

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7038 OF 2022

Dattatray Bajrang Naik
Age – 68 yrs., Occ – Retired
R/at 347/3, Mahatma Phule Peth,
Near Vithal Mandir,
Pune – 411042

..... Petitioner

Versus

- 1 Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi - 110001.
- 2 Director General of Vigilance,
Customs and Central Excise,
1st Floor, Samrat Hotel, Kautilya Marg,
Chanakypuri,
New Delhi – 110021
- 3 The Chief Commissioner of Central
Excise and Customs, Pune Zone (AA)
ICE House, 41-A, Sasoon Road,
Opp. Wadia College,
Pune – 411001
- 4 The Chief Commissioner of Central
Excise and CGST, Pune – II
Commissionerate, (DA)
ICE House, 41-A, Sasoon Road,
Opp. Wadia College,
Pune – 411001

..... Respondents

**WITH
WRIT PETITION NO.12693 OF 2018**

- 1 Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi - 110001.
- 2 Director General of Vigilance,
Customs and GST (formerly known
Central Excise) 1st & 2nd Floor,
Samrat Hotel, Kautilya Marg,
Chanakyapuri,
New Delhi – 110021
- 3 The Chief Commissioner of Central GST
& Customs (formerly known as Central
Excise & Customs), Pune Zone, GST
Bhavan, 41-A, Sasoon Road,
Opp. Wadia College,
Pune – 411001
- 4 The Chief Commissioner
Central Tax – GST Pune-II (formerly
known as Central Excise & Customs,
Pune-III) 41-A, Sasoon Road, GST
Bhavan, Opp. Wadia College,
Pune – 411001

..... Petitioners

Versus

Dattatray Bajrang Naik
Residing at 347/3, Mahatma Pule Peth,
Nr. Vithal Mandir, Pune – 42
Ex-Superintendent of Central Excise
Commissionerate, Pune-III, Pune

..... Respondent

Shri Sandeep Phatak for the Petitioner in WP/7038/2022 and for
Respondent in WP/12693/2018

Shri Parag A. Vyas a/w. Ms. Karuna Yadav for Petitioner in WP/12693/2018

Shri Rui Rodrigues with Shri A. A. Garge for Respondent No.1 to 4 in WP/7038/2022

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. & ARIF S. DOCTOR, J.

DATE : APRIL 10, 2024

ORAL JUDGMENT (PER : CHIEF JUSTICE)

1. Heard learned counsel representing the respective parties.

CHALLENGE:

2. These petitions filed under Article 226 of the Constitution of India, assail the validity of the judgment and order dated 11th April 2017 passed by the Mumbai Bench of Central Administrative Tribunal, Mumbai (hereinafter referred to as the **Tribunal**), in Original Application No.548 of 2014, whereby the order of punishment of removal of the Petitioner of Writ Petition No.7038 of 2022 from service (hereinafter referred to as the **Petitioner**), dated 11th September 2013 passed by the disciplinary authority and the order dated 12th November 2013 rejecting the statutory appeal preferred by the Petitioner against the order of removal, have been quashed. By the impugned judgment the Petitioner has been ordered to be reinstated in

service, however, it has further been held by the Tribunal that he shall not be entitled to any promotion on the basis of incorrect caste certificate submitted by him. The Tribunal has also held that the Petitioner shall not be entitled to wages from the date of his removal from service till the date he superannuated i.e. 30th November 2013. The Tribunal has also directed that the revised order placing the Petitioner to his original post of Inspector, Central Excise shall be passed negating the effect of all subsequent promotions granted to him after his initial appointment. The impugned judgment further holds that the Petitioner would be entitled to admissible pensionary benefits as a consequence of his reinstatement in service and superannuation in the post of Inspector, Central Excise.

3. The Petitioner has challenged the impugned judgment and order passed by the Tribunal to the extent the Tribunal has held that he shall not be entitled to promotion and that he shall not be entitled to wages from the date of his removal till the date of his superannuation. The Petitioner also takes exception to the impugned judgment of the Tribunal to the extent the Tribunal has directed that he shall be placed on his original post of Inspector, Central Excise and that all benefits and effect of

subsequent promotions granted to him shall be negated. The Petitioner also challenges the directions issued by the Tribunal by passing the impugned judgment to the effect that he shall be entitled to pensionary benefits in the post of Inspector, Central Excise and not in the post of Superintendent, Grade-B on which post he had been working prior to passing of the order of punishment of removal from service.

4. The Petitioner in Writ Petition No.12693 of 2018 i.e. the Union of India has challenged the impugned judgment passed by the Tribunal in its entirety. The Union of India, in fact, has asserted in this matter that the judgment of the Tribunal setting aside the order of punishment of removal from service dated 11th September 2013 itself is erroneous and accordingly, the consequential reliefs granted to the Petitioner by the Tribunal are also not sustainable.

FACTS:

5. The Petitioner was appointed on the post of Inspector, Central Excise in the year 1979 on the basis of a selection held for recruitment to the said post by the Staff Selection Commission. The Petitioner had participated in the said selection

for recruitment of the Inspector, Central Excise against a vacancy reserved for the Scheduled Tribe category. Having been selected, the Petitioner submitted his joining on the post of Inspector, Central Excise and at the time of joining furnished the caste certificate dated 15th June 1971 issued by the Tahasildar cum Taluka Magistrate, Pune City, wherein he was described to belong to "Hindu Beldar" community. As per the said certificate dated 15th June 1971 the "Hindu Beldar" community is recognized as a Scheduled Tribe under the Scheduled Tribe (Modification) Order 1956 read with Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956.

6. The Petitioner, after working on the post of Inspector, Central Excise was promoted on 23rd December 1994 to the post of Superintendent Grade-B, Central Excise, however, this promotion order, according to the Petitioner, wrongly described the Petitioner to belong to Scheduled Caste category. It is the case of the Petitioner that immediately after receiving the promotion order for the post of Superintendent Grade-B, Central Excise, he represented the authorities concerned to correctly describe him in the promotion order as belonging to Scheduled Tribe category, however, the said mistake was not rectified.

7. The Petitioner, thus, ever since his appointment on the post of Inspector, Central Excise in the year 1979 worked uninterruptedly and was even granted promotion to the higher post of Inspector (Senior Grade) and Superintendent Grade-B, Central Excise in the year 1985 and 1994, respectively, and all along this period of 25 years, no doubt was ever cast on his category of Scheduled Tribe.

8. The Petitioner received a letter on 9th June 2004 from the office of Central Excise, Pune requiring him to submit a duly attested copy of his caste certificate, stating that the caste certificate in respect of the officers of the reserved categories was required for the purpose of preparation of a post-based roster. The Petitioner submitted an attested copy of his caste certificate on 18th June 2004. However, on 17th November 2004, he received a letter from the Administrative Officer in the Office of Commissioner of Central Excise, Pune wherein it was stated that the caste "Beldar" mentioned in the caste certificate submitted by the Petitioner does not appear in the Scheduled Tribe category in the State of Maharashtra as per Appendix-19 of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in services and that the Petitioner was,

accordingly, required to submit a clarification. The Petitioner replied vide his letter dated 21st March 2007 stating therein that the caste certificate furnished by him was issued by the competent authority on the strength of affidavit executed by his father in the year 1971 and that his father passed away in the year 1978. He further stated that the affidavit executed by his father was not readily available with him. The Petitioner submitted in the representation that he tried to obtain a copy of the certificate obtained by his father in the year 1971 from the Tahasildar, however, he could not get any copy thereof.

