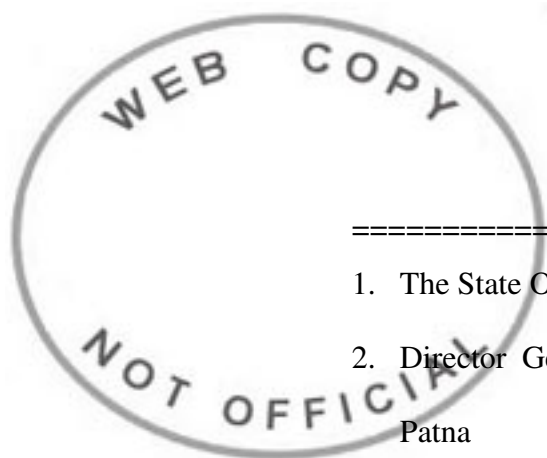




IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.516 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 471 of 2004

- =====
- 1. The State Of Bihar
 - 2. Director General-Cum-Inspector General Of Police, Bihar, Old Secretariat, Patna
 - 3. The Additional Director General Of Police, Crime Investigation Department, Bihar, Old Secretariat, Patna
 - 4. The Deputy Inspector General Of Police, Crime Investigation Department, Old Secretariat, Patna
 - 5. The Superintendent Of Police, Crime Investigation Department, Old Secretariat, Patna
 - 6. The Deputy Superintendent Of Police, Crime Investigation Department, Old Secretariat, Patna

.... Appellant/s

Versus

Maharana Pratap Singh Son of Shri Bhuneshwar Singh Resident of Village-Taranpur, P.S. Gaurichak, District Patna

.... Respondent/s

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Appearance :

For the Appellants : Mr. Rajeshwar Singh, GA 10

For the Respondent/s : Mr. Abhinav Srivastava, Advocate

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)
Date: 16-11-2016**

Challenge in the present intra-court appeal is to the judgment dated 16.07.2013 passed by the learned Single Bench by which C.W.J.C. No. 471 of 2004 filed by the respondent-writ applicant has been allowed.

2. The respondent was appointed as constable in the Dog Squad of the C.I.D. in the year 1973. He proceeded on earned leave for two days and resumed his duty on 08.08.1988. In the meantime, an F.I.R. was lodged with a request to organize a raiding party to arrest persons who had demanded money by blackmailing the informant. The respondent was caught with Rs. 40,000/- by the raiding party and taken into custody. He was placed under suspension on 08.08.1988 and on 05.10.1988 chargesheet was submitted. On 14.06.1989 a departmental proceeding was also initiated against him. On 26.04.1994, the respondent was convicted in the criminal case. On 23.06.1995, the Enquiry Officer submitted his finding and the Superintendent of Police, C.I.D. issued second show cause to the respondent. In the meantime, conviction of the respondent was set aside in appeal by judgment dated 16.02.1996. Thereafter, the



respondent submitted his reply to the second show cause on 11.03.1996. He was dismissed from service by order dated 14.06.1996 as contained in memo no. 1833 dated 21.06.1996 by the Superintendent of Police (C), C.I.D., Bihar, Patna. The appeal of the respondent was dismissed by the D.I.G., C.I.D., Bihar, Patna by order dated 11.07.1997 contained in memo no. 2404 dated 14.07.1997. The respondent filed memorial before the I.G., C.I.D. on 24.09.1997 but when the same was not decided, he filed C.W.J.C. No. 5946 of 2002, which was disposed off by order dated 13.05.2002 with a direction to the I.G., C.I.D. to dispose off the memorial filed by the respondent within two months. By order dated 06.08.2003, the memorial filed by the respondent was also dismissed by the Director General of Police-cum- Inspector General of Police, Bihar, Patna. The respondent being aggrieved by the same, preferred C.W.J.C. No. 471 of 2004 for setting aside the order of dismissal which was affirmed in appeal and also by the Director General of Police. The writ petition was allowed by judgment dated 16.07.2013 and the same is the subject matter of the present Letters Patent Appeal.

3. Learned counsel for the appellants submitted that the learned Single Bench has misdirected itself by going into the merits of the allegation as an Appellate Authority, which is impermissible. It was further submitted that even the probability of the allegation has



been held in favour of the respondent, which is not justified. Learned counsel submitted that the parameters in recording an evidence of guilt in a departmental proceeding is different from that in a criminal case and even initially the trial court had convicted the respondent and only in appeal he has been acquitted. Learned counsel submitted that the learned Single Bench has also not appreciated the law in its correct perspective, inasmuch as, it has been held that the respondent had to be given opportunity of cross-examining the main prosecution witness, without appreciating the fact that the respondent was present during the time the prosecution witness was examined and him not cross-examining the witness would not make the testimony weak in law. It is submitted that if at all the prosecution had not given opportunity to the respondent to cross-examine, then objection ought to have been made by the respondent, who was very much present during the examination of the said prosecution witness, but he has not made any objection. Learned counsel submitted that the orders of the Disciplinary Authority, the Appellate Authority as well as the Director General of Police on the memorial filed by the respondent, are well considered and do not suffer from any illegal infirmity. Learned counsel submitted that the respondent was caught with Rs. 40,000/- which he had received from the informant which has not been denied by him as he has only stated in his defence that a

briefcase was forcibly given in his hand which contained Rs. 40,000/-.

