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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2766/2007

% *Judgment dated 23rd August, 2016*

THE CHIEF SECRETARY & ORS. Petitioners
Through : Mr.Satyakam, Adv.

versus

JITENDER KUMAR BHATIA Respondent
Through : Mr.R.M. Bagai, Adv.

+ W.P.(C) 3500/2007

CHIEF SECRETARY & ORS. Petitioners
Through : Mr.Satyakam, Adv.

versus

P.K.SHARMA Respondent
Through : Ms.Avnish Ahlawat and Ms.Latika
Chudhry, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. With the consent of the counsel for the parties, both writ petitions are set down for final hearing. Both the writ petitions have been heard together and are being disposed of by a common judgment.
2. It may be noticed that although separate impugned orders have been passed in both these writ petitions but in the impugned order of W.P. (C) 3500/2007, a reference has been made to the impugned order in W.P.(C) 2766/2007.
3. For the sake of convenience, respondent in W.P.(C) 3500/2007, namely Sh. P.K. Sharma, shall be referred to as '*Sharma*'; and respondent in

W.P.(C) 2766/2007, namely Sh. Jitender Kumar Bhatia, shall be referred to as '*Bhatia*'. They shall be collectively referred to as the '*respondents*'.

4. Present writ petitions have been filed by the petitioners against the order dated 09.11.2006 passed by Central Administrative Tribunal (in short '*the Tribunal*') in O.A. No. 8/2004 filed by Sharma and the order dated 12.01.2007 passed by the Tribunal in O.A. No. 542/2004 filed by Bhatia, whereby the OAs filed by both, Sharma and Bhatia, were allowed.
5. The necessary facts, which are required to be noticed for disposal of the present writ petitions, are that Sharma and Bhatia were working as UDCs in the office of Sh. N.K. Gulati, Sub-Registrar, Pitampura, Delhi. It is claimed that Sharma was performing the duties of Reader and Bhatia was performing the duties of collecting fees for inspection, issuance of certified copies, duplication as well as pagination of documents like Sale Deeds, etc. On 29.09.1997, one, Sh.Sanjay Mittal, a deed writer, made a complaint to the Anti Corruption Branch of CBI alleging demand of Rs. 3,600/- by the Sub-Registrar, Sharma and Bhatia for registration of 18 Power of Attorneys. On the same day, a raid was conducted in the office of the Sub-Registrar. During the course of the raid, an independent witness was involved and a micro tape recorder and mike-cum-transmitter were used to record the conversation at the site. As per the petitioners, the complainant, Sh. Sanjay Mittal, and the independent witness went inside the office of the Sub-Registrar and met the officials. The Sub-Registrar and Bhatia agreed to send one, Mr. Arone Verma, for collecting the amount in lieu of registration of GPAs. Thereafter the said Mr. Verma came to the office of the complainant and accepted Rs. 3,600/- from him along with a list of the 18 GPAs sought to be registered. The said Mr. Verma was caught red-handed and Rs. 3,600/- was recovered from him and he confessed to his guilt. A Recovery Memo was prepared. Based on

the Recovery Memo, disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against the Sub-Registrar as well as Sharma and Bhatia. Simultaneously, a criminal case was registered against Sharma and Bhatia vide FIR dated 29.09.1997 under Sections 7 and 8 of the Prevention of Corruption Act, 1988 read with Section 120-B of the Indian Penal Code, 1860. On 16.07.1999, respondents were charged of misconduct. Since the respondents denied the charges, an inquiry officer was appointed. The Inquiry Officer, vide his report dated 31.07.2000, held the charges to be proved against Sharma and Bhatia. The CVC gave its second stage advice dated 30.10.2000 concurring with the findings of the inquiry officer. Thereafter Sharma and Bhatia made a representation on 12.12.2000 against the inquiry report. The Disciplinary Authority, vide order dated 20.07.2001, imposed a penalty upon Sharma and Bhatia of reduction to three lower stages in the time scale of pay for a period of five years coupled with loss of increment temporarily.