9. It appears that vide letter dated 11th September 2007, the Office of Additional Commissioner, Central Excise, Pune required the Regional Caste Certificate Scrutiny Committee, Pune District to verify the caste certificate issued by the Tahasildar/Magistrate, Pune in favour of the Petitioner. In response to the said letter dated 11th September 2007, the Special District Social Welfare Officer and Member Secretary, Regional Caste Certificates Scrutiny Committee No.-3 wrote to the Additional Commissioner of Central Excise stating therein that caste "Beldar" was not under the Scheduled Tribe category but it was rather categorized under "Vimukta Nomadic Tribe".

10. Thereafter, a Memorandum of Charge, dated 23rd June 2008 was issued to the Petitioner requiring him to submit his written statement of defense. The said Memorandum of Charge contained Article of Charge and statement of imputation of misconduct in support of Article of Charge.

11. As per the Article of Charge, dated 23rd June 2008, the Petitioner was said to have committed gross misconduct as he allegedly failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant for the reason that he had illegitimately claimed the benefit of Scheduled Tribe for getting selected and posted as Inspector, Central Excise and Customs. The imputation of misconduct in support of the Charge, *inter alia*; stated that the caste "Beldar" under Scheduled Tribe category, as claimed by the Petitioner on the basis of caste certificate dated 15th June 1971 issued by the Tahasildar and Taluka Magistrate, Pune City, does not fall under the category of either Scheduled Tribe or Scheduled Caste, but in the category of Vimukta Nomadic Tribe in the State of Maharashtra since 1976 and accordingly, it was apparent that the Petitioner had falsely claimed the benefit of

Scheduled Tribe category, which he did not belong to, at the time of his appointment. The imputation further recites that such an act on the part of the Petitioner exhibited absolute lack of integrity and gross misconduct unbecoming of a Government servant and hence he had contravened certain provisions of the Central Civil Services (Conduct), Rules 1964.

12. In sum and substance, the charge levelled against the Petitioner in the departmental proceedings was that he wrongly took benefit of the caste certificate issued by the Tahasildar cum Taluka Magistrate, Pune City on 15th June 1971 whereby the caste "Beldar" was described to be categorized as Scheduled Tribe though the said caste falls in the category of Vimukta Nomadic Tribe in the State of Maharashtra. The allegation, thus, was that the Petitioner took benefit of a wrong certificate and claimed his appointment against the post reserved for Scheduled Tribe category though the caste to which he belongs did not fall in the category of Scheduled Tribe.

13. On the basis of the aforesaid memorandum of charge, dated 23rd June 2008, inquiry was conducted against the Petitioner who submitted his reply denying the allegations and

stating that the Petitioner belongs to "Beldar" caste and that he did not lay any false claim as belonging to any other caste. He also stated in his reply that the caste certificate mentions his caste as "Beldar" and that the dispute has arisen because of classification of "Beldar" caste. The Petitioner further stated in his reply that the caste certificate was issued in the year 1971 by the then competent authority and under his signature. He also stated that there is no allegation against the Petitioner that the Tahasildar's certificate was forged or false or counterfeit. It was also stated that the caste certificate was never declared to be invalid and unless and until such caste certificate is declared to be invalid, no charge is made out against the Petitioner.

14. In the reply, the Petitioner further stated that the caste certificate was issued by the competent authority on the basis of affidavit sworn-in by his father who was illiterate and that he had since died. It was also stated in reply that the father of the Petitioner had affirmed and executed the affidavit stating therein that he belongs to "Beldar" community and classification of "Beldar" community was left to the competent authority.

15. The Petitioner further submitted in his reply to the charge

memorandum that the charge sheet mentions that as per Scheduled Castes and Scheduled Tribes Order (Amendment) Act 1976 the caste "Beldar" falls under the category of Nomadic Tribe in Maharashtra, however, the caste certificate describing the caste as "Beldar" as Scheduled Tribe was issued to the Petitioner by the competent authority in 1971 i.e. much before 1976 and accordingly, the charge memo has been issued without examining the status of the caste "Beldar" prior to 1976. He also stated that after he joined the Department as Inspector, Central Excise, relevant entry in his service book was made as to his caste and status therein was also duly authenticated in token of verification by the competent officer of the Department and further that annual verification by the Head Office was also made according to the Central Excise Procedure Manual. He stated, thus, that the entries regarding caste status in his service book have been verified by different authorities all along of his service career of 29 years and that he was initially appointed on probation for a period of two years on 30th November 1979 and after successful completion of his probation he was confirmed in service in the year 1984. It was, thus, denied by the Petitioner that he ever failed to maintain absolute integrity.

16. On submission of charge sheet, the inquiry was conducted and the inquiry officer submitted his report on 13th March 2009. It is relevant to point out that during the course of inquiry, the Defense Assistant expressed his opinion that, **"it was Petitioner's honest belief that he belongs to Scheduled Tribe category and that he belongs to "Beldar" community as per his father's affidavit."** The Presenting Officer, during the course of inquiry submitted that the affidavit executed by father of the Petitioner could not be produced and therefore, no comment could be offered as to what exactly was mentioned in the affidavit, only "Beldar" or Scheduled Tribe as well. The stand of the Department in inquiry was that "Beldar" community does not belong to Scheduled Tribe category. The Inquiry Officer further noticed that in the letter of the Divisional Social officer / Member Secretary of Caste Certificate Scrutiny Committee it was stated that the "Beldar" community was not covered either under the Scheduled Tribe or Scheduled Caste category; rather it was covered under the Nomadic Tribe category in Maharashtra. The Inquiry officer also noticed that the Petitioner could not submit either the original or the photocopy of the affidavit of his father to ascertain the details given therein and that the office of

the Magistrate, vide letter dated 27th November 2008 also stated that his office did not find any copy of the affidavit submitted by the father of the Petitioner for obtaining caste certificate.

17. The Inquiry officer has also noticed that the **from these facts, it appears that he honestly believed that his caste "Beldar" was falling under the Scheduled Tribe category in Maharashtra.** The Inquiry officer, however, concluded finally that the submission of caste certificate was issued on the strength of the affidavit filed by the father and that he knowingly claimed status of Scheduled Tribes category to which he does not belong and that the office of the Divisional Social Welfare Officer certified that "Beldar" community is not covered either under the Scheduled Castes or Scheduled Tribes category but is covered under the nomadic tribe category in Maharashtra. The Inquiry Officer, thus, found the charge to be proved.

18. On the basis of the aforesaid inquiry report, the disciplinary authority i.e. Commissioner of Central Excise, Pune passed the order of punishment of removal from service on 11th September 2013 which was challenged by the Petitioner by filing a statutory appeal which, too, was dismissed by the appellate authority by

means of order dated 20th November 2013. Challenging these two orders, the Petitioner instituted Original Application No.548 of 2014 which has been allowed with certain directions by quashing the order of punishment of removal from service. It is this order passed by the Tribunal that has been assailed by the Petitioner by instituting Writ Petition No.7038 of 2022.

