Supreme Court of India
Union Of India Etc vs Parma Nand Etc on 14 March, 1989
Equivalent citations: 1989 AIR 1185, 1989 SCR (2) 19
Author: K Shetty
Bench: Shetty, K.J. (J)

PETITIONER:
UNION OF INDIA ETC.

Vs.

RESPONDENT:
PARMA NAND ETC.

DATE OF JUDGMENT14/03/1989

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
AHMADI, A.M. (J)
KULDIP SINGH (J)

CITATION:
1989 AIR 1185 1989 SCR (2) 19
1989 SCC (2) 177 JT 1989 (2) 132
1989 SCALE (1)606

ACT:
Administrative Tribunals Act, 1985: Section 14-16, 27-29.
Disciplinary proceedings--Inquiry--Penalty imposed by
Competent Authority--Punjab Government Servants Conduct
Rules, 1966-Administrative Tribunal--Jurisdiction
of--Whether could modify penalty on the ground that it is
excessive or disproportionate to the misconduct proved.
Constitution of India, 1950 Art. 311(2)(a): Civil
Servant-Conviction on a Criminal Charge--Penalty imposed by
competent authority--Administrative Tribunal--Jurisdiction
of--Whether can examine adequacy of penalty.
Article 136: Supreme Court's jurisdiction--Is
equitable--Supreme Court can modify the penalty imposed by
Competent Authority--High Court or Tribunal has no such

jurisdiction.
Words and Phrases: "All Courts'--Meaning of.

HEADNOTE:

The respondent, in the appeal, was in-charge of preparing the pay bills of the employees of the Beas Sutlej Link Project. He, along with other two employees, was charged with the fraudulent act of withdrawal of Rs.238.90 by preparing a bogus pay bill and identity card in the name of a fictitious person. An enquiry was conducted against all the three employees under the Punjab Government Servants Conduct Rules, 1966 and the Inquiry Officer found all the three guilty of the charge framed against each of them. The competent authority accepted the findings of the Inquiry Officer and after giving an opportunity of being heard imposed the penalty of dismissal on the respondent. Minor penalty of with-holding two or three future increments was imposed on each of the other two employees. The respondent challenged the finding of the Inquiry Officer as well as the order of dismissal by filing a writ petition in the High Court of Himachal Pradesh. Subsequently the writ stood transferred to the Central Administrative Tribunal under the
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provisions of the Administrative Tribunal Act, 1985. The Tribunal agreed with the findings recorded by the Inquiry Officer to the effect that the respondent was guilty of the charge but modified the punishment by reducing the punishment of dismissal imposed to that of stopping his five increments on the ground that the respondent was measur

ed with a different yardstick than the other two employees. Against the aforesaid order of the Tribunal appeals were filed before this Court; (a) by the Union of India contending that the tribunal has no powers to interfere with the punishment imposed by the disciplinary authority on the ground that it is disproportionate to the proved misdemeanour, and (b) by the respondent seeking a complete exoneration from the charge.

While allowing the appeal of the Union and dismissing the Special Leave Petition of the respondent the Court set aside the order of the Tribunal, and,

HELD: 1. Under the provisions of the Administrative Tribunal Act, 1985 the powers of the High Courts under Article 226, in so far as they are exercisable in relation to service matters stand conferred on the Tribunal established under the Act. The powers of other ordinary civil Courts in relation to service matters to try all suits of a civil nature excepting suits of which their cognisance either expressly or impliedly barred also stand conferred on the Tribunal. The Act thus excludes the jurisdiction, power and authority of all Courts except the Supreme Court and confers the same on the Tribunal in relation to recruitment and service matters. The Tribunal is just a substitute to the civil Court and High Court. The Tribunal thus could exercise only such powers which the civil Court or the High Court could have exercised by way of judicial review. It is neither less nor more. [27DG-H; 28B-

S.P. Sampat Kumar v. Union of India & [1987]

