THE TERRAINS OF JUDICIAL ARBITRARINESS: A COMMENT ON RAM SARAN v. IG POLICE

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INTRODUCTION: IMPORTANCE OF RAM SARAN v. IG POLICE

Administrative law in India is recognized as largely judge-made law, where it is the judiciary that exercises control over administrative action. Judicial review, therefore, becomes a very important tool of curbing arbitrary administrative action[1]. Yet at the same time, it is important from the point of view of the separation of powers doctrine that judicial review remains just that–the review of the procedure of the way the administrative decision was taken; the courts cannot, by substituting their own judgment for that of the administrator, become a sort of appellate authority.[2] Therefore, the doctrine of judicial review, as recognized in India[3] is restricted to only four grounds, *viz.* illegality, irrationality, procedural impropriety, and, to a certain extent, proportionality.[4] Another important consideration, which the courts have been sadly lacking in taking into account, as will be seen through this case comment, is the contextualizing of these principles to the fact situation at hand.[5]

This paper is a comment on *Ram Saran v. I.G. of Police, CRPF and Ors*[6], and it is in the light of the scope of judicial review with respect to the proportionality of the punishment meted out by the administrative authority, to the appellant, that the case becomes very important. The appellant in this case, while applying for recruitment to the Central Reserve Police Force (hereinafter "CRPF"), had tampered with his date of birth as stated in his school certificate, thereby making him eligible for the post, for which otherwise he would have been two months short in age. After he had served for 27 years, with "good grading" for 10 years,[7] (when he was seeking voluntary retirement) proceedings were instituted against him for lying about his date of birth. The original authority took the appellant's good record into account, and therefore, as punishment, deputed him in rank for a year. However, the appellate

1. MP Jain and SN Jain, Principles of Administrative Law, 13 (Wadhwa and Co, Nagpur, 2003).
2. This fine balance between review and appeal, is a well established principle in administrative law; it finds mention in a corpus of case law; in particular, see Chief Constable of the North Wales Police v. Evans, [1983 1 WLR 1155] and Ridge v. Baldwin, [1964] AC 40, at 96.
3. India follows English case law on this point
4. Council of Civil Servants Union v. Minister for Civil Service, [1985] AC 374. (hereinafter "CCSU case")
5. This lacuna has been critcised by many administrative law scholars, particularly Professor Unpendra Baxi. See Upendra Baxi, *The Myth and Reality of the Indian Administrative Law,* in IP Massey, Administrative Law (Eastern Book Company, Lucknow, 2005).
6. [2006] 2 SCC 541.
7. Id., para 3.

authority, the respondent, enhanced the punishment and terminated his services, as a result of which, he wasn't entitled to any pension.[8] The decision was challenged before the Bombay High Court under Article 266, on the ground that the punishment was disproportionate to the offence committed. On appeal to the Supreme Court, the case was dismissed by Arun and Pasayat JJ.

Since the ramifications of such a decision are that an old man[9] from a rural background[10], who has conscientiously served the CRPF for 30 odd years, will, because of what seems *prima facie* to be a disproportionate punishment, not get any pension benefits, it is important to understand exactly where this case fits in the jurisprudence of proportionality as a ground for judicial review in India.

Therefore, this case comment attempts to analyse this case in the backdrop of the recent cases dealing with the issue of the termination of civil services, and examine the trends that emerge from the same. Further, since Hon'ble Pasayat J. sits on the Supreme Court's Civil Services Bench, the cases examined are the ones before him.

PROPORTIONALITY AS A GROUND FOR JUDICIAL REVIEW: RAM SARAN'S CASE CIRCUMVENTING PRECEDENT?

The status of proportionality as a ground for judicial review in England is not yet settled.[11] In India however, the doctrine of proportionality was recognized in *Ranjit Thakur v. Union of India.*[12] The Indian position on the scope of judicial review of the proportionality of the punishment awarded, is, after the cases of Union of India v. G. Ganayutham,[13] Om Kumar v. Union of India[14] and BC Chaurvedi v. Union of

8. Rule 24 of the Central Civil Services (Pension) Rules, states that dismissal from services entails forfeiture of pension.
9. Since the appellant had applied for the CRPF in 1969, at the time the appeal came before the Supreme Court, he would be 50 odd years old.
10. Supra n. 6, para 5.
11. Lord Diplock in the CCSU case, merely acknowledged proportionality as a "future possibility." See CCSU, supra n. 4.
12. AIR 1987 SC 2387.
13. [1997] 7 SCC 463; The Court in this case expounded the English position, on where judicial review of administrative action would lie, proportionality only coming in if the convention allowing the same were to be incorporated into the law. With regard to the Indian position, the Court, in paragraph 31, the Court categorically stated that since "no fundamental freedoms...are involved" the Court will only play a "secondary role" and apply the Wednesbury test of reasonableness to see if the administrative action suffered from arbitrariness.
14. [2001] 2 SCC 386; In this case, the Court, after reviewing the authorities on the point, came to the conclusion that the "disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

