IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.258 OF 2012

Mr Vinayak Mallanna Chinchuwar,
S/o Mallanna Vithoba Chinchuwar,
Aged 61 years, r/o "B103 SW Block,
Kurtarkar Gardens, Gogal,
Margao Goa. … Petitioner

Versus

1 Post Master General,
Goa Region, PMG Office
Building, Panaji Goa.

2 Director of Postal Services,
Bombay Region, Mumbai GPO,
GPO Complex,
Mumbai – 400 001

3 Superintendent of RMS
"BM' Division,
Miraj, Karnataka – 416 410 …Respondents

Mr V. A. Lawande with Ms Prithvi Bandekar, Ms Smita Gawas @ Redkar, Mr Shivan Gurav and Mr Parimal Redkar, Advocates for the petitioner.
Mr Pravin Faldessai, Deputy Solicitor General of India and Mr Raviraj Chodankar, Central Government Standing Counsel for the respondents.

CORAM: M. S. KARNIK & NIVEDITA P. MEHTA, JJ

DATED : 27th JANUARY 2025

JUDGMENT (Per Nivedita P. Mehta, J.)

1. The Petitioner by way of the present petition under Article 226 of the Constitution of India has prayed for the following reliefs:

> **(i)** This Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ order calling for records from the Hon'ble Central Administrative Tribunal in original application No.2/2008 and Respondent No.1 to 3 in relation to the dismissal of Petitioner from service and quash and set aside the order of dismissal from service dated 30.09.2006, order passed by Respondent No.1 appellate authority dated 06.08.2007 and order dated 13.05.2011 passed by Hon'ble Central Administrative Tribunal in original Application No.2/2008;
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> **(ii)** This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order and direction, commanding the Respondents to reinstate the Petitioner and pay all the back wages and benefits from the date of dismissal and further pay pension to the Petitioner as per rules.

2. The facts of the case, in brief, are that the Petitioner was recruited in the Department of Posts on 30.04.1970 as a sorting Assistant in Railway Mail Service and was posted to work at Kolhapur Railway Mail Service. The Petitioner was transferred to Panaji in December 1980 under the BM Division, Miraj. Subsequently, in 1986 the Petitioner was promoted after 16 years of service under the Time Bound Promotion Scheme and was further upgraded in the Pay Scale of Higher Selection Grade II under the Biennial Cadre Review scheme in April 1996. The Petitioner was hired as Head Sorting Assistant (H.S.A. for short) in Mail Office/Railway Mail Service, Margao on 25.09.2003.

3. During the tenure in the Margao Office as a Sorting Assistant in the Mail Office, the Petitioner was charge-sheeted vide Memorandum dated 03.08.2004 on three counts alleging therein that the Petitioner was involved in (i) collusion with the accused in the theft of Margao Head Office Account T.B. closed by Panaji sorting dated 25.09.2003 (ii) facilitating the co-account to obtain loan fraudulently from the bank in his capacity as Disbursing Officer (iii) Unauthorised Travelling during suspension period without prior permission of the authority.

4. It was alleged in Articles I, II and III of the charge sheet that the petitioner while functioning as H.S.A. Madgaon, fraudulently showed Shri A. R. Kamble, the Mail Guard, as present for duties from 4.30 a.m. to 7.00 a.m. in the attendance register, when he was absent from 4.30 a.m. to 6.10 a.m. The Petitioner concealed the Mail Guard's absence by not reporting in his daily report and gave a misleading statement dated 28.09.2003 to Assistant Superintendent of Post Office, Miraj.

By such action, the Petitioner caused the Department to incur a loss of Rs.42,425/-. It was alleged that the Petitioner failed to show absolute integrity, lack of devotion to duties and acted in a manner unbecoming of a government servant and thereby contravened the provisions of Rule No.3(1)(i)(iii) of Central Civil Services (Classification, Conduct and Appeal) Rules, 1965. (hereinafter referred to as CCS (CCA) Rules).

5. It was also alleged that the Petitioner had failed to protect against the misuse of his designation stamp, and in collusion facilitated Shri A. R. Kamble, Mail Guard to obtain a loan of Rs.25,000/- from Syndicate Bank by submitting a fake undertaking dated 30.06.2002. It was further alleged that the Petitioner had left the Headquarters without prior permission of the competent authority and travelled unauthorisedly from Thane to Margao.

