

18.04.2024
Court No.13
Item No.30
AP

WPA 28525 of 2022

Sri Biswanath Datta

Vs.

**The Syama Prasad Mookerjee Port Authority,
Kolkata and Ors.**

Mr. Soumya Majumdar

Mr. Debajyoti Basu

Mr. Barun Chatterjee

... For the Petitioner.

Mr. Kallol Basu

Mr. Ashok Kumar Jena

... For the Port Trust Authority.

Facts of the Case

1. The petitioner challenges an order dated 22nd March, 2017 removing him from service, passed by the disciplinary authority of the Respondent No.1 as confirmed by the Appellate Authority in its order dated 19th August, 2020.

2. The petitioner was serving as a Shed Clerk, Grade-I of the Traffic Department of the Syama Prasad Mookerjee Port Trust (formerly known as Kolkata Port Trust). In course of his duties on 13th September, 2010, the petitioner was alleged to have demanded a bribe of Rs.9,000/- from Ajoy Kumar Shah, proprietor of M/s. Kesri Merine Syndicate, a customer of the Port Trust.

3. The said Ajoy Kumar Shah immediately contacted the CBI. The CBI laid a trap. The petitioner was caught on the next day, i.e. 14th September, 2010, accepting a bribe of Rs.9,000/- from Ajoy Kumar Shah.

4. The CBI had laced currency notes of Rs.9,000/- with a chemical, Upon the cash money being received by the petitioner, he was immediately surrounded by the officials of the police and the CBI. His hands were washed with water, which turned pink. This was a consequence of the chemical laced currency notes, touched and received by the petitioner.

5. The CBI initiated criminal proceedings against the writ petitioner, inter alia, under Sections 7 and 13(1)(d) of the Prevention of Corruption Act 1988. The Criminal proceedings continued until 29th November, 2021 when final judgement was pronounced by the criminal court.

The petitioner was acquitted with the following observations:-

“8. Accused Biswanath Datta is found to be a Public Servant. The sanction under section 19 of the P.C. Act 1988 though found to be valid, the prosecution failed to prove any of the above ingredients as provided u/s 13(9)(1)(d) of the P.C. Act. The allegation for offence u/s 7 of the P.C. Act is also found to be baseless. Thus the prosecution being unable to prove the charges against the accused person beyond all shadow of reasonable doubt, the accused person deserves an order of acquittal. The prosecution case fails.”

6. In the meantime, the respondents issued a Charge Sheet dated 6th May, 2011 against the petitioner,

under Regulation 7 and 8 of the Kolkata Port Trust Officers (Clarification, Control, Discipline and Appeal) Regulations 1987 The articles of charge against the petitioner were as follows:-

“Statement of Article of charge framed against Sri Biswanath Datta,
S/C Gr-I, EMP No.47183, of Traffic Department.

Article of Charge –I

Sri Biswanath Datta, S/C Gr-I, EMP No.47183 is charged with misconduct inasmuch as while working as Shed Clerk Gr-I, at NSD Shed he demanded a bribe of Rs.9000/- on 13.09.2010 from Sri Ajay Kumar Shah, Proprietor of M/s Kesri Marine Syndicate for doing certain official job.

Sri Biswanath Datta, S/C Gr-I, EMP No.47183 by his above acts exhibited lack of integrity and conduct which is unbecoming of employee of Kolkata Port Trust and thereby violated sub-Regulation (1) of Regulation 3 of Calcutta Port Trust Employees’ (Conduct) Regulation, 1987.

Article of Charge –II

Sri Biswanath Datta, S/C Gr-I, EMP No.47183 is charged with misconduct inasmuch as on 14.09.2010 he was caught red-handed by the CBI Trap Team outside 3 NSD Gate when he was accepting a bribe of Rs.9000/- from Sri Ajay Kumar Shah, Proprietor of M/s Kesri Marine Syndicate.

Sri Biswanath Datta, S/C Gr-I, EMP No.47183 by his above acts exhibited lack of integrity and conduct which is unbecoming of employee of Kolkata Port Trust and thereby violated sub-Regulation (1) of regulation 3 of Calcutta Port Trust Employees’ (Conduct) Regulation, 1987.

ANNEXURE – II

Statement of Imputation of misconduct in support of
Article of charge framed against
Sri Biswanath Datta, S/C Gr-I, EMP No.47183, of
Traffic Department.

Article of Charge –I

Sri Biswanath Datta, S/C Gr-I, EMP No.47183 while working as Shed Clerk Gr-I, at 2 NSD Shed on 13.09.2010 demanded a bribe of Rs.9000/- from Sri Ajay Kumar Shah, Proprietor of M/s Kesri Marine Syndicate for doing certain official job. The said Sri Dutta also directed the said Sri Shah to pay him the bribe outside 3 NSD Gate after 07:00 PM of 14.09.2010.

Sri Biswanath Datta, S/C Gr-I, EMP No.47183 threatened Sri Shah that if he did not pay the bribe of Rs.9000/- as demanded by him then in future he would

ensure that the Cart Tickets/Dock Challans submitted by Sri Shah in respect of the Export Cargo are not processed, which would in turn cause harassment to Sri Shah.

Shen Sri Ajay Kumar Shah proprietor of M/s Kesri Marine Syndicate refused to pay the bribe, **Sri Biswanath Datta, S/C Gr-I, EMP No.47183** further threatened Sir Shah that he would stop him from entering the dock premises by submitting false report against him to his superiors.

Sri Dutta's above act of demanding bribe exhibited lack of integrity in violation of sub-Regulation (1) of Regulation 3 of the Calcutta Port Trust Employees'(Conduct) Regulation, 1987.

Article of Charge –II

Sri Biswanath Datta, S/C Gr-I, EMP No.47183 was booked as Shed Clerk Gr-I at 2 NSD Shed from 0900 hrs to 1700 hrs on 14.09.2010.

A CBI Trap Team alongwith the independent witnesses and Sri Ajay Kumar Shah Proprietor of M/s Kesri Marine Syndicate reached 3 NSD Gate around 18.05 hrs on 14.09.2010. At about 20:15 hrs on that day i.e 14.09.2010 **Sri Biswanath Datta, S/C Gr-I**, riding a motor cycle bearing registration No. WB 20X-5253 alongwith Sri Biswajit Chakraborty, Shed Clerk, Grade II riding pillion, came out through 3 NSD Gate and stopped in front of Sri Ajay Kumar Shah, Proprietor of M/s Kesri Marine Syndicate. Sri Dutta then alighted from the motorcycle after parking the same. **Sri Biswanath Datta, S/C Gr-I, EMP No.47183** then asked the said Sri Shah whether he had bought the money. To which Sri Shah confirmed. **Sri Biswanath Datta, S/C Gr-I, EMP No.47183** then extended his right hand towards Sri Shah and took the money, counted the same with both hands and kept it in the clutch of his left hand.

