IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 16216 of 2021

Sri Jyotirmoy Basu

Vs.

Union of India & Ors.

For the Petitioner	:	Mr. Suvadip Bhattacharjee, Mr. Balaram Patra.
For the Respondent/ Union of India	:	Mr. Suchayan Banerjee, Mr. Soumadeep Banerjee.
Hearing concluded on	:	28.02.2025
Judgment on	:	02.04.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred against an award dated 07.08.2020 passed by the Central Government Industrial Tribunal cum Labour Court, Kolkata, in reference case no. 03 of 06, and praying for granting of full back wages along with all consequential benefits to the petitioner.

2. The petitioner's case in short is that respondent no. 2 is a Nationalised Bank and the petitioner was employed by the management of the respondents as a Clerk with effect from 15.12.1980 and initially was posted at GARH NOKHA Branch, District-Rohtas, Bihar.

3. Petitioner's further case is that he was wrongfully, arbitrarily and illegally dismissed from service with effect from 9.2.2004 for the reasons that **by mistake and/or by oversight he was in possession of certain blank stationery** of the Bhawanipur Branch which was mixed with his personal belongings while on transfer from the said Bhawanipur Branch to Ballygunge Branch, which in turn had displeased the Management of the respondents and he was victimized for the same.

4. It is further stated that the fact of possession of certain blank stationary surfaced only after a raid which was conducted by the **police authorized on 05.11.2000.**

5. **The petitioner was taken into custody** and a police case was registered against him. **On 29.11.2000** he went to office for discharging his duties where he was allowed to work but at the same time **an explanation was sought for his unauthorized absence.**

6. On 03.02.2001 an order was passed by the competent authority wherein it was stated that he was suspended. Thereafter, vide RO/CAL/PD/PF40/73 dated 5th January, 2002 it was informed that one Mr. Dipak Kumar Saha, Senior Branch Manager attached with College Street Branch Kolkata was being appointed as Enquiry Officer who will conduct the enquiry.

7. **The enquiry was conducted and the Enquiry Officer submitted his report dated 16.08.2022 wherein it was categorically stated that "Hence, the charge is not established beyond the iota of doubt".**

8. Vide RO/KOL/HRM/PF/41/2366 dated September 27, 2003 the petitioner was intimated that **Disciplinary Authority had disagreed** with the finding of the Enquiry Officer which says *"III After having found that the specific allegation of unauthorized possession of Bank's sensitive articles by the CSE, has been proved, the Enquiry Officer has traveled beyond his reference and jurisdiction of the Charge Sheet and has observed that since **no such eventuality have been specified in the Charge Sheet** and placed as document he was not in a position to corroborate charges to the factual position mentioned in the Charge Sheet".*

9. The petitioner had duly replied to the said order vide letter dated 31.10.2003 wherein he again repeated and reiterated his explanation and again sought for exoneration from the charges.

10. Vide letter dated 17th December, 2003 Deputy General Manager (KMR) & Disciplinary Authority stated in Para 3:-

> *"With regard to the contention of the CSE that to err is human and to forgive is divine. I find that Charge established against the CSE is grave in nature. By holding unauthorisedly Bank's security items the CSE has shaken the faith reposed on him by the Bank. Beside that this misconduct on the part of the CSE is subversive to the discipline of the bank.*
> *Having regard to the gravity of the misconduct established against the CSE and the extenuating and aggravating factors, I propose to impose the following punishment on him :*

"REMOVAL FROM THE BANK'S SERVICE WITH SUPERANNUATION AND WITHOUT DISQUALIFICATION FROM FUTURE EMPLOYMENT"."

11. Subsequently a **corrigendum** dated 22nd December, 2003 was issued to notice dated 17th December, 2003 by the Deputy General Manager (KMR) & Disciplinary Authority wherein it was stated that **"REMOVAL FROM THE BANK'S SERVICE WITH SUPERANNUATION BENEFITS AND WITHOUT DISQUALIFICATION FROM FUTURE EMPLOYMENT".**

12. In the meantime the criminal case being GR Case NO. 3588/00 under Section 420/120B/419/467/468/471 of Indian Penal Code wherein he was arrayed as an accused was decided vide judgment dated 20.01.2004 by the learned Metropolitan Magistrate 9th Court, Calcutta. It was ordered **"That both the accused persons Pradip Kumar Biswas and Jyotirmoy Basu are found not guilty of committing offence under which they have been charged".**

13. Subsequently the petitioner made another representation dated 4.2.2004 to Deputy General Manager Disciplinary Authority (KMR) wherein he had made a prayer for joining his duties.