6. After issuance of the charge sheet dated 03.08.2004, the Departmental inquiry under Rule 14 of the CCS (CCA) Rules, 1965 was initiated against the Petitioner. After a full-fledged disciplinary inquiry, the Inquiry Officer submitted his inquiry report holding that the charges as levelled against the petitioner are proved. The disciplinary authority vide Memorandum dated 30.09.2006 imposed a penalty of dismissal from service. Against the dismissal, the Petitioner preferred an appeal before the Appellate Authority. The Appellate Authority vide order dated

06.08.2007 rejected the appeal. The Petitioner assailed the order of the Appellate Authority before the Central Administrative Tribunal Bombay Bench Mumbai (hereinafter referred to as the "Tribunal"). After considering the inquiry proceedings and the order of the Appellate Authority, the Tribunal was convinced that the punishment awarded by the disciplinary authority does not call for any interference. Being aggrieved and dissatisfied with the order of the Tribunal dated 13.05.2011 the Petitioner has filed the present writ petition.

7. Learned counsel for the Petitioner argued that the charge of theft and criminal conspiracy against the Petitioner is not proved. Moreover, the Petitioner is discharged by the Judicial Magistrate First Class at Margao in Criminal Case No.114/S/2006/E vide order dated 23.10.2008 passed on the application moved by the Petitioner for discharge. Therefore, according to him, the disciplinary authority, appellate authority and the Tribunal have committed irregularity; by rejecting the cases that were under consideration before the respective authorities. Learned counsel for the Petitioner submits that the inquiry report relied upon by the respondents is fabricated and said report could not have been relied upon and dismissal of the Petitioner from service violates the CCS (CCA) Rules, 1965 and Article 311 of the Constitution of India. The Petitioner was unnecessarily dragged by Shri A. R. Kamble alleging that the theft was committed on the Petitioner's instructions. Shri Kallappa Mang, casual labourer and the driver of the Mail Motor vehicle Shri Rudresh Narvekar have not corroborated with the statement of Shri A. R. Kamble. There is no evidence against the Petitioner except uncorroborated statements of Shri A. R. Kamble. The Respondents have relied upon extraneous material and false statement of Shri A. R. Kamble alone; when quite to the contrary he has admitted in his statement dated 08.01.2004 that he had travelled to Margao Railway Mail Service by Mail Motor service vehicle at about 6.10 hours. The driver of the Mail Motor Service vehicle who had given a lift to Shri A. R. Kamble was not examined by the Investigating Officer during regular enquiry.

8. The petitioner’s counsel submits that in the statement of imputation of charge, it is mentioned that Shri A. R. Kamble was present on duty from 4.30 a.m. to 7.00 a.m. in his batch, which was done in collusion with the Petitioner. However, no details as regards the alleged collusion are mentioned. According to him, the charges as levelled against the Petitioner are vague and not proved. Learned counsel submits that in the written statement of Shri A. R. Kamble recorded on 10.01.2004, he has admitted that at the residence of Shri Mang, they had committed pilferage from the accounts bags and further stated that they have acted as per the instructions of the Petitioner. It is contended that the statement of Shri A. R. Kamble is incorrect as the said pilferage of the cash from the accounts bag was done by him alone. Learned counsel further submits that the Petitioner had asked for a copy of the recorded statement of Shri Rudresh Narvekar, the driver, and Shri Kallappa Mang, a casual labourer whose names have figured in the statement of Shri A. R. Kamble. Furthermore, to examine them as witnesses was arbitrarily rejected by the inquiry officer on 02.05.2005 without recording the reason for such denial.

9. Learned counsel further submits that as far as charge No.III regarding the unauthorised travel of the Petitioner in the mail van of the running section on the railway called BM-1/In/set-1 on 16.01.2004 and leaving the headquarters without prior permission is incorrect as the Petitioner had submitted his leave application by Fax for leaving the headquarters. It is contended that the departmental enquiry against the petitioner ought to have been conducted along with Shri A. R. Kamble, Shri Rudresh Narvekar and Shri Kallappa Mang as a common enquiry under Rule 18 of the CCS (CCA) Rules, 1965. However, the enquiry under Rule 14 against Shri A. R. Kamble was conducted separately, and the Petitioner was proposed to be a witness against Shri A. R. Kamble. The proceedings against Shri A. R. Kamble were dropped by the disciplinary authority as he had accepted the charges imposed on him. Failure on the part of the disciplinary authority to conduct common proceedings has caused great prejudice to the Petitioner. The Tribunal failed to consider that the enquiry officer did not allow the application of the Petitioner for summoning the witnesses Shri Rudresh Narvekar and Shri Kallappa Mang in complete ignorance of the principles of natural justice. Therefore, the order of the Tribunal warrants interference.

