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Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
ESTT.(Estt. A-III)

(Dated 24 November, 2022)

OFFICE MEMORANDUM

Disciplinary Jurisdiction of CAT/Election Commission of India

(A) Jurisdiction of CAT in the matter of disciplinary action against Government servants

Department of Personnel & Training, vide OM No. 11012/1/90-Estt.A dated 28.02.1990 and OM No. 11012/6/94-Estt.(A) dated 28.03.1994, had circulated the observation of the Hon'ble Supreme Court [*in the cases of Shri Parma Nanda Vs. State of Haryana and others (1989(2) Supreme Court Cases 177) and State Bank of India Vs. Samarendra Kishore Endow (1994(1) SLR 516)*] on the question whether the Tribunal could interfere with the penalty awarded by the competent authority on the ground that it is excessive or disproportionate to the misconduct proved. The essence of both the instructions in the matter has been summarized in the following paras for guidance and better understanding:

1. The question whether the Tribunal could interfere with the penalty awarded by the competent authority on the ground that it is excessive or disproportionate to the misconduct proved, was examined by the Supreme Court in the case of Shri Parma Nanda Vs. State of Haryana and others (1989(2) Supreme Court Cases 177) and the Court held that the Tribunal could exercise only such powers which the civil courts or the High Courts could have exercised by way of judicial review. The Supreme Court in that case further observed as under:

"....The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. 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 proviso to Art.309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal 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."

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"...We may, however, carve out one exception to this proposal. There may be cases where the penalty is imposed under Clause (a) of the second proviso to Art 311(2) of the Constitution. Where the person without inquiry 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 apparently 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 penalties provided under Clause (a)."

[Para 1 of the OM No. 11012/1/90-Estt.(A) dated 28.02.1990]

2. In a Judgement of State Bank of India Vs. Samarendra Kishore Endow (1994(1) SLR 516), the Supreme Court has reiterated the above said ruling that a High Court or Tribunal has no power to substitute its own discretion for that of the authority. The Supreme Court in that case further 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 the stage that there are certain observations in Union of India Vs. Tulsiram Patel (AIR 1985 SC 1416), 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 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."

[Para 1 and 2 of the OM No. 11012/6/94-Estt.(A) dated 28.03.1994]

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

[Para 3 of the OM No. 11012/6/94-Estt.(A) dated 28.03.1994]

(B) Disciplinary jurisdiction of Election Commission of India over Government servants deputed for election duties

Disciplinary action against officers, staff and police personnel deputed on election duties shall be governed by the principles and decisions agreed to between the Union Government and the Election Commission and as recorded by the Hon'ble Supreme Court of India in its Orders dated 21.09.2000 in Writ Petition (C) No. 606 of 1993 (Election Commission of India V/s Union of India and Ors.). The Provision related to disciplinary jurisdiction of Election Commission of India over Government servants deputed for election duties are spread in three instructions. The essence of all the instructions in the matter has been summarized in the following paras for guidance and better understanding:

1. One of the issues in Writ Petition (C) No. 606/1993 in the matter of Election Commission of India Vs. Union of India & Others was regarding jurisdiction of Election Commission of India over the Representation of the People Act, 1951 and section 13CC of the Representation of the People Act, 1950. The Supreme Court by its order dated 21.9.2000 disposed of the said petition in terms of the settlement between the Union of India and Election Commission of India. The said Terms of Settlement are as under:-

"The disciplinary functions of the Election Commission over officers, staff and police deputed to perform election duties shall extend to –

- a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;*
- b) Substituting any officer/official/police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;*
- c) Making recommendations to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendations shall be promptly acted upon by the disciplinary authority and action taken will be communicated to the Election Commission; within a period of 6 months from the date of Election Commission's recommendation.*
- d) The Government of India will advice the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control."*

[Para 1 of the OM No. 11012/7/98-Estt.(A) dated 07.11.2000]

2. The implication of the disposal of the Writ Petition by the Supreme Court in terms of the above settlement is that the Election Commission can suspend any officer/official/police personnel working under the Central Government or Public Sector Undertaking or an autonomous body fully or substantially financed by the Government for insubordination or dereliction of duty and the Election Commission can also direct substituting any officer/official/police personnel by another person besides making recommendations to the Competent Authority for taking disciplinary action for insubordination or dereliction of duty while engaged in the preparation of electoral rolls or election duty. It is also clarified that it is not necessary to amend the service rules for exercise of powers of suspension by the Election

Commission in this case since these powers are derived from the provisions of section 13CC of the Representation of the People Act, 1950 and section 28A of the Representation of the People Act, 1951 since provisions of these Act would have overriding effect over the disciplinary rules. However in case there are any conflicting provisions in an Act governing the disciplinary action, the same are required to be amended suitably in accordance with the Terms of Settlement.

[\[Para 2 of the OM No. 11012/7/98-Estt.\(A\) dated 07.11.2000\]](#)

3. The terms of settlement have to be complied with while adhering to the provisions of the relevant disciplinary rules. The recommendations of the Election Commission made to the Competent Authority for taking disciplinary action for any act of insubordination or dereliction of duty while on duty shall be promptly acted upon by the disciplinary authority and action taken should be communicated to the Election Commission within a period of six months from the date of the Election Commission's recommendations.

[\[Para 3 of the OM No. 11012\(4\)/2008-Estt.\(A\) dated 20.03.2008\]](#)

4. It shall be mandatory for the disciplinary authorities to consult the Election Commission if the matter is proposed to be closed only on the basis of a written explanation given by officer concerned to enable the Commission to provide necessary inputs to the disciplinary authorities before the Disciplinary Authorities take a final decision.

[\[Para 2 of the OM No. 11012\(4\)/2008-Estt.\(A\) dated 28.07.2008\]](#)

5. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document are as under:

- a. [OM No. 11012/1/90-Estt.\(A\) dated 28.02.1990](#)
- b. [OM No. 11012/6/94-Estt.\(A\) dated 28.03.1994](#)
- c. [OM No. 11012/7/98-Estt.\(A\) dated 07.11.2000](#)
- d. [OM No. 11012\(4\)/2008-Estt.\(A\) dated 20.03.2008](#)
- e. [OM No. 11012\(4\)/2008-Estt.\(A\) dated 28.07.2008](#)
