

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 1505 of 2020**

**With**

**CRAN 1 of 2020**

**Sadanand Shukla**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioner** : Mr. Md. Salahuddin,  
Mr. Md. Ahsanuzzaman.

**For the Opposite Party No.2** : Mr. Sabyasachi Banerjee,  
Mr. Anirban Dutta,  
Ms. Priyanka Mukherjee.

**For the State** : Mr. Arijit Ganguly,  
Mr. Sanjib Kr. Dan.

**Hearing concluded on** : 20.02.2024

**Judgment on** : 20.03.2024

**Shampa Dutt (Paul), J.:**

1. The present revision has been preferred praying for quashing of a proceeding being Special Case No. 01 of 2019 pending before the Learned Special Judge, 4<sup>th</sup> Special Court, Calcutta arising out of Hare Street Police Station Case No. 139 dated 30.04.2019 under Sections 409/420/467/471/477A of the Indian Penal Code read with 66D/71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of the P C Act.
2. The petitioner's case is that he was an employee under Kolkata Port Trust appointed in the year 1980 as a Lower Division Clerk (LDC) after completing all formalities including the written test conducted by the authority of Kolkata Port Trust and worked there very sincerely, honestly with the satisfaction of the authority. But surprisingly the Kolkata Port Trust initiated a Departmental proceeding against the petitioner vide Memorandum No. FA/M/137 dated 23.11.1984 and in the said proceeding the petitioner was found guilty and was proposed to impose penalty of removal from service and to that effect under the Statute the competent authority of Kolkata Port Trust issued show cause with a direction to the petitioner to submit against the award.
3. After receiving such show cause, the petitioner duly submitted the written statements against the said award to the then Deputy Chairman, Kolkata Port Trust and after going through the records of the proceeding, service records of the petitioner and the relevant documents, the then

Deputy Chairman, Kolkata Port Trust reviewed the award for removal from service and passed an award of minor penalty instead of removal from service by withholding of grade increment of two years without cumulative effective vide No. CVO/38/F/Con/1 dated 27.04.1988. After the award passed by the then Deputy Chairman, Kolkata Port Trust, the petitioner had been working there and subsequently the petitioner was designated as Accounts Officer, Finance Department under Kolkata Port Trust.

4. Surprisingly after completion of 30 years of service another Departmental proceeding was initiated by the authority of Kolkata Port Trust and ultimately charge was framed against the petitioner vide Charge Sheet Memorandum No. Vig/PE/01/2018/994 dated 25.07.2018 with allegations that the petitioner entered fictitious amounts of Rs. 1,09,792/- in his account by using the payroll module of the computer system and unauthorisedly and deceitfully misused user IDs' and passwords of his sub ordinates and entered in the computer system in his favour of Rs. 42,450/- and admittedly the amounts as alleged was duly recovered from his salary by the Kolkata Port Trust.
5. After concluding the aforesaid Departmental Proceeding, the charges leveled against the petitioner were established and final order was passed by the Deputy Chairman and Disciplinary Authority by awarding major punishment by reducing four stages lower of scale of pay till the retirement from service and the petitioner was also debarred from getting

increments till his superannuation and the pension would be fixed according to the reduced pay and surprisingly the order of suspension was not revoked or withdrawn by the authority of Kolkata Port Trust till the date of his retirement.

6. After passing the aforesaid final order, the authority of Kolkata Port Trust neither revoked the suspension order nor allowed the petitioner to join his duties and surprisingly issued another alleged Memorandum vide No. Admin/7806/Con & FA & CAO/16 dated 14.06.2019 which was received by the petitioner on 20.06.2019. It was alleged in the aforesaid Memorandum that the petitioner has willfully impersonated the name of his father to secure employment as died-in-harness candidate and thereby committed gross misconduct. It is pertinent to mention here that the allegation leveled against the petitioner in the Memorandum dated 14.06.2019, had already been decided finally and the order was reviewed by the then competent authority and award was passed vide No. CVO/38/F/Con/1 dated 27.04.1988 and accordingly it has reached its finality as against the said reviewed order no appeal was preferred or challenged before any court of law by the authority of Kolkata Port Trust as yet, but on the verge of his retirement on the basis of the alleged Memorandum, the authority of the Kolkata Port Trust lodged a complaint before the Hare Street Police Station being Hare Street Police Station Case No. 139 dated 30.04.2019 under Sections 409/420/467/471/477A of the Indian Penal Code read with 66D/71 of I T Act and Sections 7,

