

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No.12538 of 2008

With

CAN 1 of 2008 (Old No. CAN 10195 of 2008)

CAN 3 of 2011 (Old No. CAN 7126 of 2011)

CAN 5 of 2017 (Old No. CAN 4145 of 2017)

Sri Chira Ranjan Biswas

Vs

Food Corporation of India & Ors.

With

WPA 2968 of 2013

With

CAN 1 of 2013 (Old No. CAN 7956 of 2013)

CAN 4 of 2018 (Old No. CAN 7874 of 2018)

CAN 5 of 2021

Sri Chira Ranjan Biswas

Vs

The Managing Director, Reviewing Authority, FCI & Ors.

For the Petitioner

: Mr. Tapan Kr. Rakshit.

For the Respondent/

F.C.I. (In WPA 12538 of 2008)

: Mr. Kamal Kr. Chattopadhyay.

For the Respondent/

F.C.I. (In WPA 2968 of 2013)

**: Mr. Partha Sarathi Bhattacharyya,
Mr. Aniruddha Bagchi.**

Hearing concluded on

: 10.09.2024

Judgment on

: 25.09.2024

Shampa Dutt (Paul), J.:

1. The Writ Petition (WPA 12538 of 2008) has been preferred praying for the following reliefs :-

- a) *For the issue of a writ in the nature of mandamus;*
 - i. *Commanding the respondent authorities and each of them to act In accordance with law.*
 - ii. *Commanding the respondent authorities and each of them to withdraw the purported transfer order issued, going beyond to the policy, illegal and arbitrary suspension order dated 28.04.2008 and release promotional benefit from AG-III (Depot) to AG-II (Depot) issued on 29.02.2004 with retrospective effect, release salaries of the petitioner from September, 2007 onwards along with increment for small family norms from February, 1995, PLI for 2006-2007 and 2007-2008, increased D.A. of 6% for the months of July and August, 2007 and lastly allow him VRS like similarly situated employees together with upgradation of pay scales (twice) in accordance with the instruction of the Central Govt. issued in favour of the CDA pattern employees.*
- b) *For the issue of a writ of/or in the nature of certiorari commanding the respondents and each of them to transmit and certify before this Hon'ble Courts all records and documents relating to the purported transfer order, arbitrary suspension order along with change of HQ, non-release of promotional benefits with retrospective effect, rejection of VRS, non-release of salaries from September, 2007 onwards along with increment for small family norms from February, 1995, PLI for 2006-2007 and 2007-2008, non release of increased D.A. of 6% for the months of July and August, 2007 and lastly non-release of upgradation of pay scale (twice) in accordance with Central Govt.'s instruction and also to release all his pending claims as mentioned above and withdraw the purported transfer order and arbitrary suspension order along with change of headquarters forthwith **and other reliefs.***

2. In WPA 2968 of 2013 the following reliefs have been prayed for :-

- a) *A writ in the nature of a writ of Mandamus commanding the respondents to forbear from giving any effect or further effect to the impugned Order dated 06.09.2012 under reference No. A&R/10(151)/2010/1055 passed by the Respondent No. 1 rejecting the Review petition of the petitioner.*
- b) *A writ in the nature of a Writ of Mandamus Commanding the respondents to quash the charges as contained in Article of Charge Nos. I to IV of the Memorandum of Charge Sheet dated 16.12.2008 under Memorandum No. viz. 4(7)/2007 issued by the General Manager/Disciplinary Authority, Regional Office, Food Corporation of India, Kolkata – 700 016.*
- c) *A writ in the nature of a writ of Mandamus commanding the respondents to quash all the four charges as contained in Memorandum of Charge Sheet dated 16.12.2008 under Memorandum No. Vig 4(7)2007 issued by the General Manager/Disciplinary Authority, F.C.I., West Bengal and to re-instate the petitioner in his proper post with full backwages including all financial benefits, the Petitioner was entitled to get during his service period at Food Storage Depot, Cossipore, under the Control of Area Office, Kolkata North and to issue Certificate of Cash, Cash Book etc. which was not issued at the time of release on 18.09.2007 & other reliefs.*

3. The petitioner's case is that he has been working in Food Corporation of India as Assistant Grade-III (Depot) from 1978 till date (2008). During the material period, he has been posted at FSD, Cossipore, dealing with storage section, Administration section and cash section under direct control of Manager (Depot) and Administrative control of Area Manager, Cal-North and overall control of the General Manager, West Bengal.

