IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 10556 of 2008

Sankha Dutta
Vs.
The Union of India & Ors.

For the Petitioner	:	Mr. Dilip Kumar Samanta, Mr. Biswapriya Samanta, Mr. Suhotro Palit.
For the Respondent No.3	:	Mr. Debapriya Gupta.
Hearing concluded on	:	12.02.2025
Judgment on	:	28.02.2025

Shampa Dutt (Paul) , J.

1. The present writ application has been preferred against charge sheets dated 5th January, 2007 as well as 7th July, 2007 and proceeding of the Summary Security Force Court dated 08.12.2007 to 14.12.2007 as well as verdict and sentence dated 14.12.2007 passed by the Summary Security Force Court and order dated 10th April, 2008 passed by the Director General, Border Security Force.

2. The petitioner's case in short is that he joined to the post of Constable in Border Security Force (BSF) in the year 1985 and was promoted as Lance Naik. The petitioner applied for earned leave for a period of 30 days on the ground of his mother's illness which was granted to the petitioner for the period from 20.04.2006 to 19.05.2006.

3. An application dated 08.06.2006 was made by the petitioner for extension of his earned leave for a further period of sixty days. Another application was made on 26.01.2006 for further extension of two months of leave on medical grounds.

4. It is stated that medical documents issued by the Chandannagar Sub-Divisional Hospital regarding his treatment was annexed.

5. It is submitted that he could not join his duty due to his mother's and his illness but the respondent authority without considering the petitioner's application issued letter on 20.08.2006 to the Superintendent of Police to produce the petitioner and accordingly, he was apprehended by the BSF Escort party and handed over to the unit on 18.01.2006.

6. The Commandant, 106 Battalion, N.D.R.F., Border Security Force, initiated a proceeding under Rule 45 of the BSF Rule against the petitioner for committing an offence under Section 19(b) of the BSF Act, 1968. The charge leveled against the petitioner on **06.02.2007** by the Commandant runs as follows:-

> ***"The accused No.861619 L/NK Sankha Dutta of 73 Bn, BSF attached with 106 Bn NDRF is charged with :-***

BSF Act, 1968 Sec.- 19(b) WITHOUT SUFFICIENT CAUSE OVER STAYING LEAVE GRANTED TO HIM

In that he,

Having been granted leave of absence from 20/04/2006 to 19/05/2006(30 days E/L) failed to rejoin duty without sufficient cause and later on apprehended by BSF escort party handed over to unit on 18.10.2006 (Total period of absence 152 days.)"

7. The second charge sheet is dated 7.7.07 and is as follows:-

"FIRST CHARGE
BSF ACT SEC-46
COMMITTING A CIVIL OFFENCE, THAT IS TO SAY BEING A PUBLIC SERVANT ACCEPTING GRATIFICATION OTHER THAN LEGAL REMUNERATION FOR BEARING TO DO THE ACT PUNISHABLE UNDER SECTION-7 OF PREVENTION OF CORRUPTION ACT 1988.

In that he,
while posted at Ftr HQ BSF SB, (Now posted 73 Bn BSF & further attached with 106 Bn BSF) accepted gratification amounting to Rs, 25,000/- from a civilian namely Kuldeep Chakraborty during the year 2002 other than legal remuneration as a motive or reward in the exercise of his official function for showing favour and consent to an illegal act thereby committed an offence U/S-7 of prevention of corruption Act 1988.

SECOND CHARGE
BSF ACT SEC-40
AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE.

In that he,
while serving at FTR HQ BSF SB during Feb 2006 improperly and without authority suppressed the fact from the superior that two civilians named Mr T.K. Mondal and Kuldeep Chakraborty who acted as BSF Account officials FTR HQ BSF SB to the officials of

Canara Bank and facilitated them to have access in campus of FTR HQ BSF SB for an illegal Act.