6. Thereafter both, Sharma and Bhatia, filed an appeal against the penalty order before the Appellate Authority/ Lieutenant Governor of Delhi. On 28.01.2003 appeals filed by both, Sharma and Bhatia, were dismissed by the Lieutenant Governor after granting a personal hearing to them. In the order dated 28.01.2003, it was also stated that the Lieutenant Governor was of the view that the penalty imposed was inadequate in comparison to the charges proved against the respondents. Accordingly, a show cause notice was issued to Sharma and Bhatia on 31.03.2003 proposing an enhancement of punishment to reduction of post to a lower grade i.e. from Grade-III, DASS, to Grade IV, DASS, for a period of five years, which would debar both, Sharma and Bhatia, from promotion till the order of penalty was to remain in operation with further direction that on restoration to Grade-III their pay would be fixed in the restored grade as

admissible under the Rules and they would be assigned seniority as per the length of service in that Grade. Both, Sharma and Bhatia, sent their representations. At the same time, Sharma requested he may be granted a personal hearing. The Appellate Authority rejected their representations and also rejected Sharma's request for personal hearing as he had been heard when his appeal against the order dated 20.07.2001 was being considered. Accordingly, vide orders dated 04.11.2003, the Appellate Authority enhanced the punishment as proposed.

7. In the meanwhile, a closure report was filed in the FIR dated 29.09.1997 pending against the respondents. On 27.04.2002, the said closure report was accepted by the Special Judge, Delhi.
8. Thereafter in the year 2004, Sharma and Bhatia filed O.A. No. 8/2004 and O.A. No. 542/2004 respectively before the Tribunal seeking to quash the inquiry report; the second advice of CVC; the order dated 20.07.2001 passed by the Disciplinary Authority; the order dated 28.01.2003 whereby the appeals of Sharma and Bhatia were dismissed; the show cause notice dated 31.03.2003; and the final order dated 04.11.2003. Both the OAs have been allowed by the Tribunal. Hence the present writ petition.
9. Mr. Satyakam, learned counsel for the petitioners in both the writ petitions, submits that the Tribunal has exceeded its jurisdiction. Counsel further submits that the impugned order is bad in law and is liable to be set aside. It is further submitted that the Tribunal has failed to take into account that grave and serious charges were levelled against Sharma and Bhatia. It is further contended that merely because a closure report was filed by the CBI that by itself is not a ground to reach a conclusion that Sharma and Bhatia were not guilty as the parameters for deciding a criminal case are different than in dealing with a departmental enquiry. Counsel further submits that the Tribunal has failed to take into

consideration that an opportunity of hearing was granted to Sharma and Bhatia by the Lieutenant Governor of Delhi and to say that a second hearing was not granted at the stage of Show Cause Notice that by itself cannot be a ground to set aside the order of the Lieutenant Governor of Delhi. It is further submitted that the Lieutenant Governor upon examination of the record had passed a reasoned order and the Tribunal has erred in holding that the order of the Lieutenant Governor is not a reasoned order.

10. On the merits of the matters, learned counsel for the petitioners submits that the procedure laid down in Rule 14 of the CCS (CCA) Rules, 1965 has been followed and the principles of natural justice were complied with. It is further submitted that the witnesses were examined, documents were supplied to Sharma and Bhatia and an opportunity to cross-examine the witnesses was afforded to them. Counsel further submits that the Tribunal has misdirected itself and wrongly applied the law to hold that Rule 14 (18) of the CCS (CCA) Rules, 1965 was not complied with. It is further contended that even otherwise Sharma and Bhatia have failed to show that any prejudice was caused to them in the absence of not having complied with Rule 14 (18) of the CCS (CCA) Rules, 1965.
11. Ms.Ahlawat, learned counsel appearing on behalf of the respondent/Sharma, submits that the order passed by the Appellate Authority is patently illegal. It is further submitted that no reasons have been assigned either in the Show Cause Notice for enhancing the punishment nor the final order has been passed affirming the enhancement of punishment. It is further submitted that Exhibits S-9, which is a transcript of the cassette containing conversation between the accused persons and the complaint recorded by the CBI on 29.09.1997, and Exhibit S-10, transcript of Meltrack cassette used during the trap

proceeding containing the conversation between the accused persons and the complainant, having not been put to the applicant, i.e. Sharma in his examination by the Inquiry Officer on 11.5.2000, cannot be relied upon as the same is in violation of Rule 14 (18) of the CCS (CCA) Rules, 1965 which is incumbent upon the Inquiry Officer. It is next contended by Ms. Ahlawat that in the absence of not following Rule 14 (18) of the CCS (CCA) Rules, 1965, it would render the entire proceedings as null and void.

