Manoj H.Mishra vs Union Of India & Ors on 9 April, 2013

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Bench: M.Y.Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. ……. OF 2013
[Arising out of SLP (C) NO.9126 OF 2010]

Manoj H. Mishra
. ..Appellant

VERSUS

Union of India & Ors.
..Respondents

J U D G M E N T

SURINDER SINGH NIJJAR,J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 14th July, 2009 rendered in Letters Patent Appeal No.1041 of 2007 by the Division Bench of the High Court of Gujarat at Ahmedabad confirming the judgment of the learned Single Judge dated 31st January, 2007 in Special Civil Application No.2115 of 1997. On 11th May, 2010, this Court issued notice limited to the question of award of punishment. In the High Court, before the learned Single Judge, the learned counsel for the appellant made only one submission that looking to the allegations and the charges proved against the appellant and the penalty of removal imposed upon the appellant is disproportionate to the misconduct. However, in the Letters Patent Appeal, a draft amendment was moved by the appellant seeking to challenge the order of removal from service on the ground that the acts committed by the appellant did not constitute misconduct. The application for amendment was rejected.

3. We may very briefly notice the relevant facts for deciding the limited issue as to whether the punishment imposed on the appellant is shockingly disproportionate to the misconduct.

4. On 14th October, 1991, the appellant, who had studied upto 12th standard, was appointed as Tradesman/B Class III post at Kakarapar Atomic Power Project (KAPP) at Surat, Gujarat, a public sector enterprises. He was placed on probation for two years in accordance with the statutory rules. It is his case that on completion of the probation period, he is deemed to be confirmed w.e.f.

14th October, 1993. Thereafter, on 17th December, 1993, he was elected as General Secretary of the recognized Union of Class III and Class IV of KAPP, called Kakarapar Anumathak Karamchari Sangthan. It is the claim of the appellant that until his resignation from the primary membership of the aforesaid Union on 22nd September, 1995 at the instance of the Managing Director of the Nuclear Power Corporation (respondent No.2), he acted as the General Secretary of the Union. He was a popular Union leader who always won elections with more than 3/4th majority. On 3rd May, 1994, he was declared a protected workman along with others. He claims that as the General Secretary of the Union, he was very active and always made extra efforts to see that the genuine demands of the members of the Union are accepted by the respondents. As a representative of the Union, he was regularly in contact with the Station Director, KAPP (respondent No.4). As a consequence of the Union activities, the relationship of the appellant with respondent No.4 were sour. The appellant, however, maintained working relationship with the respondents. It is also the claim of the appellant that during the monsoon season, there was heavy rain during the night of 15th June, 1994 and water at Kakarapar Dam had risen beyond the danger level. As a result, the Dam authorities had to open the flood gates. In normal circumstances, Kakarapar lake would receive the Dam water through a canal which is an interlink. The water of the lake is used by the respondents' authorities for power generation. However, on the night of 15th July, 1994, it was the flood water, which entered in the Kakarapar lake and within no time it had also entered into the plant. Before the next morning, more than 25 feet of the turbine which is adjacent to the Nuclear reactors was submerged under water. In fact, the entire record room and computer room were washed away. That apart, some of the barrels containing nuclear wastes were also washed away by the flood water. On 16th July, 1994, the respondent authorities declared an emergency, and started taking preventive measures.

5. It is the claim of the appellant that questions were being raised by many people as to why and how the flood water could not be prevented from entering into the turbines and other areas of the plant. Therefore on 18th June, 1994, the appellant wrote a letter to the Editor, Gujarat Samachar, Surat narrating in the Gujarati language about the aforesaid incident. A translated copy of the letter has been placed at Annexure: P1 to the Special Leave Petition and reads as under :-

> "Date: 18.06.1994 To, The Editor, Gujarat Samachar, Surat.
>
> In the Kankarapar on 16.06.94 there was water filled in, due to this reason about 25 to 30 feet water was filled in the Kankarapar, due to this reason the machines lying in the Atomic Centre shut down Unit No.1 several machines have moved back, and if this same unit No.1 was in the running condition then the situation would have been

very grave, the Unit No.2 is not yet started. On 16.06.94 night there was water filled in the Pali Mahi Scheme, but some engineers in the department who were present at night in Pali they did not find it important to take any action due to this reason the water level went on rising slowly and the situation became so worse that there was emergency declared and the employees were sent away, the staff that was left behind there was no proper facility for food and water made, the employees leader Manojbhai Mishra says that all this is a result of grave corruptions. The department has incurred expenses worth lakhs of rupees and several big canals were made, but the same were not managed properly therefore due to ....illigible....field engineer section thousands of rupees were expended and in the building the situation was very grave and due to this reason although there were thousand crores rupees expended on motor, pump, piping all of which is drowned.