Sri Piyush Nag, [Record Clerk, National Insurance Corporation Limited, N.S. Road Kolkata] the shadow witness who had seen the transaction and heard the conversation between **Sri Biswanath Datta, S/C Gr-I, EMP No.47183** and Sri Ajay Kumar Shah, Proprietor of M/s Kesri Marine Syndicate, then signaled the members of the Trap Team who rushed towards **Sri Biswanath Datta, S/C Gr-I, EMP No.47183** and caught him red-handed clutching the bribe of Rs.9000/- with his left hand.

Sri Datta, was thereafter asked by Sri Subhrendu Gangopadhyay, Inspector, CBI/ACB/Kolkata to hand over the bribe money held in his left hand to Sri Dabburu Apostula Raju, [Officer, Circle Office, Canara Bank, Kolkata] another independent witness. Sri Subhrendu Gangopadhyay, Inspector, CBI/ACB/Kolkata then requested Sri Dabburu Apostula Raju, to tally the note numbers of the money found in the clutch of Sri Dutta with the note number recorded in the Pre-Trap Memorandum. On doing so the note numbers tallied exactly,

Sri Datta, was later taken to the Office of Assistant Superintendent, 2 NSD and arrested for demanding and

accepting a bribe. Sri Surajit Patra, Traffic Officer who was then on duty was also intimated about Sri Datta' arrest.

Sri Datta's above act exhibited lack of integrity in violation of sub-Regulation (1) of Regulation 3 of the Calcutta Port Trust Employees' (Conduct) Regulation, 1987."

7. The Petitioner replied to the Charge sheet and denied all allegations.

8. The Disciplinary Authority appointed an Enquiry officer and presenting officer on 29th June 2011.

9. The appointment of the said Enquiry Officer P.N. Roychowdhury stood terminated on 31st May 2013. Thereafter one Nripendranath Ghosh was appointed as the 2nd Enquiry Officer on 19th June 2013.

10. The 2nd Enquiry Officer conducted the whole enquiry and submitted his report finding the petitioner guilty in his report, which was forwarded to the petitioner. The petitioner submitted his representation against the same on 6th January 2015.

11. The Disciplinary Authority accepted the grounds urged by the petitioner and found several discrepancies in the Enquiry report.

12. To allay the apprehensions of the petitioner, the Disciplinary Authority appointed a 3rd Enquiry Officer, one Ms. Shima Chaudhuri. The suspension of the petitioner was revoked and he resumed service on 21st January 2016.

13. As many as 10 witnesses were examined by the Management. The petitioner participated in the enquiry and cross-examined each and every one of the witnesses of the Port Trust. The petitioner did not produce any witness from his side.

14. After conclusion of the enquiry, comments were invited from the petitioner as well as the Port Trust by the said 3rd Enquiry Officer. Considering the material received in the course of the enquiry and the submissions of the petitioner, as also the presiding officer on behalf of the Port Trust, the Enquiry Officer submitted a detailed report dated 9th September 2016, to the Disciplinary Authority. The Enquiry Officer found the charges against the proved beyond doubt.

15. The Enquiry Report was furnished to the petitioner by the Disciplinary Authority on 6th October, 2016 inviting his comments.

16. The writ petitioner, by representation dated 7th November, 2016, sought to explain and challenge the evidence of each of the witnesses on behalf of the Port Trust. The Disciplinary Authority found charges against the petitioner, “proved”. The writ petitioner was removed from service by the Disciplinary Authority vide order dated 2nd March, 2017, passed under Regulation 7 (v) to (ix) of the said Regulations of 1987.

17. It appears from the records that the writ petitioner had moved WP No.26094(W) of 2013 praying for stay of the Disciplinary Proceedings during the pendency of the criminal proceedings. Such stay was declined by a Coordinate Bench vide order dated 28th January, 2014. The petitioner was granted liberty to participate in the disciplinary proceedings and the same were allowed to continue. It is submitted by the learned counsel for the petitioner that an appeal was preferred against the order, which is since pending. There is, however, no stay on the disciplinary proceedings by any Court till date.

Arguments on behalf of the Petitioner

18. Mr. Soumya Majumdar and Mr. Debajyoti Basu, learned counsel made submissions on behalf of the writ petitioner.

19. The following points have been urged to assail the entire proceedings culminating in the order of removal:-

(a) The writ petitioner had repeatedly sought authentication of the documents relied upon by the Port Trust. The same was not supplied to him. There is, therefore, breach of natural justice. It is argued that the documents in the exhibited in the Enquiry could not be relied upon by the Employer.

(b) The Port Trust ought to have waited for the order of the criminal proceedings since the charges in the departmental enquiry and the criminal proceedings are one and the same and/or identical.

(c) The test to be applied by the Port Trust, in a case of this nature where the allegation is of taking a monetary bribe, is a stringent one. Even in the departmental proceedings, the charges must be proved to the hilt. The normal principle of preponderance of probabilities applied to departmental proceedings cannot be applied to proceedings against the petitioner.

(d) The Enquiry Officer, Disciplinary Authority have not applied the “conclusive proof or proof beyond reasonable doubt” test. The findings of the Enquiry Officer and the Appellate Authority, therefore, are liable to be interfered with and quashed and set aside.

(e) The writ petitioner has been acquitted in the criminal proceedings. He, therefore, ought to have been automatically acquitted in the departmental proceedings instituted by the Port Trust particularly when the charges are identical as is the evidence in the two proceedings.

(f) It is next argued that the order of the Disciplinary Authority is completely devoid of reasons. The Disciplinary Authority has mechanically agreed to the

findings arrived at by the Enquiry Officer. The Disciplinary Authority has not applied its mind independently or discussed the evidence on record to arrive at any conclusion of guilt. The order of the Disciplinary Authority is, therefore, vitiated.