12. Ms.Ahlawat states that the story of the petitioners is that on demand of respondent, i.e. Sharma and Bhatia with Sub-Registrar, from Sanjay Mittal of illegal gratification culminated into acceptance on their behalf by one, A. Verma, whose confessional statement has been recorded during the trap and was relied upon but this witness was neither named in the list of witnesses nor was examined during the course of inquiry, which has deprived Sharma and Bhatia a reasonable opportunity to cross-examine the witness and to rebut the allegations against him. It is stated that this is an important matter, which when taken into consideration vitiates the inquiry.
13. Ms. Ahlawat further submits that the version of the CBI has not been substantiated on the basis of record which led to a closure report which was filed by the CBI itself. Counsel further contends that in the absence of any evidence placed on record before the Inquiry Officer, Sharma could not have been held guilty. It is further submitted that in the Articles of Charge, Sharma has not been named. Ms.Ahlawat points out that in fact the prime witness, Arone Verma, was never produced as a witness and, thus, Sharma was deprived of an opportunity to cross-examine Arone Verma.
14. Ms.Ahlawat relies on the Closure Report in support of her submission that

even as per the Closure Report Sharma was not present at the office of the Sub-Registrar.

15. Ms.Ahlawat submits that due to suppression of a material witness, the inquiry proceedings are liable to be vitiated.
16. In support of her submission that material witnesses have not been examined, Ms.Ahlawat has relied upon *Union Of India v. K.A. Kittu & Others*, (2001) 1 SCC 65 and *Kuldeep Singh v. Commissioner of Police And Others*, (1999) 2 SCC 10.
17. Ms. Ahlawat has also relied upon *Ministry of Finance & Anr. v. S.B. Ramesh*, JT 1998 (1) SC 219, in support of her submission that provisions of Rule 14(18) of the CCS (CCA) Rules, 1965, has not been complied with.
18. Mr. Bagai, learned counsel appearing on behalf of the respondent-Bhatia, has supported the arguments made by Ms.Ahlawat. Additionally, Mr. Bagai submits that there is no evidence whatsoever against Bhatia. Mr. Bagai relies upon *Capt. M. Paul v. Bharat Gold Mines Ltd. And Anr.*, [1999] 2 SCR 257, to contend that once the criminal court had accepted the closure report and held that no charges were made out, the contradictory findings of the departmental proceedings were automatically vitiated.
19. We have heard learned counsel for the parties and given our thoughtful consideration to the matter. The basic facts of the case which have been narrated hereinabove are not in dispute. It is also not in dispute that the CBI had filed a Closure Report before the Special Judge, CBI, on 21.05.2001, which was accepted by the Special Judge while passing the order dated 27.04.2002; relevant portion of which reads as under:

*“The trap money was not handed over to any public servant.
The tape recording turned out to be of very poor quality so
much so that voices could not be matched even by CFSL.*

Shadow witness did not have occasion to see or hear that transpired between complainant and Sub-Registrar who is alleged to have made the demand. The alleged tout is shown by the evidence to have been called by the complainant to his own office to hand over the money.

Arone Verma, private person, who received the money has his own explanation on the plea that he is engaged in the business of working for advocates at the office of Sub-Registrar to facilitate process of registration.

In these circumstances I would agree with the conclusion reached by the Investigating agency. Closure report is accepted. File be consigned to record room.”