19. The Union of India has also challenged the judgment dated 11th April 2013 passed by the Tribunal in its entirety.

ARGUMENTS ON BEHALF OF THE Petitioner (EMPLOYEE):

20. In support of Writ Petition No.7038/2022, the Petitioner has made the following submissions:

(a) As per Office Memorandum dated 25th May 2005 issued by the Department of Personnel and Training, Government of India, re-verification of caste / category of only those employees was to be conducted who were appointed after 1995:

In this regard, our attention has been drawn by the learned Counsel for the Petitioner to the Office Memorandum dated 25th May 2005 which was issued on the subject of implementation of the directions of the High Court, Delhi issued in Civil Writ Petition No.5976 of 2003 regarding re-verification of caste where

employees had secured employment under the strength of forged / fake Scheduled Tribes certificates. Paragraph 2 of the said Office Memorandum states that the Government has decided that a detailed verification of all such certificates produced before various authorities since 1995 be carried out. Paragraph 2 of the Office Memorandum dated 25th May 2005 is extracted hereinbelow:

"2. CBI was directed by the Hon'ble High Court vide order dated 14th July, 2004 to verify the details of all those persons who had obtained employment under ST category. On preliminary verification, it appears that more than 30% of the ST certificates presented by candidates were either forged or false. Government has, therefore, decided that a detailed verification of all such certificates produced before various appointing authorities since 1995 be carried out."

21. It is thus, the submission of learned Counsel for the Petitioner that having been appointed in the year 1979 on the post of Inspector, Central Excise, the re-verification of the caste certificate furnished by the Petitioner was uncalled for as the Office Memorandum dated 25th May 2005 clearly states that the Government had taken decision to conduct verification of certificates produced before various appointing authorities since 1995 and not prior to the year 1995. The submission further is that the Department only on 11th September 2007 issued a letter

to the Member Secretary of the Caste Scrutiny Committee seeking certain information, in response to which the Member Secretary of the Caste Scrutiny Committee wrote a letter on 14th September 2007 informing the Department that the "Beldar" caste does not belong to Scheduled Tribe category but it belongs to Vimukt Nomadic Tribe. It is, thus, the submission that appointment of the Petitioner having been made prior to 1995, his caste certificate was not covered for re-verification under the Office Memorandum dated 25th May 2005.

(b) Undue interference by Director General (Vigilance) Department of Central Excise:

Learned Counsel for the Petitioner has argued that the facts of the present case reveal that the Director General (Vigilance) has exercised undue influence in the matter of punishment inflicted upon the Petitioner. In this regard, it has been mentioned that the procedure for imposing penalties has been given in the Central Civil Services (Classification, Control and Appeal Rules, 1965 (hereinafter referred to as the **CCS (CCA) Rules 1965**), according to which, as per the mandate of Rule 14(23)(i) after the conclusion of inquiry, a report has to be prepared and forwarded to the disciplinary authority along with

records of inquiry. He has further stated that action on the inquiry report is to be taken in terms of the provisions of Rule 15 of the CCS (CCA) Rules, 1965 which does not require any direction or instruction to be issued by the Directorate of Vigilance or any other authority. It has been stated that Rule 15 requires consultation with the Union Public Service Commission and the disciplinary authority is required to consult the Commission where it is necessary for seeking its advice. His submission further is that the matter of disciplinary proceedings was referred by the Department to the Directorate of Vigilance who advised for strict major penalty by way of either removal or dismissal of the Petitioner from service. The said fact is clear from a letter dated 28/29th May 2008 written by the Additional Commissioner (Vigilance) to the Commissioner, Central Excise, Pune. However, on receipt of the advice the Commissioner, Central Excise wrote a letter to the Director General (Vigilance), Customs and Central Excise that though the tribe declared by the caste certificate submitted by the Petitioner was not included in the category of Scheduled Tribe, however, no action to verify the same was taken at that time i.e. in the year 1979. The Commissioner further wrote that after a lapse of 30 years, to say

that the Petitioner alone was at fault, would be unjust. The Commissioner also, thus, stated in the said letter that the Petitioner be reverted to the grade of Inspector and be placed at par with the Officers recruited in the year 1979 under the general category and that the benefit which he may have derived from his status of Scheduled Tribe, be denied to him.

22. Thus, the Commissioner was of the opinion that having regard to the facts and circumstances of the case, the Petitioner may be reverted, by way of punishment, to the grade of Inspector. The Commissioner, Central Excise, Pune-III also wrote a letter dated 5th November 2009 to the Director General (Vigilance), Directorate of Vigilance, Customs and Central Excise disclosing the entire issue in detail. In the said letter it was stated that verification of caste certificate came up only at the time of preparation of post-based roster by the Central Excise, Mumbai Commissionerate in the year 2004 and that the Delhi High Court had directed while deciding Civil Writ Petition No.5976 of 2003 to inquire the cases of persons who secured Government jobs on the basis of fake Scheduled Tribe certificates between 1995-2000 and accordingly, instructions were issued for verification of Scheduled Tribe certificates of all

the persons recruited since 1995.

23. It was opined by the Commissioner of Central Excise Pune-III in his letter dated 5th November 2009 that there is nothing on record to doubt that the Petitioner belongs to "Beldar" community but categorization of "Beldar" community as Scheduled Tribe by the Tahasildar has now been found incorrect and accordingly, the certificate is not a forged or fake or false certificate; rather it is an incorrect certificate. This letter also contains an averment that the Department had accepted the said certificate and that the Petitioner has been in service for 30 years and also that there is otherwise nothing adverse against him and that the certificate is not finally invalidated by following the prescribed procedure. The Commissioner, in the said letter dated 5th November 2009 agreeing with the suggestions of the Commissioner, Pune-I had requested the Director General (Vigilance) to review the advice given and to re-consider the penalty proposed.

24. The Chief Commissioner, Central Excise and Customs, Pune Zone-1 also wrote a letter on 13th August 2013 narrating the facts of the case and expressed his opinion that the advice

received from the Director General (Vigilance) prescribes harsher punishment than what is warranted in the peculiar facts of the case which is to be distinguished from the cases of outright forgery where Central Vigilance Officer normally recommends for imposition of major penalty. The Chief Commissioner, thus, requested that the advice for removal or dismissal from service be reconsidered and as an alternate punishment, the disciplinary authority had also suggested that the Petitioner be reverted to the grade of Inspector and be placed at par with the officers recruited in the same year i.e. 1979 under the general category.