It was submitted that such plea cannot be accepted for the reason that the respondent has been unable to explain his presence at the spot when such transaction of money took place.

4. Learned counsel for the respondent submitted that the order of the learned Single Bench is well considered and requires no interference. Learned counsel further submitted that the authorities had not given any opportunity to cross examine the prosecution witness moreso, in the background of the specific allegation of bias against the said witness, who was also the Officer-in-Charge of the concerned police station, to implicate the respondent for oblique reasons. Learned counsel submitted that the respondent having been acquitted in the criminal case for the same charges, the order of dismissal cannot be sustained and has rightly been set aside. Learned counsel submitted that the charges were also vague as there was no description as to who had made the allegation and details with regard to the allegation had also not been made and the enquiry conducted and finding the respondent guilty of charges could not be sustained. It was further submitted that the evidence adduced was perfunctory and did not bring home the guilt of the respondent and the order of dismissal based on such enquiry report has rightly been set aside. For such proposition, learned counsel has relied upon a decision of the

Hon'ble Supreme Court in the case of **Sawai Singh v. State of Rajasthan** reported as **AIR 1986 SC 995**.

5. Having considered the rival contentions, we find force in the submissions of learned counsel for the appellants. The learned Single Bench appears to have exercised appellate jurisdiction over findings recorded by the Enquiry Officer, the Disciplinary Authority as well as the Appellate Authority, which is impermissible in law, since, while exercising the power of judicial review, only the decision-making process has to be examined and not the merit and demerit of the finding recorded by the Disciplinary Authority. The Court cannot re-appreciate the merits of allegation levelled against the charged officer and return a finding that the same is not made out.

6. As far as the decision of the Hon'ble Supreme Court in the case of **Sawai Singh** (supra), relied upon by learned counsel for the respondent is concerned, we do not find that the principle laid down is applicable in the facts and circumstances of the present case for the reason that the charges are not only specific but also the procedure adopted during enquiry has been followed with sufficient opportunity to the respondent.

7. In the case of **High Court of Gujarat v. Hitendra Vrajlal Ashara** reported as **(2014) 15 SCC 614**, the Hon'ble Supreme Court has held as under:-



“7. It is a well-accepted principle of law that the High Court while exercising powers under Articles 226 and 227 of the Constitution does not act as an appellate court and its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. As already seen in the present case, the Division Bench has reappreciated the evidence acting as a court of appeal and we find it difficult to support the judgment Hitendra Vrajlal Ashara v. State of Gujarat, 2013 SCC OnLine Guj 4497 of the Division Bench. We have, on facts, found that no procedural irregularity has been committed by the enquiry officer in the disciplinary proceedings as the same was conducted in accordance with the Gujarat Civil Services (Conduct) Rules, 1971 and principles of natural justice. We noticed that the enquiring authority had elaborately considered the charges levelled against the delinquent officer and rightly held to be proved. In our view, the enquiry officer has rightly rendered the finding against the delinquent and the same was accepted by the High Court and on its recommendation the order of dismissal was passed by the appointing authority and it is legally justified.”

8. Similarly, in **State Bank of India v. Ramesh Dinkar Punde** reported as (2006) 7 SCC 212, the Supreme Court held as under:-

“5. The High Court, on reappreciation of evidence, reversed the finding of the inquiry officer and set aside the orders of the disciplinary authority and Appellate Authority.

6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view taken by this

Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:

“Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority.” (See Govt. of A.P. v. Mohd. Nasrullah Khan (2006) 2 SCC 373, SCC p. 379, para 11.)”

9. In a recent judgment of the Hon’ble Supreme Court in the case of **Union of India v. P. Gunasekaran** reported as **(2015) 2 SCC 610**, the Court held to the following effect:-

“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, reappreciating even the evidence before the enquiry 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 reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry 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 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) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, 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.

14. In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao AIR 1963 SC 1723, many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)

“7. ... The High Court is not constituted in a proceeding under Article 226 of the



Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed

before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

10. In the present case, none of the tests on the basis of which the High Court can interfere is satisfied. A reading of the order of the learned Single Bench shows that it has re-appreciated the evidence and interfered with the conclusions recorded by the Inquiry Officer and by the Disciplinary Authority. It has gone into the adequacy and the reliability of evidence. In view of the judgment in the case of **P. Gunasekaran** (supra) the re-appreciation of evidence done by the learned Single Bench to return a finding that the writ applicant was not guilty, is not tenable in law.

