

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 4312 of 2018

M/s. Kesoram Rayon & Anr.

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Soumya Majumder, Sr. Adv.
Mr. Prasun Ghosh,
Mr. Malay Kr. Seal,
Mr. S. Kundu.

For the Respondent : Mr. Balaram Patra,
Mr. Suvadip Bhattacharjee.

Hearing concluded on : 28.02.2025

Judgment on : 01.04.2025

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred against an order dated 07.08.2015 and final Award dated 28.11.2017 passed in case no. 06/10(1B)(d) of 2013 passed by the learned Judge, 3rd Industrial Tribunal, West Bengal.
2. **The petitioners' case in short is that:-**

“On 10.08.2010, the private respondent who joined the petitioner company as a “badli Helper”/workman was in

“G” Shift Duty at Sulphuric Acid Plant loading Section of Chemical Division Production Department when two tankers were loaded. Later on huge discrepancy was found in respect of a particular tanker and upon enquiry with the Driver of the said Tanker it was found out that after getting weight slip and supply note, the Tanker further went to chemical division for further loading of the material at the Acid Loading Point and in connivance with the private respondent excess material was loaded.”

3. An enquiry was conducted and the enquiry officer vide an order dated 04.04.2011 held as follows:-

“.....In the enquiry and in the reply to the chargesheet Sri Bidyut Banerjee never stated that the incident of loading of excess quantity of sulphuric acid has not happened on 10.08.2010 on which date he was on duty in "G" shift.

*Sulphuric acid loading is being done within that time (08.30 am to 4.00 pm). The system of loading of sulphuric acid **is being carried only by Sri Banerjee and Sri K.C.Ghosh**, the driver of a tanker has no part except to park it properly. The system i.e. to open valve, to check the level, to operate the pump **everything is being done by Sri Bidyut Banerjee and Sri K.C.Ghosh**. Sulphuric Acid in concentrated form (99%) is highly dangerous. Any spillage of acid due to wrong operation of the acid supply pump valves will gravely endanger life of the persons working in that area. Hence, it is an established fact that **besides Sri Banerjee and Sri K.C.Ghosh no other person handles the system of loading of sulphuric acid** from the acid loading point inside the factory and acid was loaded in excess quantity then these two persons*

*are responsible for the same and hence, **I have no doubt to hold that and this has clearly been established from the evidence of Sri K.C.Ghosh (DW-2). But the drivers in their written submissions only used the name of Sri Bidyut Banerjee they never used the name of Sri K.C.Ghosh, they said that with connivance of Sri Bidyut Banerjee the excess sulphuric acid was loaded.***

*From the evidence it is found that filling of acid in a tanker is possible for a single person at any time if he knows the system because everything should be done mechanically by operating electrical switches. **Much reliance cannot be given on the evidence of Sri K.C.Ghosh (DW-2), I think he was tutored by Sri Banerjee or by the defence helper viz. Sri Narayan Mukherjee, Sri Ghosh avoided to reply properly during cross examination. In fact this witness did not add extra strength to the case what Sri Bidyut Banerjee tried to make out only in the enquiry.***

With the connivance of Sri Bidyut Banerjee, excess quantity of sulphuric acid was loaded in both tankers on 10.08.2010 which is a clear case of theft, fraud or dishonesty as has been levelled by the Management.

Findings

From the above, I find Sri Bidyut Banerjee, Card No.A-56 guilty of the charges of (i) theft, fraud or dishonesty, (ii) act subversive of discipline and (iii) conduct prejudicial to the reputation of the company, as have been stated in the chargesheet dated 13.08.2010.

These are my findings.....”

4. The employee/worker initiated proceedings under Section 10(1B)(d) of the Industrial Disputes Act, 1997 being case no. 06/13.

5. The power of the tribunal to decide a dispute raised, has been laid down by the Supreme Court in **Workmen of Messrs Firestone Tyre and Rubber Company of India vs Management & Ors., decided on 06.03.1973, 1973 AIR 1227**, wherein in the Court held:-

*“.....(iii) Both in respect of cases where a domestic enquiry has been held as also in cases when the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under s. 11A, about the guilt or otherwise of the workmen concerned is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. **Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.***

*The contention that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by the employee, could not be accepted. **The Tribunal under s. 11A can consider the question of guilt as well as of punishment. It can also alter the punishment imposed by an employer.***

In its very early decision in Buckingham and Cernatic Com- pany Ltd, by its Managing Agents Binny & Co., Madras v. Workers of the Company represented by the Madras Labour Union and Madras, Textile Workers Union(1), the Labour Appel-

(1) [1952] Labour Appeal Cases 490.