10. Learned counsel for the Petitioner relied on the following decisions in support of his submissions.

> **(i)** *United Bank of India Vs Biswanath Battacharjee reported in (2022) 13 SCC 329;*
> **(ii)** *Ram Lal Vs State of Rajasthan and others (Civil Appeal No.7935/2023 decided on 04.12.2023);*
> **(iii)** *Union of India and others Vs S. K. Kapoor reported in (2011) 4 SCC 589;*
> **(iv)** *Umesh Kumar Pahwa Vs Board of Directors Uttarakhand Gramin Bank and others reported in (2022) 4 SCC 385;*
> **(v)** *State Bank of Bikaner and Jaipur Vs Nemi Chand Nalwaya reported in (2011) 4 SCC 584;*
> ***(vi)*** *Balbir Chand Vs Food Corporation of India Ltd. and others reported in (1997) 3 SCC 371.*

11. The Respondents in their reply contended that the Petitioner misled the Investigating Officer during the investigation conducted by the Assistant Superintendent of Post Officers (ASPOs), BM. Miraj. In a statement dated 28.09.2003, the Petitioner claimed that Shri A.R. Kamble, a Mail Guard, was present and working from 4.30 a.m. to 07.00 a.m., when in fact Shri A.R. Kamble was absent from 04.30 a.m. to 06.10 a.m. on 26.09.2003. This fraudulent and misleading conduct of the Petitioner has been brought on record in the Investigation Report. It is incorrect on the part of the petitioner to contend that he has unnecessarily been dragged in the case by Shri A. R. Kamble. The sequence of events as evident from the records of the Disciplinary proceedings reveals collusion between the Petitioner and Shri A.R. Kamble. The petitioner’s failure to prevent the misuse of the designated stamp, his conduct of certifying the authenticity of the undertaking dated 30.06.2002 and remitting monthly deductions of instalments of loan to the tune of Rs. 1100/- to Bank as Disbursing Officer when he was neither authorised nor competent do so, substantiates the charge of collusion levelled against the Petitioner under Article II of the charge sheet.

12. Mr Faldessai, learned Deputy Solicitor General of India, appearing for the Respondents argued that the Petitioner’s discharge in a criminal case does not invalidate termination based on disciplinary proceedings, as disciplinary inquiries are governed by separate parameters. He contended that the Petitioner’s attempt to distance himself from Shri A. R. Kamble is baseless, as evidence collected indicated the Petitioner and Mr Kamble have acted as per their plan. The Petitioner admitted Mr Kamble’s late arrival on 26.09.2003 in his statements dated 09.01.2004 and 06.10.2003. Disciplinary findings demonstrated collusion between the two, and the charge of collusion was not vague. Additionally, the Petitioner improperly used his official stamp, issued a certificate, and facilitated loan deductions for Shri Kamble without jurisdiction or authority. The argument that theft was a charge against the petitioner is incorrect. The petitioner has been charged with collusion with Mr A.R. Kamble as throughout the investigation the petitioner tried to narrate a false story to the investigator.

13. Similarly, the learned counsel for the Respondents vehemently argued that the non-furnishing of statements of Shri Rudresh Narvekar, the driver and Shri Kallappa Mang, casual labourer is not fatal, nor it vitiates’ the inquiry since admitted facts are proved in the course of the enquiry in respect of charges qua the Petitioner which stand substantiated. The third charge is also proved against the Petitioner as the Petitioner could not simply hop into the wagon of the train and seek to enjoy a ride when he was under suspension and not authorised to travel without prior permission. Merely sending a fax that he is leaving headquarters is impermissible and cannot be construed as any permission having been granted. Only authorised persons on duty and others who are entitled to travel are competent to travel/board the compartment of the mail wagon and the contention that the petitioner travelled in the section where the mails were not heaped is ridiculous and unsustainable. The allegation that it was mandatory to conduct a common enquiry is incorrect, as it would have had no impact on the outcome of the enquiry. According to the learned counsel for the respondents, the Petitioner was dismissed from service after taking into consideration the evidence and documents before the disciplinary authority.