25. The proposal submitted by the Chief Commissioner was reconsidered however, the Director General (Vigilance) / Central Vigilance Officer, Central Board of Excise and Customs reiterated the advice communicated earlier. A letter was accordingly written by the Additional Director General (Vigilance) to the Chief Commissioner of Central Excise and Customs, Pune on 30th August 2013, whereby it was directed that the advice given by the Director General (Vigilance) be implemented immediately without any further delay and copy of the order of punishment be passed before retirement of the Petitioner which should be communicated at the earliest to the office of the Director General

(Vigilance). The letter dated 30th August 2013 also contains a recital that the earlier advice of Director General Vigilance has not been implemented deliberately with a view to help the Officer to retire without dismissing him as there was no fresh ground for reconsideration on both the occasions when reconsideration proposals were sent. It also mentions that the responsibility thereof also needs to be fixed on the officials who did not implement the Central Vigilance Officer's advice. Letter dated 30th August 2013 also directed that action of fixing the responsibility may be completed within three weeks. The letter dated 30th August 2013 is extracted as under:

**"DIRECTORATE GENERAL OF VIGILANCE
CUSTOMS & CENTRAL EXCISE
SAMRAT HOTEL, 2nd & 3rd FLOOR,
KAUTILYA MARG, CHANAKYAPURI
NEW DELHI – 110021**

F.NO.V-548/04/2008/3950

Date : 30.08.2013

To,

*Shri Sanjeev Bihari
Chief Commissioner,
Central Excise & Customs,
Pune Zone, ICE House, 41-A,
Sasoon Road, Opp. Wadia College,
Pune-411 001*

Sir,

*Sub: -Reconsideration of 2nd Stage advice in respect of
Disciplinary proceedings initiated against Shri.
D. B. Naik, Supdt. - Reg.*

Kindly refer to your letter F.No. IT/39-26/VIG/CCO/PZ/2013 dated 12.08.2013, on the above subject.

2. The fresh reconsideration proposal relating to Shri.D.B.Naik, Supdt. has been examined. DG(Vig)/CVO, CBEC has reiterated the advice communicated vide letters of even no. 1473 dated 07.04.2011 , and even no. 2524 dated 08.07.2009.

3. Accordingly, I have been directed to request you to ensure that Second Stage Advice of DG (Vig)/CVO, CBEC dated 08.07.2009 and 07.04.2011 and reiterated now is implemented immediately without any further delay and Copy of order passed well before his retirement must be communicated at the earliest to this office.

4. Further it appears that earlier advice of DG Vigilance has not been implemented deliberately with a view to help the officer to retire without dismissing him as there was no fresh ground for reconsideration both the times when reconsideration proposals were sent. Responsibility therefore also needs to be fixed on officials who let this happen and did not implement the CVO's advice which was first communicated to the Commissionerate vide our letter dated 8.7.09. The action of fixing responsibility may be completed within three weeks and a report with specific proposal for taking disciplinary action against those responsible for the delay be submitted to the D.G. Vigilance latest by 25.09.13 without fail.

5. This issues with the approval of D.G.(Vig).

*Yours faithfully,
Sd/-
(Manoranjan Virk)
Additional Director General"*

26. Based on the aforesaid correspondence between the Commissioner / Chief Commissioner Pune and Joint Director of

Vigilance, Customs and Central Excise, it has been argued that it is a clear case where disciplinary authority, while passing the order of punishment of removal from service, has not applied his independent mind; rather he has acted on the dictates of the Director General of Vigilance which is in clear infringement of the CCS (CCA) Rules, 1965, according to which the final decision of punishment to be inflicted against an employee is to be taken by the disciplinary authority.

(c) In absence of any allegation of fraud or misrepresentation by the Petitioner while furnishing the caste certificate dated 15th June 1971, the charge levelled against him cannot be said to be made out:

Learned Counsel for the Petitioner has submitted that no charge of committing any fraud or forgery or making any misrepresentation while furnishing the caste certificate dated 15th June 1971 at the time of entering into service in the year 1979, was levelled against the Petitioner by the Department and in absence of any such charge, the stand taken by the Department that the Petitioner committed gross misconduct is not made out. Learned Counsel for the Petitioner has argued that even the inquiry officer in his finding recorded in paragraph

9 (vii) has stated that, **it appears that the Petitioner honestly believed that his caste "Beldar" was falling under Scheduled Tribe category in Maharashtra.** Thus, it has been argued that on the basis of such finding and in absence of any allegation of fraud, misrepresentation or forgery, punishment inflicted upon the Petitioner is not sustainable.

(d) Petitioner has unblemished record:

It is the case set-up by the Petitioner that it is not in dispute that ever since his appointment in the year 1979 on the post of Inspector, the Petitioner has unblemished record and that any wrong entry which appears to have crept in caste certificate dated 15th June 1971, cannot be attributed to him as the caste certificate was issued by the competent authority viz. Tahasildar cum Taluka Magistrate, Pune on the basis of affidavit submitted by his father at the time when the Petitioner was minor. In this view, the submission is that having regard to the unblemished service career as well, inflicting the Petitioner with the major penalty of removal from service is unwarranted.

ARGUMENTS ADVANCED ON BEHALF OF THE UNION OF INDIA:

27. Learned Counsel representing the Union of India has opposed the Writ Petition filed by the employee and has argued that the Tribunal has completely erred in setting aside the order of punishment of removal from service. He has also argued that there is no procedural lapse or flaw in the departmental proceedings which could be found on record so as to make the departmental proceedings and the order of punishment of removal from service, vulnerable in any manner. It has further been submitted by the learned Counsel representing the Union of India that it is not in dispute that the Petitioner belongs to "Beldar" caste. He has also stated that it is also not in dispute that as per the opinion tendered by the Member Secretary, Caste Scrutiny Committee "Beldar" caste is not categorized either as Scheduled Caste or Scheduled Tribe; rather it is categorized as Nomadic Tribe. His submission is that the categorization of caste "Beldar" in the caste certificate dated 15th June 1971 is, thus, admittedly incorrect and any benefit derived by the Petitioner on that basis cannot be permitted.

28. Submission on behalf of the Union of India further is that that cut-of-date mentioned in the circular dated 25th May 2005 issued by the Department of Personnel and Training, Government of India, will have no application in this case for the reason that process of verification in this case had commenced prior to the date the circular was issued i.e. at the time of preparation of post-based roster initiated in the year 2004.

29. Shri Parag Vyas, learned Counsel representing the Union of India has relied on the judgment of the Hon'ble Supreme Court in the case of ***Chief Executive Officer, Bhilai Steel Plant, Bhilai Vs. Mahesh Kumar Gonnade and Ors.***¹ and has stated that it has been held in this case that in view of the undisturbed finding that an employee does not belong to Scheduled Tribe category, relief to the Petitioner of the said matter could not have been granted by the High Court. On the basis of the said judgment, it has been argued that the Petitioner, in this case as well, is not entitled to any equitable relief by virtue of his long service. Reliance has also been placed on a Division Bench judgment of this Court in the case of ***Ashabai Bhila Koli @ Ashabai Devman Borse Vs. Bharat Sanchar Nigam Ltd. &***

¹ 2022 SCC OnLine SC 866

Ors., dated 13th March 2020 rendered by Aurangabad Bench in a bunch of Writ Petitions, leading Writ Petition being Writ Petition No.9885/2019 to impress upon the Court that verification of caste certificate under the Maharashtra Verification of Caste Certificates Act 2000 is also applicable to the employees of the Central Government.

