

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. NO. 483 OF 2024

1. The Union of India through its Chairman cum Chief Executive Officer, Ministry of Railway, Railway Board, having its Office at Room No.236, Rail Bhawan, Raisina Road, Post Office Rail Bhawan, Police Station Parliament Street, New Delhi 110001.
2. The Chairman cum Chief Executive Officer, Ministry of Railway, Railway Board, having its Office at Room No.236, Rail Bhawan, Raisina Road, Post Office Rail Bhawan, Police Station Parliament Street, New Delhi 110001.
3. The Director General, Railway Protection Force, having its Office at Room No.440, Rail Bhawan, Raisina Road, Post Office Rail Bhawan, Police Station Parliament Street, New Delhi 110001.
4. The Director, Railway Protection Force, having its Office at Room No.441, Rail Bhawan, Raisina Road, Post Office Rail Bhawan, Police Station Parliament Street, New Delhi 110001.
5. The Joint Director, Railway Protection Force, having its Office at Room No.441, Rail Bhawan, Raisina Road, Post Office Rail Bhawan, Police Station Parliament Street, New Delhi 110001.
6. Under Secretary / Estt(s), Railway Board, Ministry of Railway, Government of India, having address at Rail Bhawan, Raisina Road, Post Office Rail Bhawan, Police Station Parliament Street, New Delhi 110001.

... **Appellants**

-versus-

Santosh Kumar Dubey son of Late Shankar Dayay Dubey, resident of 301-C, Road No.1A, Ashok Nagar, Post Office Ashok Nagar, Police Station Argora, District Ranchi, Jharkhand.

... **Respondent**

For the Appellants : Mr. Anil Kumar, A.S.G.I.
Ms. Nitu Sinha, C.G.C.

For the Respondent : Mr. Indrajit Sinha, Advocate
Mr. Amrendra Pradhan, Advocate

PRESENT: SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

ORDER

Reserved on 25.10.2024

Pronounced on 19/11/2024

Per Ananda Sen, J. This Intra Court Appeal under Clause 10 of the Letters Patent, preferred by the Union of India and others (respondents in writ petition being W.P.(S) No. 5039 of 2023), is directed against the judgment dated 06.08.2024 passed by the learned Single Judge in W.P.(S) No. 5039 of 2023, whereby the learned Single Judge has allowed the writ petition by quashing the chargesheet dated 31.01.2023 and the order of pre-mature

retirement dated 05.12.2023, of the writ petitioner. Further, a direction was given in the impugned order to restore the services of the writ petitioner with all consequential benefits including continuity in service. The learned Single Judge directed that the intervening period be regularized as leave due.

SUBMISSIONS OF THE APPELLANT-UNION OF INDIA

2. Learned A.S.G.I. appearing on behalf of the appellants-Union of India submitted that the learned Single Judge has committed an error in allowing the writ petition. The writ petitioner (respondent in this Letters Patent Appeal) is involved in a case instituted under the Prevention of Corruption Act being RC 13(A) of 2017 registered for offences under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for amassing disproportionate assets during the check period from 1998 to 2013. Central Vigilance Commission recommended sanction for prosecution and also for initiating a major penalty proceeding. The President of India, in terms of Section 19 of the Prevention of Corruption Act, granted sanction for prosecution against the petitioner and chargesheet was submitted against him. Special Judge, C.B.I. had taken cognizance of the offence on 22.07.2022. A Departmental Proceeding was also initiated and an Enquiry Officer was appointed. In spite of extension of time, the writ petitioner did not file his written statement in defence. The writ petitioner, on 14.01.2022 filed a representation, but as the written submission was not filed, an Enquiry Officer to conduct the Departmental Proceeding was appointed. As per the learned A.S.G.I., learned Single Judge committed illegality while quashing the Departmental Proceeding and the Departmental Chargesheet observing that the representation dated 14.01.2022 was not considered and appointment of Enquiry Officer amounts to non-application of mind. As per him, the Departmental Proceeding could not have been quashed. The finding of the learned Single Judge to the effect that illegality committed by the writ petitioner in amassing disproportionate assets is subject matter of criminal proceeding and can only be adjudged by a Court, as such Departmental Proceeding cannot be initiated, is without a proper backing of law. There is no element of bias in this case. There is no legal obligation on the part of the Railway Board to dispose of the representation of the writ petitioner, which was filed on 14.01.2022. This fact has been lost sight of by the learned Single Judge. Further, the learned Single Judge failed

