Chandra Kumar Chopra vs Union Of India & Ors on 11 May, 2012

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Bench: Dipak Misra, P. Sathasivam

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 665 OF 2002

Chandra Kumar Chopra .....……..Appellant

Versus

Union of India and others ……Respondents

J U D G M E N T

DIPAK MISRA, J.

The present appeal by special leave is directed against the order dated July 23, 1991 passed by the High Court of Judicature of Delhi in Writ Petition (Criminal) No. 590 of 1991 wherein the learned Single Judge has declined to interfere with the order dated July 20, 1990 whereby the confirming authority under Section 164 of the Army Act, 1950 (for short 'the Act') had passed an order of confirmation as regards the sentence of cashiering but reduced the rigorous imprisonment from five years to six months as imposed by the Competent Authority of General Court Martial vide order dated June 4, 1990.

2. The appellant after joining the Army was confirmed in the rank of Second Lieutenant and eventually became a Major in due course of time. In the month of August, 1988 while serving at Bangalore he was transferred to Udhampur at Jammu. While he was functioning at Udhampur in

the rank of Major a General Court Martial proceeding was convened against him on the following charges: -

> "First Charge SUCH AN OFFENCE AS IS MENTIONED Army Act IN CLAUSE (f) OF SECTION 52 OF THE Section 52(f) ARMY ACT WITH INTENT TO DEFRAUD, In that he, at field, on 30th Jan. 89, with intent to defraud submitted a claim of Rs.35,270/- in respect of transportation of his household luggage and car in civil truck No. JKQ 3285 and JKR 0587 respectively on permanent posting from Bangalore to Udhampur well knowing that his such luggage and car had not been so transported.
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> Second Charge SUCH AN OFFENCE AS IS MENTIONED Army Act IN CLAUSE (D) OF SECTION 52 OF THE Section 52(D) ARMY ACT WITH INTENT TO DEFRAUD, In that he, at field, on 18th Jan. 89, with intent to defraud submitted Leave Travel Concession (LTC) claim for year 1988 to CDA (O) Pune, well knowing that he had already availed the LTC for the year 1988.
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> Third Charge " AN ACT PREJUDICIAL TO GOOD Army Act ORDER AND MILITARY DISCIPLINE. Section 63
> In that he,
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> at field, on 17th Nov. 1988, improperly utilised for himself IAFT-1752-PA/53-869651 dated 15th Nov. 1988, single/ return journey railway warrant from Jammu to New Delhi and back."

3. In pursuance of the charge-sheet, General Court Martial commenced on March 12, 1990 which consisted of five Members, namely, Co. Choudhary Sohan Lal, Lt. Col. Harpal Singh, Lt. Col. Shiv Kumar Singh, Maj. Saigal Rajinder Nath and Maj. Manhas Rajender Singh.

4. At the commencement of trial in Court Martial, the appellant objected to some of the officers being members of the composition of Court Martial on the foundation that he had lodged a statutory complaint under Section 27 of the Act before the Central Government regarding certain irregularities against the Commander of the Sub Area and as all the presiding officers had worked under the Convening Officer, namely, Brig. Phoolka, the composition of Court Martial was vitiated. The Presiding Officer and other Members of Court Martial adverted to Section 130 of the Act and Rule 44 of the Army Rules, 1954 (for short 'the Rules') and eventually repelled the objections and proceeded with the trial.

5. After a full length trial, Court Martial found that all the charges levelled against the appellant had been proved and accordingly sentenced him as has been indicated hereinbefore.