30. On the aforesaid grounds, on behalf of the Union of India, it has been urged that the Writ Petition filed by the Petitioner – employee is liable to be dismissed, whereas the Writ Petition filed by the Union of India deserves to be allowed and the judgment passed by the Tribunal is liable to be quashed.

ISSUES

31. The facts as pleaded by respective parties in this case give rise to the following issues for our consideration:

- (a) Whether in the facts of the case, the disciplinary authority, while passing the order of punishment of removal from service surrendered its discretion to and acted on the dictates of Director General (Vigilance), Department of Central Excise, which vitiates the order of punishment?
- (b) As to whether re-verification of caste/category of the Petitioner conducted by the Department including the consequential disciplinary inquiry was barred under the

provisions of the Office Memorandum dated 25th May 2005 issued by the Department of Personnel and Training?

(c) As to whether the punishment of removal from service awarded to the Petitioner is disproportionate to the gravity of charge and as such has rightly been set aside by the Tribunal in the light of doctrine of proportionality?

DISCUSSION AND CONCLUSION:

32. To examine the first issue as culled out above, we may refer to the provisions of Rule 14 and 15 of the CCS (CCA) Rules, 1965. Rule 14(23) of the said Rules mandates that after conclusion of the inquiry a report shall be prepared which shall be forwarded to the disciplinary authority along with the records of inquiry. Rule 15 of the CCS (CCA) Rules 1965 provides for action on the inquiry report. The action under Rule 15 on the inquiry report has to be finally taken by the disciplinary authority. Rule 15(3)(a) provides that in every case where it is necessary to consult Union Public Service Commission (hereinafter referred to as the **UPSC**), the disciplinary authority shall forward a copy of the inquiry report along with his comments on the representation of the delinquent employee for the advice of the UPSC. Rule 15(3)(b) requires that the disciplinary authority shall forward the advice of the UPSC to the

Government servant requiring him to submit his written representation and thereafter under sub Rule (5) of Rule 15 the disciplinary authority has to form an opinion whether the charged officer is to be inflicted with penalty and accordingly, he shall make an order imposing such penalty. Rule 15 of the CCS (CCA) Rules 1965 is quoted hereunder:

"15. ACTION ON INQUIRY REPORT:

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government Servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:

(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and

(ii) comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.

(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, on the advice of the Commission.

(4) The Disciplinary Authority shall consider the representation under sub-rule (2) and/or clause (b) of sub-rule (3), if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (5) and (6).

(5) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty.

(6) 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 inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed."

33. A perusal of Rule 15 as quoted above reveals that the ultimate authority for imposing penalty against a charged officer is the disciplinary authority who in certain cases may seek

consultation with the UPSC and form its opinion on consideration of the representation to be made by the charged officer in respect of the advice tendered by the UPSC and taking into consideration the entire material available in the record of the disciplinary proceedings. It is, thus, apparent that the Rules do not require any consultation with or advice from the Central Vigilance Officer of the Department.

34. At this juncture, we may refer to a document tendered by the learned Counsel appearing for the Union of India which appears to have been downloaded from the website of Central Board of Indirect Taxes & Customs and gives certain information about the Directorate General of Vigilance, Indirect Taxes and Customs. The said document mentions certain functions and duties of the Directorate General of Vigilance which, *inter alia*; includes, (a) to get an inquiry conducted into various complaints received from public, (b) to process the investigation received from its Zonal Units and (c) to obtain Central Vigilance Commission/ Central Vigilance Officer's first stage advice for further action where charged officers under the Central Board of Indirect Taxes & Customs are involved. It also provides that Zonal units of the Directorate General of the department may

also assist the disciplinary authority in disciplinary and prosecution matters relating to Group-A officers under Central Board of Indirect Taxes & Customs in consultation with Central Vigilance Commission. No other rule or circular or regulation was brought to the notice of the Court by the learned Counsel representing either of the parties.

35. Accordingly, what we could gather about the functions and duties of the Directorate General of Vigilance Department in the matters of disciplinary action against the officers under the Central Board of Indirect Taxes & Customs is that the Director General of Vigilance of the Department is to assist the disciplinary authority in disciplinary matters relating to Group-A officers under the Central Board of Indirect Taxes & Customs.

36. Having regard to Rule 15 of the CCS (CCA) Rules, 1965 and the document submitted by learned Counsel representing the Union of India which describes the functions of Directorate General of Vigilance of the Department, what we unambiguously conclude is that the only function assigned to the Directorate General, Vigilance is to assist the disciplinary authority in the matters concerning Group-A officers of the Department. We also

conclude that there does not appear to be any mandate for the disciplinary authority to consult or seek advice of the Directorate General of Vigilance of the Department for forming an opinion about the punishment or quantum of punishment to be inflicted upon the charged officer. The authority to inflict punishment is vested in the disciplinary authority under Rule 15 of the CCS (CCA) Rules, 1965 and accordingly, the disciplinary authority has to apply its independent mind for arriving at a conclusion regarding the punishment or quantum of punishment to be imposed against a charged officer in case charges are found to be proved.

37. To delve into the issue as to whether advice or direction of Vigilance Directorate of the department is binding on the disciplinary authority we find it appropriate to first reflect upon the requirement of consultation with UPSC in the matter of disciplinary action against the officers and also on the issue as to whether the advice tendered by the UPSC is binding.

38. Under Article 311 of the Constitution of India, the Government servants have been provided certain protections and one of the protections provided to the Government servants

under this constitutional provision is that no Government servant shall be dismissed or removed or reduced in rank by an authority subordinate to that by which he was appointed. Thus, under the scheme of Article 311 it is either the appointing authority or an authority higher in rank to the appointing authority which is empowered to inflict either of the major penalties of dismissal or removal from service, that too, only after an inquiry in which the employee concerned has been informed of the charges and is given a reasonable opportunity of being heard in respect of the charges.

39. Article 320 of the Constitution of India provides for the functions of the UPSC. Sub Article 3(c) of Article 320 provides that the UPSC shall be consulted on all the disciplinary matters affecting a person serving under the Government of India or the State Government in civil capacity. Article 320(3)(c) is quoted hereinbelow:

Article 320(3)(c):

320 : Functions of Public Service Commissions:

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted -

(a)

(b)

(c) *on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;"*

40. What is the nature of consultation in respect of disciplinary matters with UPSC has been settled long ago by a Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***State of U.P. Vs. Manbodhan Lal Srivastava***², where it has been held that the opinion of the UPSC is not binding upon the disciplinary authority. Discussing the interface between Article 311 and 320 of the Constitution of India, the Hon'ble Supreme Court has held that Article 311 is not in any way controlled by the provisions of Chapter II of Part XIV of the Constitution with particular reference to Article 320. Paragraph 8 and 9 of the report in the case of ***Manbodhan Lal Srivastava (supra)*** is quoted hereunder:

"8. *Secondly, it is clear that the requirement of the consultation with the Commission does not extend to making the advice of the Commission on those matters, binding on the Government. Of course, the Government, when it consults the Commission on matters like these, does it not by way of a mere formality, but with a view to getting proper assistance in assessing the guilt or otherwise of the person proceeded against and of the*

² 1957 SCC OnLine SC 4

suitability and adequacy of the penalty proposed to be imposed. If the opinion of the Commission were binding on the Government, it may have been argued with greater force that non-compliance with the rule for consultation would have been fatal to the validity of the order proposed to be passed against a public servant. In the absence of such a binding character, it is difficult to see how non-compliance with the provisions of Article 320(3)(c) could have the effect of nullifying the final order passed by the Government.

