

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Acting Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

WP.CT 186 OF 2015

Shyamal Kar
-Vs-
Union of India &Ors.

For the Petitioner: Ms. Gokul Chandra Chakraborty, Adv.,
Mr. Aditya Shit, Adv.

For the Respondents: Ms. Susmita Saha Dutta, Adv.,
Mr. Niladri Saha, Adv.,
Mr. Subhajit Seth, Adv.,
Ms. Madhurima Basu, Adv.

Hearing concluded on: 19.11.2025

Judgment on: 25.11.2025

PARTHA SARATHI SEN, J. : –

1. In this writ petition as filed under Article 226/227 of the Constitution of India, the order dated 20.07.2015 as passed in OA No. 476 of 2012 by the Central Administrative Tribunal, Calcutta Bench, Kolkata, hereinafter referred to as the 'said Tribunal' in short is impugned.
2. By the impugned order the said Tribunal declined to interfere with the order of punishment dated 14.09.2011 as passed by the Respondent No. 3

authority as has been affirmed by the Respondent No. 2 authority being the appellate authority by its order dated 13.08.2012.

3. For effective adjudication of the instant *lis* some relevant facts leading to filling of this writ petition are required to be dealt with in a nut shell which are as under:-

- (i) At the time of alleged incident, the writ petitioner/original applicant was posted as Staff Car Driver, Grade II, DCO, West Bengal.
- (ii) On 02.09.2010 under cover of a memo he was served with a charge-sheet dated 02.09.2010 containing four numbers of articles of charges including imputations of misconduct in support of those articles of charges by the Respondent No. 3 authority.
- (iii) On 16.11.2010, the Respondent No. 4 authority recalled the earlier charge-sheet dated 02.09.2010 and by the self-same memo the writ petitioner/original applicant was again served with a memorandum of charge-sheet containing 4 numbers of articles of charges including statements of imputation of misconduct, serious negligence and dereliction of duty in view of theft of office vehicle from his custody resulting to consumable loss to the Government.
- (iv) On 27.08.2010 the respondent authorities appointed an Enquiry Officer.
- (v) The writ petitioner participated in the disciplinary proceeding.

- (vi) On 15.06.2011 the Enquiry Officer submitted its report whereby and whereunder he found that all the charges against the delinquent have been proved.
- (vii) The disciplinary authority after considering the enquiry report and the representation of the delinquent/writ petitioner/original applicant against the enquiry report found no substance in such representation and thus imposed penalty of removal from Government service with immediate effect which shall not be a disqualification for future employment under the Government.
- (viii) The delinquent preferred an appeal before the Respondent No. 2 authority and the said appellate authority by its order dated 13.08.2012 found no merit in such appeal of the delinquent and thus affirmed the order of the disciplinary authority.
- (ix) The writ petitioner unsuccessfully challenged the decisions of the enquiry authority, disciplinary authority and the appellate authority before the said Tribunal and hence, the instant writ petition.

4. In course of his argument Mr. Chakraborty, learned Advocate duly assisted by Mr. Shit appearing on behalf of the writ petitioners/original applicant at the very outset submits before this Court that the second charge-sheet dated 16.11.2010 is itself defective inasmuch as such charge-sheet was submitted by an authority who is neither the appointing authority nor the disciplinary authority of the delinquent. It is further argued by Mr. Chakraborty that since the Respondent No. 4 authority which issued the

charge-sheet dated 16.11.2010 is much below the rank of the Respondent No. 3 authority being the alleged disciplinary authority of the delinquent, the charge-sheet dated 16.11.2010 suffers from material irregularity and/or illegality in view of the provisions of Article 311 of the Constitution of India.

5. It is submitted further on behalf of the writ petitioner/original applicant that from the materials as placed before this Court it would reveal further that the Enquiry Officer was biased inasmuch as the said Enquiry Officer failed to visualise that Smt. Parul Burman, the then Deputy Director of Census Operations had adduced no evidence against the delinquent. It is further argued on behalf of the writ petitioner that the logbook of the stolen vehicle as produced before the enquiry authority categorically indicated that it was the normal practice of the drivers of the said organisation to park their vehicle in front of their own houses for the convenience of the Officers of the organisation.