20. Extensive reliance is placed on the provisions of Regulations 8A of the aforesaid Regulations of the Port Trust of 1987 (supra). In support of the aforesaid contentions, Mr. Majumdar has relied upon several decisions of the Supreme Court.

i) Reliance is placed on ***Union of India VS. H.C. Goel*** reported in **1963 SCC OnLine SC 16** particularly paragraphs 19 and 27 thereof. The proposition advanced is that, in a Disciplinary proceeding regarding a charge of bribe, mere suspicion cannot be a ground for holding the employee guilty. The test to be applied in domestic enquiries, in such cases, is as scrupulous as that of criminal proceedings. The said decision is also relied upon to argue that the enquiry report is a mere collection of material. It is the Disciplinary Authority that has to discuss the evidence in detail and pronounce upon the Enquiry Officer's report.

ii) Reliance is next placed on the decision of the Supreme Court in the case of ***Union of India and Ors. Vs. Gyan Chand Chattar*** reported in **(2009) 12**

SCC 78 particularly paragraph 21 thereof, on the proposition that, the degree of proof, where charges in a criminal Court as well as domestic enquiry, is the same.

iii) Counsel for the petitioner next relied upon the decision of the **Commissioner of Police, Delhi and Ors. Vs. Jai Bhagwan** reported in **(2011) 6 SCC 376** particularly paragraphs 15 and 17 thereof on the proposition that preponderance of probability is not the test to be applied in domestic enquiries where charges are of taking a monetary bribe.

iv) The next decision relied upon by the counsel for the petitioner is the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr.** reported in **(1999) 3 SCC 679** particularly paragraphs 34 and 35 of the said judgment on the propositions already indicated hereinabove.

v) Reliance is placed on the case of **S. Bhaskar Reddy and Anr. Vs. Superintendent of Police and Anr.** reported in **(2015) 2 SCC 365** particularly paragraphs 21 and 23 on the proposition as already discussed hereinabove.

vi) On the proposition that acquittal in a criminal proceeding would have a vital bearing on a disciplinary proceeding, reliance is placed on paragraphs 9, 12 and 24 of the decision of **Ram Lal**

Vs. State of Rajasthan and Ors. reported in **(2024) 1 SCC 175.**

vii) Reliance is also placed on paragraphs 7 and 31 of the case of ***G.M. Tank Vs. State of Gujarat and Ors.*** reported in **(2006) 5 SCC 446.**

viii) Mr. Majumdar, lastly relies upon the case of ***Managing Director, ECIL, Hyderabad and Ors. Vs. B. Karunakar and Ors.*** reported in **(1993) 4 SCC 727** particularly paragraphs 8, 16 and 26 thereof on the proposition that the findings of an Enquiry Officer are at best a collection of materials. It is for the Disciplinary Authority to discuss such findings in detail and give sufficient reasons to arrive at any conclusion against the writ petitioner.

Arguments on behalf of Port Trust

21. Per contra, Mr. Kallol Basu, learned counsel for the Port Trust submitted a short note on the scope, authority and power of the Disciplinary and Appellate Authority.

i. Reliance is placed on the decision of ***State Bank of Bikaner & Jaipur and Ors. Vs. Prabhu Dayal Grover*** reported in **(1995) 6 SCC 279** particularly Paragraph 13 thereof.

ii. Reliance is next placed on the decision of ***Pravin Kumar Vs. Union of India and Ors.*** reported in

(2020) 9 SCC 471 particularly paragraphs 25 and 30 to 34 thereof. The aforesaid decisions are in answer to the propositions cited by the counsel for the petitioner.

iii. It is next argued by referring to the decision of the **P.D. Grover (supra)** that to ascertain the role of the Disciplinary Authority one must refer to the Regulations of the employer concerned. It is argued that if the regulations do not warrant any detailed reasons to be given, the Disciplinary Authority, need not give detailed reasons while agreeing with the findings of the Enquiry Officer.

iv. **The Pravin Kumar (supra)** decision is relied upon to support the argument that in case a person is acquitted in criminal proceedings, the same would not have any binding effect on the Disciplinary proceedings instituted by an employer against its employee.

This Court's Findings and Analysis

22. This Court has carefully heard and considered the arguments advanced by the counsel for the parties.

The Questions that need to be addressed

23. The questions to be addressed by this Court are three fold:-

(a) Whether an acquittal in criminal proceedings would ipso facto have a binding effect on an employer in a disciplinary proceeding?

(b) What is the degree of proof to be applied in a domestic enquiry where the charges are akin to criminal proceedings i.e. taking of a bribe?

(c) Whether a disciplinary and appellate authority are required to be given detailed reasons or any reasons at all when the findings of the enquiry report are being agreed upon?

24. Questions (b) and (c) above are taken and examined first.

25. Regulations 8A of the KPT (now SPT) Employees (Classification, Control and Appeal) Regulations of 1987 are as follows :-

8A. Action on the enquiry report-(1) (i) The Disciplinary Authority if it is not itself the Enquiring Authority, may on perusal of the enquiry report and representation, if any, of the delinquent, remit the case to the enquiring authority, for further enquiry and report after recording its reasons in writing and the enquiring authority shall thereupon proceed to hold further enquiry as per Rule.

(ii) the Disciplinary Authority shall if it disagrees with the findings of the Enquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(iii) if the Disciplinary Authority, having regard to its findings on all or any of the articles of charge is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

(2) If the Disciplinary Authority having regards to its findings on all or any of the articles of charge, is of the opinion that any of the penalties as specified in

Clauses (i) to (iv) of Regulation 7 should be imposed on the employee, it shall notwithstanding anything contained in Regulation 9, make an order imposing such penalty.

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the enquiry, is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Regulations 7 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee any further opportunity of making representation on the penalty proposed to be imposed.

26. The Regulations conceive of two situations. One where the Disciplinary Authority himself enquires into the charges against an employee. The second is where the Disciplinary Authority appoints an Enquiry Officer to look into the charges and submit a report to him. The second procedure has been adopted by the Disciplinary Authority.

27. The Disciplinary Authority appointed an Enquiry and a Presenting Officer as already indicated in the facts hereinabove. The Enquiry Officer examined 10 several witnesses produced by the management. Their evidence has been taken on record. The writ petitioner has cross-examined some of the witnesses of the Port Trust.

28. After conclusion of the proceedings before the Enquiry Officer, both the writ petitioner and the Presenting Officer submitted detailed comments analyzing the evidence from their respective sides.

29. The Enquiry Officer has duly considered the entire evidence of each of the 10 management witnesses

in the light of the representations of the writ petitioner and the presenting officer and has found that the petitioner was guilty beyond reasonable doubt.

30. The Enquiry Officer has himself found that the test to be applied is proof beyond reasonable doubt. It is essentially based on such test, the Enquiry Officer found the petitioner guilty of the charges.