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S.C.C. 124 referred to;
2. The jurisdiction of the Tribunal to interfere wi
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the disciplinary matters or punishment cannot be equat
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with an appellate jurisdiction. The Tribunal cannot inte
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fere with the findings of the Inquiry Officer or compete
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authority where they are not arbitrary or utterly pervers
e.
The power to impose penalty on a delinquent officer
is
conferred on the competent authority either by an Act
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legislature or rules made under the provisio to Article 3
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of the Constitution. If there has been an enquiry consiste
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with the rules and in accordance with principles of natur
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justice what punishment would meet the
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ends of justice is a matter exclusively within the jurisdi
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tion of the competent authority. If the penalty can lawful
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be imposed and is imposed on the proved misconduct, t
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Tribunal has no power to substitute its own discretion f
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that of the authority. The adequacy of penalty unless it
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malafide is certainly not a matter for the Tribunal
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concern with. The Tribunal also cannot interfere with t
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penalty if the conclusion of the Inquiry Officer or t
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competent authority is based on evidence even if some of
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is found to be irrelevant or extraneous to the matte
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[33D-F]
State of Orissa v. Bidyabhushan, [1963] (Suppl.)
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S.C.R. Dhirajlal Girdharilal v. Commissioner
648;
of
Income-Tax, A.I.R. 1955 S.C. 271; State of Maharashtra
v.
B.K. Takkamore & [1967] 2 S.C.R. 583; Zora Singh
v.

J.M. Tandon 1971 S.C. 1537; Railway Board v. Niran-
jan Singh, [1969] 3 S.C.R. 548, State of U.P. v. O.P.
Gupta, [1970] 3 S.C.R. 1970 S.C. 679 and Union of India v. Sarda
Bahadur, [1972] 2 S.C.R. 218, applied.

Bhagat Ram v. State of Himachal Pradesh, [1983] 2 S.C.C.
442, distinguished.

3. There is one exception to this proposition. There may
be cases where the penalty is imposed under clause (a) of
the second proviso to Article 311(2) of the Constitution.
Where the person, without enquiry is dismissed, removed or
reduced in rank solely on the basis of conviction by a
criminal court, the Tribunal may examine the adequacy of the
penalty imposed in the light of the conviction and sentence
inflicted on the person. If the penalty impugned is apparent-
ly unreasonable or uncalled for, having regard to the
nature of the criminal charge, the Tribunal may step in to
render substantial justice. The Tribunal may remit the
matter to the competent authority for reconsideration or by
itself substitute one of the penalities provided under
clause (a) [35E-
F] Union of India v. Tulsiram Patel, [1985] 3 S.C.C. 398,
applied.

4. Since the respondent had made his choice of forum and
was even otherwise dealt with under the Government Servant
(Conduct) Rules which are applicable to him it cannot be
held that he falls into the category of a workman empowering
the Central Administrative Tribunal to exercise the powers
of an Industrial Court for giving appropriate relief. [35
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1709 of 1988.

From the Judgment and Order dated 9.10.1987 of t he Central Administrative Tribunal Chandigarh in Appln. T.

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1055 of 1986.

WITH (SLP (Civil) No. 6998 of 1988) V.C. Mahajan, Mrs. Indu Goswami, C.V. Subba Rao, P.

Parmeshwaran for the Appellant in C.A. No. 1709 of 1988. M.K.D. Namboodary for the Petitioner in SLP (Civil) N o.

6998 of 1988.

S.M. Ashri and Mahabir Singh for the Respondents. The Judgment of the Court was delivered by K. JAGANNATHA SHETTY, J. The civil appeal, by speci al leave, and the connected SLP raise an important issue as to the power of the Central Administration Tribun al ("Tribunal") to examine the adequacy of penalty awarded by the competent authority to a Government servant in discipl i-

nary proceedings.

Short factual background is this:

Parmanand--Respondent in the appeal was a Time Keeper in Beas Sutlej Link Project, Sundernagar. He was incharge of preparing the pay bills and other bills of the work charg ed employees of the project. It was alleged that he maSte r-

minded and prepared the pay roll pertaining to 'T' Token of Central Survey Division, Sundernagar for the month of M ay 1969 and entered the name of one Shri Ashok Kumar, Token N o.