(Emphasis Supplied)

20. The Tribunal has quashed the orders passed by the Lieutenant Governor as also the Disciplinary Authority primarily on three grounds. As far as the order passed by the Lieutenant Governor is concerned, the Tribunal was persuaded to allow the OAs on the ground that firstly the Show Cause Notices issued to Sharma and Bhatia were devoid of any reason as to why the order of the Disciplinary Authority is required to be enhanced. Secondly, the Lieutenant Governor although had granted a personal hearing to Sharma at the time of hearing of his appeal, but at the time of passing the order in the proceedings arising out of the show cause notice issued, he was deprived of the opportunity of personal hearing. The third ground which found favour with the Tribunal for setting aside the order of the Lieutenant Governor was that the impugned order was devoid of any reason and the impugned order did not consider the grounds raised by Sharma and Bhatia in their reply to the show cause notices. On the merits, the Tribunal was persuaded by the fact that Arone Verma, who was the important witness and who, as claimed, received the bribe, was not examined as a witness. The only other ground which was considered

by the Tribunal was that Rule 14 (18) of the CCS (CCA) Rules, 1965, was not followed.

21. Before us, the learned counsel for the petitioner has impugned the order of the Tribunal primarily on the grounds that firstly, Rule 14 (18) of the CCS (CCA) Rules, 1965 as well as the principles of natural justice have been complied with. Further, even if the Tribunal came to the conclusion that the rules were not complied with, it did not mandate interference as no prejudice was shown to have been caused to the respondents herein. Secondly, there was no infirmity with the order of the Lieutenant Governor in as much as a non-granting of second hearing cannot be a ground to quash the order. Further, the order of the Lieutenant Governor is a reasoned order and the Tribunal had erred in this regard. Thirdly, he has contended that the acquittal in the criminal case has no bearing upon the disciplinary proceedings.
22. In regard to the first contention, the alleged tout Mr. Arone Verma has not been produced as a witness, while his confessional statement (Ex. S-5) has been relied upon in the enquiry. The Tribunal had found that the respondents were denied a proper opportunity to defend themselves and that the transcription of cassette (Ex. S-9) and transcription of meltrack cassette (Ex. S-10) recorded during the raid were inadequate. Prior to proceeding further, we deem it appropriate to reproduce the findings of the Tribunal in the impugned order in favour of Sharma:

“32. ...Transcription of exhibits S-9 and S-10, which has not been established having been put in the general examination to applicant by which [sic] IO on 11.5.2000 applicant was generally examined by the IO but nowhere the fact of tape recorded conversation by the CBI and the transcription thereof having been put to applicant, has been deprived of an opportunity to effectively defend this part of evidence which has been strongly relied upon not only by the IO but also by the DA to impose punishment upon him...”

23. Rule 14 (18) of the CCS (CCA) Rules mandates that, when the charged officer does not examine himself as a witness, it is incumbent upon the enquiry officer to question the charged officer on the evidence appearing against him in order to enable him to rebut the circumstances arising therefrom. We may observe the judgment of this Court in ***Union of India (UOI) v. Mr. Lalit Kumar, W.P. (C) 11396/2005*** dated 10.03.2011:

“13. As regards the contention of compliance of Rule 14(18) of the CCS (CCA) Rules, the following examination of Respondent under Rule 14(18) of the CCS (CCA) Rules has been done:

General Examination of Shri Lalit Kumar, EE(E), AIR

Q1. The charge-sheet says that you tried to manipulate the figures in the test report to cover up your acceptance of alternator of lesser frame size. What do you have to say about it?

A. I have not tried to manipulate the figures in test report. It was a human error. This has been verified by SE(E) in 1990.

Q 2. Do you have anything else to say?

A. I have performed my duty with devotion keeping in view interest of work as well as terms and conditions of agreement. I deny all the charges.

It is admitted case that Respondent did not examine himself as a witness. As the Respondent had not examined himself as a witness, it was incumbent upon the enquiry officer to question the officer facing the charge on the evidence appearing against him in compliance of Rule 14(18) of CCS (CCA) Rules. The said rule had been enacted with a view that whatever evidence comes in the enquiry, explanation may be sought to rebut the circumstances for the purpose of enabling him to explain the same.