13(1)(a)(b) and 13(2) of the P C Act and on the basis of such alleged complaint, the Assistant Commissioner of Police (I) Central Division, Kolkata Police issued a notice dated 26.07.2019 under Section 41 (A) of Criminal Procedure Code with a direction upon the petitioner to meet him for the purpose of interrogation in the light of the allegations of the FIR.

7. It is stated by the petitioner that the complainant one Madhusudan Roy, claiming him as the Financial Advisor and Chief Accounts Officer, Kolkata Port Trust, lodged a complaint before the Officer-In-Charge of Hare Street Police Station against the petitioner alleging that the petitioner had impersonated himself as son of late Ramadhar Shukla and get employed in died-in-harness Scheme on 22.09.1980. It was further alleged that the petitioner committed electronic forgery and altered official data by using the user IDs and password of his sub ordinates by utilizing his post of Accounts Officer and misappropriated Rs.1,09,792/- by mailing fictitious accounting entries. He has also increased the amount payable to him as monthly salary by forgery. The complainant has also alleged that the accused person has misappropriated public money and made wrongful gain.
8. On the basis of the aforesaid alleged complaint, Hare Street Police Station started Hare Street Police Station Case No. 139 dated 30.04.2019 under Sections 409/420/467/471/477A of the Indian Penal Code read

with 66D/71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of the P C Act.

9. The police authorities filed Charge Sheet being no. 16 dated 25.01.2020 before the Learned Special Judge 4<sup>th</sup> Special Court, Calcutta under Sections 409/420/467/471/477A of the Indian Penal Code read with 66D/71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of the P C Act and in the said Charge Sheet the Investigating Agency observed that “No substantive evidence could be gathered that Sadanand Shukla committed forgery and misappropriation during his appointment at KPT” but surprisingly the case has been sent for trial, though the allegations made against the petitioner has already been decided and final orders have been passed by the Kolkata Port Trust by giving punishment to the petitioner.
10. The petitioner states that he retired from service on and from 01.02.2020 and before retirement the petitioner by complying with all formalities, submitted the required papers and documents to the Kolkata Port Trust on 14.11.2019 for releasing the retiral benefits including pension but surprisingly the Kolkata Port Trust neither released the retiral benefits nor gave any response to that effect till date and as a result of it the petitioner along with his family members have been passing their days fearing death by starvation and also without any treatment being a heart patient.

- 11.** The petitioner submits that it is surprising that the authorities of Kolkata Port Trust have lodged a complaint against the petitioner on the alleged charges which have already been decided in the disciplinary proceedings and imposed punishment to the petitioner and it is more surprising that before awarding punishment they have not lodged any complaint to that effect with the police authorities for the alleged offence, hence it is presumed that the instant case is concocted, an afterthought and harassing one and has no basis in the eye of law and accordingly the alleged proceeding pending before the learned Trial Court should be quashed and set aside.
- 12.** That the alleged proceedings has been initiated under Regulation 8 read with Regulation 23 of the Kolkata Port Trust Employees (Classification, Control and Appeal) Regulation, 1987, (for short the said Regulation) and admittedly the said Regulation has clearly empowered only the (i) Central Government or (ii) the Chairman after consultation with the Central Government but in the instant proceeding neither the Central Government nor the Chairman has initiated the same and admittedly the Deputy Chairman has initiated the same which is gross violation of Regulation and cannot be sustainable in the eye of law and the alleged proceeding is liable to be quashed.
- 13.** The petitioner submits that the Learned Special Judge, 4<sup>th</sup> Special Court, Calcutta ought not to have taken cognizance of the offence under Sections 409/420/467/471/477A of the Indian Penal Code read with

66D/71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of the P C Act against the petitioner on the basis of the allegations which have already decided by the authority of the Kolkata Port Trust on the self same cause of action by two departmental proceedings and its has reached its finality and the authority cannot re-open the same in any manner whatsoever.