11. Further the Hon'ble Supreme Court has clearly defined the Rules relating to natural justice and the right to cross - examination in the case of **State of Mysore v. Shivabasappa** reported as **AIR 1963 SC 375** where it has been held as under:-

“3. The sole point for determination in this appeal therefore is whether the procedure adopted by the Deputy Superintendent of Police in admitting the statements of witnesses examined before Mr. Mujumdar in evidence is opposed to the rules of natural justice. The question is one of importance, because as appears from the cases which have come before us the procedure followed by the Deputy Superintendent of Police in this case is the one followed by many tribunals exercising quasi-judicial powers. For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-



judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.

4. The question as to the contents of the rules of natural justice has been subject of numerous decisions in England and in this country. Dealing with this question Lord Loreburn, L. C., observed, in Board of Education v. Rice, 1911 AC 179 (182) as follows :

"In such cases the Board of Education will have to ascertain the law as also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty laying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view"

This statement of the law was adopted again

by the House of Lords in Local Government Board v. Arlidge, 1915 AC 120."

12. Likewise, in the case of **K. L. Tripathi v. State Bank of India** reported as **AIR 1984 SC 273**, on the issue of cross-examination and opportunity to lead evidence the Hon'ble Supreme Court has held as under:-

"41. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed. See in this connection the observations of this Court in the case of Jankinath Sarangi v. State of Orissa (1969) 3 SCC 392. Hidayatullah, C. J., observed there at page 394 of the report "there is no doubt that if the principles of natural justice are violated and there is a gross case, this Court would interfere by striking down the order of dismissal: but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right," Judged



by this principle, in the background of the facts and circumstances mentioned before, we are of the opinion that there has been no real prejudice caused by infraction of any particular rule of natural justice of which appellant before us complained in this case. See in this connection the observations of this Court in the case of Union of India v. P. K. Roy, (1968) 2 SCR 186: (AIR 1968 SC 850) where this Court reiterated that "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in a particular case". See also in this connection the observations of Hidayatullah, C. J., in the case of Channabasappa Basappa Happali v. State of Mysore, (1971) 2 SCR 645 : (AIR 1972 SC 32). In our opinion, in the background of facts and circumstances of this case, the nature of investigation conducted in which the appellant was associated, there has been no infraction of that principle. In the premises, for the reasons aforesaid, there has been in the facts and circumstances of the case, no infraction of any principle of natural Justice by the absence of a formal opportunity of cross-examination. Neither cross-examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi-judicial adjudications."

13. The Hon'ble Supreme Court in the case of **State Bank of Patiala v. S. K. Sharma** reported as **AIR 1996 SC 1669**, while examining the scope of natural justice and principles to be followed in the context of disciplinary enquiries and order of punishment imposed by employer upon the employee, has held as

under:-

“32. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) :

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this



connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that



the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and not adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram

partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

14. We may also add that strict rules of evidence are not applicable with regard to departmental proceeding as has been held by the Hon’ble Supreme Court in the case of **T.N.C.S. Corporation Ltd. v. K. Meerabai** reported as **(2006) 2 SCC 255:-**

“ 21. Similarly, the learned Single Judge was patently misconceived in reaching the conclusion that the acquittal of the respondent by the Court of CJM clinched the issue in the departmental enquiry, while losing sight of the well-settled law that the scope of criminal proceedings in the court of criminal law and the scope of disciplinary proceedings in a departmental enquiry are quite distinct and exclusive and independent.

22. The learned Single Judge has also failed to appreciate that the standards of proof required in the criminal proceedings and the departmental disciplinary actions are not the same.

23. We have perused the order of dismissal dated 28-11-1991 passed by the disciplinary authority and the order of the Appellate Authority dated 16-6-1994 upholding the

order of dismissal with dispassionate judicial mind. In our opinion, both the orders aforementioned are exhaustive in details, impeccable on facts and armed with irrefutable reasons in support of the conclusions.

24. The learned Judges of the Division Bench who dismissed the writ appeal filed by the Corporation upheld the patently erroneous judgment of the learned Single Judge virtually on all those grounds and reasons which had appealed to the learned Single Judge. While passing the impugned judgment, the learned Judges have lost sight of the following:

(i) the scope of the criminal proceedings in a criminal court and the scope of disciplinary proceedings in a departmental enquiry are quite distinct, exclusive and independent of each other;

(ii) the criminal proceedings in the Court of the Chief Judicial Magistrate and disciplinary proceedings were on totally different sets of facts and charges;

(iii) the order of dismissal dated 28-11-1991 (Annexure P-5) passed by the disciplinary authority and the order dated 16-6-1994 of the Appellate Authority, dismissing the respondent's departmental appeal are exhaustive orders, incorporating the statement of the correct and relevant facts of the case and impeccable conclusions based on dispassionate appreciation of the evidence on record and supported by legally irrefutable reasons.