6. After recording of guilt and imposition of sentence, the appellant submitted an application under Section 164(1) of the Act stating, inter alia, that the Members of Court Martial were disqualified as there was a statutory complaint against the Convening Officer under whom the Members of Court Martial were functioning; that he was not afforded adequate opportunity to prepare his defence

inasmuch as the officer whose name had been given by him to defend his case was not provided; and that the principles of natural justice had been flagrantly violated. As far as the first charge was concerned, it was stated that the household luggage and car were transported from Bangalore to Udhampur in the hired vehicle of Karnataka Transport Corporation (for short 'the Corporation') and documents were produced to that effect but the same were not taken into consideration; that no officer from the Corporation was examined to find out the veracity of the said receipts; that the bill alleged to have been submitted by the appellant had been interpolated; that the evidence brought on record was inadmissible as evidence being hearsay; that he had handed over his personal luggage and car to the Corporation for transportation and, therefore, the reliance on the evidence of DW-6 was totally misconceived; and that there was no material on record to disprove the factum that the Corporation had transported the luggage from Bangalore to Udhampur as claimed by the appellant. In this backdrop, it was contended that the first charge was not proved against the appellant.

7. As far as the second charge was concerned, it was put forth that the appellant had not obtained Leave Travel Concession twice as he had availed LTC once while he was posted at Bangalore and again at Udhampur; that as per Regulation 177(A) and other provisions relating to availing of LTC while serving in field area as defined in Travel Regulation 177(C), he had availed two LTCs one while being posted at Bangalore and the other at Udhampur and, therefore, his claim for the LTC twice in a year was reasonable and acceptable though it may suggest an erroneous interpretation of Travel Regulations 177(A) and 177(C) but there was no intention to defraud. That apart, after the said mistake was detected, the appellant on 18.2.1989 had explained his perception in his reply and at the instance of the Commanding Officer of the Unit, recovery for the excess amount was effectuated in the month of February, 1989 itself; and that once the matter was closed by taking recourse to recovery, it is to be presumed that the charge levelled against the appellant stood closed and condoned by the competent authority and hence, there was no justification or warrant to proceed again in that regard in Court Martial.

8. As regards the third charge, it was urged that the appellant had neither collected the alleged railway warrant nor did he exchange it for the ticket. As a matter of fact, he had purchased the ticket for AC-2 Tier on cash payment for the journey from Jammu to Delhi and back. It was also propounded that there was no evidence on record to prove that the relevant railway warrant was utilized as no witness from the railways was examined during the course of Court Martial.

9. The confirming authority, as stated earlier, only reduced the rigorous imprisonment from five years to six months.

10. Being dissatisfied with the aforesaid orders, the appellant assailed the same before the High Court. Before the High Court, it was contended that when the appellant had expressed lack of confidence in the composition of Court Martial, it was incumbent upon the convening officer to have attached him to another unit; that there was inherent bias in the functioning of Court Martial and the same got manifested by denial of any engagement of proper officer; that the finding recorded as regards the claim of transportation charges without transporting the goods was contrary to the material on record and, in fact, perverse since no officer from the Corporation was examined; and that when the amount of LTC was recovered, a charge of similar nature could not have been framed

as the same did amount to double jeopardy. The learned single Judge negatived all the contentions and dismissed the writ petition.

11. Ms. Indu Malhotra, learned senior counsel appearing on behalf of the appellant, questioning the pregnability of the order passed by the authorities under the Act and the writ court, has raised the following contentions: -

> (i) When lack of faith and confidence was expressed in the competent authority who had convened the proceeding and the composition of Court Martial in view of the statutory complaint filed by the appellant, the whole proceeding is vitiated as the ultimate conclusion is the result of a biased forum. The fundamental principle that 'justice should not be done but should appear to have been done' has been guillotined by rejecting the objection raised by the appellant in Court Martial and the concurrence thereof by the confirming authority and the eventual affirmance of the same by the High Court.
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> (ii) There has been violation of the principles of natural justice as the appellant was not provided with a proper defending officer and an officer was imposed on him who was reluctant to canvass his case.
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> (iii) The first charge levelled against the appellant cannot be said to have been proven inasmuch as no officer from the Corporation was examined to deny the receipts given by it to the appellant pertaining to transportation of goods from Bangalore to Udhampur. That apart, the stand and stance put forth by the appellant is that the bill that has been submitted for transportation was interpolated to show that goods had been transported in truck Nos. JKQ 3285 and JKR 9587 by a different transporter. Undue emphasis has been placed on the evidence of DW-6 who had stated that goods were, in fact, not transported. As far as the second charge is concerned, it was imperative on the part of Court Martial to examine an official from the railways to prove that he had availed the warrant and exchanged the same for a ticket.