14. Mr Faldessai learned counsel relied on the decision of this Court in *Ravindranath A. N. Gaonkar Vs The Chief Secretary and the Appellate Authority and others* (Writ Petition No.390 of 2014 decided on 27.05.2022).

15. We have heard learned counsel Mr Lawande for the Petitioner and the learned counsel Mr Faldessai for the Respondents.

16. The Petitioner who was an employee of the Department of Post was ordered dismissal from service vide order dated 30.09.2006 by the Department of Posts, Mumbai. The Petitioner was served with a charge sheet basically on three charges. Firstly, while functioning as HAS Margao, he fraudulently showed Shri A. R. Kamble, the Mail Guard of the set, as present for duties from 4.30 a.m. to 7.00 a.m. in the attendance register and the composition of the set. However, the said Kamble was absent during that time and the Petitioner did not report his absence in his daily report as he was bound to disclose it in the capacity of supervisory function. The other connected allegation against the Petitioner is that he gave a misleading statement dated 28.09.2003 to Assistant Superintendent of Post Office, Miraj in respect of the incident of loss of Margao Head Office Accounts Transit Bag (in short "A/c T.B.") closed by Panaji sorting 3A dated 25.09.2003 to evade the detection of loss of Margao Head Office A/c T.B. by police thereby attempting to frustrate the departmental investigation at the initial stage by collusion and caused loss to the department to the extent of Rs.42425/-. In view thereof, it was alleged that the Petitioner has violated the provisions of Rule No.50(I) of Chapter III and Rule No.28(i) of Chapter II of the Postal Manual Vol. VII (corrected up to September 1999) including the provisions of Rule No.3 (1) (I) (II) (III) of C.C.S.(Conduct) Rules, 1965.

17. The second charge against the Petitioner is that he failed to protect against misuse of his designation stamp and in collusion with Shri A. R. Kamble, Mail Guard SRO, Margao facilitated obtaining a loan of Rs.25,000/- from Syndicate Bank by submitting fake undertaking dated 30.06.2002 purported to have being issued by SRO, Margao under his designation stamp and signature and by effecting unauthorised deductions of instalments of loan of Rs.1100/- each from the pay of the official for September 2002 and October 2002 and remitting the same to the bank as Disbursing Officer and misleading the bank authorities as to the authenticity of undertaking dated 30.06.2002. Thus, the Petitioner thereby violated the provisions of Rule No.3 (1) (I) (II) (III) of C.C.S.(Conduct) Rules, 1965.

18. The third charge against the Petitioner was that while under suspension with effect from 07.10.2003, he left the headquarters without prior permission of the competent authority and travelled unauthorisedly from Thane to Margao and thereby violated the provisions of Rule No. 21 of Chapter I of P & T Manual, Volume III and in contravention of provisions of Rule 3 (1) (III) of C.C.S. (Conduct) Rules, 1965.

19. The Enquiry officer had granted a preliminary hearing on 16/17.01.2005 and 04.02.2005 to the petitioner. The petitioner denied all the charges levelled against him and requested to permit him to avail the assistance of Shri P.K.Pense retired postal official as his defence assistant. Shri P.K Pense submitted his willingness. The presenting officer submitted documentary evidence. The inspection of the said documents was duly carried out by the petitioner. The petitioner had asked for supply of documents which was duly granted and provided. The prosecution (respondents) presented 6 witnesses, and the petitioner presented Shri S.B. Kamble as his defence witness. The petitioner was given full opportunity to cross-examine the prosecution witnesses. Both sides thereafter filed their written submissions. The enquiry officer after going through the documents, deposition of witnesses and the written submissions of the presenting officer as well as the petitioner (charged officer), submitted a report on 29.09.2005 by making the following observations.