**14.** Hence the revision.

**15.** The Opposite Party No.2 in its Affidavit in opposition has stated:-

- i) *That the petitioner while securing employment in the FA & CAO's Department of Kolkata Port Trust had committed gross misconduct by entering service as a died-in-harness candidate by fraudulently representing himself as the son of Late Ramadhar Shukla when his father's name is Sri Raj Banshi Shukla. He had knowingly and willfully impersonated the name of his father to secure employment as a died-in-harness candidate which was admitted by him during the Inquiry held in the departmental proceeding to this regard. A charge sheet being FA/N/137 dated 23.11.1984 was filed by the Disciplinary Authority and upon conclusion of the Inquiry, it was proposed to impose the penalty of 'removal from service' vide Show Cause Notice dated 29.11.1986. As it was found that the petitioner was next of kin of the Late Ramadhar Shukla who was his grandfather and a minor penalty of withholding of grade increment was awarded to the petitioner vide FINAL ORDER CVO/38/F/Con/1 dated 27.04.1988.*
- ii) *In and around the year 2017, it was revealed that the petitioner was making illegal entries in the computer system using the IDs and passwords of his colleagues in an unauthorized manner to cause pecuniary gain to himself. Two illegal entries in the computer system for payment of Rs. 42,450 (approx) was seen to have been made in his favour wrongfully which was followed by subsequent reverse entries on 12.06.2017 and 13.06.2017 for partially reversing the earlier illegal entries made in his favour to mask the trail of undue payment cornered by him previously.*

**Based on such observations, the Vigilance Department to Kolkata Port Trust proceeded to conduct a detailed preliminary enquiry/investigation into the**

**allegations regarding the irregularities and misconduct committed by the petitioner which comprised of not only securing employment in a fraudulent manner but also manipulation of entries in the computer system to misappropriate funds.** On 21.07.2017, a report to this effect was submitted by the OSD (Finance) & Enquiry Officer stating that based on *prima facie* and circumstantial evidence against the petitioner, it had been revealed that the petitioner had been carrying on several wrongful and improper activities which includes making illegal and counterfeit entries in the salary module on computer.

- iii) **After considering the findings of the preliminary enquiry, a report to this effect being No. Vig/PE-01/2018/479 dated 13.04.2018 was sent to Central Vigilance Commission by the Vigilance Department. The Central Vigilance Commission vide letter dated 23.05.2018 advised to revise the inappropriate order dated 27/04/1988, if rules of KOPT permit as well as that a police complaint be launched for the commission of fraud for impersonation against the petitioner.**
- iv) Simultaneously, on 25.07.2018 another departmental proceeding was initiated by opposite party no.2 vide Charge Sheet Memorandum No. Vig/PE/01/2018/994.
- v) The Disciplinary Authority on conclusion of the enquiry and considering the material facts and findings evidence brought forth by the Inquiring Officer in the report thereby establishing the abovementioned charges, passed a final order being Memorandum No. Admn/7806/CON/FA&CAO/11 dated 21.06.2016 that the pay scale of the petitioner will be reduced by four stages for the remaining period of his service and he will not earn increment of pay till his superannuation. The amount secured as excess payment in an irregular and fraudulent manner would be deducted from his future salary in the nature of 'recovery by port'.
- vi) Thereafter, based on the recommendation of the Central Vigilance Commission, a process to review the order passed vide CVO/38/F/CON/1 dated 27.04.1988 passed in accordance with Regulation 23 of the Kolkata Port Trust (Classification, Control and Appeal) Regulation, 1987 was initiated. The said Regulation provides for the power to remit the case to the authority which made the order or to any other authority directing such authority to make such further