The employees leader Manojbhai Mishra has stated that in the department there are no arrangements made for meeting with the natural calamities, and as a result of which this situation was created. Manojbhai Mishra has further stated that this is not any cloth mill, sugar mill or any paper mill but it is a valuable asset of the country of India and it is an atomic reactor. Manojbhai Mishra says that a high level committee inquiry should be immediately initiated in respect to the Kakarapar Atomic Centre and take strict action against the erring officer, so that in future no such accident may take place.

Thanking you, Yours faithfully, Sd/-

[Manojbhai Mishra] General Secretary Employee Union"

6. The appellant points out that he did not disclose any official information which he could have received during his official duty. He claims that the facts narrated in the letter were of public knowledge and a matter of public concern. This is evident from the fact that every newspapers, politicians, members of legislative assembly and other citizens expressed their concern regarding the safety of the nuclear project and as to how the said incident could have happened. The appellant had narrated the facts relating to the water logging so that in future this type of incident may not occur. The appellant relies on a newspaper Anumukti dated 22nd June, 1994 entitled "Paying the Price for Honesty and Courage". This article points out that although mercifully no great disaster took place the event did highlight the lax attitude towards safety of the nuclear power plant authorities. The article points out some of the glaring irregularities. After pointing out the irregularities, the article concludes:-

"All this shows a criminal negligence on part of designers, operations and regulators of nuclear power in the country. And yet nobody is likely to suffer any adverse consequences at all. Nobody except Shri Manoj Mishra – the man who blew the whistle".

> xx xx xx "Mishra was immediately suspended from work for the crime of talking to the press and his suspension continues even today, five months after the event. While all those who displayed singular dereliction of duty continued merrily along, the one man who put the interest of the country above his own selfish interest has been made to suffer as an example to others that in the nuclear establishment the only 'leaks' that matter are leaks of authentic information."

7. The appellant claims that it was only after the news was published on the 22nd June, 1994 that people outside and even the nuclear establishment in Bombay took cognizance of the event. The Station Superintendent made a "dash" to Surat and issued a statement along with the District Collector of Surat assuring all and sundry that all was well under control. The appellant claims that his honest approach was, however, not appreciated by the Management and in fact he was singled out for action, instead of taking action against erring officials on account of negligence. He had only performed his duty in alerting the authorities to the imminent danger to KAPP.

8. As a 'reward', the respondent authorities placed him under suspension by an order dated 5th July, 1994, in contemplation of disciplinary proceedings for major penalty. On 4th August, 1994, the appellant was served with the following charge sheet:-

> "Article I: That Shri Manoj Mishra, while functioning as Tradesman/B in the Kakrapar Atomic Power Project, vide his letter on 18-6-1994 to the Editor, 'Gujarat Samachar' newspaper, Surat, unauthorisedly communicated with the Press.
>
> Article II: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project, in the letter dated 18-6-1994 written by him to the Editor, Gujarat Samachar made certain statement or expressed certain opinions, which amounted to criticism of the Project management or casting of aspersion on the integrity of its authorities.
>
> Article III: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project, though his letter dated 18-6-1994, he wrote to the Editor of the Gujarat Samachar unauthorisedly communicated to the Press official information concerning the Kakrapar Atomic Power Project.
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> Article IV: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project established contact with a Press correspondent to feed information enabling the press to create news story about the Project containing inflammatory and misleading information causing embarrassment to, and damaging the reputation of the Project and the NPCIL.
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> Article V: That the said Shri Manoj Mishra, while functioning as Tradesman/B in the aforesaid project, established contacts with the Press correspondent and fed him with vital information which has come into his possession in the course of his duty as Tradesman/B in the Project, enabling the press to create a news story about the

> Project creating embarrassment to the Project as swell as to the State authorities. Shri Manoj Mishra has thus committed breach of oath of secrecy which he took at the time of joining the Project."

