of the Court. If the offence is outrageous defiance of logic, then the sentence may be set aside.

22. Hon'ble Supreme Court in the case of ***State of Punjab and Ors. v. Ram Singh Ex. Constable*** reported in (1992) 3 SCR 634, had an occasion to consider what a misconduct means. It has been held that the word misconduct though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its

performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

23. Dealing with the Court's power to interfere with the punishment imposed upon the delinquent employee, in ***G.V. Triveni Prasad vs Syndicate Bank And Ors.*** (2007) II LLJ 685 (AP), it was observed as under:-

> *"22. The Court's power to interfere with the punishment imposed on the delinquent employee has become subject-matter of scrutiny in large number of cases. The terms and phrases like arbitrary, unreasonable, unconscionable and shockingly disproportionate are often used by the advocates representing the delinquent employees who seek intervention of the Court for invalidation of the order of punishment. The doctrine of proportionality and Wednesbury rule have also been pressed into service for persuading the Courts to interfere with the employers' prerogative to punish the employee. But, the Courts have to constantly remain guard against adopting a populist approach in such matters and refrain from interfering with the punishment imposed by the employer on a delinquent employee. The power of judicial review in such cases should be exercised with great care and circumspection. Only in exceptional cases, the Court may interfere with*

> *the punishment, if it is convinced that the same is wholly arbitrary or shockingly disproportionate to the misconduct found proved. For determining this, the Court has to take into consideration the factors like length of service of the delinquent, the nature of duties assigned to him, sensitive nature of his posting and job requirement, performance norms, if any laid down by the employer, the nature of charges found proved, the past conduct of the employee and the punishment, if any, imposed earlier. The Court has also to keep in mind the paramount requirement of maintaining discipline in the services and the larger public interest."*

24. In ***Ranjit Thakur v. Union of India***, 1988 Crl. L.J. 158, the Supreme Court invoked the doctrine of proportionality for quashing the order of punishment because the same was found to be shockingly disproportionate to the misconduct found proved against the appellant. The proposition laid down in that case reads as under:

> *"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.*

25. In ***Union of India v. G. Ganayutham,*** (2000) 11 LLJ 648 SC, the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

> *"(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.*
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> *(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.*
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> *(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.*
>
> *(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the*

fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc., are involved and not for Article 14".

26. In ***Om Kumar v. Union of India*** (2001) 2 SCC 386, the Supreme Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution. Referring to the judgments in ***Ranjit Thakur v. Union of India*** (supra) and ***B.C. Chaturvedi v. Union of India*** their Lordhips held:

*"(1) In this context, we shall only refer to these cases. **In Ranjit Thakur v. Union of India**, this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. **In B.C. Chaturvedi v. Union of India**, this Court stated that the Court will not interfere unless the punishment awarded was one which shocked*

the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in Ganayutham's case (supra)."

xxx ...".

22. In Director General, RPF v. Ch. Sai Babu, (2003) 1 SCR 729 the Supreme Court reiterated that the High Court should not ordinarily interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

"Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

27. In **V. Ramana v. A.P. SRTC**, (2005) III LLJ 723 SC, the Supreme Court approved the view expressed by the Full Bench of this Court in the matter of imposition of punishment and observed:

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case (1948) 1 KB 223 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 for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

28. Similar view was taken in Fancy Corporation Ltd. (supra), where it was observed as under:

"26. Courts below have also failed to appreciate that they were required only to judicially review the action of the petitioner and not to sit as Court of appeal over the action of the petitioner. It is also trite law that where a departmental enquiry is held to be fair and proper and the findings of the enquiry officer are also held to be legal, proper and not perverse, the Management is invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of misconduct. In this connection the petitioner rightly referred to the observation of the Apex Court in the case of ***B.C. Chaturvedi v. Union of India,*** *reading as under:*

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment, and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent authority or whether rules of natural justice are complied with. When the findings and conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.

The Court/Tribunal in its power of Judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

A review of the above legal position would establish that the disciplinary authority

> *and on Appeal the Appellate Authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal."*
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> *The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the Court would appropriately mould the relief either by directing the disciplinary/ appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception and impose appropriate punishment with cogent reasons in support thereof.*

29. In a recent decision of Hon'ble Supreme Court in the case of **S. Muthu Kumaran vs. Union of India and ors**, reported in (2017) 4 SCC 609, their Lordships have held that through punishment of dismissal was well within powers of authorities concerned, but his unblemished long service record ought to have been considered by the competent authority before imposing punishment of dismissal. We feel it apposite to quote relevant portion of the decision as under:-

> "11. No doubt, the dismissal order passed against the appellant was within the powers of the authorities concerned. However, as far as the dismissal from service is concerned, it is an

> extreme punishment imposed against the appellant. The appellant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the appellant, so as to claim any reinstatement into service. Even if he was discharged from service, in lieu of dismissal from service, the appellant cannot seek for any employment or re-employment into the Army. Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the appellant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the appellant would also get an opportunity to lead an honourable life in the society."

30. In the case on hand, the punishment has been awarded on the threshold of petitioner's retirement in spite of the fact that he served for more than 19 of spotless pensionable service and no penalty was imposed upon him earlier. It shocks our conscience and seems to be question of non-application of mind while dealing with the quantum of punishment awarded to the petitioner. In view of our observations made in the body of the order, we are of the opinion that though the order of punishment seems to be just and proper, but the quantum of punishment of dismissal from service seems to be excessive, unreasonable, unjust and disproportionate to the offence complained of.

31. In view of above, the T.A. deserves to be allowed on the ground of disproportionate punishment; hence partly allowed. Impugned order of dismissal dated 13.04.2000 and order dated 20.04.2000 are modified to the extent that the petitioner shall deem to be discharged from Air Force Service with all consequential benefits. He shall be entitled to post retiral dues including pension from 30.06.2000. The exercise shall be completed within a period of two months from the date of presentation of certified copy of this order. The amount of Living Out and Travelling expenses shall be calculated by the authority concerned and shall be recoverable from the pension to be paid to the petitioner. However, no interest shall be charged by the respondents against the recoverable amount.

32. Subject to above, the T.A. is **partly allowed.**

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

September 2017

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