*enquiry as it may consider proper. The said regulation also provides for enhancement of penalty.*

- vii) The petitioner was asked to show cause as to why he should not be imposed an enhanced punishment vide memorandum No. Admn/706/CON/FA&CAO/16 dated 08.01.2019 to which a representation dated 28.01.2019 (date wrongly given by the petitioner as 28.01.2018) was submitted by the petitioner.*
- viii) On considering the reply of the petitioner to the abovementioned memorandum unsatisfactory, a departmental proceeding was initiated against the petitioner vide Charge Sheet Memorandum No. Admn. 7806/CON/FA&CAO/16 dated 14.06.2019 for committing misconduct inasmuch as he secured appointment in Kolkata Port Trust on 22.09.1980 in the post of Lower Division Clerk under Finance Department as a died in harness candidate by fraudulent representation of his father's name. The petitioner had earlier been imposed a minor penalty of withholding of grade increment vide Order dated 27.04.1988 in this regard and the proceeding was initiated to review the same.*
- ix) Upon receiving the memorandum dated 14.06.2019, the petitioner submitted a written representation dated 03.07.2019.*
- x) Upon conclusion of Inquiry, a notice to show cause as to why the minor penalty of withholding increment should not be enhanced was served upon the petitioner on 05.05.2020 to which the petitioner did not submit any representation.*
- xi) Subsequently, an order dated 22.09.2020 was passed thereby dismissing him from service w.e.f. the date from which he was placed under suspension i.e., 21.06.2017.*
- xii) The petitioner has also preferred an appeal against the said final order passed in the third departmental proceeding on 13.11.2020 which was disposed of by an order dated 17.12.2020 by the appellate authority upholding the Final Order of dismissal passed on 22.09.2020.*
- xiii) That parallel to the Disciplinary Proceedings against the petitioner, a complaint for offences punishable in terms of Chapter III of the Code of Criminal Procedure, 1973 was lodged by the opposite party no.2 regarding the*

*misappropriation of funds by the petitioner which was registered as Hare Street Police Station Case No. 139 dated 30.04.2019 Sections 409/420/467/471/477A of the Indian Penal Code read with section 66D/71 of the Information Technology Act, 2000 and Sections 7, 13(1)(a)(b) and 13 (2) of the Prevention of Corruption Act, 1988.*

***The allegations leveled against the petitioner are as follows:-***

- a) That the petitioner was posted as Accounts Officer in the Bill Wing of the Pre-Audit Section of the Finance Department w.e.f. July, 2011. The Pre Audit Section dealt with online compilation and processing of bills related to the salary and allowances of all the employees which was done through a computerized software module called Pay Role Module. The petitioner was in charge of the "Bill Passing Section" and was responsible for the accuracy and authenticity of the salary disbursed to all employees and enjoyed unfettered access to the Computer Module.*
- b) The petitioner misused his official position to make fictitious entries in the Computer Module with regards to his medical reimbursement bills, LTC and arrears in leave encashment by using his own user name and passwords as well as using the user names and passwords of other employees in an unauthorized manner for the sole purpose of causing wrongful gain onto himself. He also made unauthorized reverse entries to partially off set the undue pecuniary gain made by him.*
- c) The petitioner made undue financial gain of nearly Rs. 1,09,792/- (Rupees one lakh nine thousand seven hundred ninety two) during the period of December, 2016 to May, 2017.*
- d) The petitioner had been appointed as a Lower Division Clerk in the Finance Department of KoPT on 22.09.1980 through the "died-in-harness" scheme and while entering into the service, the petitioner declared his father's name as Late Rama Dhar Shukla when the real name of his father was Shri Raj Banshi Shukla. Simply by virtue of such fraudulent representation the petitioner had secured employment by deceiving the authorities.*
- xiv) Pursuant to an investigation a charge sheet being Charge Sheet No. 16 dated 25.01.2020 under Sections*