9. The appellant appeared before the Enquiry Officer on 20th December, 1995, when his Defence Assistant (for short 'DA') made the following statement:-

> "DA. Shri Manoj Mishra met M.D. on 18.12.95 regarding the enquiry. He made appeal to M.D. on 22.9.95 and referring to this Shri Mishra enquired with M.D. As to what was his decision on his appeal. M.D. informed Shri Mishra that a lenient view will be taken, if he accepts the charge. I also met him today and he assured similarly to me also. In view of the above facts, Shri Mishra admits all the charges levelled against him and accordingly requests closure of the proceedings. We now request the I.O. also to take a lenient view of the case."

10. The Enquiry Officer, however, declined to accept the conditional admission with the following observations:-

> "I.O. Such admissions in the inquiry are not valid. Your meeting M.D. is an extraneous matter with which I am Inquiry Officer is not concerned. Further I also would not like you to admit the charges on reasons other than facts. I therefore, request you to categorically tell me whether on your own you admit the charges or not."

11. In response to the aforesaid request of the Enquiry Officer, the appellant, i.e., C.O. stated thus :-

> "C.O. I admit the charges. I request the inquiry to be closed."

12. In view of the aforesaid admission, the Enquiry Officer closed the enquiry proceedings. The charges were held to be proved against the appellant. Acting on the aforesaid enquiry report by order dated 30th March, 1996, the Disciplinary Authority ordered the removal of the appellant from service of KAPP w.e.f. afternoon of 30th March, 1996. The appellant was informed that an appeal lies against the aforesaid order with the Station Director, KAPP within a period of 45 days from the date of the issue of the order. The appeal filed by the appellant was dismissed. The appellant thereafter preferred a revision application before respondent No. 3, which was also dismissed.

13. The appellant challenged the aforesaid order by way of a Special Civil Application No. 2115 of 1997. The aforesaid writ petition was dismissed by learned Single Judge. The appellant preferred LPA No. 1041 of 2007 against the aforesaid judgment of the learned Single Judge, which was dismissed by the Division Bench on 14th July, 2009. All these orders have been challenged before this Court in the present appeal.

14. We have heard the learned counsel for the parties.

15. Mr. Prashant Bhushan, learned counsel appearing for the appellant submitted that the appellant had only done his duty as an enlightened citizen of this country in highlighting the serious lapses on the part of the authorities that could have resulted in a catastrophic accident. Learned counsel pointed out that seriousness of the accident which took place at KAPP is evident from the fact that it is mentioned in the Audit Report submitted by the department of the Atomic Energy to the Government on the safety of Indian Nuclear Installation. Learned counsel further pointed out that power supply to the KAPP could be restored only at 1510 hrs. on 16th June, 1994. Some part of the plant could be restarted only on 17th June, 1994 at 10.25 am. The report clearly indicates that during the incident Site Emergency was declared at 11.00 a.m. and terminated at 5.00 p.m. on 16th June, 1994. The Audit Report clearly indicates that the valuable feedback arising out from the three incidents which were reviewed, which indicated the incident at KAPS led to strengthening the design of the nuclear power stations in the country. Therefore, according to the learned counsel, instead of being punished, the appellant ought to have been rewarded for doing his duty as an enlightened citizen of this country. Learned counsel further pointed out that once the internal emergency had been declared, respondent Nos. 2 to 4 were under obligation to alert the Collector and District Magistrate, Surat, SDM of Vyara, Mandvi, Olpad, DSP (rural), Surat about the emergency situation. However, the KAPP authority did not alert the authorities of the district administration on 16th June, 1994. In fact the District Authority visited the site only on 23rd June, 1994 after the new stories were published in the local dailies on 22nd June, 1994. Mr. Prashant Bhushan has made a reference to the letter dated 2nd July, 1994, in which the Disciplinary Authority has informed the appellant that:

> "As a result of the appearing of the highly inflammatory news stories in the press, the authorities of the District Administration had to rush to the Plaint Site on 23.6.1994 to ascertain the veracity of the story and to take corrective measures for removing the apprehensions caused all around on account of the news story. The project authorities too had to rush to the District Headquarters on 23.6.1994 for taking appropriate immediate action to issue clarificatory information to the Press. All these could have been avoided had Shri Manoj Mishra and his accomplices behaved themselves in the responsible manner and desisted themselves from interacting with the press and passed on distorted information.