14. He also preferred an Appeal before the Appellate Authority against the order dated 9.2.2004 passed by the Deputy General Manager (KMR) on 22.3.2004.

15. On 7th May, 2004, the Appellate Authority passed its order wherein it was stated:-

> *"Taking into consideration all relevant papers/documents related to the enquiry proceedings, Order of the Disciplinary authority, the Appeal dated 22.3.2004 submitted by the Appellant and the facts and circumstances of the case, I am of the considered view that the charges leveled against him have been proved. The punishment imposed by the Disciplinary Authority is proportionate to the gravity of misconduct".*

16. Petitioner preferred one writ application being WP No. 19453(w) of 2004 before the Hon'ble High Court at Calcutta. The said application was dismissed with the observation that the remedy provided in the special statute should be availed of by the petitioner and that he should not be permitted to invoke the high prerogative writ jurisdiction of this Court.

17. Pursuant to the order passed in WP No. 19453 of 2004 he had approached the Regional Labour Commissioner (Central) who in turn referred the matter before the respondent no. 1 as the same could not be amicable settled. Hence, respondent No. 1 referred the matter before the Learned Central Government Industrial Tribunal, Calcutta and thus Reference Case No. 03 of 2006 was initiated.

18. Petitioner states that the Central Government Industrial Tribunal, Calcutta on 11.11.2009 fixed the matter for hearing on the point of validity of domestic enquiry and upon hearing both the parties, the Tribunal, observed that *"In the above circumstances the departmental enquiry held against the workman concerned is held to be valid and legal. Parties are required to be heard on the point of punishment under Section 11-A of the Industrial Disputes Act, 1947".*

19. The matter was then heard with regard to Section 11A of the Industrial Disputes Act, 1947 and Award was passed by learned Central Government Industrial Tribunal, Calcutta **on 07.08.2020,** wherein it has held that petitioner is entitled to lump sum compensation of Rs. 200,000 (Two Lacs Only).

20. Hence the writ petition.

21. The power of the tribunal to decide a dispute raised, has been laid down by the Supreme Court in ***Workmen of Messrs Firestone Tyre and Rubber Company of India vs Management & Ors., decided on 06.03.1973, 1973 AIR 1227,*** wherein in the Court held:-

> *"……..(iii) Both in respect of cases where a domestic enquiry has been held as also in cases when the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under s. 11A, about the guilt or otherwise of the workmen concerned is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other.* ***Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.***
> *The contention that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by the employee, could not be accepted.* ***The Tribunal under s. 11A can consider the question of guilt as well as of punishment. It can also alter the punishment imposed by an employer.***
>
> *In its very early decision in Buckingham and Cernatic Com- pany Ltd, by its Managing Agents Binny & Co., Madras v. Workers of the Company represented by the Madras Labour Union and Madras, Textile Workers Union(1), the Labour Appel-*
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> *(1) [1952] Labour Appeal Cases 490.*

-L761 Sup CI73 late Tribunal held that the decision of the Management in relation to charges against the employee will not prevail if

(a) there is want of ***bona fide,*** *or*

(b) it is a case of ***victimisation or unfair labour practice or violation of the principles of natural justice, or***

(c) there is a basic ***error of facts*** *or,*

(d) there has been ***a perverse finding*** *on the materials. It was further laid down, that an employer ought to have the right to decide what the appropriate punishment for a misconduct should be and its exercise of the discretion in this regard should not be interfered with by a Tribunal unless the punishment is unjust. In Shri Ram Swarath Sinha, Righa, Muzafferpur v. The Management of the Belsund Sugar Company Limited, Righa Muzaffarpur(1), the Labour Appellate Tribunal has recognised the right of a management to ask for permission to adduce evidence for the first time before the Tribunal to justify its action though no domestic enquiry had been held by it. It has been emphasised that the permission asked for cannot be thrown out in limine on the ground that the management had not made any previous enquiry into the charge. We may say that this decision was in respect of a proceeding under section 33 of the Act, but, as held by this Court,* ***there is no difference in such matters whether the Tribunal was deciding a dispute referred to it under section 10 or an application filed before it under section 33 of the Act.***