*409/420/467/471/477A of the Indian Penal Code read with Section 66D/71 of the Information Technology Act, 2000 and Sections 7, 13(1)(a)(b) and 13(2) of the Prevention of Corruption Act, 1988 was submitted by the Investigating Authorities before the Learned Court.*

- xv) The Investigating Authority had also observed that “substantive evidence has been collected that the accused person committed misappropriation of the amount of Rs. 1,09,702 and the same amount has been recovered from the salary of the accused person by KPT” in Charge Sheet being Charge Sheet No. 16 dated 25.01.2020 under Sections 409/420/467/471/477A of the Indian Penal Code read with Section 66D/71 of the Information Technology Act, 2000 and Sections 7, 13(1)(a)(b) and 13(2) of the Prevention of Corruption Act, 1988, which the petitioner deliberately refused to take notice of or acknowledge in order to mislead the Hon’ble Court to believe that the criminal proceeding was initiated by the opposite party no. 2 only against the allegation of impersonation at the time of appointment.*

- 16.** It is further submitted that it is trite law that the purpose of a disciplinary proceeding is distinct from a criminal proceeding. The former questions whether the erring employee is guilty of the misconduct that would merit actions against him and the delinquent official is dealt with departmentally by imposing penalty in accordance with the relevant rules of service. Whereas a criminal proceeding is initiated for a remedy against the wrong committed to the society and offence is triable in a court of law to impose punishment in terms of Chapter III of the Code of Criminal Procedure, 1973.
- 17.** In reply on Affidavit thereto, the petitioner as reiterated his case as stated in his revisional application and denied the contents in the affidavit in opposition filed by the opposite party no. 2.

**18. Written arguments along with Judgments relied upon has been filed by both the parties.**

**19.** The petitioner in his Written Argument has reiterated his case as made out in the revisional application.

**20.** It is submitted by the petitioner that the authority of Kolkata Port Trust had already decided the matter of impersonation and another proceedings for misappropriation of fund which has also been decided by authority of Kolkata Port Trust by imposing major punishment to the petitioner and the Kolkata Port Trust has also recovered the alleged money from the monthly salary of the petitioner. So the continuation of the above proceedings is a gross abuse of the due process of law and the same should not be continued any further as the petitioner has suffered punishment in the said proceedings and according to the provisions of law, no person can be punished twice on the same cause of action.

**21.** On the other hand the opposite party no. 2 in his written notes has stressed that:-

On 30.04.2019 a complaint was lodged by the opposite party no.2 on the recommendation of the Central Vigilance Commission which was registered as Hare Street Police Station Case No. 139 dated 30.04.2019 Sections 409/420/467/471/477A of the Indian Penal Code read with Section 66D/71 of the Information Technology Act, 2000 and Sections 7, 13(1)(a)(b) and 13(2) of the Prevention of Corruption Act, 1988.

**22. The following Judgments have been relied upon by the opposite parties:-**

- i) *Mahesh Lall vs Union of India & Ors., 2023 SCC OnLine Cal 5648.*
- ii) *Ajit Kumar Nag vs General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors., (2005) 7 SCC 764.*
- iii) *Depot Manager, A.P. State Road Transport Corporation vs Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699.*
- iv) *Noida Entrepreneurs Association vs Noida & Ors., (2007) 10 SCC 385.*
- v) *Radheshyam Kejriwal vs State of West Bengal & Anr., (2011) 3 SCC 581.*
- vi) *S.A Venkataraman vs Union of India., 1954 SCC OnLine SC 26.*

**23. The State has filed the Case Diary** along with a memo of evidence stating therein that:-

The allegation in the present case is that the petitioner when posted as an Accounts Officer Bill Wing of the Pre Audit Section, Finance Department, KPT committed electronic forgery and altered official data by using the user id and password of his sub ordinates Rajib Mitra and his id on 22.12.2016, 23.12.2016, 27.01.2017, 23.02.2017, 24.05.2017 as a payment for medical reimbursement and LTC all to the tune of Rs. 1,09,792/- and committed cheating and

forgery in respect to that amount by making fictitious entries and by increasing the amount payable to him in monthly salary.