Since the action on the part of Shri Manoj Mishra and his accomplices has caused serious difficulties to the various authorities, apart from causing irreversible damage to the reputation of the establishment and called in the question the integrity of some of its own employees, the District Administration Authorities have called upon the Project Management to investigate into the entire episode and take action to bring to book the culprits."

16. Mr. Prashant Bhushan submitted that if the aim of the appellant was to seek publicity, he could have gone to the press on 16th June, 1994 or the latest on 17th June, 1994. The appellant only talked to the reporters when they were at plant site to cover the situation. He had talked to the press in his capacity as the General Secretary of KAKS. Learned counsel pointed out that the appellant only wrote to the letter dated 18th June, 1994 to the Editor of Gujarat Samachar, when he saw that the concerned authorities were acting negligently. Mr. Bhushan further submitted that the appellant has

been misled into admitting the charges levelled against him as he was verbally assured by respondent No. 4 that he would be dealt with leniently, if he admits all the charges. Keeping in view the facts that the appellant had acted in the best interest of nuclear facility and to prevent a catastrophic accident having disastrous result like Fukushima accident, the appellant could not be said to be guilty of any misconduct. Mr. Bhushan further submitted that the information given by the appellant was not, in any manner, confidential information to invite any Disciplinary Proceedings or punishment. The appellant was, in fact, in the position of a "whistle blower" and he is to be given full protection by the Court. Learned counsel pointed out that radio activity would continue for a long time even after a nuclear reactor is shut down, therefore, the fuel rods have to be kept cool for a very long time and sometimes even for years. The incident which took place on the night of 15th June, 1994 was very serious. The power failure could have had devastating effect. Therefore, the civil authorities had to be alerted forthwith, as the population in the entire area would have to be evacuated. Instead of taking timely preventive measures, the atomic centre merely tried to keep the incident concealed. Merely because the damage caused by the flood was ultimately controlled is not a ground to conclude that it would not have led to a major catastrophe. The appellant had only alerted the Civil Authorities, which was required to be mandatorily done by the respondents, under the rules. Mr. Bhushan reiterated that the description of the incident given by the authorities themselves clearly shows that ultimately action was taken on a war footing to control the flood situation at the site. Various officers were contacted and it was on their action the situation was brought under control. Learned counsel also reiterated the Extracts from Manual on Emergency Preparedness for KAPS Volume I Part II, Page 3 and Action Plan for Site Emergency. He brought to our notice, in particular, that on hearing the emergency signal and/or on getting information of the same through telephone (or any other means), the Director shall immediately proceed to the main control room. He is required to alert Collector and District Magistrate, Surat, SDM of Vyara, Mandvi, Olpad, DSP (rural), Surat. Under Clause 5 of the aforesaid extracts from Manual. The authorities are required to depute one Assistant Health Physicist to the assembly areas for general contamination and radiation checks. Arrangements have to be made for transportation of injured person/persons to the Hospital after providing First Aid. Arrangements had to be made for evacuation of the site personnel, if required. Since none of that was being done, the appellant acted as a "whistle blower" and alerted the Press.

17. Mr. Bhushan makes a reference to the letter dated 2nd July, 1994 of the Senior Manager (P & IR) to the appellant as President of KAKS in which it was alleged that "the story which appeared in Gujarat Samachar created panic among the people residing in areas nearby the Project in particular and the State of Gujarat in general as also the State Administration, thereby causing spread of disinformation and bringing disrepute to the Project, which was raised doubts about the safety of the Project and integrity of the Project Authorities".

18. Learned counsel, therefore, submitted that the learned Single Judge as well as the Division Bench have committed a serious error in not accepting the plea of the appellant that the punishment was disproportionate to the misconduct. Learned counsel submitted that when exercising the jurisdiction under Article 226 of the Constitution of India, the High Court is not bound by any technicalities and is required to do substantial justice where glaring injustice demands affirmative action. He submitted that in the circumstances ends of justice would be met in case the punishment

of removal is substituted by the punishment of stoppage of three increments without cumulative effect. He relies on Gujarat Steel Tubes Ltd. & Ors. Vs. Gujarat Steel Tubes Mazdoor Sabha & Ors.[1], in which this Court held as under:-

> "While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process".