to take into consideration that representation dated 14.01.2022 has got no relation with the allegation made in the Departmental Proceeding. The Departmental Proceeding was initiated on the ground of not giving intimation of acquisition of properties, which is in violation of Rule 9(15) of the Railway Conduct Rule, whereas the criminal proceeding was initiated for amassing Disproportionate Assets under Section 13(1)(e) of the Prevention of Corruption Act. Since both the proceedings operate in different fields, the Departmental Proceeding could not have been quashed. The finding that there is a delay in initiating the Departmental Proceeding does not warrant quashing of the charge. Further, it was argued that the premature retirement is not a punishment. The writ petitioner along with several others were considered in terms of Rule 1802(a) of the Indian Railway Establishment Code and thereafter a decision was taken to give compulsory retirement to the writ petitioner on the basis of materials available on record. Learned Single Judge could not have sat as an Appellate Authority on the order of compulsory retirement passed by the appellants herein. Further, since the said order is not a punitive order, interference was unwarranted. On these grounds, he submitted that the impugned order of the learned Single Judge is bad in law and needs to be quashed.

SUBMISSIONS OF THE WRIT PETITIONER-RESPONDENT

3. Learned counsel appearing on behalf of the writ petitioner-respondent submitted that a Departmental Proceeding was initiated against the writ petitioner and departmental chargesheet was submitted under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The writ petitioner was directed to submit written submission of defence within 10 (ten) days, which was extended up to 31.03.2023. The writ petitioner made representation on 24.02.2023, stating that his earlier representation dated 14.01.2022 was pending for disposal. Disposal order is essential for his reply, thus, requested for time, but the appellants-Union of India, in most arbitrary manner, rejected his representation for time and appointed an Enquiry Officer. This caused prejudice and reflects bias on the part of the appellants-Union of India. Thus, learned Single Judge has correctly quashed the Departmental Proceeding. Learned counsel argued that without applying mind, the representation of the petitioner for extension of time was rejected. Further, it was argued that on a stale allegation, which is more than 15 years

old and mostly related to his father and mother, who also expired 14 years back, appellant-Union of India had proceeded against the writ petitioner-respondent, which is absolutely bad. The delay, thus, caused is fatal. Further, when a Departmental Proceeding was initiated, during pendency thereof the impugned order of compulsory retirement under Rule 1802(a) of the Indian Railway Establishment Code was issued, which clearly shows biasness against the writ petitioner-respondent and also reflects the malafide intention of the Appellant. He argued that the procedure adopted by the appellant is unknown in law, thus, learned Single Judge had quashed the proceeding. He further submitted that charge in the criminal proceeding is grave in nature and involves complicated question of facts, thus, without conclusion of the Criminal Proceeding, Departmental Proceeding could not have been initiated nor could the writ petitioner have been punished. It was contended that charge is similar and identical, which also prohibits the appellant to proceed against the writ petitioner departmentally. He lastly submitted that the impugned order passed by the learned Single Judge needs no interference as the same is in accordance with law.

FACTS OF THE CASE

4. The writ petitioner-respondent was appointed as Assistant Security Commissioner, Railway Protection Force, Ministry of Railways, New Delhi in the year 1998. On 10.07.2013, a First Information Report was lodged against the writ petitioner by the Central Bureau of Investigation, Anti Corruption Branch, Patna being RC Case No.0232013(A) 0017 for allegedly committing offences under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for the period pertaining to 1998 to 2013. The allegation in the First Information Report is that the writ petitioner had amassed disproportionate assets / income to the extent of Rs.1.48 crore which cannot be accounted for by him, specifically, and was beyond his lawful sources of income. The said criminal proceeding is still pending. A Departmental Proceeding was initiated against the petitioner in exercise of power under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Statement of misconduct was served upon him along with list of documents and article of charges proposed against him vide memo No.2013/Sec(E)/DAR-2/5 dated 31.01.2023. The charge was annexed as Annexure 2 to the writ petition. The statement of article of charges to be