9. *Thirdly, Article 320 or the other articles in Chapter II of Part XIV of the Constitution, deal with the constitution of the Commission and appointment and removal of the Chairman or other members of the Commission and their terms of service as also their duties and functions. Chapter II deals with the relation between Government and the Commission but not between the Commission and a public servant. Chapter II containing Article 320, does not, in terms, confer any rights or privileges on an individual public servant, nor any constitutional guarantee of the nature contained in Chapter I of that Part, particularly Article 311. Article 311, therefore, is not, in any way, controlled by the provisions of Chapter II of Part XIV, with particular reference to Article 320."*

41. The principle that the appointing authority is not bound by the advice of UPSC in terms of the provisions contained in Article 320 of the Constitution of India, has been reiterated in **A. N. D'Silva Vs. Union of India**³, where it has been observed that **"the President is by Article 320 of the Constitution required to consult the UPSC (except in certain cases, which are not material) but the President is not bound by**

³ AIR 1962 SC 1130

the advice of the UPSC.

42. The Constitution Bench judgment in the case of ***Manbodhan Lal Srivastava (supra)*** has been relied on and quoted with approval by Hon'ble Supreme Court in various later judgments. One such reference in this regard may be had to ***Indian Administrative Services (S.C.S.) Association, U.P. & Ors. Vs. Union of India & Ors.***⁴ In the said case, the law propounded by the Supreme Court in the ***Manbodhan Lal Srivastava (supra)*** has been referred to and it has further been observed that ***Manbodhan Lal Srivastava (supra)*** did not extend the role of consultation to making the advice of the UPSC to be binding on the Government. Paragraph 17 of the judgment in the case of ***Indian Administrative Services (S.C.S.) Association, U.P.*** is extracted hereinbelow:

"17. In State of U.P. v. Manbodhan Lal Srivastava [1958 SCR 533, 542 : AIR 1957 SC 912 : (1958) 2 LLJ 273] the word "consultation" in Article 320 of the Constitution of India was considered by a Constitution Bench. It was held that the word "consultation" did not envisage mandatory character for consultation, but the Constitution-makers allowed the discretion to the appointing authority to consult the Public Service Commission. But the executive Government cannot completely ignore the existence of the Public Service Commission or pick up and choose cases in which it may or may not be consulted. However, prior consultation was held to be not mandatory for removal of a

⁴ 1993 Supp(1) SCC 730

Government servant as the Central Government has not been tied down by the advice of the UPSC. This Court did not extend the rule of consultation to making the advice of the Commission on those matters binding on the Government. In the absence of a binding character, this Court held that non-compliance of Article 320(3)(c) would not have the affect of nullifying the final order passed by the Government of removal of the Government servant from service. In U.R. Bhatt v. Union of India [AIR 1962 SC 1344 : (1962) 1 LLJ 656] this Court held that the absence of consultation of the Public Service Commission or any irregularity in consultation under Article 320 does not affect the ultimate decision taken by the authority under Article 311 of the Constitution. In Ram Gopal Chaturvedi v. State of M.P. [(1969) 2 SCC 240 : (1970) 1 SCR 472] the same view was reiterated. In N. Raghavendra Rao v. Dy. Commissioner [(1964) 7 SCR 549 : AIR 1965 SC 136] construing the words "prior approval" of the Central Government in the proviso to Section 115(7) of S.R. Act of varying the conditions of service the Constitution Bench held that "prior approval" would include a general approval to the variation in the conditions of service within certain limits, indicated by the Central Government. Same view was reiterated by another Constitution Bench in Mohd. Shujat Ali v. Union of India [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449, 469-471]"

43. In the case of ***Union of India and Anr. Vs. T. V. Patel***,⁵ a question arose as to whether supply of copy of advice tendered by UPSC to the delinquent employee while imposing penalty is necessary or not. Hon'ble Supreme Court placing reliance on the Constitution Bench judgment in the case of ***Manbodhan Lal Srivastava (supra)*** held that the provisions of Article 320(3)(c) are not mandatory and as such do not confer any right on the

5 (2007) 4 SCC 785

public servant so that the absence of consultation or any irregularity in the consultation process or in furnishing a copy of advice tendered by the UPSC does not afford the delinquent servant a cause of action in any court of law. It is, however, necessary to refer to a judgment of Hon'ble Supreme Court in the case of ***Union of India and Ors. Vs. R. P. Singh***,⁶ where ***T.V. Patel (supra)*** has been held to be *per incuriam* to the extent ***T.V. Patel (supra)*** held that the advice tendered by the UPSC was not necessary to be served upon the delinquent officer before passing the order of punishment, but, the principle as enunciated by the Constitution Bench judgment in the case of ***Manbodhan Lal Srivastava (supra)*** remains unaffected by the pronouncement in ***R. P. Singh (supra)***.

44. In view of the aforesaid discussion, it is well settled that the advice tendered by the UPSC in relation to the disciplinary matters involving a Central Government employee under Article 320(3)(c) of the Constitution of India is not binding on the disciplinary authority; neither consultation with the UPSC is mandatory.

45. We have already noticed above that the CCS (CCA) Rules, 6 (2014) 7 SCC 340

1965 do not envisage any consultation with or seeking the advice of the Central Vigilance Officer/Directorate General of Vigilance of the Department concerned. In absence of any such mandate of either consultation with or advice from the Director General of Vigilance, it is difficult to hold that in case any such advice is tendered in the matters relating to the disciplinary action against the officers of the Central Government, such advice will be binding on the disciplinary authority for the reason that though CCS (CCA) Rules, 1965 provide for seeking consultation from UPSC, however, the Hon'ble Supreme Court in the aforementioned judgments held that such consultation with and advice of UPSC is not binding. Once despite existence of provision of consultation with UPSC in the CCS (CCA) Rules, 1965, Hon'ble Supreme Court has held that the advice of UPSC in disciplinary matters is not binding, to hold that such advice tendered by the Director General of Vigilance will be binding is extremely difficult for the reason that no such provision regarding consultation even exists in CCS (CCA) Rules, 1965.

