IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 15908 of 2019

MSTC Ltd.

Vs.

Malay Sengupta & Ors.

For the Petitioner	:	Mr. Soumya Majumder, ld. Sr. Adv. Ms. Noelle Banerjee, Mr. Dipak Dey, Ms. Sucheta Mitra.
For the Respondents	:	None.
Hearing concluded on	:	27.02.2025
Judgment on	:	25.03.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred praying for direction upon the respondents to recall the order dated 30th April, 2019 passed by the respondent no. 2, being the Deputy Chief Labour Commissioner (Central), Kolkata and Appellate Authority under Payment of Gratuity Act, 1972.

2. The petitioner's case in short is that the respondent no. 1 was a presidential appointee on the Board of Directors of the writ petitioner company. While being so appointed, he was governed by the conduct, discipline and appeal Rules, 1980 of MSTC Limited.

3. On 20th April, 2009, the respondent no. 1 while holding the post of CMD of MSTC Limited was issued a memorandum of charge sheet for initiation of major penalty proceeding. The charges were of serious nature involving imports of scrap made at a higher cost as compared to similar transaction effected then by other private parties, resulting in a loss of Rs.7.44 crores to the writ petitioner company by reason of recommendations for purchase of scarp made by the Purchase Committee of MSTC Limited, of which the respondent no. 1 was a member.

4. During the pendency of the disciplinary proceeding initiated by the Central Government against the respondent no. 1, the said respondent attained the age of superannuation on 30th April, 2009. The charge sheet was issued on 20th April, 2009 which was never challenged by the respondent no. 1 and the said respondent continued to participate in the disciplinary proceeding even after his superannuation.

5. The conduct, discipline and appeal Rules, 1980 of MSTC Limited also permit continuance of disciplinary proceeding after superannuation of an employee. During the pendency of the disciplinary proceeding, the Ministry had been writing to the petitioner company time and again regarding the aspect of recovery of dues from the respondent

no. 1 pertaining to the disciplinary proceeding initiated against him and also directed to withholding of gratuity by letter dated 24th April, 2009 pending the completion of such disciplinary proceedings.

6. **By an order dated 30th April, 2013, the Disciplinary Authority imposed upon the respondent no. 1 the penalty for recovery of Rs.10 lacs payable to the respondent no. 1 on account of gratuity** which was withheld at the time of his retirement, for the loss caused to MSTC Limited by negligence and breach of orders. Such order was passed by invocation of Rule 23(d) read with Rule 30A(ii) of conduct, discipline and appeal Rules, 1980 of MSTC Limited.

7. The respondent no. 1 filed a review application dated 28th October, 2013 but the same was also rejected by the Ministry being the Disciplinary Authority vide order dated 20th March, 2014.

8. It is further stated by the petitioner that long after the respondent no. 1 had superannuated from service (30th April, 2009), and after having accepted the penalty order of forfeiture of gratuity by way of penalty, the respondent no. 1 made a representation dated 3rd April, 2017 to the petitioner company demanding gratuity. **The respondent no. 1 had never challenged the penalty order passed in the disciplinary proceeding in any Court of Law.** He thus accepted the said penalty order. The gross delay of about 8 years in making a claim for gratuity also estops the respondent no. 1 by conduct from claiming gratuity from the writ petitioner company. The petitioner by

its letter dated 5th July, 2017 denied the claim of the respondent no. 1 for gratuity.

9. The respondent no. 1 filed a claim application before the respondent no. 3 in Form 'N' demanding the gratuity amount. The respondent no. 1 made a demand in Form 'I' on 3rd April, 2017.

10. The petitioner in his written objection specifically pleaded that in view of the enabling provisions of Rule 30A of the conduct, discipline and appeal Rules, 1980, the respondent no. 1 was not entitled to gratuity amount. That apart, the unchallenged penalty order passed by the Disciplinary Authority could not be bypassed even if such a claim application was made by the respondent no. 1.

11. The Controlling Authority passed an order on 20th February, 2018 holding that the respondent no. 1 was not entitled for payment of the gratuity amount since the Ministry had already imposed the penalty of recovery of loss suffered by it through forfeiture of the gratuity amount of the respondent no. 1. The respondent no. 1 preferred an appeal before the respondent no. 2.

12. The respondent no. 2 passed an order on 30th April, 2019 and allowed the appeal directing payment of the said amount of gratuity with simple interest of 8% with effect from 30th April, 2009. The aforesaid order dated 30th April, 2019 was sent under the covering letter dated 28th May, 2019 and received at the office of the petitioner company on or about 31st May, 2019.