Charge I: The documentary evidence i.e. Ex-P-1 (the Daily Report of HSA Margao RMS/3 A dated 25/09/2003) shows that the Petitioner had not reported that Mr A. R. Kamble was absent from 4.30 to 6.0 a.m. and that Mr A. R. Kamble during his cross-examination admitted that he had attended the duty late and had informed the Petitioner on the phone on 25/09/2003. PW-6 Mrs Ujwala Kamble, the wife of Mr A. R. Kamble deposed that her husband left home at around 4.30 a.m. to 5.00 a.m., and considering the distance, it takes 1 or 1½ hours to reach Margao RMS. PW4 (D.V Ganmote) during investigation confirmed from Mr A. R. Kamble that he had attended at 6.10 a.m. on 26/09/2003. The Petitioner stated in his written statement (P-5) dated 28/09/2003 given before ASP DO Miraj, that Mr A. R. Kamble attended the duty at 4.30 a.m. on 26/09/2003 and the

Margaon lines bags were handed over to him at 5.30 a.m., which contention was modified in Ex. P-8 (Application dated 06/10/2003 faxed by the Petitioner). Thereafter, the Petitioner again modified the contention in Ex-D-2 (written statement of the Petitioner dated 9/01/04 recorded by ASP DO Miraj) and stated that Mr A. R. Kamble had attended the duty at 6.15 a.m. on 26.09.2003. The Petitioner was unable to furnish a satisfactory reason after considering the documentary and oral evidence adduced during the enquiry. Hence, in the enquiry officer's opinion, there was enough evidence, which proved that the Petitioner fraudulently showed Mr A. R. Kamble as present. Further, about the detection of the loss of Margaon H.O. A/C TB, the Petitioner revealed these facts to the police, but he did not reveal these facts during the investigation by ASP DO Miraj on 28-9-2003. Ex-P5 (written statement dated 28/09/2003 given by the Petitioner before ASP DO Miraj) clearly shows that the Petitioner had given a misleading statement.

Charge II: It was observed while examining documentary evidence, Ex. P-27 (written statement dated 30/07/04 of the Petitioner (under suspension) given before IP Ist Sub Division, Panaji) has stated that A.R. Kamble had neither obtained required permission nor informed the department after taking a loan and he has signed over the designation stamp impression of SRO Margao which is at Ex P-28 dated 30.06.2002, as the Petitioner had refused to sign on the undertaking. However, the Petitioner allowed the loan instalments to be deducted knowing that he had not signed the undertaking to obtain a loan. The Petitioner has deducted the loan instalments from the pay of Mr A. R. Kamble and remitted it to the Syndicate Bank Branch Miraj under Ex P-14 (SRO Margao, letter No.CH-1/1244/02-03, dt 7/10/2002). The letter at Ex P-15 (letter No. 5391/MRJ/Adv/ARK dt 16/10/2002) was received from the Manager of Syndicate Bank addressed to SRO Madgao. Exhibit P-14 is the letter written by the Petitioner in respect of forwarding the demand draft of the amount deducted from the pay of Mr A. R. Kamble towards the loan, and Ex P-18 (credit note dt 20/11/2002, issued by Syndicate Bank Branch Miraj for Rs. 1100/-), which proves the conduct of the Petitioner, certifying the authenticity of undertaking dated 30/06/2002, and remitting monthly deduction of loan of Rs. 1100/-. There was no evidence provided by the Petitioner to show that Mr A. R. Kamble had obtained the designation stamp externally. It was the Petitioner's duty to report the misuse of the stamp, but he took no action and allowed the loan deduction, thus proving that Mr A. R. Kamble had taken the loan with the Petitioner's consent.

Charge III: Pw-2(Shri B.B.Jadhav, SRO Satara) and Pw-3 (Shri. G.A Polad, M.M SRO Margao) have confirmed that the Petitioner had travelled through section BM-1/In-1 on 16/01/2004. The Petitioner applied for permission to travel, allowing very little time for processing the case by the controlling authority. The application was faxed to the Divisional head due to urgency, but it was not received before the actual departure from the headquarters. It was the petitioner's duty to avail the permission well in advance before leaving the headquarters. The Petitioner being a senior officer having put vast service, with sufficient knowledge and experience of the departmental functioning system should have taken precautions but he did not follow the provisions. Therefore, the charge of unauthorized travel is proved without doubt.

Therefore, in view of the above findings, the enquiry officer concluded that the charges levelled against the Petitioner are proved beyond a shadow of doubt and there was no violation of the principle of natural justice as the Petitioner was given a fair opportunity to defend himself.