In discussing the nature of the jurisdiction exercised by an Industrial Tribunal when adjudicating a dispute relating to dismissal or discharge, it has been emphasised by this Court in Indian Iron & Steel Co. Ltd.(2) as follows :

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination, of service of a workman is justified to give appropriate relief. In cases of dismissal on misconduct, ***the Tribunal*** *does not, however, act as a Court of appeal and substitute its own judgment for that of the management.* ***It will interfere (i) when there is***

> ***want of good faith; (ii) when there is victimisation or unfair Labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural Justice. and (iv) when on the materials the finding is completely baseless or perverse"............"***
>
> ***"............. We have pointed out that this position has now been changed by section 11 A.*** *The section has the effect of altering the law by abridging the rights of the employer inasmuch as it* ***gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by' an employer as well as the punishment imposed by him......."***

22. In the present case, the said guidelines were clearly not followed by the tribunal.

23. Affidavits filed by the parties are on record.

24. Written notes of argument along with judgments relied up have been filed by the parties.

25. The following judgments have been relied upon by the petitioner:-

1. ***Harjinder Singh –vs- Punjab State Warehousing Corporation, (2010) 3 SCC 192;***
2. ***Deepali Gundu Surwase –vs- Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors., (2013) 10 SCC 324;***
3. ***Jayantibhai Raojibhai Patel –vs-Municipal Council , Narkhed and Ors., (2019) 17 SCC 184;***
4. ***State of Rajasthan and Ors. Vs- Heem Singh, (2021) 12 SCC 569;***

5. ***Roop Singh Negi –vs- Punjab National Bank and Ors., (2009) 2SCC 570;***
6. ***Harlal Saini –vs- Union of India, LAWS (ALL) 2019 8 344;***
7. ***Punjab National Bank and Ors. –vs- Kunj Behari Misra, (1998) 7 SCC 84;***
8. ***State of U.P. and Ors. –vs- Shyam Kewal Ram, 2024 SCC OnLine ALL 2716; and***
9. ***Bank of Baroda –vs- S.K. Kool (Dead) through Legal Representatives and another, (2014) 2 SCC 715.***

26. The following judgments have been relied upon by the respondents:-

1. ***Indian Bank-vs- Central Government Industrial Tribunal, 2003 (3) CHN 311;***
2. ***Uttar Pradesh State Road Transport Corporation -vs- Gajadhar Nath, 2021 (14) Scale 675;***
3. ***M L Singla –vs- Punjab National Bank and another, reported in 2018 (11) Scale 374;***
4. ***Arup Basu Chowdhury –vs- UCO Bank and Ors., reported in 2015 (3) CHN 216;***

27. On hearing the learned counsels for the parties and on perusal of the materials on record, it appears that the **Enquiry Officer's findings** dated 16.08.2022 against the petitioner herein is as follows:-

> *"i) The fact that the charge sheeted employee came in unauthorized possession of the* ***Letter Head-Pads of the Bank and Rubber Stamps of the Bank*** *has been categorically admitted by the Charge sheeted employee in the*

preliminary hearing itself. The ground put up by him that due to in-advertence while transfer the personal belonging from the office was wrongly shifted to his house does not appear to be acceptable as any such document is very vital in so far as the authentication and certification of financial transactions are concerned. The CSE being fully aware of the gravity and consequences of such unauthorized possession of such documents as a very senior employee of the Bank so pleading ignorance at the later stage on some pretext of the other is not acceptable.

ii) Though the CSE has refused the charge of acting prejudicial in the interest of the Bank, the nature and circumstances lead the under-signed to believe that any such unauthorized possession exposes the bank to the high risk of the Bank and mis-use which at the later stage may be found to the detrimental to the interest of the Bank. ***Since no such eventuality have been specified in the charge sheet and placed as document, <u>I am not in a position to corroborate charges to the factual position mentioned in the charge sheet.</u>***