31. In the backdrop of the above, it would be relevant to examine Regulation 8A that has been set out hereinabove.

It appears from a plain reading of Regulation 8A that a Disciplinary Authority is required to give reasons when he disagrees with the findings of the Enquiry Officer and his report. The Disciplinary Authority may on the basis of the findings of the Enquiry Officer also completely exonerate a charged employee. Even if the Disciplinary Authority finds a minor penalty imposable based on the findings in the enquiry report, he may do so.

32. However, where the Disciplinary Authority is inclined to impose penalty under Regulation 7(v) to (ix), it is stipulated that the disciplinary authority may impose any such penalty without giving any further notice to the employee to make a representation against the findings of the Enquiry Officer.

33. The said provision has since been diluted by the Supreme Court since after the decision of ***Managing Director, ECIL, Hyderabad and Ors. Vs. B. Karunakar and Ors. (supra)***. By the said decision it was made mandatory for all Government and Public Sector Organizations to issue what is called a “second show cause notice”, before imposing any punishment on an employee after receipt of an enquiry report. This has been done in the instant case. Hence, notwithstanding the liberty granted to the Disciplinary Authority under Sub Clause 3 of Regulation 8(a), the writ petitioner was afforded an opportunity to make a representation against the enquiry report.

34. The question that needs to be addressed now is whether or not the Disciplinary Authority has given sufficient reasons for arriving at a finding of guilt and punishing the writ petition.

35. For the aforesaid purpose, the order of the Disciplinary Authority is set out in its entirety:-

“KOLKATA PORT TRUST

Traffic Department
40, C.G.R. Road
Kolkata – 700 043

No. Tfc/DP-427

Dated : 22.03.2017

ORDER

WHEREAS Sri Biswanath Datta, S/C Gr-I No.47183 was deemed to have been suspended from pay and duty with effect from 15.09.2010 for being in Judicial custody exceeding a period of 48 hours following his arrest by CBI Team under section 7 of Prevention of Corruption Act, 1988 on 14.09.2010.

AND WHEREAS a departmental proceeding under Regulation 8 of the Calcutta Port Trust Employees’

(Classification, Control and Appeal) Regulations, 1987 was initiated against **Sri Biswanath Datta, S/C Grade-I, EMP No.47183** vide C.S. Memorandum bearing even no dated 06.05.2011.

AND WHEREAS the **Sri Biswanath Datta, S/C Grade-I, EMP No.47183** on receipt of the said C.S. Memorandum dated 06.05.2011 submitted a representation dated 25.05.2011.

AND WHEREAS the then Traffic Manager & Disciplinary Authority on considering that an enquiry should be held into the charge framed against the said Sri Datta appointed **Sri Prabir Narayan Roychowdhury** as Enquiring Officer for holding the enquiry and **Sri S.K. Mondal, Dy. Docks Manager** as Presenting Officer vide and Order bearing even number dated 29-06-2011.

AND WHEREAS it was later intimated by the Secretary vide a letter bearing No.Admn/4284/XI/D/EO/Contract dated 12-06-2013 that the engagement of Sri P.N. Roychowdhury, Enquiring Officer was terminated w.e.f. 31-05-2013 and **Sri Nripendra Nath Ghosh** was engaged as Enquiring Officer vice Sri P.N. Roychowdhury.

AND WHEREAS the then Disciplinary Authority, in exercise of the powers conferred by Sub-Regulation (2) of Regulation 8 of the Calcutta Port Trust Employees' (CCA) Regulations, 1987, thereafter appointed Sri Nripendra Nath Ghosh as Enquiring Officer vide an Order bearing even number dated 19-06-2013.

AND WHEREAS Sri Nripendra Nath Ghosh, Enquiring Officer submitted his Report, finding Sri Biswanath Datta S/C Grade-I EMP No.47183 guilty of the charges framed against him vide C.S. Memorandum bearing even no dated 06.05.2011.

AND WHEREAS a copy of the Enquiring Officer's report along with findings was forwarded to the said Biswanath Datta S/C Grade-I EMP No.47183, under the cover of the then Disciplinary Authority's NOTICE bearing even number dated 22.12.2014 giving Sri Datta an opportunity to submit, if he so desired, his written representation/submission within 15 days of receipt of the said NOTICE irrespective of whether the report was favourable or not to him.

AND WHEREAS the said Sri Biswanath Datta, on receiving the said NOTICE dated 22.12.2014 along with the enquiry report dated 05.09.2014 submitted his written representation dated 06.01.2015 raising inter alia the following points:

- i) After 03-07-2014, Sri Datta, was not indicated about the next date of enquiry by the Enquiring Officer.
- ii) Daily Order sheets in respect of the ex-parte enquiry were not forwarded to Sri Datta.
- iii) As Sri Datta was not intimated about the dates of enquiry after 03-07-2014 by the Enquiring Officer, Sri Datta did not get the opportunity to cross examine the management witness(es).

AND WHEREAS the Disciplinary Authority on carefully going through all the papers connected with the subject disciplinary proceedings including the written representation dated 06.01.2015 submitted by Sri Biswanath Datta, Shed Clerk Gr-I, EMP No. 47183 observes that the subject enquiry suffered from technical flaws and limitations of evidence adduced. He then on considering that a further enquiry was necessary in the instant case to meet the end of natural justice and accordingly in exercise of the powers conferred by Sub-Regulation (2) & (3) of Regulation 8 of the Calcutta Port Trust Employees' (Classification, Control and Appeal) Regulations, 1987 appointed **Smt. Shima Chaudhuri**, as **Enquiring Officer** for holding further enquiry and **Sri K.K. Sinha, Dy. Traffic Manager** as Presiding Officer to present the case in support of the charges framed against Sri Biswanath Datta, Shed Clerk Gr-I, EMP No.47183 before the Enquiring Officer.

AND WHEREAS the suspension of **Sri Biswanath Datta S/C Grade-I EMP No.47183** was revoked by an order of the Disciplinary Authority bearing even number dated 20-01-2016.

AND WHEREAS the said **Sri Biswanath Datta S/C Grade-I EMP No.47183** resumed his duty with effect from 21-01-2016.

AND WHEREAS **Smt. Shima Chaudhuri, Enquiring Officer** submitted her report dated 09-09-2016 holding **Sri Biswanath Datta S/C Grade-I EMP No.47183** guilty of both the charges framed against him vide C.S. Memorandum bearing even no. dated 06.05.2011.

AND WHEREAS a copy of the Enquiring Officer's report with findings was forwarded to the said Sri Biswanath Datta, Shed Clerk Gr-I, EMP No.47183, under the cover of a NOTICE bearing even number dated 06-10-2016 giving Sri Datta an opportunity to submit, if he so desired, his written representation/submission within 15 days of receipt of the said NOTICE irrespective of whether the report was favourable or not to him.