THIRD CHARGE
BSF ACT SEC-40
AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE

In that he,
while posted at FTR HQ BSF S.B. (Now posted 73 BN BSF further attached with 106 BN BSF) got loan sanctioned amounting to Rs. 1,00,000/- from Oriental Bank of Commerce, BT Rd. Kol-08 during May'2002 and Rs-2,40,000/- from Allahabad Bank. Elgin Rd Branch Kolkata during July 2003 fraudulently by producing fake documents viz, pay slip and identity card etc, thus damaged the image of the Force."

8. Order dated 18.10.2006 is as follows:-

"No.Pers/PF/755/06/14485-89   Date 18 Oct 2006

ORDER

As approved by the CA the following personnel of units as shown against their names are hereby attached with 106 Bn BSF with immediate effect for discipline purpose in the bank fraudulent loan case:-
a) No.85833023 HC BK Mahapatra - 02 Bn BSF
b) ***No.86161993 LNK Sankha Dutta - 73 Bn BSF***
2. 02 and 73 Bn BSF will relieve above personnel to report 106 Bn BSF by 18 Oct 2006 and submit compliance accordingly.

Sd/-
Asstt Comdt(Min)-I
For IG BSF SB Ftr"

9. It is the contention of the petitioner that a second charge sheet with additional charges was served upon him, which is bad in law because Rule 140 of the Border Security Force Rules, 1969 was not complied with.

10. Rule 154 of the BSF Rules, 1969 lays down:-

> *"**154. Charges in different charge-sheets.**-(1) When the charges at a trial by Summary Security Force Court are contained in different charge-sheets, the accused shall be tried on each charge-sheet separately up to and including the stage of finding.*
>
> *(2)The Court shall, thereafter, comply with rule 150 or 151, as the case may be."*

11. The subsequent charge sheet with fresh charges are additional charges and not an alteration of earlier charge (1st charge sheet) framed and as such amendment was not required in the present case and the same is as per Rule 154 of the BSF Rules, 1969.

12. In ***Airports Authority of India vs Pradip Kumar Banerjee, in Civil Appeal No(s). 8414 of 2017, decided on February 04, 2025,*** the Supreme Court held:-

> *"**32.** It is trite law that in disciplinary proceedings, it is not necessary for the Disciplinary Authority to deal with each and every ground raised by the delinquent officer in the representation against the proposed penalty and detailed reasons are not required to be recorded in the order imposing punishment if he accepts the findings recorded by the Enquiry Officer. Our view stands fortified by the decision of this Court in **Boloram Bordoloi v. Lakhimi Gaolia Bank, (2021) 3 SCC 806,** wherein it was held:-*
>
> *"11. . . . Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. . . ."*

> ***33.*** *All that is required on the part of the Disciplinary Authority is that it should examine the evidence in the disciplinary proceedings and arrive at a reasoned conclusion that the material placed on record during the course of enquiry establishes the guilt of the delinquent employee on the principle of preponderance of probabilities. This is precisely what was done by the Disciplinary Authority and the Appellate Authority while dealing with the case of the respondent.*
>
> ***39.*** *In the wake of the above discussion, we hold that the Division Bench, while exercising the intra-court writ appellate jurisdiction clearly erred in interfering with the* ***concurrent findings recorded by the Disciplinary Authority, the Appellate Authority*** *as affirmed by the learned Single Judge."*

13. One of the contentions of the petitioner is that the order in appeal has been passed on behalf of the DG, BSF by the DIG/Chief Law Officer (D&L) who is not duly authorized to do so and as such the order in appeal has no force and is thus liable to be set aside.

14. Rule 160 of the BSF Rules, 1969 is as follows:-

> ***"160. Review of proceedings.-****The proceedings of a Summary Security Force Court shall immediately on promulgation, be forwarded through the Chief Law Officer, or a Law Officer to the Deputy Inspector-General under whom the accused may have been serving."*

15. Rule 161 of the BSF Rules, 1969 is as follows:-

> ***"161. Action by the Deputy Inspector-General.-****(1) Where the Deputy Inspector-General to whom the proceedings of a Summary Security Force Court have been forwarded under rule 160, is satisfied that injustice has been done to the accused by reason of any grave irregularity in the proceedings or otherwise, he may,-*
>
> *(a)set aside the proceedings of the Court; or*
>
> *(b)reduce the sentence or commute the punishment awarded to one lower in the scale of punishment given*

in [section 48 and return it to the unit of the accused for promulgation].