As regards the third charge, the same is absolutely unsustainable inasmuch as after the misconception was cleared, the amount was recovered which amounts to condonation of the act.

(iv) The appellant had served with dedication and devotion in the war field and at difficult stations for a period of 21 years and had an unblemished career and hence, the punishment imposed is totally disproportionate and it is a fit case which undoubtedly invites the invocation of the doctrine of proportionality.

12. Mr. R. Balasubramanian, learned counsel appearing on behalf of the respondents, per contra, has submitted as follows: -

> (i) The statutory complaint alleged to have been made by the appellant was against Commander 71, Sub Area and at the time of lodging of the complaint, the concerned

authority was one Brig. I.S. Sahni whereas the convening officer of Court Martial was Brig. J.S. Phoolka and, therefore, the convening of the proceeding cannot be flawed. The objections raised with regard to certain officers who had formed Court Martial were absolutely vague and, in fact, the plea of bias was a figment of imagination of the appellant and the authorities as well as the High Court have appositely repelled the said stand.

(ii) The appellant was duly defended by the officer concerned who was engaged to defend him and, therefore, there had been no violation of the doctrine of audi alteram partem and, in any case, no prejudice was caused to him.

(iii) The allegation of interpolation of the bill is farthest from the truth inasmuch as the document to the naked eye would clearly reveal the signature of the appellant and he was holding the post of Major in the Army and the person in his position very well knew what was written over there and there is no interpolation. The plea of interpolation is an afterthought and the same does not merit any consideration. The charges have been duly proven and the findings are based on evidence, both oral and documentary, brought on record.

(iv) Keeping in view the post that was held by the appellant, the submission that the principle of proportionality should be invoked and a lesser punishment be imposed, does not stand to reason since the charges are grave in the backdrop of a disciplined force like Army.

13. First, we shall deal with the issue of bias. On a perusal of the record, it is graphically clear that it was Brig. J.S. Phoolka who had convened Court Martial under Section 109 of the Act. The statutory complaint submitted by the appellant pertained to certain irregularities committed by Commander 71, Sub Area. Be it noted, in Court Martial, as soon as the court assembled, it read over the names of the presiding officer and other members to the accused and enquired if he had any objection to any of the members being party to the tribunal. The appellant objected to the composition of the tribunal basically on the ground of lodging of the statutory complaint. The question that arises for consideration is whether a complaint made pertaining to irregularities by the commanding officer of the relevant Sub Area would tantamount to composition of the tribunal as a biased forum solely on the foundation that all members worked in the said Sub Area.

14. In this regard, we may profitably refer to the decision in Manak Lal v. Dr. Prem Chand[1] where it has been opined that every member of a tribunal who proceeds to try issues in judicial or quasi-judicial proceeding must be able to act judicially. It is the essence of judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases, the test is not whether, in fact, a bias has affected the judgment, the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal.

15. In Gullapalli Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and Another[2], it has been held that the principles governing the "doctrine of bias" vis-à-vis judicial tribunals are well-settled and they are: (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not take part in the decision or sit on the tribunal.

16. In A.K. Kraipak and others v. Union of India and others[3], this Court was dealing with the constitution of a Selection Board. One of the members was to be considered for selection. In that context, it was observed that it was against all canons of justice to make a man judge in his own cause. It was further observed that the real question is not whether he was biased, for it is difficult to prove the state of mind of a person. What is required to be seen is whether there is reasonable ground for believing that a person is likely to have been biased. A mere suspicion of bias is not sufficient. There has to be reasonable likelihood of bias. It was emphasised that while deciding the question of bias, the Court is required to take into consideration human probabilities and ordinary course of human conduct.

17. In Dr. S.P. Kapoor v. State of Himachal Pradesh and others[4], a two- Judge Bench did not appreciate the Annual Confidential Reports which were initiated by an officer junior to the appellant and also an aspirant for promotion to the higher post along with other candidates, should have been taken into consideration. It was observed therein that it was not fair on the part of the Departmental Promotion Committee to take into consideration the Annual Confidential Reports made by junior officer though they might have been revised by the higher authorities. Emphasis was laid on the fairness of action.