framed against the writ petitioner is under three heads. As per the Article of Charges, the writ petitioner has violated Rule 3(i) (iii) (vi) (ix) (xvii) (xxi), 18(2), Rule 18(3) of the Indian Railway Services (Conduct) Rules, 1966. Alongwith the Article of Charges, Statement of Imputation of Misconduct was also served upon the writ petitioner. The List of Documents relied upon and the witnesses proposed to be examined during the Departmental Proceeding was also intimated to the writ petitioner. Be it noted that on 24.01.2022, the petitioner submitted a representation to the authorities, which, according to the writ petitioner, has covered all the issues including his defence, but without disposing of the said representation, the departmental chargesheet was issued against the petitioner. The writ petitioner, thus, after receipt of the departmental chargesheet, on 24.03.2023, informed the Chairman-cum-C.E.O., Railway Board (Disciplinary Authority) that the charges could not have been framed against the writ petitioner and further the representation dated 14.01.2022, since is pending, he cannot give a proper holistic reply in defence to the chargesheet, thus, a speaking order should be passed on representation dated 14.01.2022. Accordingly, he prayed for time. On 16.05.2023, the writ petitioner was informed that he should submit his defence and no further time will be granted to him as the writ petitioner did not file any reply in defence, an Enquiry Officer was appointed to proceed with the Departmental Proceeding.

5. The writ petitioner, thereafter, on the ground of vagueness, bias, delay and also on the ground of violation of principles of natural justice and violation of Rules and Regulations, challenged the Departmental Proceeding in W.P.(S) No.5039 of 2023, which is the instant writ petition from which this Letters Patent Appeal arises.

6. In the writ petition, vide order dated 05.10.2023, the learned Single Judge directed the respondent-Union of India to file Counter Affidavit and passed an interim order staying the Departmental Proceeding.

7. During pendency of this writ petition and the order of stay, the Union of India issued an order dated 5th September, 2023, compulsorily retiring the writ petitioner in terms of Rule 1802(a) of the Indian Railway Establishment Code. The writ petitioner, thereafter, challenged the said order by way of an amendment. The order of compulsory retirement was stayed by the learned Single Judge, vide order dated 19.12.2023 in the

aforesaid writ petition.

8. Ultimately, vide judgment dated 06.08.2024, the writ petition was allowed by quashing the chargesheet and the Departmental Proceeding and also the order of compulsory retirement and a further direction was given to reinstate the petitioner without break in service and with all consequential benefits.

ANALYSIS AND FINDINGS

(A) ON COMPULSORY RETIREMENT

9. From the writ petition and the documents and also from the arguments, we find that a Departmental Proceeding was initiated against the writ petitioner. The memorandum of charge and the imputation were served upon the writ petitioner. The said memorandum is dated 31.01.2023. As per the statement of Article of Charge framed against the writ petitioner, there is an allegation of violation of Rule 18(2) and 18(3) of the Railway Services (Conduct) Rules, 1966. The said Rules read as under: -

18. Movable, immovable and valuable Property. (1) ...

(2) No railway servant shall, except with the previous knowledge of the Government acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:

Provided that the previous sanction of the Government shall be obtained by the Railway servant if any such transaction is with a person having official dealings with him.

(3) Where a railway servant enters into a transaction in respect of movable property either in his own name or in the name of a member of his family, he shall, within one month from the date of such transaction, report the same to the Government, if the value of such property exceeds two months' basic pay of the Railway servant:

Provided that the previous sanction of the Government shall be obtained by the Railway servant if any such transaction is with a person having official dealings with him.

10. Article of charge is under three heads and alleges that the writ petitioner has failed to maintain absolute integrity and devotion in his duty and has committed misconduct as he failed to intimate the Departmental and competent authority regarding purchase of shops in Defence Colony in the name of his father and also failed to intimate receipt of money from his father-in-law, father and other relatives. Further, there is an allegation that he failed to intimate the Department regarding execution of agreements with

Heritage Developers for purchasing plots in Ranchi. The three charges of the Departmental Proceeding read as under: -

Article of charge No.1:

That, Shri Santosh Kumar Dubey, the then Dy. CSC/RPF(Construction)/Ranchi/ECR, now DIG-cum-CSC/RPF/RDSO while working in Chakradharpur, Dhanbad and Ranchi Divisions during the relevant period committed gross misconduct in as much as he failed to intimate the Department/competent authority regarding purchase of 03 commercial shops at Defence Colony, New Delhi on 23.04.2008 through 03 sale deeds for an amount of Rs.54.06 lakhs (including registration charges etc.) in the name of his father, Late Shri Shankar Dayal Dubey, (these sale deeds have been signed by him by holding power of attorney) and thereby failed to maintain absolute integrity and devotion to duty and thus violated Rule 18(2) of Railway Services (Conduct) Rules, 1966.