(2)Where no action under sub-rule (1) has been taken he shall countersign the proceedings [* *] [Certain words omitted by S.O. 436(E), dated 29.5.1990.].*

(3)The proceedings shall, after its promulgation [under sub-rule (1) or counter signature under sub-rule (2)] [Inserted by S.O. 436(E), dated 29.5.1990.], be forwarded to the Chief Law Officer for custody."

16. **From the said rules it appears that the appropriate authority herein the DIG (Deputy Inspector General).**

17. On conclusion of the said proceeding a verdict of the Summary Security Force Court was delivered, on 14th December, 2007 and is as follows :-

"I am of the opinion on the evidence before me that accused No.86161993 L/NK Sankha Dutta of 73 Bn, BSF attached with 106 Bn, NDRF is not guilty of first and second charges and guilty of third and fourth charges."

18. The Summary Security Force Court also awarded the sentence on 14th December, 2007. The sentence awarded by the Summary Security Force Court is as follows:-

"Taking all this matter into consideration, now sentence the accused No.86161993 L/NK Sankha Dutta of 73 Bn, BSF attached with 106 Bn, NDRF to be ***dismissed from service."***

19. The petitioner preferred an appeal/review under Section 117 of the BSF Act against the said order of dismissal. The Director General, the respondent no.2 herein, rejected the petitioner's appeal dated 24.2.2008 by an order dated 10th April, 2008 by holding as follows:-

> *"13. The petitioner had 21 years of service on the day of his trial and he has 09 cash rewards to his credit.* ***He has been punished once under Section 19(a) of the BSF Act and awarded Reprimand.***
> *14. There is sufficient evidence on record to substantiate third and fourth charges against the petitioner and the sentence awarded is commensurate to the gravity of offence.*
> *15. In view of the above, after careful consideration of all facts and circumstances of the case, the Director General has* ***rejected*** *the statutory petition submitted by the petitioner being devoid of merit."*

20. Hence, the writ application on the ground that findings of the Disciplinary Authority is perverse and not in accordance with law and being against the principle of natural justice is liable to be set aside.

21. Both parties have placed their written notes.

22. The Supreme Court in the ***State of Rajasthan and others – vs – Heem Singh, in Civil Appeal No. 3340 of 2020 decided on 29th October, 2020*** held :-

> *"33.* ***In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The***

judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. *But they are not governed by strict rules of evidence which apply to judicial proceedings.* ***The standard of proof is*** *hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt,* ***but a civil standard governed by a preponderance of probabilities.*** *Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service.* ***At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact.*** *Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in* ***allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum.*** *Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review.* ***To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity.*** *But this does not allow the court to re-appreciate evidentiary findings in a* *disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."*

23. In ***B. C. Chaturvedi – vs – Union of Indian and others [(1995) 6 Supreme Court Cases 749 in Civil Appeal No. 9830 of 1995],*** the Supreme Court held that :-

"18. A review of the above legal position would establish 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.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every

Court, not to speak of a court of plenary jurisdiction like a High Court. Of Course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.
24. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case, which thinking was extended to cases attracting Article 21 in Maneka Gandhi v. Union of India, the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram v. State of H.P. also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it."

24. ***In Civil Appeal No. 5848 of 2021 (Union of India & Ors. vs. Dalbir Singh) the Supreme Court held (relevant paragraphs are reproduced herein):-***

"25. This Court in Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors., (2005) 7 SCC 764 held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".