13. The Controlling Authority in the present case in his findings dated 20.02.2018 passed the following order:-

"On the basis of submission of the parties, it is observed that the Opposite Party has contested about the eligibility/entitlement/period of the applicant as such payment of gratuity amounting to Rs.10,000 Lakhs (Ten lakhs only). Hence, it is an admitted position that the applicant is not entitled for the aforesaid amount as gratuity w.e.f. 01.08.1973. As the Charge-sheet was issued well before his superannuation and inquiry was proposed to be conducted against him under the Conduct, Discipline and Appeal Rules, 1980 of MSTC Ltd. of which he was the CMD. And Departmental proceeding against the applicant before the Central Vigilance Commission (CVC) was continued up to his retirement.

In its order dated 30.04.2013, the Ministry had imposed a penalty on the applicant for recovery of Rs.10 Lakhs payable to the applicant on the gratuity in view of the above facts. In other works, the Opposite Party, the Govt. of India/Competent Authority might have considered the termination of the service of the applicant on the basis of the departmental inquiry for the purpose of ***Clause (A) (B) of Sub-section 6 of Section 4 of the Payment of Gratuity act,*** *which provides that gratuity of an employee can be* ***forfeited*** *whose service has been* ***terminated*** *for any act willful omission on negligence causing any damage or loss to or destruction of properties belonging to the employer shall be forfeited to the extent of the damage caused or loss so caused.*

After considering all the averment and arguments of the parties, I have arrived at a conclusion that the applicant is not entitled for payment of the disputed claimed amount. Therefore, the action of the management MSTC Limited is withholding of gratuity of Shri Malay Sengupta is quite legal and justified."

14. **In appeal,** the Deputy Chief Labour Commissioner (Central), Kolkata vide an order dated 30th April, 2019 held as follows:-

"After going through the rival contentions it is observed that the ***respondent is not terminated*** *from the service which is a* ***pre-condition for ordering forfeiture of an employee under P.G. Act.*** *Further forfeiture is linked to moral turpitude, riotous behaviour in case the whole of the gratuity amount is required to be forfeited. However, in case of damage and loss*

the employer is empowered to order forfeiture to the extent the same has been quantified by the employer as a loss caused to them ***but without quantifying the loss mechanically imposition of penalty to order forfeiture of 10 lakhs i.e. the entire amount of gratuity is against the statute."***

15. **The appellate authority** relying upon various judgments relevant to the issue to be decided, held that the Controlling Authority has not gone deep into the provisions of the Payment of Gratuity Act and he has not taken into cognizance of the argument of the appellant without sufficient reasons and justifications and set aside the order of the Controlling Authority by allowing the appeal and directed the petitioner herein to disburse gratuity from the date of retirement i.e. 30.04.2009 with simple interest of 8% till the gratuity amount is physically disbursed relying upon the judgment of the Hon'ble Supreme Court in the case of ***Kerala State Cashew Development Corp. Ltd. & Anr. Vs. N. Asokan, reported in (2009) 16 SCC 758.***

16. The appellate authority further held that the calculation of gratuity for the appellant exceeded 10 lakhs as his last wages drawn exceeds Rs. 1 Lakh per month and as he has rendered more than 35 yrs of service on the date of his retirement, the same is restricted to 10 lakhs as per the provisions of the Payment of Gratuity Act applicable then.

17. Being aggrieved, the present writ application has been preferred by the company.

18. Short notes of argument has been filed by the petitioner along with the judgments relied upon.

19. Affidavits were filed in course of hearing.

20. The petitioner has relied upon the judgment of the division bench of this Court in ***State Bank of India & Ors. vs Ratan Kumar Rabbai & Ors., 2022 SCC OnLine Cal 1218,*** wherein the Court held:-