19. Relying on the aforesaid observations, he submits that the High Court has failed to exercise the jurisdiction vested in it under Article 226 of the Constitution of India. The Singe Judge, even having noticed the principle that the Court can interfere with the decision of the Disciplinary Authority, if it seems to be illegal or suffers from procedural impropriety or is shocking to the judicial conscience of the Court, erroneously failed to apply the same to the case of the appellant.

20. The punishment imposed on the appellant suffer from all the vices of irrationality, perversity and being shockingly disproportionate and ought to have been set aside and substituted by a lesser punishment. In support of the submissions, he relies on Ranjit Thakur Vs. Union of India & Ors.[2], in which this Court held as under:-

> "25. 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 recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service9 Lord Diplock said:
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> "Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I

> have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . ."

21. On the same proposition, the learned counsel has relied on a number of judgments, but it is not necessary to make a reference to them as the ratio of law laid down in the aforesaid cases have only been reiterated. Learned counsel submitted that on 21st April, 2004, Ministry of Personnel, Public Grievances and Pension issued a Notification for the protection of "whistle blowers" in terms of the order of this Court in Parivartan & Ors. Vs. Union of India & Ors., Writ Petition (C) No. 93 of 2004 along with Writ Petition (C) No. 539 of 2003 recording the murder of Shri Satyendra Dubey. He also relied on judgment of this Court in Indirect Tax Practitioners' Association Vs. R.K. Jain[3] in support of his submission, that the appellant had acted as "whistle blower" ought not to have been punished.

22. Mr. Parekh seriously disputes the version of events as narrated by the learned counsel for the appellant. He submits that on 16th June, 1994, as a result of the overflow, the flood water entered into parts of the plants and, therefore, precautionary actions were to be taken. Therefore, follow up exercises were being diligently carried out when everyone was busy in tackling the situation to save Atomic Power Plant, the appellant, using the official telephone contacted the following members of the media:-

i) 623375-The Editor, Gujarat Samachar, Surat

ii) 20760- Shri Vilasbhai Soni, Press Reporter, Sandesh, Vyare

iii) 30225-Hasmuklal and Company, Sardar Chowk, Bardoli.

23. On 18th June, 1994, at about 11.30 a.m., the appellant telephoned the pass section of CISF and told Mr. A. Srikrishna, CISF Constable, that a person asking for him will come to pass section. The Constable was told to tell the person to wait for the appellant. After the press reporter arrived, the appellant met him in his official quarters. Thereafter, the appellant wrote the letter to the Daily Gujarat Newspaper having the largest circulation in Gujarat. Relying on the aforesaid, the newspaper published the news. Soon thereafter on 22nd June, 1994, another news story appeared in Gujarat Samachar with the title that "Half of Gujarat would have exploded on June 15". In this news story, it was stated that "at the same time chances of an accident damaging not only Surat district but, the whole of Gujarat and being totally demolished within seconds have been saved". According to Mr. Parekh, the aforesaid story contained false and defamatory allegations of "blatant corruption going on in the organization". It gave false and distorted and inflammatory information about the Project, raising serious doubts about the safety and security of the Nuclear Power Plant. The aforesaid news story was capable of creating extreme panic among the public of Gujarat. After satisfying himself with the safety situations, the District Collector in his capacity as Director of Site Emergency Plan of KAPS gave a press release to that effect. Similarly, the Station Director also issued a press release to diffuse the panic situation created by the news item released by the appellant in his own name and signature. These clarifications were published in the Gujarat

Samachar on 23rd June, 1994. On 5th July, 1994, respondent No. 2 appointed a Committee to investigate the role of the appellant behind the aforesaid media reports. Based on the preliminary reports, the Disciplinary Authority placed the appellant under suspension, in contemplation of disciplinary proceedings to be initiated against him for major penalty. The statement of imputation of misconduct of misbehaviour in support of charges were served on the appellant on 4th August, 1994. An Inquiry Officer was appointed on 26th December, 1994. At the primary hearing in the enquiry, the appellant denied all the charges. His choice of Mr. P.B. Sharma as Defense Assistant was accepted. He was given inspection of all the documents, he was also asked to submit his list of witnesses. The appellant had stated that the list of witnesses would be submitted after consulting his Defense Assistant. On 9th October, 1995, the hearing of the inquiry was adjourned on the ground that the appellant had submitted an appeal to NPCIL. On 20th December, 1995, the appellant admitted all the charges leveled against him in toto and accordingly the inquiry was closed on such admission of the charges.