AND WHEREAS the said Sri Biswanath Datta, on receiving the aforesaid 'NOTICE' along with the enquiry report submitted an appeal dated 25-10-2016 seeking an extension of time of submitting his written representation.

AND WHEREAS Sri Biswanath Datta was given an extension till 07-11-2016 as a last chance to submit his written representation.

AND WHEREAS Sri Biswanath Datta finally submitted his written representation dated 07.11.2016.

AND WHEREAS the undersigned assumed the charge of the Traffic Manager and Disciplinary Authority with effect from 15-12-2016;

AND WHEREAS on carefully going through all the papers connected with the disciplinary proceeding initiated against **Sri Biswanath Datta, S/C Grade-I, EMP No 47183**, including the written representation dated 07-11-

2016 and the undersigned as Disciplinary Authority finds that :

- i) All the 12 listed witness(es) including the 2 independent witnesses, i.e. Sri P. Nag and Sri D.A. Raju were produced in the enquiry.
- ii) During the course of enquiry the listed document(s) were vouched by the respective witness(es) before the Enquiring Officer.
- iii) During the course of enquiry, Sri Datta in his defence submitted a document (D-1), but that document was not taken into consideration by the Enquiring Officer as Sri Datta did not make any attempt to produce the concerned person as a witness in the enquiry.
- iv) During the course of the enquiry, the concerned witnesses while vouching for their respective signatures on the following listed documents, i.e. M-1, M-2, M-3, M-4, M-5 & M-6, also confirmed that the said listed documents were genuine photocopies of the original documents certified as true copy of the original. Further, Sri Datta himself has not specifically raised any point about the authenticity of any of the aforesaid listed documents.
- v) Sri Datta has not adduced any new evidence in his written representation dated 07-11-2016.
- vi) The charges (Charge 1 & 11) have been proved in the enquiry.
- vii) There is no legal bar for initiating disciplinary action under the applicable rules against an employee who is already under a criminal prosecution.

AND WHEREAS on the basis of the aforesaid analysis and agreeing with the report of the Enquiring Officer the undersigned holds that the charges brought against Sri Datta vide C.S. Memorandum bearing even number dated 06-05-2011 are proved. Further, looking at the nature of the offence, the undersigned considers that to meet the ends of justice the said **Sri Biswanath Datta, S/C Gr-I, EMP No.47183**, deserved an appropriate punishment in the instant case to have a deterrent effect and to meet the ends of justice.

NOW THEREFORE, the undersigned passes Order finally to the effect that **Sri Biswanath Datta, S/C Gr-I, EMP No.47183**, is removed from the Trustees' service with immediate effect.

Further, it may be noted that the entire period of his suspension from 15-09-2010 to 20-01-2016 be dealt with as suspension.

The receipt of this Order should be acknowledged.

(Capt. Himanshu Shekhar)
Traffic Manager
&
Disciplinary Authority

To
Biswanath Datta
S/C Grade-I
EMP No.47183

Copy to CVO/FA & CAO/ Secretary/CMO for information and necessary action.”

36. The order of the Disciplinary Authority at first glance may suggest that the detailed reasons and discussion of evidence before the Enquiry Officer have not been done. Would this by itself vitiate the order of the Disciplinary Authority.

37. It is now well settled that any order passed by any quasi-judicial authority must be informed with reasons. It is equally well settled that sufficiency, details and quantum of reasons cannot be gone into by a Court of law.

38. This Court is of the view that the mandate of Regulations in questions must be adhered to in the light of the dicta of the Supreme Court in Paragraph 13 of the case of ***P.D. Grover Case (supra)***. Paragraph 13 is set out hereinbelow:-

“13. In view of the answer so given, it has to be now seen whether under the Regulations, the authorities concerned are required to give reasons for their decisions. Regulation 68(3) lays down the procedure the disciplinary authority is required to follow after it receives the proceedings of the enquiry including the report of the Inquiry Officer. On careful perusal thereof we find that only in those cases where the disciplinary authority considers it necessary to direct fresh or further enquiry or disagrees with the findings of the Inquiry Officer, it has to record the reasons for its such directions, but there is no such obligation if it agrees with the findings of the Inquiry Officer. It can, therefore, be legitimately inferred that when express provisions

have been made in the Regulations for recording reasons in only the first two of the three fact situations — and not the other — there is no implied obligation also to record the reasons in case of concurrence with the findings of the Inquiry Officer. Even if we proceed on the basis that such an obligation is implicit, still the order of the disciplinary authority cannot be held to be bad as, on perusal thereof, we find that before concurring with the findings of the Inquiry Officer it has gone through the entire proceeding and applied its mind thereto. In our considered opinion, when the disciplinary authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to reappraise the evidence to arrive at the same findings. We are, therefore, unable to accept the contention of Mr Dutta that the order of punishment was liable to be struck down as it was a non-speaking order and did not contain any reason.”

39. It would be useful to refer to the facts of the said case. The respondent employee of the Bank was charged with accepting a bribe from one Maniram and was removed from service on 27th May, 1983. Charge sheet was not furnished to the employee. The proceedings in the enquiry were also not being furnished to the petitioner.

40. In the backdrop of the above, the Supreme Court in the said ***P.D. Grover Case (Supra)*** went on to examine whether a Disciplinary Authority is required to give detailed reasons in terms of Regulations 68(3) of the Banks Conduct, Discipline and Appeal Regulations. The following was held:-

“12. Now that we found that the departmental proceeding cannot be faulted for purported breach of Regulation 68(2)(iii), we have next to ascertain whether the findings of the learned courts below regarding the orders of the disciplinary authority and the appellate authority can be sustained or not. Before considering

them in the light of their factual contents, it will be apposite to look into the law laid down by this Court regarding furnishing of reasons by administrative authorities for its decisions. As earlier noticed, the learned counsel for the parties referred to a number of decisions of this Court on the subject, but to avoid prolixity we would only refer to that in *S.N. Mukherjee case* [(1990) 4 SCC 594 : 1990 SCC (L&S) 242 : 1990 SCC (Cri) 669 : (1991) 16 ATC 445], as it was rendered by a Constitution Bench of five Judges. In that case, the following two questions fell for determination: (SCC p. 602, para 9)

“(i) Is there any general principle of law which requires an administrative authority to record the reasons for its decision; and

(ii) If so, does the said principle apply to an order confirming the findings and sentence of a court-martial and post-confirmation proceedings under the Act?”