6. It is next contended by Mr. Chakraborty that the said Tribunal while passing the impugned order has failed to visualise the discrepancies as quoted hereinabove in the disciplinary proceeding and most mechanically endorsed the view taken by the enquiry authority, disciplinary authority as well as the appellate authority. It is further argued by Mr. Chakraborty that the said Tribunal has also not considered that the alleged misconduct of the writ petitioner/original applicant was not at all proved in the said in-house proceeding.

7. It is further contended by Mr. Chakraborty that the said Tribunal also failed to consider that the burden of proof lies on the prosecution and not on the delinquent. Drawing attention to Rule 11 of the Central Civil Services (Class, Control and Appeal) Rules, 1965, hereinafter referred to as the 'said Rules' in short, it is also argued by Mr. Chakraborty that the penalty as imposed upon the writ petitioner/original applicant was excessive and not commensurate with the charges as labelled against him which also the said Tribunal failed to appreciate.

8. In course of his submission Mr. Chakraborty places his reliance upon the following decisions:-

- i) *Union of India &Ors. vs. J. Ahmed*, 1979 AIR 1022, 1979 SCR (3) 504, (1979)2SCC 286
- ii) *Union of India &Ors. vs. B.V. Gopinath*, 2013 LAB. I. C. 4175
- iii) *Roop Singh Negi vs. Punjab National Bank and Others*, (2009) 2 SCC 570
- iv) *Central Bank of India Ltd. vs. Prakash Chand Jain*, AIR 1969 Supreme Court 983
- v) *Kuldeep Singh vs. The Commissioner of Police and others*, AIR 1999 Supreme Court 677
- vi) *Hardwari Lal vs. State of U.P. &ors*, 200(1) ATJ 244
- vii) *Commissioner of Police, Delhi and others vs. Jai Bhagwan*, (2011) 6 SCC 376
- viii) *The judgment dated 11.09.2015 as passed by the High Court of Delhi in W.P. (C). 8726/2015 (Union of India vs. Shameem Akhtar)*,
- ix) *Central Bank of India vs. Vikram Singh Baxla*, 2000 (1) CLJ 322

9. Mr. Chakraborty thus submits that it is a fit case for allowing the instant writ petition by setting aside the order of the Tribunal as well as by

setting aside the order of punishment as imposed upon the writ petitioner/original applicant.

10. Per contra Ms. Saha Dutta learned Advocate appearing on behalf of the respondent/ Union of India and its instrumentalities in course of her submission at the very outset draws attention of this Court to the various rules of the said Rules. She submits that Rule 2(g) of the said Rules defines the 'disciplinary authority' and Rule 12 read with Part IV of the Schedule of the said Rules indicates who is the disciplinary authority in case of Central Civil Services, Group D post.
11. It is submitted by Ms. Saha Dutta that from the materials as placed before this Court it would reveal that the Deputy Director of the relevant Directorate being the head of office was the controlling authority of the delinquent and, therefore, the competency of the said Deputy Director in issuing the charge-sheet against the delinquent ought not to be questioned.
12. It is further submitted by Ms. Saha Dutta that by memo dated 27.08.2010 the Under Secretary (Vigilance) of the office of the Registrar General, India appointed the Enquiry Officer and based on the report of such Enquiry Officer the Respondent No. 3 being the Director as well as being the disciplinary authority imposed major penalty upon the delinquent and thus, the competence of the said director was rightly upheld by the Tribunal.
13. It is further argued by Ms. Saha Dutta that there cannot be any occasion to doubt the correctness of the enquiry report inasmuch as the same is based on proper appreciation of evidence. It is further argued that in the

said disciplinary proceeding the then Deputy Director Smt. Parul Burman was examined, however, her cross-examination was declined by the delinquent.