4. From 1978 till date (2008) i.e. for the last 28 years, he has been working as Assistant Grade-III (Depot) though there is no vigilance case is pending/contemplated against him. All of his juniors were

promoted long back to the post of AG-II (Depot) but due to inaction and negligence on the part of the respondent authorities, the petitioner has been stagnated in one post i.e. AG-III(Depot) for more than 28 years.

5. The petitioner was promoted to AG-II (Depot) by the respondent authorities in February, 2004 but unfortunately the said promotion order was not conveyed to the petitioner for which he was not able to avail his promotion and he is still stagnating in the same post due to the inaction and failure of the authority concerned.
6. The petitioner states that 2 financial upgradation under the ACP scheme in the entire Government service career of an employee shall be counted against regular promotions. This shall mean that 2 financial upgradations under ACP scheme shall be available only if no regular promotion during the prescribed periods (12 and 24 years) have been availed by an employee. This ACP scheme envisage merely placement in the higher scale/grant of financial benefits through financial upgradation only to the Govt. servant/under CDA pattern employees on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for this purpose.

In the instant case, the petitioner is under Central Govt. pay scale and is entitled to get all facilities and schemes as declared for the CDA pattern employees by the Govt. of India. Ministry of Personnel,

Public Grievances and Pensions, Govt. of India, through their letter dated 09.08.1999 had circulated the assured Career Progression Scheme for the CDA pattern pay scale. The petitioner is stagnating for more than 28 years in one post and there he is lawfully entitled to get two upgradation of pay scale under the said ACP Scheme. Unfortunately, despite repeated prayer for upgradation of the pay scale of the petitioner, the respondent authority in violation of the instruction circulated by the Govt. of India on 09.08.1999, did not care to abide by the said instruction in respect of upgradation of pay scale of the petitioner and thereby the petitioner is suffering severely by way of getting less salary to the tune of near about Rs. 5000/- per month.

7. That his lawful claim for upgradation of pay scale as per ACP Scheme has not been acceded to without any sanction of law, **he has been transferred to FCI, Siliguri**, in the same capacity in violation of the convention, prevailed for 33 years in FCI in the Eastern Sector that AG-III can be transferred from his original place of posting to any other place only on the basis of prayer/representation of the individual employee. In the transfer policy circulated by the Corporation, there is no specific instruction regarding rotational policy in respect of AG-III. The petitioner is working at FSD, Cossipore, as In-charge, Storage Section, Administration Section and Cash Section **he has been released** from Storage and Administration Section but not from the

Cash Section. Moreover, in the release order, his designation has been shown as AG-II (Depot) whereas he is AG-III (Depot).

8. It is further stated that there was/is no chest vault/cash box available in the cash section in the FSD, Cossipore. The cash is retained by the Depot Officer after the completion of the days' work and as such, the question of handing over the keys of the chest vault/cash box does not arise and **therefore, without release from the cash section and correction of the designation of the petitioner, he could not join at FCI, Siliguri.** Several letters/representations were submitted before the competent authority to that effect but till date no result has been achieved so far.
9. The petitioner states that though he was not released from the cash section of FSD, Cossipore and his designation was not corrected according to this status, he was not allowed to sign in the attendance register despite his regular attendance at Cossipore. Moreover, the Area Manager In-charge, Cal-North, going beyond his power and authority and without investigating into the matter regarding non-release of the petitioner as AG-III(Depot) from FSD, Cossipore, in a whimsical and arbitrary manner, stopped the salary of the petitioner for the month of September, 2007 onwards in addition to non-release of PLI for the year 2006-2007 and 2007-2008.