India[15] well settled. The position is that Indian Courts, while reviewing administrative action on the grounds of proportionality, cannot, as a general rule, act as primary courts and exercise judgment on the quantum of punishment, unless the question of the infringement of fundamental rights is involved. Therefore, the courts can only play a secondary role and apply the test of reasonableness as laid down in the English case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation[16] (hereinafter "Wednesbury case") where Lord Green enunciated that the court could only strike down that administrative decision which it felt that no reasonable man could have come to. What comprises this criterion of reasonableness has been enunciated by Hon'ble Pasayat J. himself in *Rameshwar Prasad v. Union of India*[17]. An important point made by the learned Judge in the said case was that a decision could be said to be unreasonable in the Wednesbury sense if, *inter alia,* the administrative authority had ignored a relevant material which it should have taken into account.

It is submitted that *Ram Saran's* case falls squarely within the four corners of this proposition, since the Disciplinary Authority had failed to take into account the fact that the appellant had diligently served the CRPF for 30 odd years, and meted out a grossly disproportionate punishment[18]. Yet Hon'ble Pasayat J., while reviewing the decision, has chosen to ignore his own formulation of the Wednesbury test, after stating that in such a case, where no fundamental freedoms are involved, the court could only review the decision on the basis of the said test.[19] In fact, it is pertinent to note that after stating that the Wednesbury test entails that the court cannot pass primary judgment on the offence and the quantum of punishment, the Hon'ble Justice has fallen to prey to his own warning, since he has based his decision on the fact that an "admitted forgery" like the appellant's "does not deserve any leniency".[20] Thus, the Hon'ble Judge has himself imposed his own view on gravity of the appellant's offence and appropriateness of the punishment awarded.

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15. AIR 1996 SC 484; In this case the Court actually explained what is meant by proportionality, stating, "By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality."
16. [1948] 1 KB 223.
17. (2006) 2 SCC 1.
18. Infact, the question of whether the Appellate Disciplinary Authority had even taken relevant factors into account is not evident from the case since learned Pasayat J. has not even looked into the question.
19. Ram Saran v. IG Police, supra n.6, para 8.
20. Id., para 11.

PASAYAT J. ON PROPORTIONALITY: A NON-REASONED "HANDS OFF" APPROACH

To understand where exactly the case of *Ram Saran* fits in jurisprudence of proportionality as culled from civil service cases decided by Hon'ble Pasayat J., it is imperative to analyse the judgments he has delivered on the question. Since the concept of judicial review on the ground of proportionality is itself new, most of cases have come before the Supreme Court after the year 2000. There are around 9 cases relevant to the subject, which have been decided by Pasayat J.

From the cases, two trends are apparent–firstly, that Pasayat J. is by and large a "hands off" judge, who chooses not to interfere with the decision of the administrative authority, no matter how absurd or unjust the decision may be.[21] The second trend, which flows from the first, is that the learned Judge's "hands off" approach has led to rather mechanical unreasoned decision-making, since the context in every case is different, and consequently, the ramifications of not interfering with the administrative decisions are varied, from being unfair to the alleged wrong-doers, to being downright shocking.

To elucidate, of the 9 cases examined,[22] Pasayat J. has remanded only one case back to the High Court, *viz. Kailash Nath Gupta v. Enquiry Officer Allahabad Bank*[23] on the ground that while reviewing the decision of the administrative authority dismissing the appellant from service as he had allowed advances to be made to certain people, without following the bank's procedural safeguards, resulting in a loss of Rs. 46000 to the Bank, the High Court had not taken into account the "relevant factor" that the appellant had served the Bank for 30 years, and that but for the unfortunate dismissal, he could have been superannuated in a couple of years. This case must be contrasted with the present case under study, *Ram Saran v. IG Police*,[24] where the context was the same, that is, the appellant Ram Saran had served as a conscientious officer in the Reserve Police Force for 27 years, and had been about to seek voluntary retirement when he was dismissed for a minor offence he committed as a poor youth from a rural background desperate to gain employment. Yet, Hon'ble