14. In course of her argument Ms. Saha Dutta placed her reliance upon a reported decision of ***State of Jharkhand and Ors. Vs. Rukma Kesh Mishra*** reported in ***2025 SCC Online SC 676***. It is submitted by Ms. Saha Dutta that in the case of ***Rukma Kesh Mishra (Supra)*** the Hon'ble Supreme Court while placing its reliance upon a previous decision in ***P.V. Srinivasa Sastry Vs. Comptroller and Auditor General*** reported in ***(1993) 1 SCC 419*** observed that though Article 311 (1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed, but the said Article 311(1) does not say that even the Departmental proceeding must be initiated only by the appointing authority.

15. It is thus argued by Ms. Saha Dutta that in view of such categorical finding of the Hon'ble Supreme Court there is hardly any scope to raise any question with regard to the competence of the Deputy Director of the said directorate in issuing the charge-sheet against the delinquent as well as regarding competence of the Enquiry Officer in holding the enquiry against the delinquent.

16. In her next fold of submission Ms. Saha Dutta further contended that considering the gravity of the charges as have been proved against the delinquent there cannot be any occasion to question the quantum of punishment since the severity of punishment ought not to have shock the

conscience of the Court since the quantum of punishment is commensurate with the proved misconduct of the writ petitioner.

17. Ms. Saha Dutta thus submits that it is a case for dismissal of the instant writ petition.

18. In order to arrive at any logical conclusion of the instant writ petition we at the very outset propose to look to Article 311 of the Constitution of India which is quoted hereinbelow in verbatim:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.]

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

19. Since from the members of the Bar, much reliance was placed upon the ‘said Rules’ we propose to look to some of the relevant rules of the said Rules which are as under:

“2(g) “Disciplinary authority” means the authority competent under these rules to impose on a Government Servant any of the penalties specified in Rule 11”

20. Rule 11 of the said rules is as under :-

“11. Penalties.-- *The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government Servant, namely—and*

Minor penalties-

- (i) censure;*
- (ii) withholding of his promotion;*
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;*

(iii-a) reduction to a lower stage in the time-scale of the pay for a Period not exceeding 3 years without cumulative effect and not adversely affecting his pension;

- (iv) withholding of increments of pay;*

Major penalties--

(v) save as otherwise provided for in clause (iii-a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

vi) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government Servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions, regarding conditions of restoration to the grade or post or service from which the Government Servant was reduced and his seniority and pay on such restoration to that grade, post or service;

vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

.....”

21. Rule 12 of the said rules is as under :-

“12. Disciplinary Authorities.—(1) *The President may impose any of the penalties specified in Rule 11 on any Government Servant.*

(2) Without prejudice to the provisions of sub-rule (1) subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on-

(a) a member of a Central Civil Service other than the General Central Services, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Services, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

(3) Subject to the provisions of sub-rule (4), the power to impose any of the penalties specified in Rule 11 may also be exercised, in the case of a member of a Central Civil Service, Group C (other than the Central/Secretariat Clerical Service), or a Central Civil Service, Group D-

(a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India, in that Ministry or Department, or

(b) if he is serving in any other office, by the head of that office, except where the head of the office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

(4).....”

22. Keeping in mind the aforementioned provisions of Rules if we look to the factual aspects as involved in the instant writ petition it reveals that by a memo dated 16.11.2010 the Deputy Director of the relevant Directorate issued charge-sheet against the writ petitioner. From the punishment order dated 14.09.2011 as issued by the Director of the relevant Directorate it

would reveal that the letter of appointment of the delinquent was issued by the Joint Director of the relevant Directorate, who is higher in rank than the Deputy Director.

23. At this juncture, the moot question arises for consideration before us as to whether the Deputy Director of the relevant directorate was at all competent to issue charge-sheet against the delinquent.
24. Placing reliance on Rule 12 of the said Rules vis-à-vis Part IV of the Schedule it was argued on behalf of the Respondent Union of India that the said Deputy Director was the head of the office of the delinquent.
25. At this juncture, we propose to look to the reported decision of **P.S. Srinivasa Sastry (Supra)** wherein the Hon'ble Apex Court expressed the following view:-

“4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed, But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not

subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences. and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding".."