24. Mr. Parekh further submitted that the appellant having admitted all the charges levelled against him can not be permitted to resile from the same on the ground that any assurance of leniency were made to him by the respondents. He further submitted that the appellant has been non-suited at every stage. Even this Court had only issued notice with regard to the question of punishment. He points out that the appellant is correct in saying that he is not an employee of a cloth mill or sugar mill, he was an employee of the highly sensitive Atomic Centre. He was required to maintain highest degree of confidentiality at the time of the incident. The appellant, instead of assisting the control of flood situation, was busy giving disinformation to the press. He submitted that under the rules and regulations applicable at the Atomic Centre, press can not be contacted by any employee other than the Specified Officer. This is so as the workers in the nuclear power facility are a special category of employees. They are required to maintain a very high standard with regard to confidentiality to prevent the leakage of very sensitive information. Mr. Parekh emphatically denied the claim of the appellant that he is a “whistle blower”. At the time when the water was entering into the nuclear plant the appellant made three telephone calls to the Media divulging the information which he was not permitted to give. The appellant had even informed the constable on duty to keep one of the news reporters outside on 18th June, 1994 when the emergency was at its highest. Mr. Parekh further pointed out that a mere perusal of the charges which have been admitted by the appellant would clearly show that the punishment is not only justified but in fact rather lenient. The respondents in fact had the option to prosecute the appellant but he has only been proceeded against the departmentally. Mr. Parekh also submitted that most of the submissions made by Mr. Bhushan and the documents relied upon in support of the submissions were never a part of the record before the High Court. According to the learned senior counsel, the appellant does not deserve any leniency and the appeal deserves to be dismissed.

25. We have considered the submissions made by the learned counsel very anxiously.

26. We have noted in detail the submissions made by Mr. Bhushan, though strictly speaking, it was not necessary in view of the categorical admission made by the appellant before the Enquiry Officer. Having admitted the charges understandably, the appellant only pleaded for reduction in punishment before the High Court. The learned Single Judge has clearly noticed that the counsel for

the appellant has only submitted that the punishment is disproportionate to the gravity of the misconduct admitted by the appellant. The prayer made by the appellant before the Division Bench in the LPA for amendment of the grounds of appeal to incorporate the challenge to the findings of guilt was rejected.

27. In our opinion, the learned Single Judge and the Division Bench have not committed any error in rejecting the submissions made by the learned counsel for the appellant. We are not inclined to examine the issue that the actions of the appellant would not constitute a misconduct under the Rules. In view of the admissions made by the appellant, no evidence was adduced before the Enquiry Officer by either of the parties. Once the Enquiry Officer had declined to accept the conditional admissions made by the appellant, it was open to him to deny the charges. But he chose to make an unequivocal admission, instead of reiterating his earlier denial as recorded in preliminary hearing held on 26th December, 1994. The appellant cannot now be permitted to resile from the admission made before the Enquiry Officer. The plea to re-open the enquiry has been rejected by the Appellate as well as the Revisional Authority. Thereafter, it was not even argued before the learned Single Judge. Learned counsel had confined the submission to the quantum of punishment. In LPA, the Division Bench declined to reopen the issue. In such circumstances, we are not inclined to exercise our extraordinary jurisdiction under Article 136 for reopening the entire issue at this stage. Such power is reserved to enable this Court to prevent grave miscarriage of justice. It is normally not exercised when the High Court has taken a view that is reasonably possible. The appellant has failed to demonstrate any perversity in the decisions rendered by the Single Judge or the Division Bench of the High Court.