After referring to the earlier decisions of this Court and the relevant law prevalent in other countries, this Court answered the first question — with which we are only concerned in these appeals — as under: (SCC p. 614, para 40)

“For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.”

13. In view of the answer so given, it has to be now seen whether under the Regulations, the authorities concerned are required to give reasons for their decisions. Regulation 68(3) lays down the procedure the disciplinary authority is required to follow after it receives the proceedings of the enquiry including the report of the Inquiry Officer. On careful perusal thereof we find that only in those cases where the disciplinary authority considers it necessary to direct fresh or further enquiry or disagrees with the findings of the Inquiry Officer, it has to record the reasons for its such directions, but there is no such obligation if it agrees with the findings of the Inquiry Officer. It can, therefore, be legitimately inferred that when express provisions have been made in the Regulations for recording reasons in only the first two of the three fact situations — and not the other — there is no implied obligation also to record the reasons in case of concurrence with the findings of the Inquiry Officer. Even if we proceed on the basis that such an obligation is implicit, still the order of the disciplinary authority cannot be held to be bad as, on perusal thereof, we find that before

concurring with the findings of the Inquiry Officer it has gone through the entire proceeding and applied its mind thereto. In our considered opinion, when the disciplinary authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to reappraise the evidence to arrive at the same findings. We are, therefore, unable to accept the contention of Mr Dutta that the order of punishment was liable to be struck down as it was a non-speaking order and did not contain any reason.

14. That brings us to the order of the appellate authority. Under Regulation 70(2), the appellate authority is required to consider whether the findings recorded against the officer concerned are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case. This Regulation also does not obligate the appellate authority to give any reasons for its order. Assuming, that by necessary implication this Regulation also requires the appellate authority to give the reasons, still its order cannot be invalidated, as we find that it has discharged its obligation by considering the records and proceedings pertaining to the disciplinary action and the submissions made by Grover. In other words, the order clearly demonstrates that the appellate authority had applied its mind not only to the proceedings of the enquiry, but also the grounds raised by Grover in his appeal and on such application found that there was no substance in the appeal.”

41. It would follow from the above, that it is essentially the service regulations that would have to be examined to ascertain the role of a disciplinary authority in a domestic inquiry.

42. Regulation 8(a), lays the scope of duties of the Disciplinary Authority and uses the expression “its findings”, both in clauses 2 and 3 thereunder. Regulation 8(a) itself is entitled “Action On The Enquiry Report”.

43. A conjoint reading of clauses 1, 2 and 3 of Regulation 8A would indicate that the reference to “its findings” therein are the findings of the Enquiry Officer and no detailed or any separate finding is required to be given by the Disciplinary Authority. The Enquiry Officer has analysed the evidence on record and the submissions of the petitioner in great detail.

44. This, however, does not mean that a Disciplinary Authority in a quasi-judicial proceeding, could pass a one-line order stating that he agrees with the findings of the Enquiry Officer and issue an order of punishment. That has not happened in the instant case. The Disciplinary Authority in his 3 page order, has clearly stated that he has applied his mind to the entire proceedings. He has discussed the proceedings briefly, and has come to agree with the findings of the Enquiry Officer. The Disciplinary Authority has also commented upon the evidence on record to some extent.

45. This is, therefore, not a case where the Disciplinary Authority has mechanically relied upon the findings of the Enquiry Officer.

46. It is not for a Writ Court to weigh the quantum of reasons and volume of discussions required to be given/made by a Disciplinary Authority when the findings of the Enquiry Officer in its report are sufficient

and in detail. This is not a case of no evidence whatsoever against the writ petitioner.

47. The evidence on record that has been placed meticulously and in detail by the learned counsel for the petitioner clearly and sufficiently indicates the entire chain of evidence and facts having been proved by each of the management witnesses. Each of the witnesses has stated the facts from the time when the petitioner demanded the bribe of Rs.9,000/-; The complaint of a customer to the CBI; the laying of a trap to catch the writ petitioner red-handed with the currency notes; lacing of the currency notes with chemicals; the petitioner receiving the currency notes from the complainant; the colour of the water turning pink after the petitioner's hands were dipped in the water.

48. This Court having been very carefully and meticulously taken through the entire evidence by the counsel for the petitioner, has to inevitably conclude that the factum of the petitioner taking bribe has been proved beyond reasonable doubt. The findings of this Court are based on the materials that have been brought on record, in the writ petition and the Supplementary affidavit filed by the petitioner.

49. In the backdrop of the above, even if one were to require the Disciplinary Authority to give detailed reasons, such omission has been cured by a detailed

discussion by the Enquiry Officer and the consideration of the evidence in the enquiry that has come before this Court.

50. This Court also finds that the charges against the writ petitioner have been fully proved. Even by applying the tests laid down in the cases of ***H.C. Goel (Supra)***, ***Gyan Chand Chattar (Supra)***, and ***Jai Bhagwan (Supra)***, relied upon by the petitioner, it cannot be said that a charge against the petitioner has not been proved to the hilt.

51. The findings of the Enquiry Officer and the Disciplinary Authority as this Court finds from the evidence brought on record are not based on principle of “preponderance of probabilities”.

Answer to Questions (b) and (c)

52. In the backdrop of the aforesaid discussion, this Court is inclined to hold that the order of the Disciplinary Authority dated 2nd March, 2017 is fully justified and sufficient and sustainable in law. Questions 2 and 3 are answered as above and against the writ petitioner.

Discussion on Question (a)

53. On the first question i.e. the effect of the findings of a Criminal Court on a domestic enquiry, this Court finds as follows:-

54. In the case of **Capt. M. Paul Anthony** (*supra*) the facts of the case must be noted in some detail. The appellant therein was charged with illegally possessing a gold ball and gold-bearing sand, recovered from his house after a raid was conducted by the police. Criminal proceedings were started. Simultaneously departmental proceedings were commenced issuance of a chargesheet. Substantive allowance was not paid to the petitioner. The petitioner asked for deferment of disciplinary proceedings during the pendency of the criminal proceeding instituted by the State against him which the respondent did not. The employee was not paid subsistence allowance. The employee could not attend the departmental proceeding held at Kolar which was held at a great distance from his residence on account of his ill health and poor financial condition. The respondents did not defer the departmental proceedings despite repeated requests in writing by the petitioner, supported by medical certificates. He was dismissed from service on 7th June 1986. On the 3rd February 1987, the employee was acquitted in the criminal proceedings where there was a categorical finding that there was no raid at all.