<u>Hence, the charge is not established beyond the iota of doubt."</u>

28. The disciplinary authority vide an order dated 27.9.2023 disagreed with the findings of the enquiry officer by holding as follows:-

"I give herein below the reasons for disagreeing with the above inference, drawn by the Enquiry Officer:

I. Mr. Jyotirmoy Basu was charged for "doing acts prejudicial to the interest of the Bank" which is a gross misconduct under the provisions of the Bipartite Settlement, on the basis of the ***allegation that he kept the Letter Head Pad with inscription of name and address of Bhowanipur Branch of the Bank, Blank***

Pass Books of the Bank and Rubber Stamps bearing the impressions of Bhowanipur Branch of the Bank's unauthorisedly at his residence.

II. *The above allegations have been found to be proved by the Enquiry Officer due to acceptance of the same by the CSE during the preliminary hearing. The Enquiry Officer has also observed that the plea of ignorance/inadvertence taken by the CSE cannot be accepted, since the CSE, being a very senior employee was fully aware of the gravity and consequences of such authorized possession of such articles.*

III. *After having found that the specific allegation of unauthorized* ***possession*** *of Bank's* ***sensitive articles*** *by the CSE, has been proved,* ***the Enquiry Officer has traveled beyond his reference and jurisdiction of the Charge Sheet and has observed that since no such eventuality have been specified in the Charge Sheet and placed as document. I am not in a position to corroborate charges to the factual positions mentioned in the Charge Sheet.***

Since there was no charge of misuse of the security items of the Bank, found in the possession of the CSE, was levelled against the CSE, the above observation and inference of the Enquiry Officer is out of context and irrelevant.

I therefore, disagree with the above said inference of the Enquiry Officer and hence do not accept the same.

In view of the foregoing, I the undersigned Disciplinary Authority, find that the only charge of unauthorized possession of Bank's certain sensitive articles, levelled against Mr. Jyotirmoy Basu, Clerk Ballygunj Branch, Kolkata has been duly proved beyond any iota of doubt.

Therefore, I hold that Mr. Jyotirmoy Basu, the CSE has done acts which tantamount to doing acts prejudicial to the interest of the Bank, which is a gross misconduct under the provisions of the Bipartite Settlement.

Dated: 27th September, 2003 ***Sd/-***

DISCIPLINARY AUTHORITY
ASST. GENERAL MANAGER (HRM)
KOLKATA METRO REGION"

29. The petitioner herein was dismissed from bank service with superannuation benefits and without being disqualified from future employment.

30. **Charge** framed against the petitioner herein are as follows:-

i) That the CSE kept the letter head pads with inscription of the name address of Bhowanipore Branch of the Bank, blank pass book of the Bank and Rubber stamps bearing the impressions of Bhowanipore branch of the Bank at the residence tantamount unauthorisedly at the residence.

ii) **That such possession of bank letter head pads with inscription of the name address of Bhowanipore branch of the Bank and Rubber Stamp of the Bank would tantamount to "doing acts prejudicial to the interest of the Bank.**

31. Enquiry officer found the charge not proved and passed an order based on specific findings and reasons.

32. The disciplinary totally disagreed and punishment of dismissal from service was inflicted.

33. The petitioner in the present case has filed a copy of the judgment passed in **G.R. Case No. 3588 of 2000** passed by the learned Metropolitan Magistrate, 9th Court, Calcutta on 20th January, 2004. Vide the said judgment, the petitioner herein Jyotirmoy Basu has been found **"not guilty"** of the offences under Sections 420/120B/419/467/468/471 I.P.C. and 12 P.P. Act.

34. It appears from the said judgment that the complainant himself was the investigating officer and this is clearly against the principles of natural justice. The learned Magistrate has also held similarly.

35. There has been no corroborating evidence against the petitioner in the said criminal case.

36. The prosecution in the criminal case, also did not prove any documents which were allegedly forged though they were seized by the investigating agency as per seizure list.

37. 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."*

38. 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."*

39. 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 29 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."*

40. It appears from the judgment of acquittal passed by the learned Metropolitan Magistrate, 9th Court, Calcutta in G.R. Case No. 3588 of 2000 under Sections 420/120B/419/467/468/471 I.P.C. and 12 P.P. Act, dated 20th January, 2004 that the learned Magistrate was pleased to acquit the accused persons, including the present petitioner from all charges.