18. In Ranjit Thakur v. Union of India and others[5], this Court was dealing with Court Martial proceeding. Venkatachaliah, J. (as his Lordship then was) emphasised on the procedural safeguards contemplated in the Act regard being had to the plenitude of summary jurisdiction of Court Martial and the severity of the consequences that visit the person subject to that jurisdiction. It was observed that the procedural safeguards should be commensurate with the sweep of the power. A contention was canvassed in the said case that the proceedings of Court Martial were vitiated as the fourth respondent who was biased against the appellant was member of the tribunal. In that regard, it was held that the test of real likelihood of bias is whether a reasonable man, in possession of relevant information, would have thought that bias was likely and whether the concerned respondent was likely to be disposed to decide the matter only in a particular way. The appellant in that case had sent a written complaint complaining of ill-treatment at the hands of respondent No. 4 directly to the higher officers as a result of which he was punished with 28 days' rigorous imprisonment by the said respondent. Keeping the said fact in view, the Bench held that the participation of the respondent No. 4 in Court Martial rendered the proceeding coram non-judice.

19. In M/s. Crawford Bayley & Co. & Ors. v. Union of India & Ors.[6], this Court referred to the circumstances under which the doctrine of bias, i.e., no man can be judge in his own cause, can be applied. It has been held therein that for the said doctrine to come into play, it must be shown that

the officer concerned has a personal bias or connection or a personal interest or was personally connected in the matter concerned or has already taken a decision one way or the other which he may be interested in supporting.

20. In S. Parthasarathi v. State of Andhra Pradesh[7], while dealing with the test of likelihood of bias, it has been opined that if right minded persons would think there is a real likelihood of bias on the part of an officer, he must not conduct the inquiry. It has been observed that surmises or conjectures would not be enough, there must exist circumstances from which reasonable man would think that it is probable or likely that the inquiring officer will be prejudiced against the delinquent officer. Be it noted, the issue before the Court was enquiry by an inquiry officer against whom bias was pleaded and established.

21. At this juncture, we may usefully reproduce a passage from Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon[8] wherein Lord Denning M.R. observed thus: -

> "……in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit."

22. From the aforesaid pronouncement of law, it is discernible that mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by Rule of Law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum.

23. It is worth noting that despite the sanctity attached to non-biased attitude of a member of a tribunal or a court and in spite of the principle that justice must not only be done but must seen to have been done, it is to be scrutinized on the basis of material brought on record whether someone makes wild, irrelevant and imaginary allegations to frustrate a trial or it is in consonance with the thinking of a reasonable man which can meet the test of real likelihood of bias. The principle cannot be attracted in vacuum. In the case at hand, the convening officer had ceased to be the Commander. There was a general complaint against the irregularities about the Commander, the convening officer. The objection that was put forth by the appellant in Court Martial was that his complaint was pending with the Central Government. Nothing was brought on record that there was anything personal against any of the members who constituted Court Martial. Thus, in the obtaining factual matrix, it is extremely difficult to hold that there was real likelihood of bias because the prudence of

a reasonable man cannot so conceive and a right minded man would discard it without any hesitation. Hence, we repel the said submission raised by the learned senior counsel for the appellant.

24. The next contention pertains to compliance of the principles of natural justice. The only ground raised is that the appellant was not provided a defending officer of his choice. It is not a case where he was not provided with the assistance of a defending officer. On a close scrutiny of Court Martial proceeding, we find that the defending officer had acted with due sincerity and put forth the case of the appellant in proper perspective. There can be no shadow of doubt that there has been compliance of the principle of natural justice and no prejudice has been caused to the appellant because of any kind of non assistance. That apart, there is nothing in the Act or the Rules which lay down that an accused shall be given a defending officer of his own choice. Thus, there is no violation of any mandatory provision and, therefore, it cannot be said that the proceeding is vitiated because of violation of the principle of natural justice.