Article of charge No.2:

That, Shri Santosh Kumar Dubey, the then Dy. CSC/RPF (Construction)/ Ranchi/ECR, now DIG-cum-CSC/RPF/RDSO, while working in Chakradharpur, Dhanbad and Ranchi divisions during the relevant period committed gross misconduct in as much as he failed to intimate the Department / competent authority regarding:

(i) Receipt of Rs. 10 lakhs into his HUF A/c No.00150100006940 of Bank of Baroda, Dhanbad in 2008-09 (Rs 5 lakhs on 16.12.2008 and Rs.5 lakhs on 12.01.2009) from the account of Shri Raghuvir Singh, his father-in-law.

(ii) Receipt of Rs.1 lakh on 26.06.2008_and Rs.1.50 lakhs on 18.11.2008 from his father Late Shri Shankar Dayal Dubey.

(iii) Receipt of Rs.4.64 lakh, (Rs.2 lacs on 20.05.2008 and Rs.2.64 lacs on 30.06.2008) from Shri Rajesh Kumar/Rajesh Kumar Dubey.

(iv) Receipt of Rs.4.5 lacs during 30.12.2009 to 15.05.2010 from Shri Amendra Kumar Singh R/o Bokaro.

And thereby he failed to maintain absolute integrity and devotion to duty and thus violated Rule 18(3) of Railway Services (Conduct) Rules, 1966.

Article of charge No.3:

That, Shri Santosh Kumar Dubey, the then Dy. CSC/RPF (Construction)/Ranchi/ECR, now DIG-cum-CSC/RPF/RDSO, while working in Chakradharpur, Dhanbad and Ranchi Divisions during the relevant period committed gross misconduct in as much as he failed to intimate the Department/competent authority regarding execution of an agreement dated 26.11.2003 with M/s Heritage Developer, Ranchi by Shri Santosh Kumar Dubey and Smt. Priya Dubey (his wife) for purchasing a plot near

BIT Mesra, Ranchi in Rs.14 lacs and thereby failed to maintain absolute integrity and devotion to duty and thus violated Rule 18 (2) of Railway Services (Conduct) Rules, 1966.

11. Be it noted that along with the charge, statement of imputation, description of documents and list of documents have been served upon the petitioner.

12. It is an admitted case of the parties that a criminal case was also instituted against the petitioner with an allegation that while he was working in RPF as Assistant and Senior Commandant and other places during service period from 1998 to 2013, by corrupt and illegal means, he acquired huge assets to the extent of Rs.1.48 crores, which is disproportionate to his known sources of income. This criminal case being RC Case No.0232013(A) 0017 is also pending.

13. It is also an admitted case that the petitioner filed a representation on 14.01.2022, explaining his innocence and stating that this acquisition of property is not illegal and is not disproportionate. The said representation is pending. This representation is in respect of sanction of the Criminal Case. It is also undisputed that during pendency of this criminal case, Departmental Proceeding was initiated and chargesheet was issued. It is also undisputed that the writ petitioner did not file his defence statement in the Departmental Proceeding, rather on several occasions prayed for time and also insisted for disposal of his representation dated 14.01.2022. It is also undisputed that the Union of India appointed an Enquiry Officer to proceed against the writ petitioner in the Departmental Proceeding. The Departmental Proceeding was pending when instant writ petition was filed challenging the proceeding.