-L761 Sup CI73 late Tribunal held that the decision of the Management in relation to charges against the employee will not prevail if

*(a) there is want of **bona fide**, or*

*(b) it is a case of **victimisation or unfair labour practice or violation of the principles of natural justice, or***

*(c) there is a basic **error of facts** or,*

(d) there has been **a perverse finding** on the materials. It was further laid down, that an employer ought to have the right to decide what the appropriate punishment for a misconduct should be and its exercise of the discretion in this regard should not be interfered with by a Tribunal unless the punishment is unjust. In *Shri Ram Swarath Sinha, Righa, Muzaffarpur v. The Management of the Belsund Sugar Company Limited, Righa Muzaffarpur*(1), the Labour Appellate Tribunal has recognised the right of a management to ask for permission to adduce evidence for the first time before the Tribunal to justify its action though no domestic enquiry had been held by it. It has been emphasised that the permission asked for cannot be thrown out in limine on the ground that the management had not made any previous enquiry into the charge. We may say that this decision was in respect of a proceeding under section 33 of the Act, but, as held by this Court, **there is no difference in such matters whether the Tribunal was deciding a dispute referred to it under section 10 or an application filed before it under section 33 of the Act.**

In discussing the nature of the jurisdiction exercised by an Industrial Tribunal when adjudicating a dispute relating to dismissal or discharge, it has been emphasised by this Court in *Indian Iron & Steel Co. Ltd.*(2) as follows :

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination, of service of a workman is justified to give appropriate relief. In cases of dismissal on misconduct, **the Tribunal** does not, however, act as a Court of appeal and substitute its own judgment for that of the management. **It will interfere (i) when there is want of good faith; (ii) when there is victimisation or unfair Labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural Justice. and (iv) when on the materials the finding is completely baseless or perverse"....."**

"..... We have pointed out that this position has now been changed by section 11 A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it **gives power to the Tribunal for the first time to differ both on a**

finding of misconduct arrived at by' an employer as well as the punishment imposed by him....."

6. **Vide the order dated 07.08.2015 the Judge, 3rd Industrial Tribunal, Kolkata held as follows:-**

".....Regard being had to present facts and circumstances of this case it appears to me that report and findings of the enquiry officer is not based on proper appreciation of evidences adduced by both sides. It is a fact that in such case, the Tribunal does not act as the court of Appeal but the findings of an enquiry officer should be reasonable and convincing one. In this instant case this thing did not take place. Considering the whole, it appears to this Tribunal that the report and findings of the enquiry officer appears to be biased and perverted one and through this departmental enquiry principle of natural justice has been violated and particularly I think that point No. 1 & 5 of the Sur Enamel's case were not complied with properly. As the enquiry conducted by the enquiry officer does not tally with the requirements as mandated by the Hon'ble Apex Court, the enquiry held in the case cannot be said to have been held properly.

*Thus summing up of call I am compelling to come to the conclusion that **the departmental enquiry held against delinquent workman Bidyut Banerjee is found invalid.***

Fix...4.9.15 for hearing the case on merit.

***Sd/-
Judge
3rd Industrial Tribunal
Kolkata."***

7. By the Award challenged herein dated 28.11.2017, the Judge, 3rd Industrial Tribunal, West Bengal **set aside the dismissal of the workman from his service with effect from 04.04.2012 with full back wages.**
8. **The tribunal while deciding the case in favour of the workman held:-**

“i. Amongst the decision cited, one of them (for company) is the case of Sur Enamel & stamping works Ltd. reported in 1963 (7) FLR page 236=1963 (2) LLJ page-367 wherein Hon'ble Apex Court held that an enquiry cannot be said to have been properly held unless:-

1. Employee proceeded against has been informed clearly of the charges levelled against him.

2. The witnesses are examined - ordinarily in the presence of the employee - in respect of the charges.

3. The employee is given a fair opportunity to cross-examine the witnesses.

4. He is given a fair opportunity to examine witness including himself in his defence if he so wishes or any relevant matter, and

5. The enquiry officer records his findings with reasons for the same in his report.

*ii. After going through all materials before me it revealed that **the enquiry officer did not examine the two witnesses/drivers who lodged the written complaint primarily against this workman basing upon which the disciplinary proceedings was started and the management failed to produce them during enquiry.** Admittedly in this case there was no eye witness to prove the allegation brought against the workman. This point no doubt caused prejudiced to the workman and by this way management pushed the workman not to avail*

the reasonable and minimum opportunity to defend himself. To this extent enquiry officer have also his clear admission. It is a fact that basing upon those complaints the charge sheet was issued to the workman, In 2000 S.C (1) CLR page-73 it was held by Hon'ble Apex Court that non examination of complainant and other witness prejudiced the applicant.