(Emphasis Supplied)

26. In view of the above categorical finding, we find no reason to raise a question with regard to the competency of the Deputy Director of the relevant Directorate in issuing the charge-sheet against the delinquent being the head of the office of the delinquent.
27. In course of his argument, Mr. Chakraborty was also very vocal with regard to the competency as well as the correctness of the findings of the Enquiry Officer which according to him were not properly evaluated by the Tribunal. Materials have been placed before us that the Under Secretary of the office of the Registrar General of India appointed one Shri D. Roy in the rank of DDCO as Enquiry Officer who is much higher in rank than the delinquent. There is thus hardly any scope to raise any question regarding the competency of the Enquiry Officer also.

28. The scope of interference by a writ Court as well by the said tribunal in departmental enquiry has been well explained in the case of **High Court of Judicature at Bombay Vs. Sashikant S Patil and Anr.** reported in **2000 (1) SCC 416** wherein the Hon'ble Supreme Court expressed the following view :-

“Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of their enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion or grounds very similar to the above. But we cannot overlook that the departmental authority is the sole judge of the facts, if the enquiry has properly been conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

29. Keeping in mind the proposition of law as decided in the case of **High Court of Judicature at Bombay (supra)** if we look to the findings of the enquiry authority we find a little substance in the submission of Mr. Chakraborty inasmuch as no materials could be placed before us or before the said tribunal that before the enquiry authority the delinquent was deprived of presenting his case violating the principle of natural justice or

the decision of the enquiry authority is vitiated by considerations extraneous to the evidence.

30. We also found no substance in the submission of Mr. Chakraborty that the said tribunal has also failed to observe that the Enquiry authority has not followed the established procedure as prescribed. Rather it appears to us that the said Enquiry Officer duly considered the entire materials as placed before it and thus, came to a logical conclusion of the same. It has also been noticed that the then Deputy Director Smt. Parul Burman also adduced evidence in such enquiry proceeding supporting the case of the prosecution, however, her cross-examination was declined by the delinquent.

31. We are conscious that sitting in writ jurisdiction and/or supervisory jurisdiction we are not supposed to re-appreciate the evidence as has been done by the enquiry authority and as has been evaluated by the appellate authority.

32. So far as the competence of the disciplinary authority in awarding the penalty to the delinquent is concerned, we find such penalty was imposed by the Director who is the Respondent No. 3 herein. There is no gainsaying that the Respondent No. 3 is much higher in rank than the appointing authority of the delinquent and thus, by no stretch of imagination it can be said that the provision of Article 311 of the Constitution of India has been violated.

33. We have meticulously gone through the charges as framed against the delinquent. From the articles of charges as well as the imputations of misconduct we find that the delinquent for the reason best known to him took the office vehicle to his home instead of parking the same in the official garage and kept the said vehicle at least for 2 nights before it was subject to theft.
34. In course of his argument Mr. Chakraborty strongly contended that such action of the delinquent cannot be termed as misconduct since it was the general practice for the drivers of the said organisation to keep the vehicles in front of their home instead of keeping the same in the official garage. No materials could be placed before this Court that such practice was at all approved by the higher authorities of the delinquent at any point of time.
35. In order to understand the true meaning and purport of the word “misconduct” we propose to look to the reported decision of ***Union of India and Others Vs J. Ahmed*** reported in ***(1979) 2 SCC 286*** wherein the Hon’ble ApexCourt expressed thus:-

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster, 17 Q B 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers), (1959) 1 WLR 698]. This view was adopted in ShardaprasadOnkarprasad Tiwari v.

Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, 61 Bom LR 1596 and Salubha K. Vaghela v. Moosa Raza, 10 Guj LR 23. High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik, (1966) 2 SCR 434: AIR 1966 SC 1051: (1966) I LLJ 398: 28 FJR 131 in the absence of standing orders governing the employee's under-taking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India, (1967) 2 SCR 566: AIR 1967 SC 1274: (1967) 2 LLJ 249 the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P. H. Kalyani v. Air France, Calcutta, (1964) 2 SCR 104: AIR 1963 SC 1756: (1963) I LLJ 679: 24 FJR 464, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be

such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabin man signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co-op. Department Stores Ltd.), (1978) 19 Guj LR 108, 120. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.”