59-T at serial No. 10 on page 2 of the relevant pay roll. He made this entry with ulterior motive to withdraw the pay of Ashok Kumar for the month of May 1969, even though Ash ok Kumar was not working in that Division. A bogus identi ty card in the name of Ashok Kumar T.No. 59-T with the sign a-

tures of the issuing officer was also prepared by the r e-

spondent although it was not his duty to prepare the ident i-

ty card. The said fictitious identity card was used by o ne Suraj Singh, cleaner T. No. 210-K of Beggi Tunnelling Div i-

sion for the purpose of withdrawing the pay of Ashok Kuma r.

While Suraj Singh by impersonation was receiving the pay of Ashok Kumar, he was recognised by the Cashier since he kn ew him personally. There then started an enquiry followed by departmental proceedings against three persons includi ng the respondent herein. The Personnel Officer of the BSL Project was appointed as Inquiry Officer. The enqui ry was conducted under the Punjab Government Servants Condu ct Rules, 1966.

The Inquiry Officer framed charge against the responde nt in the following terms:

"That the said Shri Parma Nand, while working as Time Keeper in Time Keeping Sub-Division of Beas Sutlej Li nk Project, Sundernagar during the month of May 1969 failed to maintain absolute integrity and devotion to duty in as mu ch as he falsely marked the attendance of Shri Ashok Kuma r, Token No. 59-T in the Pay Roll of Control Survey Divisi on for the month of May 1969, which resulted in fictitio us drawal of Rs.238-90 as pay of the said Shri Ashok Kumar. He also prepared a bogus identity card in the name of the abo ve Shri Ashok Kumar and initiated it below the signatures of issuing officer and this identity card Was used by Sh ri Suraj Singh, Cleaner (Token No. 210-K), Boggi Tunnelli ng Division, at the time of attempting to receive the pay of Shri Ashok Kumar from the Cashier."

After a detailed enquiry against the respondent and t wo others, the Inquiry Officer found all the three guilty of the charge framed against each of them. The report of e n-

quiry was forwarded to the competent authority who aft er giving an opportunity of being heard dismissed the respon d-

ent from service. The other two persons were let off wi th minor punishments of withholding two or three future incr e-

ments in their pay scales. The respondent moved the High Court of Himachal Prade sh under Article 226 challenging the findings of Inquiry off i-

cer as well as the order of dismissal passed by the comp e-

tent authority. During the pendency of the writ petition, a Bench of the Central Tribunal at Chandigarh was constitut ed under the Administrative Tribunal Act, 1985. Consequentl y, the said writ petition stood transferred to the Tribunal by operation of S. 29 of that Act. The Tribunal upon consideration of the matter agre ed with the findings recorded by the Inquiry Officer that t he respondent was the master mind behind the scheme to defra ud the project. The Tribunal observed:

"Since the applicant had. access to the records which were fabricated at the relevant time the Inquiry Officer h ad come to the conclusion that the applicant was the mast er mind behind the scheme to defraud the Project. In view of the foregoing, it cannot be termed th at the finding returned by the Inquiry Officer is without a ny evidence. "

It was also observed that there was no denial of a reasonable opportunity for the respondent to set up prop er defence. After reaching this conclusion, the Tribunal pr o-

ceeded to examine the adequacy of penalty awarded to t he respondent. This is how the Tribunal dealt with that que s-

tion:

"Lastly, it was argued on behalf of the applicant that t he punishment awarded to him is disproportionate to the gravi ty of the charge proved against him and is in stark contrast to the punishment awarded to his other three colleagues in whose cases, only future increments were stopped, the max i-

mum being for three years in respect of Shri Sain Ditt a, Clerk. The finding regarding the applicant being t he master-mind behind the attempt to defraud the Project a p-

pears to have weighed. with the disciplinary authority whi le dismissing the applicant from service. An appreciation of the evidence, as done in the preceding pages, would sh ow that the applicant had entered the name of Shri Ashok Kum ar in the pay roll for May 1969 and so far as other eviden ce against him is concerned, it is mostly of a circumstanti al nature. There is no direct or expert evidence that it was he who had marked the attendance of Shri Ashok Kumar in the p ay roll for May 1969 or that it was he who had initiated t he identity card. The evidence against him is circumstantial in as much as the pay roll was under his custody and he cou ld have access to the identity cards. Under these circu m-

stances, the evidence that the applicant was the only mast er mind who sought to defraud the project of the funds cann ot be termed to be direct." The Tribunal concluded:

"As such it is a case where the applicant shou ld not be measured with a different yardstick than the other s, who have been punished along with applicant. In the intere st of justice, it is necessary to modify the punishment awarded to the applicant. We, therefore, direct that the punishment of dismissal awarded to the applicant be reduced to that of stopping of his five increments which he had earned for a period of five years, in terms of clause (iv) of Rule 11 of the Central Civil Services (Classification, Control a nd Appeal) Rules, 1965. There will be no order as to costs. T he respondents shah comply with this order within four mont hs from its receipt and pay all consequential benefits to t he applicant."

The Tribunal seems to suggest that the respondent w as not the only master mind to commit the fraudulent act a nd there were others too, and as such, he should not be mea s-

ured with a different yardstick. The Tribunal however, h as held that the respondent was guilty of entering the name of Ashok Kumar in the pay roll of May 4969. Yet it modified t he punishment to fall in line with that of others whose pa rt inthe fraudulent act was evidently not similar in nature. Being aggrieved by the reduction of penalty, the Uni on of India has preferred the Civil Appeal No. 1709 of 198

8. Parma Nanda seeking a complete exoneration from the char ge has preferred the SLP No. 6998 of 1988. The question which has to be decided, therefore, is whether the Tribunal has power to modify the penalty award ed to the respondent when the findings recorded as to h is misdemeanour is supported by legal evidence. To put in oth er words, whether the Tribunal could interfere with the penal ty awarded by the Competent authority on the ground that it is excessive or disproportionate to the misconduct proved? T he answer to the question cannot be determined without refe r-

ence to the scope of judicial review in the pre-Tribun al period. It is also necessary to remember the purpose f or which the Tribunal came to be established. Before the Trib u-

nal was constituted, the Courts were exercising judici al review of administrative decisions in public services. Th is judicial review was sought to be taken awary by the Const i-

tution (42nd Amendment Act, 1976). By this amendment, Art i-

cles 323A and 323B were introduced in the Constitutio n, thereby opening altogether a new chapter in our Administr a-

tive law. Article 323A(1) which is relevant for our purpo se is confined to matters relating to the public services. It provides power to Parliament to enact law for establishme nt of Administrative Tribunals for adjudication of disput es with regard to service matters. The service matters are of persons appointed to the public service and posts. T he public service and posts may be in connection with t he affairs of the union or of any State. The law to be enact ed by Parliament may also cover persons appointed in the loc al or other authority or of any corporation owned or controll ed by the Government. There should be only one Tribunal for t he Union of India and one for each State or for two or mo re States put together. The law cannot provide for hierarchy of Tribunals. In pursuance of Articles 323A(1) the Parliame nt enacted the Administrative Tribunal Act, 1985 ("The Act"). We may briefly examine the statutory framework. Secti on 4 of the Act provides for establishment of Central Admini s-

trative Tribunal as well as State Administrative Tribuna l.

It also provides power to constitute Benches of the Centr al Administrative Tribunal. Sections 5 to 11 deal with t he composition of Tribunals and Benches thereof and terms of office of the Chairman, Vice-Chairman and other member s.

Section 14 provides powers and authority to the Centr al Administrative Tribunal. Section 15 deals with the simil ar power and authority of the State Administrative Tribuna l.

Section 16 refers to the powers of a Joint Administrati ve Tribunal. Section 22 states that the Tribunal shall not be bound by the procedure laid down in Code of Civil Procedur e, 1908, but shall be guided by the principles of natur al justice and subject to other provisions of the Act and of any Rules made thereunder. The Tribunal could also regula te its own procedure including the fixing of places and time of enquiry and deciding whether to sit in public or in privat e.

Sub-section 2 of sec. 22 requires the Tribunal to deci de every application made to it as expeditiously as possibl e.

Ordinarily, the Tribunal shall decide every application on a perusal of documents and written representations and aft er heating such oral arguments as may be advanced. Section provides for execution of orders. Section 28 excludes t he jurisdiction of all Courts except the Supreme Court. Secti on 29 directs transfer of cases pending in courts to the Trib u-

nal for adjudication.