Furthermore, without any valid ground/reason, the said Area Manager In-charge, Cal-North, did not release the increased 6% D.A.

(CDA) in favour of the petitioner for the month of July 2007 and August, 2007, whereas all other employees were allowed to avail the same. The small family incentive scheme as allowed by the then Area Manager, Cal-North, was stopped by the present Area Manager-In-charge, Cal-North, without showing any valid reason. Even, he deducted Rs.500/- from the salary of the petitioner for the month of May, 2007 against Income Tax head before getting any declaration to that effect. Thus, it was abundantly clear that due to vindictive attitude of Area Manager In-charge, Cal-North, the petitioner was penalized without any fault on his part and thereby the petitioner is suffering from acute financial crisis and is passing his days almost in starvation along with his family members.

10. In the meantime, he has been placed under suspension by the respondent authority vide order being No. Vig-4 (7)/2007 dated 28.04.2008 on the plea that he is suspended under contemplation for dereliction in duty.

11. By an order dated 08.10.2012, in WP No. 12538(W) of 2008, a coordinate bench of this Court directed as follows :-

“.....In such view of the matter, the petitioner is given liberty to approach the respondents again for releasing the admissible terminal benefits and the pendency of the writ petition shall not stand in the way of the employer in making the payment to the petitioner without prejudice to the rights and contentions of each party.....”

- 12. The petitioner herein then approached the High Court by way of another Writ Petition being WP 1082 of 2014 praying for interest on the disbursed amount, wherein the court vide an order dated 18th March, 2019 held as follows :-**

“.....In compliance of the said order, the respondent authorities have paid the cash allowance for the period 1st January, 2005 to 6th November, 2006, amounting to Rs. 1,887/- as also the cash allowance to the sum of Rs. 5,913/-, leave encashment to the tune of Rs. 1,56,850/- gratuity amounting of Rs. 2,62,422/- and final payment of contributory provident fund amounting of Rs. 11,45,444/-, totaling to Rs. 16,78,197/-. The petitioner was further paid the arrear pay and allowance as per 6th Pay Commission with effect from 1st January, 2006 and salary for September, 2007 upto 15th September, 2007 amounting to Rs. 59,717/- payment of PLI (2006-2007) amounting to Rs. 5920/, payment of consistence allowance with effect from 28th April, 2008 to 26th July, 2008 amounting to Rs. 24,136/-, total amount of Rs. 89,773/-. All the payments were made in the year 2014.....”

- 13.** The Court was pleased to dispose of the case directing the authorities to consider the petitioner’s representation within a time frame, in accordance with law.

- 14. In appeal against the said order the appellate court (Division Bench) vide an order dated 23rd September, 2019 held as follows :-**

“.....We are, however, of the view that this issue has been specifically taken into consideration by the learned Single Judge in the impugned order dated 10th June, 2019 wherein the Court has specifically held that all the figures in the order dated 18th March, 2019 have been correctly recorded and there is no anomaly as submitted by the learned advocate appearing for the writ petitioner.

In an Intra-Court Mandamus Appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts of the instant case, on a plain reading of the impugned order we do not notice any such palpable infirmity or perversity. That apart and in any event, the impugned order is supported with cogent and justifiable reasons.

*At this stage, we also take note of the submission advanced on behalf of the respondent-Food Corporation of India that pursuant to the judgment and order dated 18th March, 2019, a notice was issued for personal hearing to the appellant/writ petitioner on 2nd April, 2019, which was followed by another notice dated 12th April, 2019. However, **the appellant/writ petitioner chose not to appear in the hearing before the General Manager of the Region and an order has been passed on 25th April, 2019.** The learned advocate hands over copies of the two notices as well as the order dated 25th April, 2019, which may be taken on record which may be taken on record.*

We are of the view that the two notices as well as the order dated 25th April, 2019, which are matters of record, ought to have been brought to the notice of the learned Single Judge before 10th June, 2019. As such, we find it all the more reason for not interfering with the order dated 10th June, 2019. The appellant/writ petitioner, however, is always at liberty to take steps in respect of the order dated 25th April, 2019 if he is otherwise entitled to do so, in accordance with law.