14. Perusal of record shows that evidence of five witnesses of department had been examined. The Enquiry Officer had not put any question to the Respondent in respect of evidence

against him in the enquiry proceedings. Only contents of charge sheet has been put to him. The finding of the Tribunal is as under:

14. Now it has to be examined whether Rule 14(18) is complied with or not? The only question as put to applicant is that as a referral to the charge sheet where applicant has been alleged to have manipulated the figures in the test report, but this is not the true import of Rule 14(18). It appears that the contents of the charge sheet have been put to applicant without any reference to the evidence and circumstances appearing against applicant during the course of disciplinary proceedings.

*15. Rule 14(18) clearly provides that it is obligatory upon the enquiring authority to question the delinquent official on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances as there is no reference to the evidence brought on record or circumstances appearing against applicant the general examination which has taken place on 5.5.98 is not the valid compliance of Rule 14(18) *ibid* and the stand taken by the Respondents is misconceived.*

The Apex Court in Ministry of Finance v. S.B. Ramesh (supra) has upheld the finding of the Tribunal wherein the enquiry has been held to be illegal for want of non compliance of Rule 14(18) of the CCS (CCA) Rules, 1965.

Learned Counsel for the Petitioner has not cited any judgment contrary to what has been stated above.”

(Emphasis Supplied)

24. This court in the case of ***Union of India through Secretary, Ministry of Information and Broadcasting and Anr. v. Tarlok Singh, W.P. (C) 1760/2008*** dated 10.03.2011 observed as under:

“19. The next contention on behalf of the Petitioner is about the non-compliance of the Rule 14(18) of CCS(CCA) Rules.

According to the Petitioners, Rule 14(18) was substantially complied with. Perusal of the record, however, reveals that it is an admitted case that the Respondent did not examine himself as a witness. In case the Respondent had not examined himself as witness, it was incumbent upon the enquiry officer to put evidence adduced against the Respondent during the enquiry to him in compliance of Rule 14(18) of CCS(CCA) Rules. The said rule had been enacted with a view that whatever evidence comes in the enquiry, explanation may be sought to rebut the circumstances, which would be in the consonance with the principle of reasonable opportunity and audi alteram partem as inbuilt in the principles of natural justice. On perusal of the questions put by the enquiry officer to the Respondent, it is apparent that out of the three articles of charges, only two articles of charge were put to the Respondent, while none of the evidence in support of those articles of charges which were against the Respondent were put to him.

20. Perusal of Rule 14(18) clearly reveals that it is obligatory upon the enquiry authority to question the delinquent officer on the circumstances appearing against him in the evidence, for the purpose of enabling him to explain any circumstance. As there is no reference to the evidence brought on record or circumstances appearing against the applicant, putting the charges against the Respondent was not valid compliance of Rule 14(18) of the CCS(CCA) Rules 1965.

...
23. Consequently, the order of the Tribunal quashing the enquiry proceeding on account of non-compliance of Rule 14(18) of CCS(CCA) Rules 1965 by not putting the evidence adduced before the enquiry officer in support of the three articles of charge to the charged officer vitiates the enquiry proceeding, cannot be termed to be illegal or un-sustainable so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

24. In the circumstances, the order of the Tribunal setting aside the punishment awarded to the Respondent does not require any interference in the facts and circumstances of the case and the writ petition is therefore, dismissed. The parties are however, left to bear their own costs.”

(Emphasis Supplied)

25. It is also important to notice that the Supreme Court in ***Ministry of Finance & Anr. v. S.B. Ramesh***, JT 1998 (1) SC 219 has held the compliance with Rule 14 (18) to be mandatory.
26. Coming to the present case, the enquiry officer has clearly stated that “[t]he CO did not offer himself as a witness. He was therefore, examined in general by me.” The aforementioned transcripts of cassettes were not put to the respondents by the enquiry officer to enable them to properly meet the allegations against them. According to us, this has denied them of an opportunity to effectively meet this part of the evidence against them. Thus, we are unable to accept the contention of the counsel for the petitioners in this regard. Counsel for the petitioner had also urged that in the absence of any prejudice being shown, the Tribunal should not have vitiated the proceedings. This argument must also fail in view of the judgment of the Supreme Court in ***S.B. Ramesh*** (Supra) holding that compliance with Rule 14 (18) is mandatory.
27. We may also take note that the confessional statement of Mr. Verma was taken into consideration while holding the charges to be proved against the respondents, but Mr. Verma was never produced as a witness by the petitioners nor any attempt was made to that end. This has also inhibited the ability of the respondents to cross-examine Mr. Verma to rebut the allegations against him and make a proper defence.
28. We are again fortified by the judgment in ***S.B. Ramesh*** (Supra) where the statement of one, Smt. K.R. Aruna, was relied upon by the disciplinary authority without examining her. This was held to be impermissible in law by the Tribunal and upheld by the Supreme Court. We are also fortified by the judgment of the Supreme Court in ***Kuldeep Singh v. Comm. of Police***, (1999) 2 SCC 10, wherein it has been held