55. The petitioner challenged the order of dismissal as it was based on the same set of facts as that of the criminal proceedings. The Single Bench of the High Court set aside the order of dismissal and reinstated the

appellant giving liberty to the respondents to start the disciplinary proceeding afresh. The decision of the Single Bench was set aside by the Division Bench of the Court and the order of dismissal was upheld.

56. What essentially weighed with the Hon'ble Supreme Court was that the disciplinary proceeding was conducted ex parte as the petitioner could not participate therein due to ill health and poor financial condition as he was not paid any subsistence allowance. The petitioner was unable to travel to Kolar to participate in the Enquiry. At paragraphs 33 and 34 the Supreme Court recorded as follows:-

“33. Since in the instant case the appellant was not provided any subsistence allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of subsistence allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the enquiry officer at such proceedings, which were held ex parte, stand vitiated.

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.”

57. It is clear from the above that the criminal court in the case of ***M. Paul Anthony (Supra)*** found that no search or raid was ever conducted by the police. The charges against the employee were found disproved. The Enquiry Officer, relying upon the same witness, concluded that there was in fact such a raid and recovery by the police. There was, therefore, a direct conflict in the findings of the Criminal Court and the Domestic Enquiry as regards the factum of the raid itself leading to the recovery of the gold in the case of Paul Anthony.

58. In the case at hand, however, the Criminal Court has not found that there was no trap. The Criminal Case only found gaps in the evidence of the prosecution witnesses and therefore held that the prosecution was unable to prove the charges against the writ petitioner, “beyond all shadow of reasonable doubt”. The petitioner has therefore been acquitted by the Criminal Court with the benefit of the doubt.

59. It is now well-settled that it is for an employer, in the special facts and circumstances, to understand what an employee in the place of the petitioner would normally do as opposed to the charged employee. The employer has been dealing with such employees and procedures in its establishment for decades. Thousands of normally accepted transactions as per procedure occur each day in the establishment. Anything unusual or out of normalcy in any transaction or conduct of an employee.

60. Assessment of an employer vis-à-vis an employee in respect of a charge of a bribe would not necessarily be as stringent or strict as in the case of a criminal trial dealing with an offence under Section 13.1(d) of the Prevention of Corruption Act, 1988.

61. The Supreme Court distinguished the case of ***M Paul Anthony (Supra)*** in the case of ***State of Rajasthan Vs. Phool Singh*** reported in **2022 SCC OnLine SC 1140**. At paragraph 14 it was held as follows:

“14. There were two factors which weighed with the Supreme Court, while deciding that case. The first was the admitted fact that the petitioner was not given any subsistence allowance during his period of suspension and therefore, he was not in a position to face the departmental proceedings in Karnataka while he was residing in Kerala. The second aspect was that the petitioner was being charged on the same set of facts in the two proceedings and therefore, he had made request to the departmental authorities to stay the departmental proceedings till the conclusion of the criminal case, a request which was denied. This aspect seems to be the most important factor weighing in the mind of this

Court, as this Court was of the opinion that the charges, (both in the criminal court and with the department), involved a complicated question of fact and law, relating to the “raid” made by the police, and therefore the departmental proceedings should have been stayed and it should have awaited the result of the criminal proceedings. It was in the raid made by the Police that the ‘Gold sponge ball’ and ‘Gold bearing sand’ were allegedly recovered from his residence. This factum of “raid and recovery” which was the fulcrum of the case, stood disproved. Under these circumstances, it was held that the petitioner was liable to be reinstated. *Capt. M. Paul Anthony* thus must be appreciated for its unique facts and to our mind it does not lay down a law of universal application.

15. We say this because as against *Capt. M. Paul Anthony*, we have a large number of cases where this Court has consistently held that the two proceedings, i.e., criminal and departmental, are entirely different and merely because one has been acquitted in a criminal trial that itself will not result in the reinstatement in service when one has been found guilty in a departmental proceeding. We may refer to a few of these decisions.”

62. Having held as above the SC in the ***Phool Singh case (Supra)*** went on to observe paragraph 16, 17, and 18, as follows:-

“16. In the case of *Union of India v. Sitaram Mishra*², a constable in Central Reserve Police Force (CRPF) was charged for being negligent and careless and therefore, was removed from service. The facts of the case were that the constable while removing the magazine of his 9mm carbine gun, accidentally fired eight rounds which resulted in the death of one constable who was at the relevant time in the same barrack. The constable was held guilty of misconduct in the disciplinary proceedings and was dismissed from service. Meanwhile the constable was also tried for the offence under Section 304 of IPC in a criminal trial where he was acquitted. He thereafter filed a writ petition before the High Court challenging his dismissal from service. The writ petition was dismissed but later on an appeal before a Division Bench, the order of the learned Single Judge was set aside and it was ordered that since the constable by that time had been acquitted in the criminal court, he is liable to be reinstated in service and since by that time he had retired from service, he was to be treated in service with directions that he be given back wages and pension. This Court while deciding the appeal filed by the Union of India came to the conclusion that the grounds which weighed with the High Court were specious, and merely because the employee was acquitted by the criminal court it does not mean, ipso-facto that he is entitled to be reinstated in service, since he was dismissed from service after facing a disciplinary

proceeding. The reason being that the disciplinary proceedings are governed by a different standard of proof, which are different from what is applied in a criminal proceeding. Whereas, in a criminal trial the burden lies on the prosecution to establish the charge beyond reasonable doubt and in a departmental proceeding, the charges have to be proved on the basis of preponderance of probabilities.

17. In the above case a distinction has also been drawn by this Court between a “criminal offence” and “misconduct”. One has to be proved in a criminal court, the other in a departmental proceeding, and though both may arise from the same set of facts, yet there is a clear distinction between the two and merely because one has been acquitted in a criminal trial, it would not amount to a reversal of the findings of “misconduct”, which were arrived in a departmental proceeding. This Court also observed that the High Court fell into an error in doing exactly this, which was done by drawing an ‘erroneous inference’ from the decision of this Court given in *Capt. M. Paul Anthony*. We must therefore, reproduce here the two paragraphs from the judgment of this Court in *Sitaram Mishra* (supra):—

“14. The fact that the first respondent was acquitted in the course of the criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The High Court, in our view, has drawn an erroneous inference from the decision of this Court in *M. Paul Anthony v. Bharat Gold Mines Ltd.* [*M. Paul Anthony v. Bharat Gold Mines Ltd.*, (1999) 3 SCC 679 : 1999 SCC (L&S) 810]. The High Court adverted to the following principle of law laid down in the above judgment : (SCC p. 687, para 13)

“13. ...While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

15. It is undoubtedly correct that the charge in the criminal trial arose from the death of a co-employee in the course of the incident resulting from the firing of a bullet which took place from the weapon which was assigned to the first respondent as a member of the Force. But the charge of misconduct is on the ground of the negligence of the first respondent in handling his weapon and his failure to comply with the departmental instructions in regard to the manner in which the weapon should be handled. Consequently, the acquittal in the criminal case was not a ground for setting aside the penalty which was

imposed in the course of the disciplinary enquiry. Hence, having regard to the parameters that govern the exercise of judicial review in disciplinary matters, we are of the view that the judgment [*Sitaram Mishra v. Union of India*, 2007 SCC OnLine Cal 718 : (2008) 1 Cal LJ 863] of the Division Bench of the High Court is unsustainable.”