36. The proposition of Law as enunciated in the case of *J. Ahmed(supra)* was consistently followed in the subsequent decisions of Hon'ble Supreme Court in the reported decisions of ***Inspector Prem Chand v. Govt. of NCT of Delhi*** reported in **(2007) 4 SCC 566**, ***Mehar Singh Salini*** reported in **(2010)13 SCC 586**, ***Ravi Yashwant Bhoir v. Collector***, **(2012) 4 SCC 407** and ***Sadhana Chaudhury v. State of UP*** **(2020)11 SCC 760**.
37. In view of the discussion made hereinabove we thus find that the act of the delinquent for which he has been charged with the articles of the charges are sufficient to come within the purview of misconduct and for his

latches and negligence the relevant directorate has lost a valuable car which cannot be recovered at any point of time.

38. In view of such, in absence of any illegality and/or perversity and/or arbitrariness on the part of the respondents/authorities, we find that the said tribunal is very much justified in not interfering with the findings of the enquiry authority, disciplinary authority and appellate authority.
39. The scope of interference with regard to the disproportionality of punishment in the disciplinary proceeding was duly dealt with by the Hon'ble Supreme Court in the reported decision of **S.R. Tewari Vs. Union of India and Anr.** reported in **(2013) 6 SCC 602** wherein the Hon'ble Apex Court held thus:-

"24. The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. In Raniit Thakur V. Union of India, (1987) 4 SCC 611, this Court observed as under: (SCC pp. 620-21, paras 25 & 27)

"25. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction.

27. *In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.*" (emphasis supplied)

(See also *Union of India v. G. Ganayutham*, (1997) 7 SCC 463, *State of U.P. v. J.P. Saraswat*, (2011) 4 SCC 545, *Chandra Kumar Chopra v. Union of India*, (2012) 6 SCC 369, and *High Court of Patna v. Pandey Gajendra Prasad*, (2012) 6 SCC 357.

25. In *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, this Court after examining its various earlier decisions observed that in exercise of the power of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority.

26. In *V. Ramana v. A.P. SRTC*, (2005) 7 SCC 338, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the court., in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to

reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the court itself can impose appropriate punishment by recording cogent reasons in support thereof.

27. In State of Meghalaya v. Mecken Singh N. Marak, (2008) 7 SCC 580 this Court observed that: (SCC p. 584, paras 13-14)

"13. ... A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it felt that the punishment is not commensurate with the proved charges.

14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. ... The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review."

(See also A.P. SRTC v. P. Jayaram Reddy, (2009) 2 SCC 681.)

40. At this juncture, if we again look to the articles of charges along with the imputations of misconduct, it appears to us that on account of the negligent and reckless act of the writ petitioner/original applicant the respondents authorities have suffered pecuniary loss not only on account of theft of vehicle affecting public exchequer but also on account of unauthorized fuel consumption. We are thus in agreement with the findings of the disciplinary authority as well as with the appellate authority that the act of the writ petitioner/original applicant was inconsistent with due and faithful discharge of his duty and thus imposition of major punishment upon him is very much warranted.

41. In view of the discussion made hereinabove we thus find hardly any scope to interfere with the quantum of punishment as has been rightly not touched by the Tribunal while disposing the original application.
42. We now proposed to deal with the reported decisions as cited from the side of the writ petition. The reported decision of **B.V. Gopinath (supra)** was dealt with in the recent judgment of the Hon'ble Supreme Court in the case of **Rukma Kesh Mishra (supra)** whrerein the Hon'ble Supreme Court had occasioned to consider the validity of initiation of an enquiry proceeding by an Officer subordinate to the appointing authority and in doing so the Hon'ble Supreme Court held thus:-

"23. Yet again, in Transport Commissioner v. A. Radhakrishna Moorthy, this Court clearly declared the law as follows:

*"8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority, Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal".
(emphasis supplied)*

24. All these decisions were considered by this Court in Inspector General of Police v. Thavasippan, and it was ruled as follows:

"9. ... Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b) (i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties

referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that Lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal". ..