that reliance on a previous statement of a witness without producing him as a witness and extending an opportunity of cross-examination deprives the charged officer of the protection under Article 311 of a reasonable opportunity to defend himself. The relevant paragraph reads as follows:

“32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means “hearing” in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

33. In State of Mysore v. Shivabasappa Shivappa Makapur [AIR 1963 SC 375 : (1963) 2 SCR 943] the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.

34. In Kesoram Cotton Mills Ltd. v. Gangadhar [AIR 1964 SC 708 : (1964) 2 SCR 809] and State of U.P. v. Om Prakash Gupta [(1969) 3 SCC 775] the above principles were reiterated and it was laid down that if a previous statement of

the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent.

35. Having regard to the law as set out above and also having regard to the fact that the factors set out in Rule 16(3) of the Delhi Police (P&A) Rules, 1980 did not exist with the result that Rule 16(3) itself could not be invoked, we are of the opinion that the enquiry officer was not right in bringing on record the so-called previous statement of witnesses, Radhey Shyam and Rajpal Singh.”

(Emphasis Supplied)

29. In view of the foregoing discussion, it is clear that the confessional statement of Mr. Verma could not have been relied upon by the petitioners without producing him as a witness. As only when he is produced as a witness, can the veracity of his statement be put to the test of cross-examination. Accordingly, the Tribunal has rightly held that the same has prejudiced the defence of the respondents herein and violated the principles of natural justice. This contention of the petitioner must fail.
30. Prior to proceeding to the second contention of the counsel for the petitioners, we deem it appropriate to deal with the third contention as the same is closely linked with the first contention dealt by us in the foregoing paragraphs. The law is well-settled that since departmental proceedings and criminal proceedings operate in distinct and different jurisdictional areas, they generally have no impression on each other. This is primarily so because of the different standards of proof in the proceedings; while the standard of proof in disciplinary proceedings is one of preponderance of probabilities, in the case of criminal proceedings, it is beyond reasonable doubt. Judicial precedents have carved out one exception to the same, when both the proceedings are based on the same

set of facts and evidence.

31. The counsel for the respondent-Bhatia has relied upon the judgment in ***Capt. M. Paul (Supra)*** to support his contention that once the criminal court had held that no charge was made out, the findings of the departmental proceedings could no longer stand in view of a contradictory judicial pronouncement. The relevant paragraphs read as under:

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

...

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, “the raid conducted at the appellant's residence and recovery of incriminating articles therefrom”. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.”

(Emphasis Supplied)

32. The judgment has been followed by the Supreme Court in ***G.M. Tank v. State of Gujarat & Ors.***, (2006) 5 SCC 446, wherein it was observed:

“30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.”

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul

Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

(Emphasis Supplied)

33. The above rule is subject to one exception that in case the acquittal is other than honourable then the departmental proceedings may continue and the discretion of the Disciplinary Authority remains unfettered. In this regard the following observations of the Constitution Bench of the Supreme Court in ***R.K. Kapur v. Union of India***, AIR 1964 SC 787 may be noticed:

“If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow, where the acquittal is other than honourable.

(Emphasis Supplied)

34. We may also take note of the following observations in ***Corpn. of the City of Nagpur v. Ramchandra***, (1981) 2 SCC 714:

“6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction [discretion] in any way fettered.