46. To ascertain as to whether in the matter of inflicting punishment against a delinquent officer, the advice tendered by vigilance organization such a Chief Vigilance Commission or the

Directorate General of Vigilance of any Department is binding or not, reference may be had to a judgment of the Hon'ble Supreme Court in the case of ***Nagaraj Shivarao Karjagi Vs. Syndicate Bank, Head Office, Manipal and Anr.***⁷. In this case, the relevant statutory regulations governing disciplinary matters left it to the discretion of the punishing authority to inflict appropriate punishment having regard to the gravity of misconduct proved in a particular case. The Hon'ble Supreme Court held that such discretion has been completely fettered by the direction issued by the Ministry of Finance where the Bank was told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance. Expressing surprise on such directives issued by the Ministry of Finance, Department of Economic Affairs (Banking Division), Hon'ble Supreme Court observed that the Bank's consultation with the Central Vigilance Commission in every case was not mandatory and even if the Bank had made a self-imposed rule to consult with the Central Vigilance Commission in every disciplinary matter, it does not make the

7 (1991) 3 SCC 219

Commission's advice binding on the punishing authority. The Apex Court in ***Nagaraj Shivarao Karjagi (supra)*** referred to ***A. N. D'Silva (supra)*** and followed the view expressed therein that the Commission's function is purely advisory, as it is not an appellate authority over the inquiry officer or the disciplinary authority and further that the advice tendered by the Commission is not binding on the Bank or the punishing authority. Hon'ble Supreme Court further observed that it is not obligatory on the punishing authority to accept the advice of the Chief Vigilance Commission. Paragraph 16 and 17 of the report in the case of ***Nagaraj Shivarao Karjagi (supra)*** are extracted hereinbelow:

"16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has

been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. *We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulations, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self-imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in A.N. D'Silva v. Union of India [1962 Supp 1 SCR 968 : AIR 1962 SC 1130] has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission."*

47. The judgment in the case of **Manbodhan Lal Srivastava** (***supra***) was again relied on by the Hon'ble Supreme Court in

the case of ***State of A.P. & Anr. Vs. Dr. Rahimuddin Kamal***,⁸ where the discipline and appeal rules provided that before taking a decision, the Government shall consult Andhra Pradesh Vigilance Commission. The Hon'ble Supreme Court placing reliance on ***Manbodhan Lal Srivastava (supra)*** clearly observed that the word "shall" appearing in the relevant rule does not make the Rule mandatory and consequently non-consultation with Andhra Pradesh Vigilance Commission would not render the order of removal of an employee concerned as illegal.

48. Some what similar matter came up for consideration before Hon'ble Supreme Court in the case of ***Satyendra Chandra Jain Vs. Punjab National Bank & Ors.***⁹, where following the law laid down in ***Nagaraj Shivarao Karjagi (supra)***, Hon'ble Supreme Court directed the disciplinary authority to take decision in the matter of penalty on the basis that the recommendation made by the Chief Vigilance Commissioner is not binding.

49. Thus, the aforesaid discussion leaves no room of doubt in

⁸ (1997) 3 SCC 505

⁹ (1997) 11 SCC 444

our minds that firstly, consultation with Chief Vigilance Officer / Directorate General of Vigilance of the Department of Indirect Taxes & Customs in this case was not mandatory and secondly; the advice tendered of the Vigilance Department was not binding on the disciplinary authority. Under rule 15 of the CCS (CCA) Rules, 1965 it is the disciplinary authority who has to exercise his discretion applying his independent mind without being influenced under any dictate of the Directorate General of Vigilance. However, the facts of the case, as are available on record, clearly establish that though the disciplinary authority was of the opinion that the Petitioner should be inflicted with the punishment of reduction in rank to his original post of Inspector Central Excise but on the asking of the Directorate General of Vigilance he has been inflicted with the penalty of removal from service.

50. We have already noticed that on receipt of advice from the Directorate of Vigilance to inflict the punishment of removal/dismissal upon the Petitioner vide letter dated 28/29th May 2008 written by the Additional Commissioner (Vigilance), the Commissioner Central Excise, Pune wrote a letter to the Directorate General of Vigilance, Customs and Central Excise

that having regard to the facts and circumstances, it will be more appropriate that the Petitioner be reverted to the grade of Inspector and be placed at par with the officers recruited in the year 1979 under the general category. The Commissioner, Central Excise also wrote a letter on 5th November 2009 to the Directorate General of Vigilance discussing the entire issue in detail and stating therein that there was nothing on record to doubt that the Petitioner belongs to "Beldar" community but categorization of "Beldar" community as scheduled tribe by Tahasildar has been found incorrect and accordingly, the caste certificate furnished by the Petitioner cannot be said to be a forged or false document; rather at the most, it is an incorrect certificate. By the said letter dated 5th November 2009, the Commissioner, Central Excise, Pune also informed the Director General (Vigilance) of the Department that the Department had accepted the said certificate and that the Petitioner had been in service for 30 years and also that there was nothing adverse against him and that the certificate was not finally invalidated and accordingly, a request was made to the Director General (Vigilance) to review the advice given and to reconsider the penalty proposed.

51. Even the Chief Commissioner, Central Excise and Customs, Pune vide his letter dated 30th August 2013 after reciting the facts of the case, expressed his opinion that the advice received from the Director General (Vigilance) prescribes harsher punishment than what was warranted in the peculiar facts of the case which needed to be distinguished from the cases of outright forgery where Chief Vigilance Officer clearly recommends for imposition of penalty. The Chief Commissioner, thus, requested by the said letter that the advice for dismissal or removal from service be reconsidered and as an alternate punishment, the Petitioner be reverted to the grade of Inspector and be placed at par with the officers recruited in the same year i.e. 1979 under the general category.

52. We, however, notice that the proposal made by the Commissioner, Central Excise, Pune and the Chief Commissioner, Central Excise, Pune was outrightly turned down by the Director General (Vigilance) and the Additional Director General (Vigilance) of the Department by writing a strongly worded letter dated 30th August 2013 to the Chief Commissioner of Central Excise & Customs, Pune not only reiterated the advice

communicated earlier for removal / dismissal of the Petitioner was reiterated but also directed that such advice be implemented immediately without any further delay and that the order of dismissal/removal be passed against the Petitioner which must be communicated at the earliest to the Directorate General of Vigilance. The said letter dated 30th August 2013 also directed to fix the responsibility on those who deliberately did not implement the advice rendered by the Directorate General of Central Excise for removing/dismissing the Petitioner. The letter also directed that the action of fixing the responsibility may be completed within three weeks and report with specific proposal for taking the disciplinary action against those responsible for alleged delay be submitted to the Director General (Vigilance), without fail.

53. It is in the aforesaid facts that the disciplinary authority passed the order of removal from service. The correspondence between the Commissioner, Central Excise, Pune and the Directorate General of Vigilance and also between the Chief Commissioner of Central Excise and Director General, clearly shows without any ambiguity that the Directorate General, Vigilance in this case ensured that the Petitioner is inflicted with

the harsher penalty i.e. removal from service without leaving it to the discretion of the disciplinary authority to consider and decide the nature of punishment to be inflicted upon the Petitioner. Such an action on the part of the Director General (Vigilance) in this case not only infringes Rule 15 of the CCS (CCA) Rules, 1965 which is binding on all having statutory force as the same have been framed under Article 309 of the Constitution of India but also is found to be in complete derogation of law laid down by the Hon'ble Supreme Court as discussed above. The disciplinary authority has, thus, clearly surrendered its discretion vested in him to the Director General (Vigilance) in this case and has abdicated his powers acting on the dictates of the Director General (Vigilance). The disciplinary authority has, thus, exercised his powers and authority in a manner which cannot be legally approved of for the reason that under Rule 15, it is he who has to form an opinion about the punishment and quantum of punishment as well by applying his independent mind, however, facts of the instant case explicitly reveal that the disciplinary authority was of the view that having regard to the peculiar facts and circumstances of the case, the Petitioner needs to be inflicted with punishment of reversion to

his original post of Inspector, Central Excise but surrendering his discretion, the disciplinary authority acted under the dictate of Director General (Vigilance) and passed the order of removal from service.