In pursuance of the provisions of the Act, the Centr al Government has established the Central Administrative Trib u-

nal with a Bench at Chandigarh whose order has been cha l-

lenged before us.

It is now necessary to examine in detail the amplitu de of powers of the Tribunal. Section 14, so far materia l, provides:

"14. Jurisdiction, powers and authority of t he Central Administrative Tribunal:

(1) Save as otherwise expressly provided in th is Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers a nd authority exercisable immediately before that day by a ll courts (except Supreme Court) in relation to:

(a) recruitment, and matters concerning recrui t-

ment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a po st connected with defence or in the defence services, being in either case, a post filled by a civilian;

(b) all service matters concerning--

Similar are the powers and authority of the State Ser v-

ice Tribunal under sec. 15 and Joint Administrative Tribun al under sec. 16.' The expression "all courts" in this connection includ es civil courts and High Court but not the Supreme Court. T he

powers of the Supreme Court for obvious reasons have be en expressly kept undisturbed. The powers of the High Cour ts under Article 226, in so far as they are exercisable in relation to service matters stand conferred on the Tribun al established under the Act. The powers of other ordina ry civil courts in relation to service matters to try all sui ts of a civil nature excepting suits of which their cognizan ce either expressly or impliedly barred also stand conferred on the Tribunal.

This position becomes further clear by secs. 27, 28 a nd 29 of the Act. Section 27 provides for finality of t he orders of the Tribunal. Section 28 excludes the jurisdicti on of courts except the Supreme Court, or any Industrial Trib u-

nal, Labour Court, concerning service matters. Section provides for automatic transfer of all pending proceedin gs in the High Court under Articles 226 and 227, relating to service matters (except appeals) to the Tribunal for adjud i-

cation. Likewise, suits and other proceedings pending befo re a Court or other authority relating to service matters al so stand transferred to the Tribunal for determination. The Act thus excludes the jurisdiction, power and a u-

thority of all Courts except the Supreme Court and confe rs the same on the Tribunal in relation to recruitment a nd service matters. Section 3(2) comprehensively defines 'service matters' to mean all ma t-

ters relating to conditions of service including the disc i-

plinary matters.

From an analysis of secs. 14, 15, 16, 27, 28 and 29, it becomes apparent that in the case of proceedings transferr ed to the Tribunal from a civil court or High Court, the Trib u-

nal has the jurisdiction to exercise all the powers whi ch the civil court could in a suit or the High Court in a wr it proceeding could have respectively exercised. In an origin al proceedings instituted before the Tribunal under sec. 1 9, the Tribunal can exercise any of the powers of a civ il court, or High Court. The Tribunal thus could exercise on ly such powers which the Civil Court or the High Court cou ld have exercised by way of judicial review. It is neither le ss nor more. Because, the Tribunal is just a substitute to t he civil court and High Court. That has been put beyond t he pale of controversy by this Court while upholding constit u-

tional validity of the Act in S.P. Sampat Kumar v. Union of India & Ors., [1987] 1 SCC 124. In this backdrop, we may consider the main question th at we have set out at the beginning of the judgment. Mr. Mah a-

jan, learned counsel for the Central Government urged th at the Tribunal has no powers to interfere with the punishme nt imposed by the disciplinary authority on the ground that it is disproportionate to the proved misdemeanour. He al so urged that if the enquiry held against the delinquent off i-

cer was proper with the findings supported by evidence the n, the Tribunal cannot substitute its own judgment to modi fy the punishment awarded. Mr. Ashri, learned counsel for t he respondent, however, justified the discretion exercised by the Tribunal in awarding the lesser punishment. We do n ot think that we could accept so bold a submission made for t he respondent, nor can it be sustained by other consideratio n.

