

OM NO. 11012/6/94-Estt.(A)
Government of India
Ministry of Personnel, Public
Grievances and Pensions
(Department of Personnel & Training)

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New Delhi, dated the 28 March, 94.

OFFICE MEMORANDUM

Subject: Jurisdiction of the CAT in the matter of disciplinary action against Government servants.

The undersigned is directed to refer to this Department OM No. 11012/1/90-Estt.(A) dated 28th February, 1990 on the above subject in which the ruling of the Supreme Court in Parma Nanda's case (1989(2) SLR 410) was circulated for information of the Ministries/Departments. In a recent Judgement in the case of State Bank of India Vs. Samarendra Kishore Endow (1994(1) SLR 518) the Supreme Court has reiterated the said ruling that a High Court or Tribunal has no power to substitute its own discretion for that of the authority.

2. In this Judgement the Supreme Court has observed as under:

On the question of punishment, learned counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgement of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It "is not an appeal from a decision, but a review of the manner in which the decision was made". In other words the power of judicial review is meant "to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court."

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It would perhaps be appropriate to mention at this stage that there are certain observations in Union of India Vs. Tulsiram Patel (AIR 1985 80 147) which at first look appear to say that the Court can interfere where the penalty imposed is "arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and

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circumstances of the case or the requirements of that particular Government service." It must, however, be remembered that Tulsiram Patel dealt with cases arising under proviso (a) to Article 311(2) of the Constitution. Tulsiram Patel overruled the earlier decision of this Court in Challappan (AIR 1975 SC 2216). While holding that no notice need be given before imposing the penalty in a case dealt with under the said proviso, the Court held that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the Appellate Court or by High Court. These observations are not relevant to cases of penalty imposed after regular inquiry.

3. Ministries/Departments are requested to bring the above ruling of the Supreme Court to the notice of all concerned so that the same is appropriately referred to in all cases where the question of quantum of penalty comes up before the CAT or Supreme Court by way of SLP or otherwise.

V. Natarajan
(V. NATARAJAN)
DEPUTY SECRETARY TO THE GOVT. OF INDIA

To

All Ministries/Departments of the Govt. of India.

Copy to:

1. C&AG, New Delhi.
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4. Lok Sabha/Rajya Sabha Secretariat.
5. All Union Territory Administrations.
6. All Officers and Sections of Ministry of Personnel, P.G. & Pensions and MHA.
7. CDDT.
8. Chief Secretaries of all States.

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