

**IN THE HIGH COURT AT CALCUTTA**  
**CONSTITUTIONAL WRIT JURISDICTION**

**ORIGINAL SIDE**

**Present :**

**The Hon'ble Justice SHAMPA DUTT (PAUL)**

**WP/17401(W)/2007**

**WPO/134/2024**

**DR. B. P. SAMANTARAY**

**Versus**

**BOARD OF TRUSTEES, KOLKATA PORT TRUST AND OTHERS**

For the Petitioner : Mr. Sanjib Kr. Mukhopadhyay, Adv.  
Ms. Aparupa Bhattacharya, Adv.

For the Respondent : Mr. Kallol Basu, Sr. Adv.  
Mr. Ashok Kumar Jena, Adv.

Hearing concluded on : 12.12.2024

Judgment on : 16.01.2025

**SHAMPA DUTT (PAUL), J.:-**

1. The present writ petition has been preferred praying for quashing of the entire disciplinary proceedings including the show cause notice dated 26.07.2007 and not to give further effect to the said notice.
2. By the said **notice dated 26.07.2007** the Deputy Chairman and disciplinary authority on considering the enquiry report submitted by Sri D. K. Roy, Enquiring Officer did not agree with the findings of the Enquiring Officer on the second charge. The said disciplinary authority held as follows:-

*“i) The charged Officer was in total charge of chlorination of drinking water at certain identified points in the Dock area as well as KoPT Quarters area.*

*ii) Such contract for manual chlorination was made w.e.f. 8.6.02 initially for a period of one year and subsequently extended for another year.*

*iii) The charged Officer raised a proposal dated 22.3.04 in anticipation that finalization of fresh tender would require time.*

*iv) Meanwhile the charged Officer proposed to extend the existing chlorination contract with the existing firm on existing terms and conditions for a period of two months.*

*v) The charged officer placed repeat order with the same firm on 13.7.04 for chlorination in respect of the period 14.7.04 to 31.8.04.*

*vi) For fresh contract, **tenders were invited on 26.5.04. No tender was received** and the date was extended thrice on 14.7.04, 11.8.04 and 27.8.04 but no result could be yielded.*

vii) The charged Officer wrote to the existing contractor on 6.8.04 for extension of the existing contract for a further period of three months w.e.f. 1<sup>st</sup> September, 2004 and this was **refused by the existing contractor.**

viii) The charged Officer further wrote a letter to the existing contractor on 20.8.04 for extension of contract for a period of atleast one month w.e.f. 1.9.04 but **the contractor refused** to comply with the request.

ix) At this stage, the charged Officer raised a proposal dated 14.9.04 seeking administrative approval for fresh press advertised tender for manual chlorination of drinking water **which has been delayed.**

**x) In view of the delay in raising proposal for fresh contract even after expiry of the existing contract, the charged Officer cannot disown his responsibility and he should have been much more alert and prompt in dealing with such important, sensitive issue which relates to drinking water to the port users and inhabitants of KoPT.**

**xi) The report submitted by the enquiry officer did not take into account the above facts though they were on record before him. As such the undersigned proposes to disagree with the findings of Enquiring Officer on the 2<sup>nd</sup> Charge.**

With the **reasons of disagreement** as appearing in the immediately preceding paragraph, now the undersigned as Disciplinary Authority forwards a copy of the said report of the Enquiring Authority to the said Dr. B. P. Samantaray, Sr. M.O. and directs him to submit, if he so desires, his **written representation/submission** thereto to the undersigned within 15 days from the date of receipt of this letter irrespective of whether the report is favourable or not to him.;

If no written representation/submission is received from the said Dr. B. P.

*Samantaray, Sr. M. O. within the aforesaid time frame, further action on the Enquiry Report will be taken as per provision of the Regulation 8A and 9A of the CPT Employees' (CCA) Regulation 1987 read with Regulation 7 of Calcutta Port Trust Employees; (Pension) Regulation 1988.*

*Enclo: As stated.*

*Dy. Chairman & Disciplinary Authority”*

3. It appears that the said disciplinary authority did not agree with the findings of the enquiry officer and asked the petitioner to show cause. It appears from the report of the enquiry officer that on extensive enquiry on examining relevant witnesses and documents the enquiry officer came to the conclusion that none of the charge(3) as framed against the petitioner could be established.
4. Written notes filed by the parties have been considered.
5. The petitioner without replying to the show cause challenged the same in the present writ petition. It appears from the report of the enquiry officer and the show cause notice that the observations and the grounds as stated by the disciplinary authority disagreeing with the findings of the enquiry officer has not been done keeping in mind the principle of natural justice. The findings are not fair and have been applied to the petitioner, when it can be clearly seen from the grounds as stated by the disciplinary authority that the