18. A three Judge Bench of this Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd.*³ held the position of law, was explained as follows:—

“11..... 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 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 offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with 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 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’.....”

63. The observations of the Supreme Court at paragraphs 33, 34 and 35 in the ***Pravin Kumar Case (Supra)*** must be noted in this context.

“III. Effect of criminal enquiry on disciplinary proceedings

33. The incident of 28-2-1999 raised serious questions of criminality under the Penal Code and the Prevention of Corruption Act, as well as of violation of Service Regulations and administrative misconduct. Thus, in addition to appointment of enquiry officer, the authorities also registered a criminal complaint with the CBI. After investigation, the CBI though did not find adequate material to launch criminal prosecution against the appellant but through its self-speaking report dated 7-3-2000, the CBI recommended major

disciplinary action against the appellant and a few others.

34. It is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. [*Karnataka SRTC v. M.G. Vittal Rao*, (2012) 1 SCC 442, para 11 : (2012) 1 SCC (L&S) 171] Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances. [*Ajit Kumar Nag v. Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764, para 11 : 2005 SCC (L&S) 1020]

35. Thus, the appellant's contention that he should be exonerated in the present proceedings as no criminal charge-sheet was filed by the CBI after enquiry, is liable to be discarded. [*BHEL v. M. Mani*, (2018) 1 SCC 285, paras 20-22, 33 : (2018) 1 SCC (L&S) 178] The employer always retains the right to conduct an independent disciplinary proceeding, irrespective of the outcome of a criminal proceeding. Furthermore, the CBI report dated 7-3-2000 does recommend major disciplinary action against the appellant. The said report also buttresses the respondent's case."

64. The case of **S. Bhaskar Reddy (Supra)** would have no manner of application in the facts of the case. The employees therein were implicated in a charge under Sections 307 and 302 read with Section 32 of the IPC and under Section 3 (1x) of the SC and ST (Prevention of Atrocities) Act. Such action did not arise in the course of employment of the State police. They occurred when the appellants were on deputation in the Railway Police Wing at Anantapur. They have been honourably acquitted by the 1st Additional District Judge, Anantapur on 26th June 2007. They were

dismissed from service under their Service rules of the State Police on 17.03.2007.

65. In the instant case, the petitioner has been acquitted in the criminal proceeding on the benefit of the doubt. The said decision therefore cannot come to the aid of the petitioner.

66. In the **G.M. Tank case (Supra)** it was found that there was not even an iota of evidence against the employee therein. The employee was honorably exonerated of all charges in the criminal proceedings. The said case would have no manner of application in the facts of the instant case.

67. In the **Phool Singh decision (Supra)**, at paragraph 20 it was held as follows:

“20. It is true that this Court, apart from the case of *Capt. M. Paul Anthony*, has in a few cases not interfered with the reinstatement of an employee who was dismissed as a result of disciplinary proceedings, and was only reinstated in service because of his acquittal in criminal proceedings, but again the reasons which weighed with the Court in such cases were that in almost in all such cases, the acquittal was an honourable acquittal and not an acquittal on a technicality, or on acquittal given because of “benefit of doubt”.”

68. There is therefore a great deal of difference between an honorable acquittal, and an acquittal on the benefit of doubt. In the case of a honorable acquittal the charge itself would stand extinguished. In the case of acquittal on benefit of a doubt, it would mean that the prosecution was not able to bring enough evidence or

prove the causal connection between the crime and the accused person. In the latter case therefore the charge does not get extinguished. It is only the criminal trial that comes to an end with an acquittal with the benefit of the doubt. Hence in such cases, the acquittal in the criminal proceedings will have no bearing on a domestic inquiry, even if the charges, the witnesses and the evidence are the same.

69. In the Ram Lal case, a similar question was framed by the Supreme Court at clause 8.2 set out at par 12 the question of law for consideration was set out.

8.2. (b) On the facts of the case, what is the effect of the acquittal, ordered by the Appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry?

70. The distinction drawn as above is supported by the observations of the Supreme Court at paragraphs 28 and 29 of the Ram Lal decision which is set out hereinbelow:-

“28. Expressions like “benefit of doubt” and “honourably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” — in fact the charge even stood “disproved” by the very

prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” (see *Vijayee Singh v. State of U.P.* [*Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190 : 1990 SCC (Cri) 378]).”

71. It follows from the above that there cannot be any straightjacket ipso facto consequence of extinguishment of a charge on a domestic enquiry consequent upon acquittal in the criminal proceeding. It must be essentially seen as to whether such acquittal was not proved or disproved.

72. Having considered the judgment dated 29th November 2021 (although not placed by the counsel for the petitioner) of the Sessions Court in the instant case in Special Case No. 20 of 2010 arising out of RC Case no. 30 of 2010, this Court is of the view that the findings of the criminal court in its entire judgment can at best indicate that the charges against the petitioner were not proved. They cannot be characterised as having been disproved or extinguished in the eyes of the reasonable and prudent man. It is therefore a case where the charge in the criminal case is neither proved nor disproved.

73. In the backdrop of the aforesaid discussion, this Court is of the view that the acquittal of the petitioner in the criminal proceedings, would not negate the evidence in the inquiry and the detailed findings of the Enquiry

Officer which this Court has very carefully been taken through by learned counsel for the petitioner.

Answer to Question (a)

74. The answer to question (a) above would therefore be as above and against the petitioner.

Conclusion

75. The Enquiry Report dated 9th September 2016, order of the Disciplinary Authority dated 22nd March, 2017 and the Appellate Authority dated 19th August 2020 are upheld.

76. For the reasons indicated hereinabove, the writ petition fails and is hereby dismissed.

77. There shall be no order as to costs.

78. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)