(emphasis supplied)

25. *Later decisions of this Court in Government of Tamil Nadu v. S. Vel Raj and Commissioner of Police v. Jayasurian also declare the law in the same vein, albeit in respect of different discipline and appeal rules, that a charge-sheet need not be issued by the appointing authority; any other authority, who is the controlling authority, can initiate departmental proceedings by issuing a chargesheet.*

26. *At this stage, we are reminded of the Latin phrase stare decisis et non queta movere meaning, stand by what has been decided and do not disturb what has been settled. While it is true that courts are not restrained by any principle of law from expressing a different view on a point of law or to distinguish precedents (a topic we wish to advert to briefly a little later), stare decisis need not be disregarded to unsettle settled positions. We would read these precedents (referred to in paragraphs 21 to 25, supra) as settling the law that unless the relevant discipline and appeal rules applicable to an officer/employee of an authority within the meaning of Article 12 of the Constitution so require, disciplinary proceedings by issuance of a charge-sheet cannot be faulted solely on the ground that either the Appointing Authority or the Disciplinary Authority has not issued the same or approved it. These precedents have stood the test of time and having full application to the case at hand, could not have been lightly overlooked. A holistic consideration of all these precedents by the High Court was certainly the need of the hour. Thavasippan (supra) had considered the precedents in Shardul Singh (supra), P.V. Srinivasa Sastry (supra) and A. Radhakrishna Moorthy (supra) and P.V. Srinivasa Sastry (supra) was placed before the coordinate Bench in B. V. Gopinath (supra). We are anchored in a belief that had the High Court looked into these a precedents, the conclusion would have certainly been otherwise.*

27. *Be that as it may, the governing rules in B.V. Gopinath (supra) and Promod Kumar (supra) being different, notwithstanding the similarity in language of Rule 14(3) of the Central Civil Services*

(Classification, Control and Appeal) Rules, 1965 and Rule 17(3) of the 2016 Rules, reliance placed by the Division Bench on the ratio of the said two decisions seems to be wholly inapt. An erroneous conclusion was arrived at contrary to the settled position of law and we have no hesitation to conclude that the impugned order is manifestly flawed and hence, unsustainable.”

43. In view of the settled proposition of law as decided in the case of **Rukma Kesh Mishra (supra)** we are constrained to hold that the case of **B.V. Gopinath (supra)** is of no assistance to the writ petitioner since in the case of **B.V. Gopinath (supra)** the Hon’ble Supreme Court noticed that the case before it involved a rule that before submission of charge-sheet against a delinquent approval has to be taken from the competent authority. In course of his argument, Mr. Chakraborty could not place any rule to substantiate that the rule governing the disciplinary action against the writ petitioner/original applicant is akin to the rule as involved in the case of **B.V. Gopinath (supra)**.

44. The reported decision of **Roop Singh Negi (supra)** and **Prakash Chand Jain (supra)** are also distinguishable from the facts and circumstances as involved in the instant writ petition in view of the fact no material could be placed on behalf of the writ petitioner to substantiate that in the said enquiry proceeding the enquiry authority relied on some extraneous materials which are not on record.

45. The reported decision of **Kuldeep Singh (supra)** has got no manner of application in the instant writ petition since it has been rightly held by the said Tribunal that the informant Smt. Parul Burman in the said disciplinary proceeding supported the case of the prosecution however her cross-examination was declined by the delinquent.
46. The reported decision of **Hardwari Lal (supra)** has got no manner of application in the instant *lis* since the writ petitioner has miserably failed to prove that principle of natural justice has not been followed by the enquiry authority.
47. The unreported decision of **Shameem Akhtar (supra)** is also distinguishable from the facts and circumstances of the instant writ petition in absence of any material to show that there was inordinate and unexplained delay on the part of the respondent authorities to submit charge-sheet against the writ petitioner.
48. The reported decision of **Vikram Singh Baxla (supra)**, is also distinguishable, in view of the fact no material could be placed before this court that in the instant case there occurred a procedural lapses in conducting the disciplinary proceedings.
49. In view of the discussion made hereinabove, we find no merit in this writ petition and accordingly the same is hereby dismissed.

50. Urgent Xerox certified copy, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)

(P.A- Pramita)