20. The enquiry process was conducted following due process, providing a fair hearing to all involved and therefore does not warrant any further review or intervention. The disciplinary proceedings confirmed that the charges against the petitioner including collusion, misuse of authority, and unauthorized actions, were substantiated. Mere discharge in a criminal case is no ground nor justification to terminate the disciplinary proceedings. The charges against the petitioner were upheld as valid by all the Authorities. No charge regarding the loss of mailbags was levelled against the petitioner. The said ground is dealt with in detail by the Inquiry officer, Disciplinary Authority and the Tribunal.

21. Therefore, the enquiry has been fairly and properly held, and the findings are based on evidence. The question of the adequacy of evidence or the reliable nature of the evidence will be no grounds for interfering with the findings of the departmental enquiry. Hence does not invite the intervention of this Court. Suffice, it would be to say that broadly, the charges are proved based on the factual position, which, in turn, was based on official documentation, which at no point in time the petitioner has controverted or denied nor has alleged that the documents were false or fabricated.

22. The three charges are held in the positive by three different forums. First, the Department of Post passed an order dated 30.09.2006. The second forum where the above three charges are established is the office of the Postmaster General, Goa Region being Appellate Authority who dismissed the appeal vide Order dated 06.08.2007 and the third and the last forum which confirmed the charges is the order dated 13.05.2011 of the Central Administrative Tribunal, Bombay Branch, Mumbai. The tribunal observed that it is the exclusive domain of the disciplinary authority to consider the evidence on record and record its findings based on evidence adduced upon it. In judicial review, the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its conclusions and that the judicial review is not an appeal from a decision but a review of how the decision is made. Further, the Tribunal in Para 23 of the order has mentioned that the prescribed procedure was followed in conducting the disciplinary proceedings. The petitioner was given full opportunity to defend himself and the punishment awarded was not shockingly disproportionate. There is no violation of the provisions contained in Article 311 of the Constitution of India. It is also observed that the petitioner was not able to establish any bias or malafide or perversity by the Inquiry officer and the order passed by the Appellate authority is reasoned.

23. We have considered the material placed on record along with the relevant papers and orders passed by the disciplinary authority which is confirmed by the Appellate Authority and Tribunal. The issue involved in the present petition is whether the Court can interfere in the order of punishment imposed by the disciplinary authority and confirmed by the Appellate Authority and the Central Administrative Tribunal on the ground of it being disproportionate or quantum, and what is the scope.

24. It is well settled that in the case of punishment based upon the inquiry report, if disciplinary authority after going through the evidence and hearing the delinquent finds that the charges levelled against the delinquent are proved and while imposing punishment the disciplinary authority must consider the quantum of punishment. In the present case, the disciplinary authority has considered the charges levelled against the Petitioner and concluded that the charges are proven. Therefore, the disciplinary authority has passed the impugned order of punishment. In our view, there is no infirmity or illegality committed by the disciplinary authority and therefore, no interference is required in the order of disciplinary authority and confirmed by the Appellate Authority and the Tribunal. At this stage, it is appropriate to consider the relevant decisions of the Hon'ble Apex Court from which we derive support.

25. The Hon'ble Apex Court in ***State Bank of India Vs A. G. D. Reddy, reported in 2023(11) Scale 530*** observed in paragraphs 32 and 37 as under: -

> *"32. From the above discussion, it is clear that it could not be said that the Enquiry Report, the findings of the Disciplinary Authority and the order of the Appointing Authority are based on no evidence or are perverse. Even if we eschew the report insofar as the aspect of nonsubmission of control form, the transgression of the area of operation and non- declaration of the immovable property and certain other charges are concerned, the order of penalty can be sustained.*
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> *37. In the present case, it could certainly not be said that the report is based on no evidence or that it is perverse. The learned Single Judge transgressed the limits of judicial review in setting aside the enquiry proceedings and the punishment imposed. The Division Bench, in a short order has, after extracting a part of the learned Single Judge's judgment, gone on to hold that having perused the*

records of the enquiry they do not find that the charges have been dealt with in any manner of specificity. Thereafter they conclude that the learned Single Judge was justified in arriving at its conclusion. We are not able to sustain the orders of the learned Single Judge and the Division Bench."