21. And this is despite the fact that the Wednesbury test, with the learned Judge apparently swears by, allows judicial review if there the decision of the administrative body is absurd or suffers from irrationality.
22. The cases are Union of India v. KG Soni [a 2006 Judgment–citation not available], V. Ramana v. Andhra Pradesh State Road Transport, AIR 2005 SC 3417, Canara Bank v. VK Awasthi, AIR 2000 SC 2090, Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain, AIR 2005 SC 584, Secretary, School Committee, Thiruvalluvar Higher Secondary School v. Government of Tamil Nadu, AIR 2003 SC 4097, Kailash Nath Gupta v. Enquiry Officer Allahabad Bank, AIR 2003 1377, Mithilesh Singh v. Union of India, AIR 2003 SC 1724, Regioanl Managaer UPSRTC, Etawah v. Moti Lal, AIR 2003 SC1462 and Chairman and Managing Director, United Commercial Bank v. PC Kakkar, AIR 2003 SC 1571.
23. AIR 2003 SC 1377.
24. Supra n.6.

Pasayat J. did not deem it fit that the Disciplinary Authority, in awarding the punishment had not taken the relevant factual context into account.

Kailash Nath Gupta's case must also be contrasted with *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain*[25], where the facts were very similar, apart from the fact that in the latter, the respondent, who had unauthorisedly withdrawn Rs.25000 from the appellant bank, where he worked, because his wife was critically ill, had repaid the money with 24% interest.[26] When the respondent informed the bank of the withdrawal and repayment, he was subject to a disciplinary enquiry, pursuant to which he was dismissed from service. The High Court, following Pasayat J.'s precedent in *Kailash Nath Gupta's case*, had remanded the case back to the authority in question, directing it to taken relevant factors into account while deciding upon the quantum of punishment to be awarded. On appeal however, Hon'ble Pasayat J. after giving a discourse on the importance of maintaining discipline in bank officers, [and thereby, exercising primary judgment upon the kind of offence, which according to the learned Judge himself, a reviewing court should never do[27]] came to the conclusion that there was nothing so shocking and absurd as per the Wednesbury test, in the disciplinary authority's decision, to warrant the Court's interference. Two relevant points that become apparent from this case are firstly, that even though Pasayat J. himself clearly demarcated the scope of judicial review in *Rameshwar Prasad v. Union of India*,[28] he has clearly crossed his own line, and secondly, that his decisions seem to have no connection to the facts at hand.

Another decision of Pasayat J., in the same field, which raises a disturbing question about the usefulness of judicial review as a tool to control arbitrary administrative action, is the case of *Secretary, School Committee, Thiruvalluvar Higher Secondary School v. Government of Tamil Nadu.*[29] The facts in this case are important and therefore require a more detailed examination. The alleged offender in this case was an English teacher employed by the appellant school. The teacher did not take regular classes, attended school only sporadically, and after the year 1984, stopped coming to school altogether, without taking any leave of absence. As a result of his negligence in teaching, he had not managed to finish large portions of the 12th standard syllabus before the Board Examinations, which was causing great consternation to the students and their parents. The School Board therefore, appointed another teacher to do the same and decided to terminate the services of the first teacher. The management

25. AIR 2005 SC 584.
26. This rate of interest incidentally, is higher than even the interest on a loan availed without security, i.e, an overdraft; id., para 3.
27. See chapter 2, supra.
28. (2006) 2 SCC 1; See also Chapter 2, supra, on the scope of judicial review, generally.
29. AIR 2003 SC 4079.

sought the permission of the Chief Educational Officer [hereinafter "CEO"] of the State[30], who, after conducting an enquiry concluded that the teacher's misconduct was not so grave as to warrant dismissal from service. The Government also directed the management to pay the said teacher his back wages. The order being upheld by the High Court, the appellant appealed to the Supreme Court. Yet again, Hon'ble Pasayat J., who delivered the opinion, refused to intervene since there was nothing so shocking in the administrative decision, to bring in review under the Wednesbury test. No question of relevant considerations, which played such a pivotal role in *Kailash Nath Gupta,* a case concerning actual dereliction of duty by the Bank officer, was even raised by the learned Judge. This decision, more than any other delivered on similar questions by the learned Judge, is very disturbing since the ramification is that a clearly incompetent and disinterested teacher would remain to teach 12th standard English, at the expense of the students.[31] This must be yet again, compared with *Ram Saran's* case, where the consequence of the judgment was that a 60 year old man, who had done nothing wrong during his service, would be deprived of even his pension.