*It is on record that **copies of those two driver's written complaint was not supplied to the workman with the C.S or at any point of time to defend his case properly and this fact is found admitted one by the enquiry officer.** It is a fact that one letter written by A.K Singh (MW-1) was sent to workmen with the notice of enquiry without driver's complaint. This not found sufficient for the purpose of defending the workman and Shri Singh clearly stated that on the basis of those written complaints submitted by the two drivers, the charges were brought against the workmen, This caused not only prejudice to the workmen but also a clear case of violation of natural justice.*

iii. *It is found that Acid filling into the tankers can only be done by the operator and helper and one K.C. Ghosh was the operator and this workman was the helper. It also revealed that Acid filling is the joint responsibility the operator and the helper. Admittedly, in this case **management did not examine the operator before the enquiry officer which reflects doubt upon the management stand against this workman.** On the other hand operator K. C. Ghosh was examined on behalf of the workman*

and **this operator deposed in favour of the workman.** From the E.O's evidence it reflected that **E.O did not consider the evidence of the operator K. C. Ghosh.** I have already mentioned that no eye witness is there in the case. In such a position management could-examine the operator. So this fact reflects doubt upon the case of the management.

iv. The findings of enquiry officer is nor proper in absence of any cogent evidence that the helper can fill up the Acid by himself without operator.

v. The workman was given 1 charge sheet dt. 13.8.2010 to which he replied and subsequently, another corrigendum charge sheet was issued upon him dt. 30.8.2010 and the workmen claimed that he is not responsible for excess Acid loading into the tankers. **It is on record that one of the driver of the tanker had his antecedent of excess Acid loading and he was caught earlier. How he was detected and what action was taken in that case against such driver is not forthcoming before this Tribunal** excepting this tiny fact. Workman claimed that management entirely changed the foundation of charge sheet in the guise of corrigendum charge sheet. **In my opinion so far as issuance of corrigendum charge sheet is concern, this corrigendum charge sheet was issued without dropping 1" charge sheet or without recalling the same. The corrigendum charge sheet is planned and afterthought matter.** The principles of a few decisions cited by both sides are

not found much fitted with that of the present fact and circumstances of this case.”

9. The private respondent in the present case has filed written notes along with judgments relied upon. **The judgment in GR Case No. 974 of 2010 passed by the Judicial Magistrate, 1st Class, 4th Court, Chuchura, Hooghly, on 18th July, 2019 has also been annexed.**
10. **Vide the said judgment the private respondent herein Bidyut Banerjee has been found not guilty of the offence under Section 379 of the IPC.**
11. It appears from the said judgment, that two witnesses were examined, one being the de facto complainant. The allegation in the said case was that on 10th August, 2007, excess sulphuric acid was loaded by the accused/private respondent. The said witness submitted before the Court that on the basis of the domestic enquiry, the accused was terminated. **The witness stated that he has no personal knowledge about the incident of the said case.**
12. **It appears that the complainant did not face the full cross-examination in the said case. P.W. 2 is the Recording Officer having no personal knowledge about the incident.**
13. **The following judgments have been relied upon on behalf of the respondent no. 5:-**
 - i. ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors., (2013) 10 SCC 324;***
 - ii. ***Tata Engineering & Locomotive Co. Ltd. vs. Jitendra PD. Singh & Anr., (2001) 10 SCC 530;***

- iii. ***Hardwari Lal vs. State of U.P. & Ors., (1999) 8 SCC 582;***
- iv. ***Man Singh vs. State of Haryana & Ors., (2008) 12 SCC 331;***
- v. ***Ramesh Chandra vs. Delhi University & Ors., (2015) 5 SCC 549;***
- vi. ***State of Rajasthan & Ors. vs. Heem Singh, (2021) 12 SCC 569;***

14. The Supreme Court in the ***State of Rajasthan and others – vs – Heem Singh in Civil Appeal No. 3340 of 2020*** decided on 29th October, 2020 held :

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. **Disciplinary enquiries have to abide by the rules of natural justice.** But they are not governed by strict rules of evidence which apply to judicial proceedings. **The standard of proof is** hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, **but a civil standard governed by a preponderance of probabilities.** Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. **At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the**

*enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. **To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity.** But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."*

- 15. It appears from the judgment of acquittal** passed by the learned Judicial Magistrate, 4th Court, Chinsurah, Hooghly in G.R. Case No. 974 of 2010 dated 18.07.2019, that **the defacto complainant Biswanath Patra (not an accused) as an employee of the petitioner company herein was in-charge of loading of the tanker at Acid Plant of Sulfuric Acid.** He is the person who made the complaint in the said case. Other than the said complainant, there was no other witness produced before the Court. **Even the drivers who were named in the written complaint as eye witness were not examined in the enquiry proceeding, and were also not made witnesses in the criminal proceedings.** None of the documents being Exhibit 1 to

11 exhibited in the enquiry proceedings were produced before the criminal court. Though four witnesses were examined by the enquiry officer, they were not produced as witnesses in the criminal trial.

16. In **B. C. Chaturvedi – vs – Union of Indian and others [(1995) 6 Supreme Court Cases 749 in Civil Appeal No. 9830 of 1995]**, the Supreme Court held that :

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

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

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

17. In Civil Appeal No. 5848 of 2021 (Union of India & Ors. vs. Dalbir Singh) the Supreme Court held (relevant paragraphs are reproduced herein):-

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

It was held as under:-

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and

have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

(Emphasis Supplied)

26. This Court in **Noida Entrepreneurs Association v. NOIDA & Ors. (2007) 10 SCC 385**, held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:

"11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See *Tata Cellular v. Union of India* [(1994) 6 SCC 651] and *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh* [(2004) 2 SCC 130].] The conceptual difference between departmental

proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011], Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341].

“8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short ‘the Evidence Act’]. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

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

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

(Emphasis Supplied)

28. Mr. Yadav, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition before the High Court, 9 (1997) 2 SCC 699 the appellants were given opportunity to produce the registers of the entrustment of S.L.R. to the writ petitioner. But it was stated that record was not available being an old record as the incident was of 1993. The enquiry was initiated in 2013 after the acquittal of the writ petitioner from the criminal trial. Therefore, in the absence of the best evidence of registers, the oral evidence of use of official weapon stands proven on the basis of oral testimony of the departmental witnesses. 29. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the

Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time.”

18. From the said series of events as noted above it is evident that:-

- (i) On full consideration of the prosecution evidence on record, before the Criminal Court and on careful reading of the entire judgment, it appears that **acquittal of the petitioner/accused was inevitable**, as the evidences on record did not support the prosecution case, nor did the other witnesses. The said materials on record has thus given the petitioner an **“honourable acquittal”**.
- (ii) The tribunal now has the power to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. **(Workmen of Messrs Firestone**

***Tyre and Rubber Company of India vs Management & Ors.,
(Supra)***

- (iii) **The tribunal vide a well reasoned order set aside the dismissal of the workman from service with full back wages.**

19. It appears from the enquiry report that:-

- a) The drivers who were named in the written complaint as eye witnesses were not examined. But their alleged submission in writing was relied upon by the enquiry officer, which is against the principles of natural justice as the charged officer/private respondent did not get the opportunity of cross examination.
- b) No steps were taken against K.C. Ghosh who admittedly acted as operator with the private respondent during filling of the tankers. In fact he was made a witness inspite of him acting along with the private respondent.
- c) The findings of the enquiry officer is based solely on the evidence of the said K.C. Ghosh, who admittedly acted along with the private respondent at the time of filling the tanker, as seen from the enquiry officers report.

20. The finding of the enquiry officer is thus not bona fide. This is a clear case of victimization, where principles of natural justice has not been followed and the finding is clearly perverse.

21. The findings of the tribunal is specific, on clear appreciation of evidence taken in the enquiry proceedings.

22. The tribunal rightly decided the dispute raised, in accordance with law and on finding the enquiry proceedings and punishment being perverse and not in accordance with law **rightly set aside the same.**
23. Thus the order dated 07.08.2015 and final Award dated 28.11.2017 passed in case no. 06/10(1B)(d) of 2013 passed by the learned Judge 3rd Industrial Tribunal, West Bengal, being in accordance with law requires no interference.
24. The petitioner is directed to treat the private respondent in service w.e.f. 04.04.2012 and pay the full back wages along with statutory interest within 3 (three) months from the date of this order, first of which is to be paid by the 15th of April, 2025. Fraction if any be paid along with the last installment.
25. **WPA 4312 of 2018 is dismissed.**
26. All connected applications, if any, stand disposed of.
27. Interim order, if any, stands vacated.
28. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)