The appeal and the application stand dismissed subject to the observation made hereinbefore.....”

- 15.** Vide an order dated 21.06.2019 in WP 12538(w) of 2008, it has been directed that:-

“.....WP 12538(w) of 2008 is to be heard along with WP 2968(w) of 2013.....”

- 16.** The Respondents have stated that several dates (27.02.2009, 06.03.2009, 03.04.2009, 16.04.2009 and 17.04.2009) for hearing in

the disciplinary proceeding were fixed with due notice to the petitioner, but inspite of acknowledgement of the said notices, the petitioner did not appear on any of the said dates and as such the respondents had no other option but to proceed ex-parte against him.

17. The learned counsel for the petitioner has submitted that the petitioner could not attend the hearings due to medical issues. Medical Certificates dated 01.03.2009 and 23.03.2009 have been relied upon.
18. On perusal of the said documents (**Annexure P-22**) it appears that there is nothing to show, any kind of medical problems, that it would not allow the petitioner to attend the hearings.
19. **The Certificates show general ailments which can be treated by medication and is prima facie such that a person on such medication can carry out one's normal duties.**
20. The said conduct of the petitioner has also been duly noted by the Hon'ble Division Bench in its order dated 23rd September, 2019 in WP 1082 of 2014.
21. Now considering the said facts and circumstances and other materials on record, it appears that the relief prayed for in WPA 12538 of 2008, **praying for withdrawal of the transfer order, has now become infractuous as the petitioner has retired from service.** All related benefits have already been received by the petitioner as seen from the order dated 18th March, 2019 of the Learned Single Judge in WP 1082 of 2014 and the Court also considered the petitioner's prayer for

interest and directed the respondents to consider the same by disposing of the petitioner's representation in accordance with law.

22. The learned counsel for the petitioner has now stressed on the reliefs as prayed for in WP 2968(w) of 2013, where in the prayer is for quashing of the charges framed against the petitioner in the disciplinary proceedings initiated against him and setting aside of the order rejecting the petitioner's review petition.
23. It appears from the order of transfer dated 13th September, 2007, that the transfer order of the petitioner, includes 11 other persons transferred to various districts.
24. Vide an order dated 14.09.2007 the petitioner was released from Kolkata North Office on 18.09.2007 (A.N.).
25. The petitioner admittedly did not proceed to/or join his place of posting and kept writing to the authorities for cancellation of the same.
26. Finally the petitioner was placed under suspension on 28.04.2008 and disciplinary proceedings were duly initiated against him by way of framing of charges which have also been challenged.
27. **Due to the non co-operation of the petitioner, the Respondents had to conduct the disciplinary proceedings ex-parte and by a well reasoned order the appropriate authority vide an order dated 24.10.2009, held as follows :-**

".....AND WHEREAS the undersigned after careful and dispassionate consideration of the charge sheet, defence statement dated 12.01.2009, report of the Inquiry Officer dated 30.04.2009, the reply of the C.O.

dated 30.05.2009 and facts and circumstances of the case do hereby agrees with the findings of the Inquiry Officer and finds that the C.O. is in the habit of intentional and deliberate disobedience of the lawful orders of the superiors consistently to adopt the tactics to frustrate and dishonour the Departmental Proceedings and accordingly holds him guilty to the charges framed against him and orders penalty specified hereunder which is just the sufficient.