25. The third plank of submission of both the learned counsel for the parties relates to the issue whether the charges levelled against the appellant have been really proven or not. We have enumerated the submissions relating to charges and it is apposite to deal with them together. Ms. Indu Malhotra, learned senior counsel, would submit that the first charge has not been proven at all as the appellant had given the responsibility to the Corporation to transport the goods from Bangalore to Udhampur. There is no dispute over the factum that the appellant had produced the receipts from the Corporation. To satisfy ourselves, we have carefully perused the original file which was produced before us. The bill submitted by the appellant clearly reflects that the truck Nos. JKQ 3285 and JKR 9587 are alleged to have carried the goods of the appellant. Nothing has been mentioned therein that the transportation was made by the Corporation. To substantiate the claim in respect of the said bill, the receipts of the Corporation were filed. On a perusal of the receipts, it is perceptible that they neither reflect the name of the truck owner nor do they mention the truck numbers. What is ultimately argued is that there had been interpolation in the bill. On a bare look at the bill, it is luculent that there is no interpolation. That apart, DW-6 Satinder Pal Singh s/o Janak Singh, who has been cited as defence witness to substantiate that he had transported the goods, has specifically stated that only a receipt for transporting the goods was given but no goods were, in fact, transported. Apart from that, PW-13, the toll incharge, has categorically asserted that the trucks namely, JKQ 3285 and JKR 9587, alleged to have carried the goods of the appellant did not cross the check- post barrier. The cumulative effect of all this clearly establishes the first charge beyond any trace of doubt. Thus, the first charge is proved.

26. As far as the second charge is concerned, it relates to availing of LTC. There is no doubt that the LTC was availed of twice to which the appellant was not entitled to. What is contended is that once the recovery was done, it could not have been the subject matter of Court Martial. Needless to say, recovery of excess amount stands in a different compartment altogether and Court Martial pertains to good order and military discipline. That apart, recovery ipso facto does not create a bar for the matter to be tried in Court Martial. In this context, we may refer with profit to Rule 53 of the Rules that deals with plea in bar. The said Rule is reproduced hereinbelow: -

> "53. Plea in bar. – (1) The accused, at the time of his general plea of "Guilty" or "Not Guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that –
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> (a) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-

martial, or has been dealt with summarily under sections 80, 83, 84 and 85, as the case may be, for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 22; or

(b) the offence has been pardoned or condoned by competent military authority;

(c) the period of limitation for trial as laid down in section 122 has expired.

(2) If he offers such plea in bar, the court shall record it as well as his general plea, and if it considers that any fact or facts stated by him are sufficient to support the plea in bar, it shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(3) If the court finds that the plea in bar is proved, it shall record its finding and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(4) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea has been found not proved.

(5) If the court finds that the plea in bar is not proved, it shall proceed with the trial, and the said findings shall be subject to confirmation like any other finding or the court." On a bare reading of the aforesaid Rule, it is vivid that recovery of the amount does not come under any of the clauses mentioned in the Rule because there has neither been any previous conviction or acquittal nor has there been any kind of pardon or condonation by any competent military authority. Thus, the submission leaves us unimpressed and we unhesitatingly decline to accept the same.

27. As far as the third charge is concerned, it relates to improper utilisation of the railway warrant from Jammu to New Delhi. The only point urged is that an officer from the railway should have been examined. On perusal of the record, it is perceivable that the appellant put up a requisition for obtaining the railway warrant and the same was collected by the representative on his instructions. He forwarded a letter for reservation and thereafter necessary reservation was made. Exchange of warrant for tickets has been duly proven. Under these circumstances, the plea that he had not collected the railway warrant and there should have been an examination of a competent witness from railway administration is bound to collapse and, accordingly, we reject the said submission.

28. The last submission of Ms. Indu Malhotra, learned senior counsel, pertains to the proportionality of punishment. It is submitted by her that the appellant has rendered dedicated and disciplined service for a span of 21 years and fought in the front and regard being had to the nature of charges, the punishment defies logic and totally buries the concept of proportionality.