> ***"11.*** *The contention of the respondent no. 1 is that gratuity under the 1972 Act could not be withheld by the employer on the ground of pendency of the disciplinary proceedings as the right to get gratuity accrued in terms of the 1972 Act immediately on the date of his superannuation that is on 30.11.2011. On the other hand the employer contended that an employee against whom disciplinary proceedings can continue even after superannuation in accordance with the service rules cannot be treated as a superannuated employee and punishment of dismissal/termination can be inflicted even after the superannuation. According to employer, an employee governed by the service rules could not have applied for gratuity before completion of the disciplinary proceedings.*
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> ***17.*** *The judgment in Jaswant Singh Gill (supra) was overruled by the larger bench in Rabindranath Choubey (supra) inter alia for the reasons that the authority under the Payment of Gratuity Act, 1972 had no jurisdiction to go into the legality of the order of disciplinary authority which was not questioned. It was further observed that in Jaswant Singh Gill (supra) the court did not consider the scope of the provisions of the Payment of Gratuity Act, 1972 and the provisions of the service rules providing legal fiction of employee deemed to be in service even after superannuation.*
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> ***18.*** *In the case on hand the appointing authority in the order dated 10.08.2012 returned a finding that the chargesheeted officer has been chiefly responsible for the financial loss of Rs. 1.90 crores to the bank. On such finding the chargesheeted officer was inflicted with the penalty of removal from service under Rule 67(i) of SBIOSR and forfeiture of entire gratuity in terms of Section 4 of the 1972 Act. The said order had attained finality and is thus binding upon the employee and the employer.*
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> ***19.*** *The principle laid down in Jaswant Singh Gill (supra) was the basis for passing the order by the appellate authority under the 1972 Act. The*

observations made in Rabindranath Choubey (supra) while overruling Jaswant Singh Gill (supra) are clearly applicable to the facts of the instant case as the order of punishment inflicted upon the employee is not under challenge. The reasons assigned by the appellate authority under the 1972 Act against forfeiture of gratuity was in view of the decision in Jaswant Singh Gill. Since Jaswant Singh Gill (supra) stands overruled, the order of the appellate authority under the 1972 Act cannot be sustained in the eye of law. In view of the observations in Rabindranath Choubey (supra) it cannot also be said that Jaswant Singh Gill's case is a possible view as held by the learned Single Judge and as such the same also calls for interference.

20. *This Court is, therefore, of the considered view that the Appellate Authority while exercising its power under the 1972 Act cannot act as the Appellate Authority of the disciplinary authority imposing the punishment. An authority exercising powers under 1972 Act, which in the instant case is the appellate authority, had no jurisdiction to deal with the order of punishment passed by the disciplinary authority. The said authority could not sit in appeal over the order of punishment of the disciplinary authority and modify or set aside the order of the disciplinary authority forfeiting the gratuity. Since the order of punishment is not the subject matter of challenge in this appeal, this Court does not deem necessary to deal with the argument of Mr. Basu that the gratuity could not have been forfeited in a case of removal from service.*

23. *A Division Bench of the Madras High Court by a judgment dated 23.08.2021 passed in W.A. No. 1558 of 2011 and M.P. No. 1 of 2011 in the case of The Management, Coimbatore District Central Co-operative Bank Ltd. v. N. Somasundaram while dealing with a case involving recovery of loss caused to the bank held that since the surcharge proceedings has come to an end it was open to the authorities to recover the loss by invoking the provisions of the Revenue Recovery Act from the employee but the gratuity cannot be withheld in view of Section 13 of the Payment of Gratuity Act. The said decision is distinguishable on facts and as such the same has no manner of application to the facts of the instant case."*

21. The petitioner has also placed the judgment in ***Western Coal Fields Ltd. vs Manohar Govinda Fulzele, in Civil Appeal No. 2608 of 2025, dated 17th February, 2025,*** wherein the Supreme Court held:-

> *"**2.** The question raised in the above cases is the permissibility of forfeiture of gratuity, in the event of termination of service on misconduct, which can be categorised as an act constituting an offence involving moral turpitude; without there being any conviction in a criminal case or even a criminal proceeding having been initiated.*
> ***10.** As has been argued by the learned Solicitor General and the learned Counsel appearing for MSRTC, subclause (ii) of Section 4(6)(b) enables forfeiture of gratuity, wholly or partially, if the delinquent employee is terminated for any act which constitutes an offence involving moral turpitude, if the offence is committed in the course of his employment. An 'Offence' as defined in the General Clauses Act, means 'any act or omission made punishable by any law for the time being' and does not call for a conviction; which definitely can only be on the basis of evidence led in a criminal proceeding. The standard of proof required in a criminal proceeding is quite different from that required in a disciplinary proceeding; the former being regulated by a higher standard of 'proof beyond reasonable doubt' while the latter governed by 'preponderance of probabilities'. The provision of forfeiture of gratuity under the Act does not speak of a conviction in a criminal proceeding, for an offence involving moral turpitude. On the contrary, the Act provides for such forfeiture; in cases where the delinquent employee is terminated for a misconduct, which constitutes an offence involving moral turpitude. Hence, **the only requirement is for the Disciplinary Authority or the Appointing Authority to decide as to whether the misconduct could, in normal circumstances, constitute an offence involving moral turpitude, with a further discretion conferred on the authority forfeiting gratuity, to decide whether the forfeiture should be of the whole or only a part of the gratuity payable, which would depend on the gravity of the misconduct.** Necessarily, there should be a notice issued to the terminated employee, who should be*

allowed to represent both on the question of the nature of the misconduct; whether it constitutes an offence involving moral turpitude, and the extent to which such forfeiture can be made. There is a notice issued and consideration made in the instant appeals; the efficacy of which, has to be considered by us separately .