- 24.** During investigation it revealed that Santosh Kumar Das, Office Superintendent, Pre Audit Section under Finance Department, KOPT as well as Rajib Mitra, head clerk Shri M. Sinha, Senior Accounts Officer were examined.
- 25.** The electronic print out of the accounts of relevant entries were collected from KOPT.
- 26.** Investigation revealed that accused Sadanand Shukla used his own user id and password and added increased amount in his monthly salary bill for the dates 27.01.17, 21.02.17, 21.02.17, 23.02.17, 24.05.17, 24.05.17, 24.05.17 in account of medical reimbursement, LTC and arrear of leave encashment. He has also used the user id and password of his sub ordinate Rajib Mitra on 23.12.16 and 22.12.16 and added increased amount to his own monthly salary in the account of medical reimbursement and LTC when Rajib Mitra was not in the office and he has misappropriated the amount of Rs. 1,09,792/-.
- 27.** It also revealed that a departmental enquiry in this regard was made where he has himself admitted the fact and has requested the department to recover the amount.
- 28.** Hence during investigation the allegation of misappropriation of an amount of Rs. 109792/- was established and evidences were found.

- 29.** After completion of investigation a prima facie case u/s 409/420/467/471/477A of IPC rw section 66D/71 of I T Act, and Sections 7, 13(1)(a)(b) and 13(2) of P C Act was established against Sadanand Shukla.
- 30.** Charge Sheet u/s 409/420/467/471/477A of IPC rw section 66D /71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of P C Act vide CS No. – 16 dt. 25.01.2020 has been submitted before the Court of Ld. Special Judge, 4<sup>th</sup> Special Court, Calcutta against Sadanand Shukla and the case is pending for trial before the Ld. Court.
- 31. From the materials on record, including the case diary the following facts are before this Court:-**
- i) The petitioner was employed with the Kolkata Port Trust as (LDC) in the year 1980.
  - ii) A Departmental proceeding was initiated against him in 1984, which ended in a minor penalty in 1988.
  - iii) The petitioner was then promoted as an Accounts Officer, Finance Department.
  - iv) In 2018, another Departmental proceeding was initiated on the allegation made in the present case of unauthorized and deceitful misuse of user ID's and passwords of his subordinates and transfer of money in his favour, which was later recovered from his salary.

- v) The proceedings ended vide order dated 21.06.2019 with a major punishment by reducing four stages lower of scale of pay and he was debarred from getting increments till his Superannuation.
- vi) The present case being Special Case No. 01 of 2019 pending before the Learned Special Judge, 4<sup>th</sup> Special Court, Calcutta arising out of Hare Street Police Station Case No. 139 dated 30.04.2019 under Sections 409/420/467/471/477A of the Indian Penal Code read with 66D/71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of the P C Act was registered against the petitioner on 30.04.2019, when the disciplinary proceedings was still pending.
- vii) The disciplinary proceedings which was initiated in 2018 was concluded on 21.06.2019 by the Deputy Chairman and Disciplinary Authority.
- viii) The Complaint in the present case has been filed by the Financial Advisor and Chief Accounts Officer, Kolkata Port Trust.
- ix) **The Central Vigilance Commission vide an office memorandum dated 23.05.2018 (Annexure F, at page 56 to the Affidavit-in-opposition) advised the opposite party no.2 to also file a police complaint for the said fraud.**
- x) This gave rise to the Police Case under revision.