14. A glaring trend of events had taken place thereafter. Vide an interim order dated 05.10.2023, learned Single Judge stayed the Departmental Proceeding, which was initiated against the writ petitioner. The appellant-Union of India, thereafter, admittedly, did not proceed with the Departmental Proceeding, but invoked Rule 1802(a) of the Indian Railway Establishment Code, which was communicated to the writ petitioner vide Memorandum No. E.II/AEP-6639 dated 13.12.2023. The said communication reads as follows: -

In compliance of decision of President of India conveyed under Railway Board's order No.E(O)1/2023/SR-10-P/29 dated 05.12.2023 referred to above, Shri Santosh Kumar Dubey,

NF/SAG/IRPFS, DIG-CUM-CSC/RDSO/Lucknow has been retired from Railway Service under Rule-1802(a) of Indian Railway Establishment Code IREC Vol.II w.e.f. 12.12.2023 (AN) i.e. the date on which Board's order dated 05.12.2023 ibid has been deemed served on him.

Shri Santosh Kumar Dubey has also been paid a sum equivalent to the amount of his pay and allowances for a period of three months calculated at the same rate at which he was drawing immediately before his retirement in lieu of the notice period as per rules.

His settlement dues will be arranged in due course as per extant rules.

*Sd/-
(R.P. Shakya)
APO/Gaz
For Director General*

15. Rule 1802(a) of the Indian Railway Establishment Code reads as under: -

1802(a) Notwithstanding anything contained in this Rule, the appointing authority shall if is of the opinion that in public interest to do so, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice:-

(i) If he is in Group 'A' or Group 'B' service or post in a substantive or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

(ii) In any other case, after he has attained the age of 55 years.

16. Aforesaid provision gives power to the Appointing Authority, in public interest, after giving notice, to compulsorily retire a railway servant. Thus, by the order, the writ petitioner was compulsorily retired during pendency of the Departmental Proceeding.

17. It is well settled principle as laid down by the Hon'ble Supreme Court in the case of ***Punjab State Power Corporation Limited and Others Versus Hari Kishan Verma*** reported in ***(2015) 13 SCC 156*** that an order whereby simplicitor a government servant is compulsorily retired, cannot be said to be punitive in nature. There is no doubt about the aforesaid proposition, but if the facts and circumstances lead to a conclusion that order of compulsory retirement is, by nature, punitive and is guided by any other extraneous factor and is not bonafide, the same can be interfered with as it is stigmatic. The facts of each case has to be weighed to see as to whether

order of compulsory retirement is simplicitor in nature or attaches a stigma or has been passed circumventing a proper Departmental Proceeding to prejudice the delinquent. If an order of compulsory retirement is passed with a punitive intention and to short circuit a Departmental Proceeding pending against any employee, the Court can exercise jurisdiction under Article 226 of the Constitution and interfere and adjudicate the validity of the same.

The Hon'ble Supreme Court, in the case of **Captain Pramod Kumar Bajaj Versus Union of India** reported in **(2023) 11 SCC 466**, while dealing with the aforesaid issue at paragraphs 23 and 26 thereof, has held as follows: -

23. In Ram Ekbal Sharma v. State of Bihar (Ram Ekbal Sharma v. State of Bihar, (1990) 3 SCC 504 : 1990 SCC (L&S) 491] it was observed that in order to find out whether an order of compulsory retirement is based on any misconduct of the government servant or the said order has been made bona fide, without any oblique or extraneous purpose, the veil can be lifted. Following are the pertinent observations made in the said decision: (SCC p. 516, para 32)

“32. On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the court from delving into the basis of the order if the order in question is challenged by the government servant concerned as has been held by this Court in Anoop Jaiswal case (Anoop Jaiswal v. Union of India, (1984) 2 SCC 369 : 1984 SCC (L&S) 256]. This being the position the respondent State cannot defend the order of compulsory retirement of the appellant in the instant case on the mere plea that the order has been made in accordance with the provisions of Rule 74(b)(ii) of the Bihar Service Code which prima facie does not make any imputation or does not cast any stigma on the service career of the appellant. But in view of the clear and specific averments made by the respondent State that the impugned order has been made to compulsorily retire the appellant from service under the aforesaid rule as the appellant was found to have committed grave financial irregularities leading to financial loss to the State, the impugned order cannot

but be said to have been made by way of punishment. As such, such an order is in contravention of Article 311 of the Constitution of India as well as it is arbitrary as it violates principles of natural justice and the same has not been made bona fide.”