15. *The appointment itself being illegal, there is no question of the terminated employee seeking fruits of his employment by way of gratuity. We uphold the decision of the PSU forfeiting his entire gratuity. However, in the case of conductors (Civil Appeal No._____ @SLP (C) No.21957 of 2022), we see that the act alleged and proved is of misappropriation of meagre amounts. It is trite that even if minimal amounts are misappropriated it would constitute a misconduct warranting termination, as held by this Court. However, on the question of forfeiture of gratuity, we are of the opinion that* ***the Appointing Authority should have taken a more sympathetic approach. We do not propose to send back the matter for fresh consideration but direct the Appointing Authority to limit the forfeiture to 25% of the gratuity payable and release the balance amounts to the respondent employees."***

The Court also considered the judgments in:-

i. ***Union Bank of India vs C.G. Ajay Babu, (2018) 9 SCC 529.***

ii. ***Jaswant Singh Gill vs M/s. Bharat Coking Coal Ltd. & Ors., (2007) 1 SCC 663.***

iii. ***Chairman cum Managing Director, Mahanadi Coalfields Limited vs Sri Rabindranath Choubey, (2020) 18 SCC 71.***

22. Section 4 Payment of Gratuity Act, 1972 lays down:-

*"**4. Payment of gratuity**.-(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*

(a)on his superannuation, or

(b)on his retirement or resignation, or

(c)on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation .-For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2)For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation .-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3)The amount of gratuity payable to an employee shall not exceed [such amount as may be notified by the Central Government from time to time].

(4)For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his

wages for the period subsequent to his disablement shall be taken to be the wages as so reduced;

(5)Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6)Notwithstanding anything contained in sub-section (1),-

(a)the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b)the gratuity payable to an employee [may be wholly or partially forfeited]-

(i)if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii)if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

[* *]"*

23. Section 4(6)(b) sub clause (ii) Payment of Gratuity Act, lays down:-

"(6)Notwithstanding anything contained in sub-section (1),-
(a)the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
(b)the gratuity payable to an employee [may be wholly or partially forfeited] -
(i)if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
(ii)if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

24. 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."*

25. 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.*
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> ***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."*

26. 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 27 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."

27. In the present case the charge against the private respondent is:-

"Articles of charges against Shri Malay Sengupta, CMD, MSTC Limited, Kolkata

Shri Malay Sengupta, CMD, MSTC Limited, Kolkata, was a Member of the Purchase Committee, which made recommendations for purchase of scrap, which transaction has emerged as not having been in the best commercial/operational interest of the Company. The imports of the scrap were made at a higher cost as compared to similar transactions effected then by other private parties and also the imports were made when there was inadequate demand. Consequently the company faced problems and had to undertake distress sales for disposal of scrap by making sales against Post Dated Cheques (PDCs). The laid down guidelines for PDC sales were violated in a number of instances and especially the creditworthiness of the parties were not duly assessed or considered. The PDC facilities were to be granted only for material value but it was also granted for custom duty, countervailing duty, sales tax, etc. HR coils were also sold on PDC whereas guidelines were made only for the shredded scrap. The grant of PDC facility and deviations from the laid down guidelines and distress sale of scrap have contributed to the losses suffered by MSTC in the

matter. The procurement decisions were taken without proper assessment of requirements and ignoring price trends and warning signals. Ultimately, MSTC had to sell material at a lower price, that too without fully realizing the sales proceedings from all purchasers, thus leading to losses to the Company. As on date, an amount of Rs. 7.44 crore is pending against 6 parties and it appears that recovery of this amount could be difficult. MSTC would stand to suffer losses in the matter of sale of scrap against the PDC on account of lapses committed by Shri Malay Sengupta, CMD, MSTC Ltd.

2. By the above acts of commissions and omissions Shri Malay Sengupta, CMD, MSTC Ltd. has violated Rules 4(1)(i), 4(1)(ii), 4(1)(iii), 5(5) and 5(21) of the CDA Rules, 1980 of MSTC Limited."