(Emphasis Supplied)

35. The Supreme Court in *Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764 held that acquittal in a criminal case does not *ipso facto* absolve the charged officer from liability in departmental proceedings. The relevant paragraph reads 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)

36. In view of the aforementioned judicial pronouncements, it is clear that acquittal in criminal proceedings does not *ipso facto* absolve the charged officer in the departmental proceedings. This primarily arises due to the distinct standard of proof in the two proceedings. Only if, the acquittal is honourable and based upon the same facts and the same evidence, the findings of the departmental authority must give way to the contrary judicial pronouncement.
37. Coming to the present case, we have carefully examined the closure report filed by the CBI as well as the order dated 27.04.2002 of the Special Judge. The CBI had filed the closure report as no link could be established between the demand made by Mr. Verma and the Sub-registrar and the respondents herein. The relevant portion of the Closure Report dated 29.09.1997 reads as under:

“During investigation, it could not be established that Sh. Arone Verma, a pvt person had demanded and accepted the said tainted amount on behalf of Sh. N.K. Gulati, Sub Registrar Pitampura and Shri PK Sharma, Reader to Sub Registrar both public servant and Sh. Arone Verma is a private person having no official capacity and there is no sufficient corroboration for his accepting the bribe in influence Mr. Gulati, Mr. Bhatia and Mr. PK Sharma Reader to Sub Registrar Pitampura, Delhi and pass on the money to him.”

38. The closure report was accepted by the Special Judge, Delhi in his order dated 27.04.2002. The order has been reproduced by us in Paragraph 19 aforegoing.
39. In view of the aforegoing, it is clear that the link sought to be established between the illicit demand and the respondents could not be established based upon the transcriptions and the statement of Mr. Arone Verma. Similarly in the departmental proceedings, the statement of the very same

person and the transcripts have been strongly relied upon to prove the nexus between the demand and the respondents. There is no doubt that the same fact is sought to be established in both the proceedings basing on the same evidence. Accordingly, the findings of the inquiry report were vitiated owing to the order of the Special Judge, Delhi and the consequent orders are liable to be quashed on this ground alone. Additionally, this also shows that the failure of the petitioners herein to produce Mr. Arone Verma as a witness has severely prejudiced the defence of the respondents.

40. The second contention of the counsel for the petitioners pertains to the order of the Lieutenant Governor dated 04.11.2003. The counsel for the petitioner contends that it was not incumbent upon the Lieutenant Governor to accord a second hearing to the respondents prior to passing of the order enhancing the penalty. He has also contended that the order dated 04.11.2003 is a well-reasoned order and the Tribunal has erred in this aspect.
41. The first question which arises for our consideration is whether the Lieutenant Governor, being the Appellate Authority, was bound to accord the respondents a personal hearing especially when a hearing had been given on 15.11.2002 while deciding the appeal of the respondents. The respondents had challenged the penalty order of the disciplinary authority dated 20.07.2001 before the Appellate Authority/ Lieutenant Governor. While adjudicating the appeals, the Lieutenant Governor had granted a personal hearing on 15.11.2002 and had later rejected the appeal vide his order dated 28.01.2003. Feeling that the penalty inflicted by the DA was inadequate, a Show Cause Notice dated 31.03.2003 proposing to enhance the penalty against the respondents was issued. The respondents had made representations and Sharma had specifically requested for a personal

hearing. The Appellate Authority rejected the representations of the respondents and also the request for personal hearing vide his order dated 04.11.2003. It is clear that the request of personal hearing was rejected as the Appellate Authority was of the view that since Sharma had already been given a personal hearing on 15.11.2002, there was no further need for a personal hearing.