- xi) The Specific Case of the petitioner is that the Learned Special Judge, 4<sup>th</sup> Special Court, Calcutta ought not to have taken cognizance of the offence under Sections 409/420/467/471/477A of the Indian Penal Code read with 66D/71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of the P C Act against the petitioner on the basis of the allegations which have already decided by the authority of the Kolkata Port Trust on the self same cause of action by two departmental proceedings and it has reached its finality and the authority cannot re-open the same in any manner whatsoever.

**32. In *Radheshyam Kejriwal Vs State of West Bengal & Anr., (2011) 3 SCC 581, decided on February 18, 2011*, the Supreme Court held:-**

*“38. The ratio which can be culled out from these decisions can broadly be stated as follows:*

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

**39.** In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

**33.** In ***Mahesh Lall vs Union of India and Ors., (2023 SCC OnLine Cal 5648), decided on 13<sup>th</sup> December, 2023,*** a division bench of the Calcutta High Court held:-

**“61.** In *B.C. Chaturvedi v. Union of Indian* [(1995) 6 SCC 749 in Civil Appeal No. 9830 of 1995], the Supreme Court held that:

“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.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the

*High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every Court, not to speak of a court of plenary jurisdiction like a High Court. Of Course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.*

*24. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case, which thinking was extended to cases attracting Article 21 in Maneka Gandhi v. Union of India, the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram v. State of H.P. also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.”*

**62.** *In Civil Appeal No. 5848 of 2021 (Union of India v. Dalbir Singh) the Supreme Court held (relevant paragraphs are reproduced herein):—*

*“25. This Court in Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia, (2005) 7 SCC 764 held that 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. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”.*

*It was held as under:—*

*“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”*

*(Emphasis Supplied)*

26. This Court in *Noida Entrepreneurs Association v. NOIDA* (2007) 10 SCC 385, held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental

*inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:*

*“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [(1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130].] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011], Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341].*

*“8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short ‘the Evidence Act’].*

*The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."*

*27. This Court in Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya, (1997) 2 SCC 699, held that in the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment. It was held as under:*

*"7. ...There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."*

*(Emphasis Supplied)*

*28. Mr. Yadav, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition before the High Court, 9 (1997) 2 SCC 699 the appellants were given opportunity to produce the registers of the entrustment of S.L.R. to the writ petitioner. But it was stated that record was not available being an old record as the incident was of 1993. The enquiry was initiated in*

2013 after the acquittal of the writ petitioner from the criminal trial. Therefore, in the absence of the best evidence of registers, the oral evidence of use of official weapon stands proven on the basis of oral testimony of the departmental witnesses. 29. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time."

**34. Thus, the two proceedings in the present case are independent, distinct and separate.**

**35.** In the present case though the petitioner was awarded punishment in the disciplinary proceedings, there is no impediment in the criminal

proceedings to continue, in which the decision is based on different considerations and procedure, as 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.

- 36.** In *Ajit Kumar Nag Vs General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Ors., (2005) 7 SCC 764, decided on September 19, 2005*, the Supreme Court held:-

***“..... In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".....”***

- 37.** Thus the proceeding being Special Case No.01 of 2019 pending before the Learned Special Judge, 4<sup>th</sup> Special Court, Calcutta arising out of Hare Street Police Station Case No. 139 dated 30.04.2019 under Sections 409/420/467/471/477A of the Indian Penal Code read with 66D/71 of I T Act and Sections 7, 13(1)(a)(b) and 13(2) of the P C Act, requires no interference by this Court, being in accordance with law.
- 38. CRR 1505 of 2020 is thus dismissed.**
- 39. Trial Court is directed to dispose of the case expeditiously, preferably within six months, considering that the petitioner has already retired from service.**
- 40.** All connected applications, if any, stand disposed of.

- 41.** There will be no order as to costs.
- 42.** Interim order, if any, stands vacated.
- 43.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 44.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**