28. On hearing the learned counsels for the parties and on perusal of the materials on record, it appears that vide an order dated 30.04.2013 the Director by order and in the name of the President on behalf of the Government of India, Ministry of Steel passed an order, as follows:-

"NOW, THEREFORE, after examination of the case and the representation submitted by Shri Sengupta, ***the Disciplinary Authority finds no merit in points made by Shri Malay Sengupta and imposes a penalty on him for recovery of Rs.10 lakhs payable to him, on account of gratuity which was withheld at the time of his retirement, for the loss caused to MSTC by negligence and breach of orders,*** *in terms of Rule 23(d) read with Rule 30-A(ii) of Conduct Discipline and Appeal (CDA) Rules 1980 of MSTC Ltd."*

29. Vide another order dated 20th March, 2014, it was held as follows:-

"2. AND WHEREAS after conducting Inquiry, the Inquiry Authority (IA) submitted the Inquiry Report wherein the

charges against Shri Malay Sengupta have been found proved.

3. AND WHEREAS after careful consideration of Inquiry Report and taking into account that Shri Malay Sengupta has already retired from the service of the company, the Disciplinary Authority proposed to impose on him a penalty of recovery of Rs.10 lakhs payable to Shri Malay Sengupta, Ex-CMD, MSTC on account of gratuity, for loss caused to MSTC by negligence and breach of orders and Central Vigilance Commission was consulted in this regard as per procedure.

4. AND WHEREAS Shri Malay Sengupta was given an opportunity of making representation on the penalty proposed vide this Ministry's O.M. of even number dated 13th February 2013.

5. AND WHEREAS, after examination of the case and the representation submitted by Shri Sengupta, the Disciplinary Authority found no merit in points made by Shri Malay Sengupta and imposed a penalty on him for recovery of Rs.10 lakhs payable to him, on account of gratuity which was withheld at the time of his retirement, for the loss caused to MSTC by negligence and breach of orders, in terms of Rule 23(d) read with Rule 30-A(ii) of Conduct, Discipline and Appeal (CDA) Rules 1980 of MSTC Ltd. vide this Ministry's order of even number dated 30-4-2013."

30. There was only **one witness** to the said disciplinary proceeding.

31. It appears that the alleged loss admittedly was by reason of recommendations made by the purchase committee of the petitioner herein of which the private respondent was one of the members.

32. The committee constituted of several members. **The private respondent was only one of them. The recommendations made were not the sole responsibility of the private respondent. It was a collective decision.**

33. Whether any action has been taken against other members of the committee is not on record.

34. The private respondent is thus not alone responsible for the alleged loss as stated, which admittedly was **only a recommendation made by a committee thus a collective decision.**

35. This clearly does not make out a case of moral turpitude.

36. On a review application being filed by the respondent herein the same was rejected.

37. Vide an order dated 20.03.2014 the petitioner was given opportunity to make representation on the penalty proposed by the authority concerned.

38. Finding no merit in the representation filed, the penalty was imposed.

39. Thus relying upon the judgment in ***Western Coal Fields Ltd. vs Manohar Govinda Fulzele, (Supra),*** this Court sets aside the order and punishment of the disciplinary authority for the reasons stated above and directs the petitioner to pay the total amount of gratuity along with simple interest @ 8% p.a. with effect from 30th April, 2009 till payment **within 60 days from the date of this order.**

40. The said/conduct of the enquiry/disciplinary authority is clearly an abuse of power and totally against the principles of natural justice, there being no independent, specific findings of the disciplinary authority against the petitioner. No reasoning nor the principles of natural justice was followed.

41. Finally, in the present case, there is absolutely no observation or specific finding against the petitioner in the said order of the

enquiry/disciplinary authority. The findings of Disciplinary Authority is based on 'no evidence' and has been passed without considering the principles of natural justice, which is a clear perverse determination of fact ***[State of Rajasthan – vs – Heem Singh (Supra)].***

42. The order under challenge thus also requires no interference as the appellate authority has not interfered either with the disciplinary proceeding or the punishment. The appellate authority was clearly within its power under the payment of gratuity to decide the case on merit regarding the entitlement/forfeiture of gratuity.

43. The order of the appellate authority is well reasoned and within jurisdiction to the extent of the provisions of the payment of gratuity and is clearly in accordance with law.

44. WPA 15908 of 2019 is thus dismissed.

45. All connected application, if any, stands disposed of.

46. Interim order, if any, stands vacated.

47. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)