54. It need not be elaborated that if law vests an authority or power to be exercised by a particular authority, then such power is to be exercised by that authority alone without any fetter unless permissible under law. If the authority vested with a power, exercises such power not with his independent mind, but under the dictate of another authority, decision so taken in such circumstances cannot be permitted to be sustained in the eye of law.

55. We, thus, do not hesitate to hold neither do we have any ambiguity in our mind that the order of removal from service passed against the Petitioner in this case is illegal and vitiated as the same has not been passed by the disciplinary authority independently.

56. In the aforesaid view, the order of punishment of removal from service cannot be permitted to be sustained.

57. Regarding the issue as to whether the process of re-verification of the caste certificate submitted by the Petitioner which was issued in the year 1971 by the Tahasildar cum Taluka Magistrate, Pune was warranted in this case, we may refer to the Office Memorandum dated 25th May 2005 issued by the Department of Personnel and Training which clearly provided that the re-verification shall be undertaken of such certificates produced before appointing authorities since 1995. It does not talk about the re-verification of the caste certificates submitted or produced before the appointing authority before 1995. In this case, the caste certificate was issued in the year 1971 which was produced/submitted by the Petitioner on his appointment on the post of Inspector, Central Excise in the year 1979 and accordingly, the process of re-verification was not covered by the said Office Memorandum dated 25th May 2005.

58. However, having observed above, the process of re-verification of caste certificate, in our opinion could be undertaken independent of the prescription in the Office Memorandum dated 25th May 2005. It is simultaneously also worth noticing that since 1979 till 2004 though at various stages the Department had occasion to verify the caste certificate but at

no point of time any such exercise was undertaken.

59. The Petitioner continued to work for 30 years. Even though the verification process was not covered by the Office Memorandum dated 25th May 2005, it was very well open for the Department to initiate verification process of the caste certificate, however, the issue as to whether any such re-verification exercise could be undertaken by the Department loses significance in this case in view of the undisputed facts and also for the reason that we have already held that the order of removal from service is vitiated. The caste certificate was issued in the year 1971 by the competent authority on the basis of an affidavit said to have been filed by the father of the Petitioner at the time when the Petitioner was a minor. The contents of the affidavit could not be ascertained even from the office of the Tahasildar cum Taluka Magistrate, Pune but there is no denial of the fact that the said caste certificate was issued from the office of the Tahasildar cum Taluka Magistrate, Pune. It is also to be noticed that even the inquiry officer, in his inquiry report, has noticed that, **"it appears that the Petitioner honestly believed that his caste "Beldar" was falling under the scheduled tribe category in Maharashtra"**. The issue, thus,

is not that the Petitioner used or falsified or forged the document or he took benefit of any document obtained by him fraudulently; rather the issue in this case is as to whether the Tahasildar cum Taluka Magistrate, Pune, who at the relevant time, was the competent authority, issued caste certificate mentioning therein that "Beldar" community falls under the category of scheduled tribe, wrongly or rightly. Such discrepancy in the caste certificate, is not attributable to the Petitioner keeping in view the fact that the caste certificate was issued in the year 1971 on the basis of some affidavit said to have been filed by his father before the Tahasildar, Taluka Magistrate, Pune at the time when the Petitioner was a minor.

60. We may also observe that there is no allegation of any fraud, forgery or misrepresentation by the Petitioner in the charge memorandum. It is only that the recital in the caste certificate that the case "Beldar" to which the Petitioner undisputedly belongs is not included in the category of scheduled tribe, is incorrect. Thus, there is nothing on record, neither has it been pleaded by the Department that Petitioner had at any point of time committed any fraud or forgery or misrepresented the Department.

61. Apart from the above, we may also notice that the Petitioner has unblemished record to his credit. After being appointed as Inspector, Central Excise, he was further promoted on two occasions and has attained the age of superannuation after serving the Department without there being any complaint from any corner against him except the order of removal from service, which was subject matter of challenge before the Tribunal.

62. As regards the judgment cited by the learned Counsel representing the Union of India in the case of ***Mahesh Kumar Gonnade and Ors. (supra)***, we may observe that there cannot be any quarrel to the legal principle laid down in the said case that merely on account of long service, an employee is not entitled to any relief in the face of the finding that the employee does not belong to scheduled tribe category. However, in the peculiar facts of the present case, what we have already noticed is that categorization of "Beldar" caste as scheduled tribe described in the caste certificate, cannot be attributed to the Petitioner. Even the inquiry officer, in his conclusion, has recorded a finding that the Petitioner honestly believed that his

caste "Beldar" belongs to the category of scheduled tribe. The caste certificate was issued by the competent authority, issuance of which is not disputed. It is only the description of "Beldar" caste falling in scheduled tribes category in the said caste certificate which was questioned and there is no denial that "Beldar" caste does not fall in the category of scheduled tribe. But since such discrepancy is not attributable to the Petitioner, punishing him with the major penalty of removal from service appears to be harsher and not in proportion to the gravity of charge. It is settled principle of law that even in disciplinary matters, the penalty imposed on a charged officer should be commensurate with the nature of the gravity of charge. Considering the peculiar facts of the case even the disciplinary authority in this case was of the opinion that the Petitioner should be inflicted with the penalty of reduction in rank to his original post of Inspector, Central Excise, however, acting on the dictate of Director General (Vigilance) punishment of removal from service has been inflicted on the Petitioner. Thus, the imposed punishment of removal from service, in our opinion, does not withstand the test of doctrine of proportionality.

63. The Tribunal, by passing the impugned judgment has not only set aside the order of punishment of removal from service but has also ordered that the Petitioner shall be reinstated in service and accordingly a revised order placing the Petitioner to his original post of Inspector, Central Excise shall be passed negating the effect of all subsequent promotions granted to him after his initial appointment and accordingly, he shall be entitled to pensionary benefits on his superannuation in the post of Inspector, Central Excise and not in the post of Superintendent, Grade-B.

64. Having formed an opinion that the order of punishment of removal from service inflicted upon the Petitioner is vitiated in law, ordinarily, this Court would have remitted the matter to the disciplinary authority to take decision afresh regarding quantum of punishment in the light of the observations made in this judgment, however, having regard to the facts and circumstances as discussed above, taking into account the fact that the disciplinary authority in this case was of the opinion that the Petitioner should be reverted to his original post of Inspector, Central Excise and considering that the Petitioner has already superannuated on 30th November 2013, we are of the opinion

that neither will it be equitable nor in the interest of justice to remit the matter to the disciplinary authority.

65. For the reasons recorded above, we find it appropriate to uphold the impugned judgment and order dated 11th September 2017 passed by the Tribunal.

66. Resultantly, both the Writ Petitions are hereby dismissed.

67. The department is directed to ensure implementation of the judgment and order dated 11th September 2017 passed by the Tribunal with expedition, say within six weeks from the date of certified copy of this order is produced before the authority concerned.

68. There will be, however, no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)