Indeed, the contention for the respondent is unsustainab le in view of the decisions of this Court. In State of Orissa v. Bidyabhushan, [1963] Suppl 1 S CR 648 the enquiry was conducted against the petitioner on several charges and eventually he was dismissed from ser v-

ice. The Orissa High Court found that the findings on two of the charges were bad being in violation of the principles of natural justice. The findings on the remaining charges we re however, found to be justified. The High Court remitted t he matter to the Government for fresh consideration for awar d-

ing a proper punishment. The High Court observed: "That the findings in respect of charges l(a) and l(e) should be set aside as being opposed to the rules of natur al justice, but the findings in respect of charges l(c) a nd l(d) and charge 2 need not be disturbed. It will be th en left to Government to decide whether, on the basis of the se charges, the punishment of dismissal should be maintain ed 'or else whether a lesser punishment would suffice."

The Supreme Court reversed this order on the ground th at if the dismissal could be supported on any finding as to substantial misdemeanour for which the punishment cou ld lawfully be imposed, it was not for the. Court to consid er whether that ground alone would have weighed with the a u-

thority dismissing the public servant. Shah, J. observed (at 665-666):

" ..... in our view the High Court had no pow er to direct the Governor of Orissa to reconsider the order of dismissal. The constitutional guarantee afforded to a publ ic servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, a nd that he shall not be dismissed or removed or reduced in ra nk until he has been given a reasonable opportunity of showi ng cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifest ly to be in accordance with the rules framed under Article 3 of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is n ot concerned to decide whether the sentence imposed, provid ed it is justified by the rules, is appropriate having rega rd to the gravity of misdemeanour established. The reaso ns which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is not just i-

fiable; nor is the penalty open to review by the court. If the High Court is satisfied that if some but not all of t he findings of the Tribunal were "unreasonable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, w as final, and the High Court had no jursidiction to direct t he Governor to review the penalty, for as we have alrea dy observed the order of dismissal passed by a competent a u-

thority on a public servant, if the conditions of the co n-

stitutional protection have been complied with, is n ot justifiable. Therefore if the order may be supported on a ny finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the cou rt to consider whether that ground alone would have weigh ed with the authority in dismissing the public servant. T he court has no jurisdiction if the findings of the enqui ry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider th at order because in respect of some of the findings but not a ll it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider t he question."

In Dhirajlal Girdharilal v. Commissioner of Income-ta x, AIR 1956 SC 271, Mehar Chand Mahajan, C.J., while deali ng with a reference application against an order of Income T ax Tribunal under the Indian Income Tax Act had struck slight ly a different note (at 273):

"The learned Attorney General frankly conced ed that it could not be denied that to a certain extent t he Tribunal had drawn upon its own imagination and had made u se of a number of surmises and conjectures in reaching i ts result. He however, contended that eliminating the irrel e-

vant material employed by the Tribunal in arriving at i ts conclusion, there was sufficient material on which t he finding of fact could be supported. In our opinion, th is contention is not well founded. It is well established th at when a court of facts acts on material, partly relevant a nd partly irrelevant, it is impossible to say to what exte nt the mind of the court was affected by the irrelevant mater i-

al used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material a nd thereby an issue of law arises."

This proposition in Dhirajlal's case was explained a nd the statement of law in Bidyabhushan's case was affirmed in State of Maharashtra v. B.K. Takkamore & Ors., [1967] 2 S CR

583. It was case of supersession of the Corporation. T he show cause notice issued to the corporation mentioned t wo grounds for supersession. One of the grounds was held to be irrelevant. This Court, however, upheld the order of supe r-

session stating that the order cannot be set aside f or reason that one of the grounds is found to be non-existe nt or irrelevant if another ground by itself was serious enou gh to supersede the Corporation. Bachawat, J., said (at 594):

"The principle underlying these decisions appea rs to be this. An administrative or quasi-judicial order bas ed on several grounds, all taken together, cannot be sustain ed if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authori ty would have passed the order on the basis of the other rel e-

vant and existing grounds. On the other hand, an order bas ed on several grounds some of which are found to be non-exis t-

ent or irrelevant, can be sustained if the court is sati s-

fied that the authority would have passed the order on t he basis of the other relevant and existing grounds, and t he exclusion of the irrelevant or non-existent grounds cou ld not have affected the ultimate opinion or decision."