26. In State of Gujarat v. Umedbhai M. Patel [State of Gujarat v. Umedbhai M. Patel, (2001) 3 SCC 314 : 2001 SCC (L&S) 576], this Court has delineated the following broad principles that ought to be followed in matters relating to compulsory retirement : (SCC p. 320, para 11)

“11. The law relating to compulsory retirement has now crystallized into a definite principle, which could be broad summarized thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

18. In the instant case in hand, from the admitted facts, we find that a Departmental Proceeding against the writ petitioner was initiated by the Railways and the same is pending. The said Departmental Proceeding was stayed by the order of the learned Single Judge of this Court. The Union of India, thereafter, bypassed the Departmental Proceeding and issued the order of compulsory retirement. This action of the Union of India not only circumvented the pending Departmental Proceeding, but also over-reached the interim order passed by the learned Single Judge, whereby the Departmental Proceeding was stayed. This action of the Union of India

smacks malice and cannot be said to be a bona fide order in terms of Rule 1802(a) of the Indian Railway Establishment Code. Learned Single Judge, thus, has correctly set aside the order of compulsory retirement passed by the appellant-Union of India. We find no error and illegality in the same.

(B) ON THE ISSUE OF QUASHING OF DEPARTMENTAL PROCEEDING

19. The next issue, which falls for consideration is in respect of setting aside the entire Departmental Proceeding. The learned Single Judge has set aside the entire Departmental Proceeding on the ground that the writ petitioner was not allowed to file written statement of defence and the representation praying for extension of time was not accepted. It has been further held that if the impugned proceeding is permitted to be proceeded, then the trial in the criminal case will be prejudiced. The learned Single Judge also held that representation dated 14th January, 2022 ought to have been considered by the respondents while taking a final view on prosecution sanction, as also recommending Departmental Proceeding by issue of chargesheet.

20. It is undisputed that criminal case was instituted against the writ petitioner. Allegation in the criminal case is that the writ petitioner has amassed wealth beyond his known sources of income. The criminal case is under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The Departmental Proceeding was initiated with a chargesheet and the memorandum of imputation. The charge, which are in three heads which have already been reproduced in paragraph 10 hereinbefore.

21. The issue in relation to continuation of a Departmental Proceeding and a Criminal Proceeding simultaneously on same and similar nature of facts and what would be the effect of each on another has been discussed and laid down by the Hon'ble Supreme Court in several decisions. In a criminal case, guilt of the accused is to be proved "beyond reasonable doubt" whereas the same person, if he is delinquent in a Departmental Proceeding, his guilt has to be proved on the basis of "preponderance of probability". The Hon'ble Supreme Court in the case of ***M. Paul Anthony Versus Bharat Gold Mines Ltd. and Another (1999) 3 SCC 679*** at paragraph 22 thereof has concluded as under: -

"22. The conclusions which are deducible from various

decisions of this Court referred to above are:

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

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

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

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

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

22. Further, in the case of **Stanzen Toyotetsu India (P) Ltd. Versus Girish V. and Others** reported in **(2014) 3 SCC 636**, at paragraph 16 thereof, the following has been held by the Hon’ble Supreme Court: -

16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for

an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

23. In the case of ***Hindustan Petroleum Corporation Ltd. and Others versus Sarvesh Berry*** reported in **(2005) 10 SCC 471**, at paragraph 8 thereof, it has been held by the Hon’ble Supreme Court that purpose of Departmental Enquiry and Criminal Case are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty, the offender owes to the Society, or for a breach of law. It has been held that what is required to be seen is whether the Departmental Enquiry would seriously prejudice the defence of the delinquent in the criminal trial. The Hon’ble Supreme Court has held that it is always a question of fact to be considered, and each case has to be dealt on its own merit. It is necessary to quote paragraph 8 of the said judgment, which reads as under: -

“8. The purposes of departmental enquiry and of prosecution are two different and distinct aspects. 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. So, crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry 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 criminal case 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 enquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short “the Evidence Act”). Converse is the case of departmental enquiry. The enquiry in departmental proceedings 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 enquiry would seriously prejudice the delinquent in his defence 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.”

24. In the case of ***Kendriya Vidyalaya Sangathan and Others Versus T. Srinivas*** reported in (2004) 7 SCC 442, while dealing with stay of Departmental Proceeding when on the self-same facts criminal case was pending, the Hon'ble Supreme Court at paragraphs 10 and 11 thereof, has held as under: -

“10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.