28. Having examined the entire fact situation, we are unable to accept the submission of Mr. Bhushan that the appellant was acting as a “whistle blower”. This Court in the case of Indirect Tax Practitioners’ Association (supra) has observed as follows:-

> “At this juncture, it will be apposite to notice the growing acceptance of the phenomenon of whistleblower. A whistleblower is a person who raises a concern about the wrongdoing occurring in an organisation or body of people. Usually this person would be from that same organisation. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organisation) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues).”

29. Before making the aforesaid observations, this Court examined in detail various events which had taken place over a long period of time in which, the respondent, Editor of the Law Journal, Excise Law Times had participated. A Contempt Petition was filed by the appellant association against the respondent on the ground that he wrote an editorial in the issue dated 1st June, 2009 of the Journal, which amounted to criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971. In the editorial, the respondent appreciated the steps taken by the new President of CESTAT to cleanse the administration. However, at the same time, he highlighted the irregularities

in transfer and posting of some members of the Tribunal. He had pointed out that one particular member, Mr. T.K. Jayaraman had been accommodated at Bangalore by transferring another member from Bangalore to Delhi in less than one year of his posting. Apart from this, he had also criticized some of the orders passed by the bench comprising of Mr. T.K. Jayaraman, which were adversely commented upon by the High Court of Karnataka and Kerala. In spite of this, the appellant contended that, by highlighting the irregularities and blatant favoritism shown to Mr. T. K. Jayaraman, Mr. R.K. Jain was trying to scandalize the functioning of CESTAT and lower its esteem in the eyes of the public. It was pointed out that the article in which the aforesaid statements have been made, was in breach of the undertaking filed in this Court in Contempt Petition (Crl.) No. 15 of 1997. In these proceedings, the respondent had given an undertaking on 25th August, 1998, to abide by the advise given by his senior counsel that in future whenever there are any serious complaints regarding the functioning of CEGAT, the proper course would be to first bring those matters to the notice of the Chief Justice of India, and/or the Ministry of Finance and await a response or corrective action for a reasonable time before taking any other action. During the pendency of the aforesaid contempt case, the respondent had written a number of detailed letters to the Finance Minister and other higher authorities in the Government of India highlighting the specific cases of irregularities, malfunctioning and corruption in CESTAT. After the notice of contempt was discharged, the respondent wrote two more letters to the Finance Minister on the same subject and also pointed out how the appointment and posting of Mr. T.K. Jayaraman, Member CESTAT was irregular. He wrote similar letters to the Revenue Secretary; President, CESTAT; Registrar, CESTAT and the Central Board of Excise and Customs. Since no cognizance of the aforesaid letters were taken by any of the five authorities, the respondent wrote the editorial in which he made the comments, which led to the filing of the Contempt Petition by the appellant.

30. This Court took notice of the conduct and the credentials of the respondent. It is noticed that the respondent is not a novice in the field of Journalism. For decades, he had been fearlessly using his pen to highlight malfunctioning of CEGAT and its successor CESTAT. In his letter dated 26th December, 1991 written to the then Chief Justice of India, he complained that CEGAT is without a president for last over six months, which has adversely affected the functioning of the Tribunal. After an in depth analysis of the relevant constitutional provisions, this Court gave certain suggestions for improving the functioning of CEGAT and other Tribunals constituted under Articles 323A and 323B. [See R.K. Jain Vs. Union of India, (1993) 4 SCC 119]. It was pointed out that the allegations made by Mr. R.K. Jain having regard to the working of CEGAT are grave and the authorities can ill afford to turn a “Nelson’s eye” to those allegations made by a person who is fairly well conversant with the internal working of the Tribunal.

31. After noticing the aforesaid observations in the earlier case, this Court in the case of Indirect Tax Practitioners’ Association (supra), pointed out that respondent was very conscious of the undertaking filed in the earlier Contempt Petition and this is the reason why before writing the editorial, he sent several communications to the functionaries concerned, to bring to their notice the irregularities in the functioning of CESTAT. The Court notices that “The sole purpose of writing those letters was to enable the authorities concerned to take corrective measures but nothing appears to have been done by them to stem the rot. It is neither the pleaded case of the appellant nor any material has been placed before this Court to show that the Finance Minister or the Revenue

Secretary, Government of India had taken any remedial action in the context of the issues raised by the respondent. Therefore, it is not possible to hold the respondent guilty of violating the undertaking given to this Court."