42. There is no dispute as to the power of the Appellate Authority to enhance punishment if the same is deemed to be inadequate under Rule 27 of the CCS (CCA) Rules. At the same time, a proviso has been appended to sub-rule (2) which obligates the appellate authority to accord a reasonable opportunity to the appellant of making a representation against the proposed enhancement. We may also take note of an OM of the DoPT dated 28.10.1985 wherein it has directed that the Appellate Authority may, at its discretion, grant a personal hearing to the appellate after considering all relevant circumstances of the case. It is clear that the request for personal hearing can be turned down by the Appellate Authority only after considering all the relevant circumstances of the case. Such discretion may only be exercised on justifiable reasons. This is more so because the authority seeks to impose a penalty for the first time, which was not given by the disciplinary authority. We are fortified by the following observations of the Supreme Court in ***Oriental Bank of Commerce v. R.K. Uppal***, (2011) 8 SCC 695 in respect of Regulation 17 of the Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations which is similar to Rule 27 of the CCA (CCS) Rules:

“19. ...Is the right of personal hearing to the Appellant implicit in the provision? We think not. In our considered view, in the absence of personal hearing to the Appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority

proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing. It is so because the appellate authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. Although there are no positive words in regulation 17, requiring that the Appellant shall be heard before enhancement of the penalty, the fairness and natural justice require him to be heard.”

(Emphasis Supplied)

43. In the present case, the Appellate Authority has denied the opportunity of personal hearing only for the reason that the respondents had already been given a hearing while deciding their appeals. This cannot be said to be a justifiable reason as the previous hearing was restricted to the appeal preferred by the respondents and not enhancement of punishment. It was this reason which was noticed by the Tribunal while quashing the order of the Appellate Authority.
44. The learned counsel for the petitioners has also urged that the order passed by the Lieutenant Governor was a well reasoned order. In this regard, we deem it appropriate to reproduce the order dated 04.11.2003 passed against Sharma, which reads as under:

“3. In his representation Shri Sharma has reiterated his defence and added that the show cause notice did not disclose the reasons for enhancement of the penalty. He has also requested for personal hearing in the case.

4. I have carefully gone through the contents of this representation and the relevant record of this case. In my order dated 28.01.2003 it has been clearly mentioned that the penalty imposed on Shri Sharma by the disciplinary authority was quite inadequate keeping in view the gravity of the misconduct committed by him. The contentions made by Shri Sharma in his representation have already been considered at

length by the Inquiring Authority, the Disciplinary Authority as also by me while considering the appeal, these have been found untenable. As regards the personal hearing since I have already heard him in person on 15.11.2002, I do not find any further need for a personal hearing.”

45. The order passed against Bhatia is identical in all material aspects. It is clear from a reading of the foregoing order that the Appellate Authority/ Lieutenant Governor has not assigned any reasons while rejecting the representation of the respondents and enhancing the penalty imposed. This is impermissible in law as the duty of the Appellate Authority to assign reasons arises from the language of Rule 27 (2) itself wherein it stipulates that the Appellate Authority must ‘consider’ whether the penalty imposed is adequate, inadequate or severe and only then pass an order modifying the penalty. We may take note of the following observations of the Supreme Court in ***Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors.***, (2006) 4 SCC 713:

“36. The order of the appellate authority demonstrates total non-application of mind. The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression 'consider' is of some significance. In the context of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

37. In R.P. Bhatt v. Union : of India, (1986) 2 SCC 651 this Court opined:

“The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such noncompliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.”

(Emphasis Supplied)

46. The Supreme Court in ***Divl. Forest Officer, Kothagudem and Ors. v. Madhusudhan Rao***, (2008) 3 SCC 469 has held that though the appellate authority is not required to give detailed reasons, but at the same time, it must give brief reasons to enable the charged officer to know the mind of the appellate authority. The relevant paragraph reads as under:

“20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for

agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum.”

(Emphasis Supplied)

47. From the foregoing discussion, it is clear that the appellate authority is bound to give reasons, if not detailed reasons while exercising the discretion vested with it in Rule 27 (2) of the CCS (CCA) Rules. This is further necessitated as only when reasons are assigned can the courts ascertain as to whether there was an application of mind by the appellate authority.
48. In the present cases, the orders dated 04.11.2003 are almost identical. None of the orders show any application of mind nor is there any whisper of reasons. It was this which persuaded the Tribunal quash the orders of the appellate authority and in our view, rightly so.
49. Therefore, no grounds are made out to interfere under Article 226. The writ petitions stand dismissed.

G.S.SISTANI, J

I.S. MEHTA, J

AUGUST 23, 2016

//msr