29. To appreciate the submission, we may advert to certain authorities in the field. In the case of Ranjit Thakur (supra), it has been held thus:-

> "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 if 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 recognised grounds of judicial review."

30. In Ex-Naik Sardar Singh v. Union of India and others[9], a two-Judge Bench of this Court adverted to Sections 71, 72 and 73 which deal with punishment awardable by Court Martial, alternative punishment awardable by court-martial and combination of punishments respectively. The Bench also referred to Section 63 which deals with violation of good order and discipline. In the said case, the appellant had purchased 11 bottles of sealed rum and one bottle of brandy from his Unit Canteen as he required the same to celebrate the marriage of one of his close relations at his home town. He was entitled to carry four bottles of rum and one bottle of brandy as per the Unit Regulations/leave certificate while he was proceeding on leave. There was confiscation of bottles of liquor by the police while he was proceeding to his home town. He was handed over to the Unit authorities and eventually, in a summary court martial, he was sentenced to three months rigorous imprisonment and dismissed from service. The plea of the appellant before the court martial was that he had purchased the liquor for the marriage of his brother-in-law on the basis of permit that was issued to him. The said plea was not accepted. This Court, after referring to the language used in Section 72, which states that any punishment lower in the scale set out in Section 71 can be imposed regard being had to the nature and degree of the offence, and the decision in Council of Civil Service Unions v. Minister for the Civil Service[10] and other authorities in the field, expressed the view that there was an element of arbitrariness in awarding the severe punishment to the appellant. The Bench opined that the punishment was excessively severe and violative of the language employed in Section 72 of the Act.

31. In Bhagat Ram v. State of H.P.[11], it has been held that penalty imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

32. In Chairman-cum-Managing Director, Coal India Ltd. & Anr. v. Mukul Kumar Choudhury & Ors.[12], this Court adverted to the concept of doctrine of proportionality and eventually opined that

the imposition of punishment is subject to judicial intervention if the same is exercised in a manner which is out of proportion to the fault. If the award of punishment is grossly in excess of the allegations made, it cannot claim immunity and makes itself amenable for interference under the limited scope of judicial review. The test to be applied while dealing with the question is whether a reasonable employer would have imposed such punishment in like circumstances. The question that has to be studiedly addressed is whether the punishment imposed is really arbitrary or an outrageous defiance of logic so as to be called irrational and perverse warranting interference in exercise of the power of judicial review. The appellant was initially cashiered from the Army and was sentenced to undergo rigorous imprisonment for five years. The period of sentence was reduced by the confirming authority. The appellant was a Major in the Army and all the charges levelled against him fundamentally pertain to commission of illegal acts in fiscal sphere. The acts done by him were intended to gain pecuniary advantage. The primary obligation of a member of Armed Forces is to maintain discipline in all aspects. Discipline in fiscal matters has to be given top priority as that mirrors the image of any institution. That apart, the appellant was a Major in the Army. Irreproachable conduct, restrained attitude, understanding of responsibility and adherence to discipline in an apple pie order were expected of him. The proven charges luminously project that the said aspects have been given a total go by. In this backdrop, it is well nigh impossible to hold that the punishment was harsh or arbitrary. Regard being had to the nature of rank held by the appellant and the disciplined conduct expected of him, we find that the doctrine of proportionality is uninvocable and, accordingly, we are compelled to repel the said preponement advanced by the learned senior counsel without any hesitation and we do so.

33. Consequently, the appeal, being devoid of merit, stands dismissed.

.....J. [P. Sathasivam] .....J. [Dipak Misra] New Delhi;

May 11, 2012

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[1] AIR 1957 SC 425
[2] (1959) Supp.1 SCR.319
[3] AIR 1970 SC 150
[4] (1981) 4 SCC 716
[5] (1987) 4 SCC 611
[6] AIR 2006 SC 2544
[7] (1974) 3 SCC 459
[8] (1969) 1 QB 577, 599
[9] [10] (1991) 3 SCC 213
[11] (1984) 3 ALL ER 935
[12] (1983) 2 SCC 442
[13] AIR 2010 SC 75