26. In ***Union of India and others Vs P. Gunasekaran reported in (2015) 2 SCC 610,*** the Hon'ble Supreme Court in detail has explained the position of law so far as the scope of interference in the matter relating to the disciplinary proceedings is concerned. The Hon'ble Supreme Court observed at paras 12 and 13 as under:

"*12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:*

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
i. The finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:
(i) re-appreciate the evidence;
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based;
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

27. It is the case of the petitioner that the fact that he has been discharged from Criminal Case No. 114/S/2006/E by the JMFC, Margao, Goa vide order dated 23.10.2008 was not taken into consideration by the Tribunal while rendering its judgment dated 13.05.2011 in the O.A. No. 02/2008, by which the penalty of dismissal from service imposed on the petitioner by the disciplinary authority, vide Memorandum dated 30.09.2006 was upheld. The Criminal Case was initiated against the petitioner upon being charge-sheeted for abetting the offence of theft committed by his co-accused and in furtherance of their common intention under Sections 109, 379 read with 34 of the Indian Penal Code, 1860. The Disciplinary inquiry initiated against the petitioner was under the CCS (Conduct) Rules 1965 on the allegations of having failed to show absolute integrity, displayed a lack of devotion to duties and acted in a manner unbecoming of a Government Servant. The allegations in both proceedings are different.

28. It is pertinent to note that whenever allegations of misconduct are made against an employee, the employer is competent to take disciplinary action and punish him for proven misconduct. Such punishment can vary from removal/dismissal from service to censure. Before acting against an employee on the alleged misconduct, the employer is required to follow due procedure. The gravamen of allegation in disciplinary proceedings may also attract penal provisions which may entail the launch of prosecution by the police. In such a case, the employee would be facing disciplinary action under the employer and criminal prosecution. Thus, on the same allegation, a person who is also an employee of an organisation can face two-pronged action, disciplinary action by the employer and criminal proceedings by the State. The relationship between employer and employee is one of contract and regulated by terms of contract and/or Rules/Regulations/ Bye-laws. The continuation of employment is based on the trust and confidence of the employer. A proven misconduct may result in dismissal/ removal from service.

29. On the contrary, penal law is structured on the concept that when a person commits a crime, it may be against a person but would be a crime against society. Therefore, even if a crime is committed in a private place or within the four corners of employment, it is still a crime against society and the State prosecutes him. In disciplinary action, misconduct can be established based on the principle of preponderance of probabilities. Circumstantial evidence can be taken into consideration to hold the charge as proved and to impose appropriate punishment. On the contrary, in criminal law, the charge must be proved with cogent and unimpeachable evidence and the burden is on the prosecution to establish the charge. Any deficiency and element of doubt in evidence will go against the prosecution. Thus, the difference between departmental proceedings and criminal proceedings is presumption versus strict rules of evidence, respectively.

30. In ***State Bank of India and others Vs P. Zadenga reported in (2023) SCC Online SC 1240,*** the Hon'ble Supreme Court has held in para 25 as under: -

"25. In Nelson Motis Vs Union of India, reported in (1992) 4 SCC 711, it was observed that the question of whether departmental proceedings could have continued in the face of acquittal in criminal proceedings had no force as: (SCC P.714 para 5)

"5………… The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

31. ***In State of Karnataka and another Vs Umesh, reported in (2022) 6 SCC 563,*** the Hon'ble Apex Court observed at para 16 thus:

"16. In Karnataka Power Transmission Corporation Ltd. v. C. Nagaraju, the Court has held:

"9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether

the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different."

The Court also held that:

"Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court."

32. Given an overview, the citations relied on by the petitioner are hereby dealt with as below.

(i) In *United Bank of India Vs Biswanath Battacharjee* (supra), the employee, Biswanath Bhattacharjee, was dismissed for disbursing loans to fictitious beneficiaries and misappropriating funds. The Calcutta High Court found the disciplinary authority's findings unsupported by sufficient evidence, concluding that the dismissal was unjustified. The Supreme Court upheld this decision. In the present case, however, there is sufficient incriminating evidence against the Petitioner, duly appreciated by the Disciplinary Authority, the Appellate Authority, and the Tribunal. Thus, the Supreme Court judgment in *Union Bank of India* (supra) is not applicable.