*NOW THEREFORE, the undersigned being the Disciplinary Authority in exercise of power conferred under Regulation 56 of FCI (Staff) Regulations, 1971 (as amended) do hereby order to impose penalty of **‘Compulsory Retirement’** upon **Shri Chira Ranjan Biswas, AG-III(D)**, with immediate effect.*

It is further ordered that ;

*(i) The period of absence of **Shri Chira Ranjan Biswas, G-III(D)**, w.e.f. 16.09.2007 to till receipt of this order excluding the period of suspension w.e.f. 28.04.2008 to 26.07.2008 not covered by grant of leave be treated as **‘DIES NON’** for all purposes.*

*(ii) The period of suspension of **Shri Chira Ranjan Biswas, AG-III(D)**, w.e.f. 28.04.2008 to 26.07.2008 be treated as **‘Non Duty Period’** for all purposes.*

***Shri Chira Ranjan Biswas, AG-III(D)** should acknowledge receipt of this order.*

Sd/-

GENERAL MANAGER (WB)”

28. It appears from the said order that the penalty of “**Compulsory Retirement**” was imposed upon the petitioner.

29. In *Union of India & Ors Vs Subrata Nath, Civil Appeal Nos.-7939-7940 of 2022 (arising out of Petitions for Special Leave to Appeal (Civil) No. 3524-25 of 2022)*, decided on November 23, 2022, the Supreme Court held:-

“14. The point that arises for our consideration is whether in the given facts of the case, the learned Single Judge and the Division Bench ought to have interfered with the punishment imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority as also by the Revisional Authority.”

30. The Court relying upon the judgment in **Union of India & Ors Vs**

Subrata Nath (Supra), further held :-

“15. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.

16. In the above context, following are the observations made by a three-Judge Bench of this Court in **B.C. Chaturvedi (supra)**:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based

on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.**

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from

patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

xxx xxx xxx
xxx xxx xxx

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.”*

[Emphasis laid]

17. *In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*, a two Judge Bench of this Court held as below :

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are

based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. **(Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikant S. Patil).**

[Emphasis laid]

18. In Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu, a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that :

“21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would

ordinarily not be invoked when the misconduct stands proved.”

19. *Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in **Union of India and Others v. P. Gunasekaran** held thus :*

“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.”

20. In **Union of India and Others v. Ex. Constable Ram Karan**, a two Judge Bench of this Court made the following pertinent observations :

“23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.

24. *Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.”*

21. *A Constitution Bench of this Court in **State of Orissa and Others (supra)** held that if the order of dismissal is based on findings that establish the prima facie guilt of great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order becomes unassailable and the High Court*

ought to forebear from interfering. The above view has been expressed in **Union of India v. Sardar Bahadur.**”

31. In **Union of India & Ors Vs Subrata Nath (Supra)**, finally held :-

“22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the **High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence** to arrive at its own conclusion in respect of the penalty imposed **unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal** or is found to be flawed for other reasons, as enumerated in **P. Gunasekaran (supra)**. If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.”

32. Now once again relying on the Judgment in **Union of India & Ors Vs Subrata Nath (Supra)**, it appears that:-

- i) Charge No. I & III relates to disobedience of lawful release order.

This charge has been duly proved as admittedly the petitioner did not join his new place of posting on being relieved from his earlier post.

- ii) Charge No. II : Finding is not proper, in view of the charge proved that he did not join his new place of posting.
- iii) Charge No. IV : Approaching higher authorities directly and not through proper channel. Proved in view of the documents produced in support.
- iv) In spite of best effort the petitioner could not be served, even the Regional vigilance team could not do so.

33. The petitioner was thus 'Compulsorily retired' on and from 24th October, 2009.

34. He has received all his dues as granted/noted in another writ petition.

35. Thus, the findings of the disciplinary proceedings in the present case are based on clear evidence, based mainly on documents and has been done so following the principles of natural justice. There is clear findings and there is prima facie no malafide on the part of the respondents.

36. Therefore the findings of the disciplinary and reviewing authority being in accordance with law requires no interference.

37. The writ petitions being WPA 12538 of 2008 and WPA 2968 of 2013 are thus dismissed.

38. All connected applications, if any, stand disposed of.

- 39.** Interim order, if any, stands vacated.
- 40.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)