This principle again receives support from the decisi on of in Zora Singh v. J.M. Tandon, AIR 1971 SC 1537. The re the Chief Settlement Commissioner cancelled the allotment of land made to a person but the High Court allowed the wr it petition quashing the order of the Chief Settlement Commi s-

sioner and directing him to proceed to decide the case on merits. The Commissioner re-heard the entire case as direc t-

ed by the Court but came to the same conclusion as befo re and reaffirmed his earlier decision canceling the allotmen t.

The person unsuccessfully moved the High Court with a wr it petition challenging the order of the Commissioner a nd finally appealed to the Supreme Court. In dismissing th at appeal, Shalat, J., made inter alia, the following observ a-

tions (at 1540):

"The High Court was right in holding that even if there were amongst the reasons given by the Commissione r, some which were extraneous, if the rest were relevant a nd could be considered sufficient, the Commissioner's concl u-

sions would not be vitiated. The principle that if some of the reasons relied on by a Tribunal for its conclusion tu rn out to be extraneous or otherwise unsustainable, its dec i-

sion would be vitiated, applies to cases in which the co n-

clusion is arived at not on assessment of objective sati s-

faction. The reason is that whereas in cases where t he decision is based on subjective satisfaction if some of t he reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of t he reasons, relevant or irrelevant, valid or invalid, h ad brought about such satisfaction. But in a case where t he conclusion is based on objective facts and evidence, such a difficult would not arise. If it is found that there was legal ev i-

dence before the Tribunal even if some of it was irrelevan t, a superior court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari, the superior court does n ot sit in appeal, but exercises only supervisory jurisdictio n, and therefore, does not enter into the question of suff i-

ciency of evidence. There was, in our view, legal eviden ce before the Commissioner upon which he was entitled to re st his finding that the copies relied on by the appellant we re not genuine."

The view taken in Bidyabhushan case has been repeated ly affirmed and reiterated in Railway Board v. Niranjan Sing h, [1969] 3 SCR 548 at 552; O.P. Gupta case AIR 1970 SC 679 a nd Union of India v. Sardar Bahadur, [1972] 2 SCR 218. A ny doubts as to the incapacity of the Court to review t he merits of the penalty must vanish when we read the remar ks of Mathew, J., in Sardar Bahadur's case (at 225): "A disciplinary proceeding is not a criminal tria l.

The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If t he inference that Nand Kumar was a person likely to have off i-

cial dealings, with the respondent was one which reasonab le person would draw from the proved facts of the case, t he High Court cannot sit as a court of appeal over a decisi on based on it. Where there are some relevant materials whi ch the authority has accepted and which materials may reason a-

bly support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdi c-

tion under Art. 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry h as been properly held the question of adequacy or reliabili ty of the evidence cannot be convassed before the High Court. "

The learned Judge also said (at 227): "Now it is settled by the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra, that if the ord er of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is just i-

fied by the rules, is appropriate having regard to t he misdemeanour established."

So much is, we think, established law on the scope of jurisdiction and the amplitude of powers of the Tribuna l.

However, of late we have been receiving a large number of appeals from the orders of Tribunals--Central a nd States--complaining about the interference with the penal ty awarded in the disciplinary proceedings. The Tribunals se em to take it within their discretion to interfere with t he

penalty on the ground that it is not commensurate with t he delinquency of the official. The law already declared by this Court, which we reiterate, makes it clear that t he Tribunals have no such discretion or power. We must unequivocally state that the jurisdiction of t he Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdictio n.

The Tribunal cannot interfere with the findings of t he Inquiry Officer or competent authority where they are n ot arbitrary or utterly perverse. It is appropriate to rememb er that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the provisoto Article 309 of the Constitution. If there has been an enquiry consiste nt with the rules and in accordance with principles of natur al justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the compete nt authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no pow er to substitute its own discretion for that of the authorit y.