(ii) In *Ram Lal Vs State of Rajasthan and others (supra),* Ram Lal, a Constable with the Rajasthan Armed Constabulary, was dismissed after being accused of altering his date of birth for recruitment. Although initially convicted, he was acquitted by an appellate court due to insufficient evidence. He challenged his dismissal through a writ petition, which the High Court dismissed. The Supreme Court later reinstated him, citing flaws in the disciplinary proceedings and the importance of evidence. The precedent laid down by this judgment does not support the Petitioner's case, as the charges against him in the departmental inquiry and the criminal court were not identical unlike that of the Petitioner in the aforesaid judgment.

(iii) In *Union of India and others Vs S. K. Kapoor (supra),* the Hon'ble Supreme Court held that violation of principles of natural justice would render the disciplinary proceedings invalid**.** However, in the present case, the disciplinary authorities provided a fair opportunity to the petitioner, ensuring compliance with the principles of natural justice. Therefore, in the facts of the present case, the citation would not be of any benefit to the petitioner.

(iv) In *Umesh Kumar Pahwa Vs Board of Directors Uttarakhand Gramin Bank and others (supra***),** Umesh Kumar Pahwa, a Branch Officer at Uttarakhand Gramin Bank, was dismissed after an inquiry upheld several charges related to a loan sanction. He challenged his removal, claiming the allegations were unfounded and biased. The High Court confirmed his dismissal, but the Supreme Court later reduced the punishment to compulsory retirement, noting no financial loss to the Bank and Pahwa's long unblemished service. The Petitioner, in the present case, has not alleged bias regarding the departmental inquiry. As such, this judgment does not support his case.

(v) In *State Bank of Bikaner and Jaipur Vs Nemi Chand Nalwaya* (supra), the respondent, a bank clerk, was dismissed for facilitating a fraudulent withdrawal after a departmental inquiry but was acquitted in criminal court due to insufficient evidence. The High Court reinstated him, citing no wilful misconduct; however, the Supreme Court overturned this decision, affirming the disciplinary findings and modifying the punishment to compulsory retirement. The Court noted that while misconduct was proven, it did not amount to fraud or misappropriation, and the charges in both cases were the same. The precedent laid down in this judgment does not apply to the present case since the allegations against the Petitioner in the disciplinary proceedings and the charges against him in the criminal proceedings are distinct.

(vi) The judgment rendered by the Supreme Court in *Balbir Chand Vs Food Corporation of India Ltd. and others, (supra),* can be differentiated from the current case, primarily due to the distinct factual matrices, which makes them not directly comparable.

33. The citation relied on by the respondents of this Court in *Ravindranath A. N. Gaonkar Vs The Chief Secretary and the Appellate Authority and others (Writ Petition No.390 of 2014 decided on 27.05.2022)* certainly assists the case of the respondents.

34. The decisions of the Hon'ble Apex Court give a clear idea of the limited scope of judicial review of the discretion exercised by the employer to impose a particular penalty on the delinquent employee. It has repeatedly emphasised that the High Court cannot exercise Appellate jurisdiction in such matters and substitute its opinion for the one formed by the disciplinary authority. It has been held that the punishment imposed by the competent authority cannot be modified/substituted with a lesser penalty unless the Court is satisfied that the same is grossly or shockingly disproportionate or is so unreasonable that no person of reasonable prudence would have imposed such punishment in the facts and circumstances of the case.

35. For determination of the question as to whether the punishment imposed by the disciplinary authority is grossly or shockingly disproportionate, the Court has to take into consideration all the relevant facts including the nature of the charges proved, the past conduct of the employee, the punishment if any imposed earlier, the nature of duties assigned to the employee having due regard to their sensitiveness, performance norms if any laid down by the employer and above all the paramount requirement of maintaining discipline in the service.

36. Considering the overall facts and circumstances of the case and in the light of the principle laid down by the Hon'ble

Supreme Court and this Court, we are of the firm opinion that the Tribunal and the Appellate Authority have recorded findings after properly appreciating the materials on record. We do not find any perversity in the impugned orders. The present petition is devoid of merits and the same deserves to be dismissed.

37. For the foregoing reasons, this petition fails and is hereby dismissed. Rule is discharged.

NIVEDITA P. MEHTA, J **M. S. KARNIK, J**