11. In the instant case, from the order of the Tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, a reading of the two impugned orders indicates that both the Tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the Tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the respondent in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It 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, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The Court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] the facts which seem to be almost similar to the facts of this case, held

that the Tribunal fell in error in staying the disciplinary proceedings.”

25. Again in the case of **State of Karnataka and Another Versus Umesh** reported in **(2022) 6 SCC 563**, the Hon’ble Supreme Court at paragraph 16 thereof has held as follows: -

“16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

26. The Hon’ble Supreme Court in the case of **State Bank of India & Others Versus P. Zadenga** reported in **(2023) 10 SCC 675**, while considering stay of Departmental Proceeding vis-à-vis pending criminal case, taking note of several judgments of the Hon’ble Supreme Court, has held that departmental proceeding pending criminal trial would not warrant an automatic stay unless, of course, a complicated question of law is involved. Further, at paragraph 26 thereof, it has been held as under: -

“26. In C. Nagaraju [Karnataka Power Transmission Corpn. Ltd. v. C. Nagaraju, (2019) 10 SCC 367 : (2020) 1 SCC (L&S) 92] it was observed : (SCC p. 371, para 9) “9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] 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 PC Act are established, and if

established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417 : 1996 SCC (L&S) 1455] ”

27. Keeping these principles of law in mind, after going through criminal chargesheet and departmental chargesheet, we find that the criminal case is in respect of amassing wealth beyond the known sources of income, whereas the charge in the Departmental Proceeding is that of misconduct as the writ petitioner failed to intimate the Department / Competent Authority regarding purchase of properties at New Delhi through sale deed in the name of his father and also committed gross misconduct as he failed to inform regarding receipt of money from several persons including father-in-law and father and committed gross misconduct as he failed to intimate the authority regarding execution of an agreement with Heritage Developer for purchase of a plot along with his wife. Thus, from the criminal charge and the Departmental Charge, we find that scope of criminal case and Departmental Proceeding is absolutely different. Whether the charge in the Departmental Proceeding, at all amounts to misconduct or not has to be judged by the Enquiry Officer. The same cannot be decided in a writ petition under Article 226 of the Constitution of India. Further, the Departmental Charge is independent of the Criminal Charge. Even if the Criminal Charge fails, the Departmental Charge can be sustained. This is because the Departmental Charge is of a misconduct of not giving proper information of purchase of asset and receipt of money etc.

28. So far as the defence statement is concerned, admittedly, the writ petitioner has not filed the same as he insisted on disposing of his representation dated 14.01.2022, which was filed against the order of sanction of criminal case. In our view, disposal of representation dated 14.01.2022 has got no bearing on the Departmental Proceeding. The writ petitioner cannot defer filing of his defence statement on the ground of non-disposal of his representation in respect of sanction for criminal prosecution.

29. Since both the Departmental Proceeding and the Criminal Trial operates in different field, we are of the opinion that the Departmental Proceeding against the writ petitioner could not have been quashed by the learned Single Judge. So far as the delay in Disciplinary Enquiry is concerned, the same is absolutely a question of fact, which cannot be

decided by this Court. This plea of delay including all the defence pleas should be taken by the writ petitioner in the Departmental Proceeding. Thus, that part of the impugned judgment, whereby the Departmental Proceeding has been quashed by the learned Single Judge, is set aside. The appellant herein will give only one more opportunity to the writ petitioner to file his defence statement within a reasonable time and thereafter should proceed with the Departmental Proceeding, if they so chose to do.

30. The aforesaid were the only two issues, which were raised before us by the appellant while arguing this appeal. Maintainability and jurisdiction issue was not canvassed by the appellant before us.

31. Thus, in view of what has been held above, we conclude that the order of compulsorily retiring the writ petitioner is malafide, bad in law and thus, has been correctly set aside by the learned Single Judge.

So far as the quashing of Departmental Proceeding is concerned, in view of what has been held and discussed above, we hold that the same could not have been set aside. The same is revived with a direction to the appellant-Union of India to give one more opportunity to the writ petitioner to file his defence statement within an adequate reasonable period and proceed with the Departmental Proceeding thereafter.

32. With the aforesaid observations and directions, this Intracourt Appeal stands disposed of. Pending interlocutory applications, if any, stand disposed of.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)

AFR/Kumar/Cp-02