The adequacy of penalty unless it is malafide is certain ly not a matter for the Tribunal to concern with. The Tribun al also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. Our attention was drawn to the decision of this Court in Bhagat Ram v. State of Himachal Pradesh, [1983] 2 SCC 44

2. We do not consider that this decision is of any assistan ce to support the contention urged for the respondent. The re the facts found were entirely different. This Court, aft er considering the matter was of opinion that the appella nt therein was not offered a reasonable opportunity to defe nd himself and accordingly the enquiry and consequential ord er of removal from service were found to be bad. Ordinarily, whe re the disciplinary enquiry is shown to have been held in violation of principles of natural justice, the enqui ry would be vitiated and the order based on such enquiry wou ld be quashed with liberty to hold fresh enquiry. But th at procedure was not adopted by this Court since the char ge against appellant was found to be a very minor infraction of duty in checking hammer-marks of trees. That negligence, if any, caused no loss to the Government, for, the man w ho resorted unauthorised felling of trees, had compensated t he Department. The appellant was a low paid class IV Governme nt servant. Considering all these facts this Court felt that it would not be fair to direct a low paid class IV employee to face the hazards of a fresh enquiry. This Court in t he interest of justice and fair play thought that a min or penalty would be sufficient. Accordingly, two incremen ts with future effect, of the appellant were ordered to be withheld. This decision is, therefore, no authority for t he proposition that the High Court or the Tribunal has juri s-

diction to impose any punishment to meet the ends of ju s-

tice. It may be noted that this Court exercised the equit a-

ble jurisdiction under Article 136 and the High Court or Tribunal has no such power or jurisdiction. We may however, carve out one exception to this propos i-

tion. There may be cases where the penalty is imposed und er clause (a) of the second proviso to Article 311(2) of t he Constitution. Where the person, without enquiry is di s-

missed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine t he adequacy of the penalty imposed in the light of the convi c-

tion and sentence inflicted on the person. If the penal ty impugned is apparently unreasonable or uncalled for, havi ng regard to the nature of the criminal charge, the Tribun al may step in to render substantial justice. The Tribunal m ay remit the matter to the competent authority for reconsider a-

tion or by itself substitute one of the penalties provid ed under clause (a). This power has been conceded to the cou rt in Union of India v. Tulsiram Patel, [1985] 3 SCC 398 whe re Madon, J., observed (at 501-502): "Where a disciplinary authority comes to know th at a government servant has been convicted on a crimin al charge, it must consider whether his conduct which has l ed to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be .....

"The disciplinary authority must, however, bear in mind th at a conviction on a criminal charge does not automatical ly entail dismissal, removed or reduction in rank of the co n-

cerned government servant. Having decided which of the se three penalties is required to be imposed, he has to pa ss the requisite order. A government servant who is aggriev ed by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too seve re or excessive and not warranted by the facts and circu m-

stances of the case. If it is his case that he is not t he government servant who has been in fact convicted, he c an also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of jud i-

cial review subject to the court permitting it. If the cou rt finds that he was not in fact the person convicted, it wi ll strike down the impugned order and order him to be reinsta t-

ed in service. Where the court finds that the penalty i m-

posed by the impugned order is arbitrary or grossly exce s-

sive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service t he court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India this Court set aside t he impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whi m-

sical and ordered his reinstatement in service with fu ll back wages. It is, however, not necessary that the cou rt should always order reinstatement. The court can inste ad substitute a penalty which

in its opinion would be just a nd proper in the circumstances of the case."

The last contention that the respondent fails into t he category of a workman and the Tribunal could exercise t he powers of an industrial court for giving appropriate reli ef is unavailable in this case, since the respondent had ma de his choice of forum and was even otherwise dealt with und er the Government Servants (Conduct) Rules which are undispu t-

edly applicable to him. In the light of the principles to which we have call ed attention and in view of the aforesaid discussion, the ord er of the Tribunal imposing a lesser penalty on the responde nt cannot, therefore, be sustained. He was found guilty of t he charge framed against him. He was a party to the fraudulent act for self aggrandisemen t.

He prepared bogus documents for withdrawal of salary in t he name of Ashok Kumar who was not working in his Division. He has thus proved himself unbecoming and unworthy to hold a ny post. Any sympathy or charitable view on such officials wi ll not be conducive to keep the streams of administration pu re which is so vital for the success of our democrary. In the result, we allow the appeal and set aside t he order of the Tribunal. Consequently, the SLP of the respon d-

ent is dismissed. In the circumstances of the case howeve r, we make no order as to costs. T.N.A. Appeal allowed and Petition dismissed.