**petitioner had taken all necessary steps diligently without any laches on his part.**

6. The Enquiry Officer had concluded that there was no sufficient material to pronounce the charged officer as guilty in respect of all the charges.
7. This was not accepted by the Disciplinary Authority under Section 164 of the Criminal Procedure Code.
8. The Disciplinary Authority by its decision dated 26.07.2007 thus disagreed with the well reasoned findings of the enquiry officer finding no materials/ evidence to pronounce the charged officer 'guilty' on the conclusion as follows:-

**"5. CONCLUSION:-**

*5.1 In view of the aforesaid analysis of available evidences and findings therefrom, it concluded that, the Articles of Charges Nos. I, II and III, as framed against Dr. B.P. Samantaray, as per C.S. Memo. No. Admn /7806 /CON /CMO /17 dated 01.04.2005, have not been established."*

9. It appears from the materials on record that certain conducts of a Disciplinary Authority which *prima facie* show abuse of power, when the Disciplinary Authority do not abide by the rules and the principles of natural justice. Circumstance in the present case, required this Court to interfere, when it found that the findings are based on absolutely no evidence and suffer from clear perversity, when total disregard of

materials on record is found and the final decision of a Disciplinary Authority is made only on the basis of his wish, position and power.

10. The Supreme Court in the State of **Rajasthan and others - vs- Heem Singh in Civil Appeal No. 3340 of 2020** decided on 29<sup>th</sup> 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."*

- 11. In *B. C. Chaturvedi VS Union of India 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 vs. 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."*

- 12. 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 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 charge-sheet 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."*

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

1. The Enquiry report dated 28.11.2006 found that there was no evidence to establish the guilt or misconduct on the part of the petitioner.
2. In spite of such findings being on record, the Disciplinary Authority was of the opinion that calling for tender had been delayed and:-

***“x) In view of the delay in raising proposal for fresh contract even after expiry of the existing contract, the charged Officer cannot disown his responsibility and he should have been much more alert and prompt in dealing with such important, sensitive issue which relates to drinking water to the port users and inhabitants of KoPT.***

***xi) The report submitted by the enquiry officer did not take into account the above facts though they were on record before him. As such the undersigned proposes to disagree with the findings of Enquiring Officer on the 2<sup>nd</sup> Charge.”***

14. There is absolutely no other observation or finding against the petitioner in the said order of the disciplinary authority.
15. Considering the findings of the disciplinary authority in clause (i) to (ix) at Para of 2 of this judgment, it appears that the said findings clearly do not support the conclusion of the disciplinary authority. His own findings

is contrary to his conclusion, which suffers from bias, prejudice and thus against the principles of natural justice, there being no proper reasons nor explanation in respect of the conclusion as to the 'delay' or the part of the petitioner.

**16. If such actions are accepted, then no person would be safe from just the words of another.**

**17.** The said/conduct of the disciplinary authority is clearly an abuse of power and totally against the principles of natural justice.

**18.** The total disregard of the report of the Enquiry Officer, in spite of there being no independent, specific findings of the disciplinary authority against the petitioner, goes to show that the disciplinary authority was hell bent on disagreeing with the findings of the Enquiring Officer. And as such, no reasoning nor the principles of natural justice was followed.

**19.** The Disciplinary Authority's findings and the show cause notice is a clear abuse of power without following any rules or the principles of natural justice.

**20.** The findings of Disciplinary Authority is based on 'no evidence' and has been passed without considering the vital evidence on record which is a clear 'perverse' determination of fact. ***(State of Rajasthan -vs- Heem Singh (Supra))***

**21.** Considering the said conduct of the disciplinary authority and his findings which is clearly against the principle of natural justice, the show cause notice dated 26.07.2007, including the findings of the disciplinary authority is hereby set aside.

**22. The writ petition is, accordingly, allowed.**

**23.** No order as to costs.

**24.** All connected applications, if any, stand disposed of.

**25.** Interim order, if any, stands vacated.

**26.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(SHAMPA DUTT (PAUL), J.)**