32. This Court upon meticulously taking note of the entire fact situation observed that the editorial written by the respondent was not intended to demean CESTAT as an institution or to scandalize its functioning. Rather, the object of the editorial was to highlight the irregularities in appointment, posting and transfer of members of CESTAT and instances of abuse of the quasi judicial powers. It was further observed that the editorial highlighted the unsatisfactory nature of the orders passed by the particular bench of Mr. T.K. Jayaraman was a member. The orders had been set aside by the High Courts of Karnataka and Kerala as well as by this Court. In these circumstances, this Court observed:-

> "38. It is not the appellant's case that the facts narrated in the editorial regarding transfer and posting of the members of CESTAT are incorrect or that the respondent had highlighted the same with an oblique motive or that the orders passed by the Karnataka and Kerala High Courts to which reference has been made in the editorial were reversed by this Court. Therefore, it is not possible to record a finding that by writing the editorial in question, the respondent has tried to scandalise the functioning of CESTAT or made an attempt to interfere with the administration of justice.
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> 41. One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behaviour or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behaviour, within an organisation, if there are complaint systems that offer not just options dictated by the planning and controlling organisation, but a choice of options for individuals, including an option that offers near absolute confidentiality. However, external whistleblowers report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, State, or federal agencies.
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> 42. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such a person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act."

33. In our opinion, the aforesaid observations are of no avail to the appellant. It is a matter of record that the appellant is educated only upto 12th standard. He is neither an engineer, nor an expert on the functioning of the Atomic Energy Plants. Apart from being an insider, the appellant did not fulfill the criteria for being granted the status of a "whistle blower". One of the basic requirements of

a person being accepted as a “whistle blower” is that his primary motive for the activity should be in furtherance of public good. In other words, the activity has to be undertaken in public interest, exposing illegal activities of a public organization or authority. The conduct of the appellant, in our opinion, does not fall within the high moral and ethical standard that would be required of a bona fide “whistle blower”.

34. In our opinion, the appellant without any justification assumed the role of vigilante. We do not find that the submissions made on behalf of the respondents to the effect that the appellant was merely seeking publicity are without any substance. The newspaper reports as well as the other publicity undoubtedly created a great deal of panic among the local population as well as throughout the State of Gujarat. Every informer can not automatically be said to be a bonafide “whistle blower”. A “whistle blower” would be a person who possesses the qualities of a crusader. His honesty, integrity and motivation should leave little or no room for doubt. It is not enough that such person is from the same organization and privy to some information, not available to the general public. The primary motivation for the action of a person to be called a “whistle blower” should be to cleanse an organization. It should not be incidental or byproduct for an action taken for some ulterior or selfish motive.

35. We are of the considered opinion that the action of the appellant herein was not merely to highlight the shortcomings in the organization. The appellant had indulged in making scandalous remarks by alleging that there was widespread corruption within the organization. Such allegations would clearly have a deleterious effect throughout the organization apart from casting shadows of doubts on the integrity of the entire project. It is for this reason that employees working within the highly sensitive atomic organization are sworn to secrecy and have to enter into a confidentiality agreement. In our opinion, the appellant had failed to maintain the standard of confidentiality and discretion which was required to be maintained. In the facts of this case, it is apparent that the appellant can take no advantage of the observations made by this Court in the case of Indirect Tax Practitioners’ Association (supra). This now brings us to the reliance placed by the appellant on the judgment in the case of Gujarat Steel Tubes Case (supra). In our opinion, the ratio in the aforesaid judgment would have no relevance in the case of the appellant. We are not satisfied that this is a case of ‘glaring injustice’.

36. In our opinion, the punishment imposed on the appellant is not ‘so disproportionate to the offence as to shock the conscience’ of this Court. The observations of this Court in Ranjit Thakur (supra) are also of no avail to the appellant. No injustice much less any grave injustice has been done to the appellant.

37. We see no merit in the appeal and the same is hereby dismissed.

.....J. [Surinder Singh Nijjar] .....J. [M.Y.Eqbal] New Delhi;

April 09, 2013.

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[1] (1980) 2 SCC 593 [2] (1987) 4 SCC 611 [3] (2010) 8 SCC 281