The other cases also have varied factual contexts, ranging from bus conductors who did not issue tickets to passengers and misappropriated money,[32] a bank employee who indulged in various acts of misconduct,[33] to a Constable with the Railway Protection Special Force who was forced to take unauthorised leave while on duty.[34] Across the board, Hon'ble Pasayat J. did not deem it fit to interfere with the orders of dismissal passed by the disciplinary authorities, since the cases were within the four corners of the Wednesbury reasonableness test.

It is especially pertinent to note that in *Mithilesh Singh v. Union of India,*[35] the Constable case, Justice Pasayat yet again, passed judgment on the nature of the offence of "abandoning" one's post,[36] and concluded that since there were no "mitigating circumstances" to show that the punishment was disproportionate, there was no reason for the Court to interfere[37]. Therefore, it appears that in the Hon'ble

30. As per the relevant Act, the School management could not terminate a teacher's employment without the sanction of the CEO.
31. It is also interesting to note that the Hon'ble Judge in this case as well, gave a discourse on the sacrosanct nature of the teaching profession, yet felt compelled to give the decision he did [after ofcourse, discussing how there was nothing shocking about the CEO's decision] since good teachers were anyway "sadly lacking" in the country. See Id., para 10.
32. See V. Ramana v. Andhra Pradesh State Road Transport Authority, AIR 2005 SC 3417 and Regional Manager UPSRTC, Etawah v. Moti Lal, AIR 2003 SC 1462.
33. Canara Bank v. VK Awasthi, AIR 2000 SC 2090.
34. Mithilesh Singh v. Union of India, AIR 2003 SC 1724; in this case the Constable, the appellant, who had been assured that he would get leave to attend a family wedding, by the Adjutant was refused the same by the Guard Commander. Therefore, he was forced to take unauthorised leave. However, before leaving, he informed his immediate superior and safely entrusted his arms and ammunitions with the said superior.
35. Id.

Judge's view, the fact that the Constable had a valid reason to take leave, and had been assured of getting such leave, and had ensured the safety of his arms and ammunition, did not come within the purview of "mitigating circumstances".

An interesting point that comes across in the analysis is that in atleast six of them, the learned Judge has followed the same procedure in delivering the judgment. He has, in all the cases, started with the facts, then proceeded to the same quote paragraphs from the same cases, *viz. Om Kumar, BC Chaturvedi and G. Ganayutham,* followed by his analysis of the said cases, which always begins with "the common thread running through all these judgments is...", and finally his decision in the last paragraph of the judgment, which again, always states the same conclusion–that the authority's decision was not so shocking so as to allow the court to interfere. This clearly shows the mechanical approach Hon'ble Pasayat J. has to reviewing cases on the proportionality of administrative decisions.

CONCLUSION: ARE WE EXCHANGING ADMINISTRATIVE ARBITRARINESS FOR JUDICIAL ARBITRARINESS?

An analysis of *Ram Saran's* case in the backdrop of Pasayat J's decisions in the Civil Services area raises certain disturbing questions. It is accepted that judicial review on the ground of proportionality is extremely limited unless a question of fundamental rights violation is involved. It is also accepted that a court of review cannot act as a court of appeal. However, it is submitted that if, even on the application of the Wednesbury test, the reviewing court can look into whether the administrator took relevant considerations into account, the question must be asked: why is it that the Court, particularly Pasayat J. has consistently refused to do so?

This case, along with the others in the same field also highlights the problem with administrative law as judge-made law: the judge is so concerned with setting a precedent that he fails to contextualize the case, which is very important to do, since administrative law, has no fixed terrain, and questions of administrative law will arise whenever there is an abuse of power. Administrative law is afterall, nothing but judicial power controlling arbitrary judicial action.[38] Yet, when [as is evident from *Ram Saran's* case] the individual's last resort of protest, the highest Court of the land, itself, gives arbitrary unreasoned, non-indivuated decisions, where is the

36. Id., para 8.
37. Id., para 12.
38. Upendra Baxi, *The Myth and Reality of the Indian Administrative Law,* in IP Massey, Administrative Law, p. xx (Eastern Book Company, Lucknow, 2005).

common man to turn? When the courts, in their hurry to be efficient[39] forget about fairness and the maxim that justice must not only be done, but must also manifestly *seen* to be done[40], it appears that we are, ultimately, exchanging administrative arbitrariness for judicial arbitrariness.

39. It is pertinent to note at this point that all the cases examined, have been largely summarily disposed of in five to six pages, and almost none of them even look into the reasons given by the authority's for giving the decisions they did.
40. This maxim has, ironically enough, been quoted in almost every decision dealing with the principles of natural justice. See Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180, J. Mohapatra v. State of Orissa, AIR 1984 SC 1572.