

4] Mr. A.D. Joshi, the learned counsel for the petitioner, submits that the petitioner's husband was prosecuted for a criminal offence but was ultimately acquitted by the appeal Court. Mr Joshi submits that in such circumstances, the penalty of dismissal imposed upon Mr. Randive warrants interference. He relies upon the decision of the Honourable Supreme Court in the case of **G.M. Tank vs. State of Gujarat and ors. - 2006 SCC (L&S) 1121** in support of this proposition.

5] Mr. Joshi further submits that that Mr. Randive had put in over 30 years of service and therefore, the penalty imposed is grossly disproportionate. Mr. Joshi submits that Mr. Randive had already submitted a notice seeking to proceed on voluntary retirement. Mr Joshi submits that the respondents without taking cognizable such notice have imposed a penalty of dismissal and this constitutes arbitrariness.

6] Mr. G. Hariharan, the learned counsel for the respondents, submits that the disciplinary proceedings in the present case were not on the same facts for which

criminal prosecution had been launched against Mr.Randive. He submits that the disciplinary proceedings were on account of unauthorised absence of Mr. Randive for almost 2 years. He submits that despite afford of opportunity, the Mr. Randive refused to take part in the enquiry proceedings. In the enquiry it was found that Mr.Randive was unauthorisedly absent for almost 2 years. There is nothing disproportionate in the penalty imposed.

7] The rival contentions now fall for our determination.

8] In the present case, the charge leveled against Mr.Randive was of unauthorised absence from duties from 5.1.2004 to 30.11.2005. There is no dispute that proper charge-sheet was served upon Mr. Randive and despite receipt of same, Mr. Randive failed to submit any defence or participate in the enquiry. As a result, the charge of unauthorised absence of almost 2 years was held as proved. On this basis, penalty of dismissal was imposed upon Mr. Randive. The appeal as well as the revision petition instituted by Mr. Randive were duly considered and rejected. The CAT has also examined the record and found

that there is no infirmity whatsoever either in the conduct of the enquiry or in the proportionality of the penalty. Unauthorised absence of about 2 years is quite a serious misconduct and therefore, the penalty of dismissal from service cannot be said to be shockingly disproportionate so as to warrant interference.

9] In ***Union of India & Ors. vs. P. Gunasekaran - AIR 2015 SC 545***, the Hon'ble Supreme Court, in the context of exercise of powers under Articles 226 and 227 by the High Court in relation to disciplinary proceedings has held that the High Court is not and cannot act as a second court of first appeal. The Hon'ble Supreme Court has held that the High Court cannot go into reliability and adequacy of evidence. Similarly, the High Court cannot re-appreciate the evidence before the enquiry officer in order to reach to a different finding. Interference is permitted only where the findings of fact are perverse. The test laid down by the Hon'ble Supreme Court, which will apply also to Central Administrative Tribunal exercising the powers of judicial review are as follows :

“(I) *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.*

II) Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate 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."*

10] In the present case, the CAT has correctly appreciated the scope of its jurisdiction in matters of this nature.

Accordingly, there is no legal infirmity in the impugned judgment and order so as to warrant any interference.

11] The contention based upon the decision in *G.M. Tank (supra)* is quite misconceived in the facts and circumstances of the present case. In *G.M. Tank (supra)*, the Hon'ble Supreme Court has held that where departmental enquiry and criminal proceedings are based on same set of facts and where an employee is honourably acquitted in criminal trial, then, the findings to the contrary recorded in departmental proceedings can, in a given case, be held as unjust, unfair and oppressive. Dismissal on the basis of such findings can therefore, be interfered.

12] In the present case, as noted earlier, the charge against Mr. Randive in the departmental proceedings was unauthorised absence of about 2 years. The criminal proceedings launched against Mr. Randive concerned misappropriation of postage stamps to the tune of Rs.10,598.70 paise between November 1989 to July 1991. In fact, Mr. Randive was convicted and sentenced to undergo rigorous imprisonment for six months. However,

the appeal court set aside the conviction and acquitted Mr. Randive. No departmental proceedings were held against Mr. Randive on the ground of misappropriation of postage stamps. Therefore, this is not a case where departmental proceedings and criminal proceedings were based on the same set of facts or charges. In such a situation, there is no question of interfering with the dismissal order by applying the principle in *G.M. Tank (supra)*.

13] There is no clear material on the aspect of Mr. Randive furnishing notice for voluntary retirement. In any case, even assuming that such notice had been furnished by Mr. Randive that by itself, does not render the penalty of dismissal imposed upon him for the proved misconduct of unauthorised absence almost 2 years, legally infirm.

14] For all the aforesaid reasons, we see no reason to interfere with the impugned judgement and order made by the CAT. This petition is therefore, dismissed. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)