It was held as under:-

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

(Emphasis Supplied)

*26. This Court in **Noida Entrepreneurs Association v. NOIDA & Ors. (2007) 10 SCC 385,** held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of* *which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:*

"11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [(1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011], Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

"8. … The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense

generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short 'the Evidence Act']. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. … Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

27. This Court ***in Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699,*** *held that in the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment. It was held as under:*

"7. …There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require

reconsideration if the criminal case gets unduly delayed." (Emphasis Supplied)

28. Mr. Yadav, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition before the High Court, 9 (1997) 2 SCC 699 the appellants were given opportunity to produce the registers of the entrustment of S.L.R. to the writ petitioner. But it was stated that record was not available being an old record as the incident was of 1993. The enquiry was initiated in 2013 after the acquittal of the writ petitioner from the criminal trial. Therefore, in the absence of the best evidence of registers, the oral evidence of use of official weapon stands proven on the basis of oral testimony of the departmental witnesses. 29. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any

> *infraction of any rule or regulations or the violation of the principles of natural justice. he best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time."*

25. A writ Court has the jurisdiction in such proceedings to only ensure that the person aggrieved has had a fair trial and that principle of natural justice was followed while deciding the case and as to whether the punishment given is in proportionate to the offence committed. A writ Court cannot go into the details of evidence recorded and as to the discrepancies of the said finding and proceedings conducted by a disciplinary authority.

26. **In the present case** the order of the disciplinary authority and the appellate/reviewing authority are based on the materials on record. No perversity is seen in the said order and the principle of natural justice has been followed.

27. The 3rd and 4th charge proved in the second charge sheet has its base in the letter dated 18.10.2006 (Bank fraudulent loan case). This was prior to even the 1st charge sheet (dated 6.2.2007) in this case.

28. In ***Central Industrial Security Force and Ors. Vs. Abrar Ali, (2017) 4 SCC 507,*** the Supreme Court held:-

> ***"13.*** *Contrary to findings of the Disciplinary Authority, the High Court accepted the version of the Respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the Disciplinary Authority that the Unit had better medical facilities which could have*

been availed by the Respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamount to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

14. *In* ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya reported in (2011) 4 SCC 584,*** *this Court held as follows:*

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. ***(Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749: 1996 SCC (L&S) 80: (1996) 32 ATC 44], Union of India v. G. Ganayutham [(1997) 7 SCC 463: 1997 SCC (L&S) 1806], Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762: 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil."***

15. *In* ***Union of India & Ors. v. P. Gunasekaran reported in (2015) 2 SCC 610****, this Court held as follows:*

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the inquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

(a) the inquiry is held by a competent authority;

(b) the inquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person 13.could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

16. *We are in agreement with the findings and conclusion of the disciplinary authority as confirmed by the appellate authority and revisional authority on Charge 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the respondent deserves to be punished suitably.*

19. Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for

> ***payment of salary and allowances for that period."***

29. According to the guidelines in (Para 15) of ***Central Industrial Security Force and Ors. Vs. Abrar Ali, (Supra),*** this court finds that, in the present case:-

(a) The enquiry/review was done by a competent authority;

(b) It was done according to the procedure prescribed in that behalf;

(c) It has been done keeping with the principles of natural justice.

(d) The proceedings and the decisions are fair, keeping in mind the petitioner's past conduct in a disciplined force.

(e) The procedure and conclusion in the disciplinary proceeding has been conducted in accordance with law, there being no irregularity.

30. But keeping with the view the fact that the petitioner joined the service in 1985 and was 'dismissed from service' with effect in December, 2007 (after 22 years of (completed) service) of the Supreme Court in ***Union of India & Ors. v. P. Gunasekaran (Supra),*** this court is of the view that **the punishment for removal from service is excessive and harsh and the penalty of compulsory retirement from service would meet the ends of justice.**

31. The first charge framed against the petitioner is on 6.2.2007 (after 22 year of service).

32. It is thus directed that the petitioner ***shall be entitled for notional continuity of service (if not already completed) till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period. (Union of India & Ors. v. P. Gunasekaran***., ***(Supra)).***

33. The writ petition being WPA 10556 of 2008 is accordingly disposed of.

34. All connected applications, if any, stand disposed of.

35. Interim order, if any, stands vacated.

36. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)