25. In our opinion, both the learned Single Judge and the learned appellate Judges of the High Court failed to consider and appreciate dispassionately and judicially the Corporation's most emphatically pronounced plea that it would be virtually impossible for them to reinstate the respondent who was found in the departmental enquiry guilty of misappropriation and other malpractices causing thereby enormous loss in stock and cash to the Corporation,

an institution primarily concerned with the distribution of essential commodities among the weaker sections of the population of the State of Tamil Nadu whose dismissal from service has been upheld by the Appellate Authority vide its very detailed, well-considered and well-reasoned verdict and in whose integrity, honesty and trustworthiness the Corporation have lost their faith completely and absolutely.

26. We shall now advert to the rulings cited by Mr Ambrish Kumar, learned counsel for the appellants, in support of his submission:

(1) In Lalit Popli v. Canara Bank (2003)3 SCC 583, while considering the nature of proof required in a departmental enquiry on the scope of judicial review of the High Court under Article 226, this Court held as follows: (SCC p. 591, paras 16-19)

“16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him 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 are conceptually different. (See State of Rajasthan v. B.K. Meena (1996) 6 SCC 417). In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of ‘proof beyond doubt’ has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an

Appellate Authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

18. In B.C. Chaturvedi v. Union of India (1995) 6 SCC 749 the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.

19. As observed in R.S. Saini v. State of Punjab (1999) 8 SCC 90 in paras 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits.”

(2) In B.C. Chaturvedi v. Union of India(1995) 6 SCC 749, it was observed at SCC p. 762, para 18 as under:

“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.”

(3) In Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corpn. Ltd. (2005) 7 SCC 674 (three-Judge Bench), Thakker, J. speaking for the Bench held as under: (SCC p. 776, para 11)

“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.”

27. We shall now advert to the rulings cited by Mr V.J. Francis, learned counsel for the respondent, in support of his submission:

(1) Mahabir Prasad Santosh Kumar v. State of U.P. (1970) 1 SCC 764 was cited for the proposition that the executive authority while exercising quasi-judicial functions should give reasons for their conclusion.

(2) Anil Kumar v. Presiding Officer (1985) 3 SCC 378, and

(3) Punjab National Bank v. Kunj Behari Misra (1998) 7 SCC 84. The first judgment was cited by Mr Francis for the proposition that in a quasi-judicial enquiry, a reasoned report of the enquiry is essential. The second judgment was cited for the proposition that disciplinary enquiry against the respondents was declared to be vitiated on account of non-observance of the principles of natural justice. This contention has no merits. A perusal of the enquiry officer's report in which the respondent has fully participated and the order of the disciplinary authority and of the Appellate Authority would go to show that the order passed by them is very detailed, well-considered and well-reasoned verdict. The conclusion arrived at by the disciplinary authority and the Appellate Authority is exhaustive in nature incorporating the correct and relevant facts of the case and conclusion based on the appreciation of the evidence on record and supported by legally irrefutable reasons.

(4) State of Karnataka v. Amajappa (2003) 9 SCC 468.

28. The other contentions made by Mr Francis are in

respect of procedural irregularity which, according to him, cannot be termed to be negligence on the part of the respondent. We have already held that both the disciplinary authority and the Appellate Authority have given ample reasons for arriving at their conclusions. This Court has held in a catena of decisions that interference is not permissible unless the orders passed by the quasi-judicial authorities are clearly unreasonable or perverse or manifestly illegal or grossly unjust.”

15. The Hon’ble Supreme Court has also gone to the extent of holding hearsay evidence to be admissible in a departmental proceeding in the case of **State of Haryana v. Rattan Singh** reported as **AIR 1977 SC 1512**, the relevant being at paragraph 4, reproduced hereinbelow:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the



conclusions reached, such finding, even though of a domestic tribunal cannot be held good. However, the courts below misdirected themselves, perhaps in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halbsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamenlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

16. We have perused the original file relating to the departmental proceeding against the respondent and find the contention of learned counsel for the appellants of there being no procedural infirmity or violation of any principles of natural justice in conducting of the enquiry, to be substantiated.

17. For the reasons aforesaid, we do not find that the order of punishment could have been interfered with by the learned

Single Bench. Consequently, Letters Patent Appeal stands allowed. Judgment dated 16.07.2013 passed by the learned Single Bench in C.W.J.C. No. 471 of 2004 is set aside and the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

(Hemant Gupta, ACJ) *I agree.*

(Hemant Gupta, ACJ)

Anjani/-

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