41. The finding of the learned Magistrate is as follows:-

> *"It is apparent that the investigating officer of this case is also the complainant. Principles of actual justice entails that any case ought to be investigated by a person other than the defacto-complainant. The complainant is taken to be an interested person and the investigation will be prejudiced if it is investigated by him.*
>
> *In the instant case only the P.W.1 is the I.O. has been examined. There is no corroborating evidence. Prosecution has not exhibited any documents which are allegedly forged though they were seized by them as per seizure list. Moreover, there is no material exhibit.*
>
> *Considering all the above this Court can safely come to a finding that the prosecution has miserably failed in its endeavour to score the guilt of any of the abovenamed accd. persons under any of the sections of I.P.C. under which charge has been framed against them. So both the accd. persons are entitled to be acquitted as per provisions of Sec. 248(1) Cr.P.C. Accordingly, all the points for determination are disposed off in favour of the accd. persons.*
>
> *Hence,*
>
> ***ordered,***

That both the accd. persons Pradip Kumar Biswas and Jyotirmoy Basu are ***found not guilty*** *of committing offence under which they have been charged.*

So they are acquitted as per provisions of Sec. 248(1) Cr.P.C. They be set at liberty forthwith and be discharged from respective bail bonds."

42. From the said series of events as noted above it is evident that:-

(i) On full consideration of the prosecution evidence on record, before the Criminal Court and on careful reading of the entire judgment, it appears that **acquittal of the petitioner/accused was inevitable,** as the evidences on record did not support the prosecution case, nor was there any witness other than the complainant/I.O. The said materials on record has thus given the petitioner an **"honourable acquittal".**

(ii) The tribunal now has the power to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. ***(Workmen of Messrs Firestone Tyre and Rubber Company of India vs Management & Ors., (Supra))***

43. The conduct of the disciplinary authority in the present case is clearly an abuse of power and totally against the principles of natural justice, being not bona fide, the findings being clearly perverse, this is a case of pure victimization.

44. The total disregard of the order of a competent Court, the report of the Enquiry Officer and inspite of there being no independent, specific findings of the disciplinary authority against the petitioner, goes to show that **the disciplinary authority was hell bent on dismissing the petitioner from service.** And as such, no reasoning nor the principles of natural justice was followed. **As to why a raid was conducted in the petitioner's house is also not on record.**

45. Using the excuse of "sensitive articles" the Disciplinary Authority dismissed the petitioner in the most unjust and perverse manner, by clear abuse of power without following any rules or the principles of natural justice.

46. The alleged sensitive articles being blank letter heads and rubber stamps, which were admittedly never misused. Such articles are normally kept in the custody of an employee in due course.

47. The disciplinary authority with the observation that "there was no charge of misuse of the security items of the Bank, found in possession of the CSE held that as such **the enquiry officer acted out of context".** This observation is a clear abuse of power, which is perverse and thus against the principle of natural Justice.

48. It is thus clear that the disciplinary authority intentionally framed the charge (vague) inspite of there being no allegation of any misuse of the 'stationary items' which appears to be a clear case of 'victimization'.

49. Finally, it is found that neither the disciplinary authority/nor the appellate authority followed the rules of natural justice. **The findings of Disciplinary Authority is based on 'no evidence'** and has been passed without considering the vital evidence on record which is a clear **perverse** determination of fact ***[State of Rajasthan – vs – Heem***

Singh (Supra)] and as such **the said order dated 17th December, 2003 and corrigendum dated 22.12.2003 are hereby set aside.**

50. The order dated 07.08.2020 passed by the CGIT, Calcutta, in reference no. 03 of 2006 also being not in accordance with the guidelines laid down by the Supreme Court in ***Workmen of Messrs Firestone Tyre and Rubber Company of India vs Management & Ors., (Supra)*** is **also set aside.**

51. **WPA 16216 of 2021 is allowed.**

52. The petitioner's removal from service being set aside, it is directed that he be treated as an in service employee in continuous service till his superannuation. The petitioner be also paid full back wages and other due benefits along with statutory interest till payment within 60 days from the date of this order.

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

54. Interim order, if any, stands vacated.

55. 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.)