IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Partha Pratim Roy

W.P.C.T. 320 of 2013

Asit Kumar Sarkar
Vs.
Union of India & Ors.

For the Petitioner	: Mr. Debottam Das, Mr. Tirupati Mukherjee.
For the Respondent	: Mr. Soumak Bera, Mrs. Priti Jain.
Heard on	: 31.08.2026
Judgment on	: 23.11.2026

Madhuresh Prasad, J.:

1. We have heard the learned advocates representing the parties.

2. The present writ petition arises out of the judgment dated 22.03.2013, passed by the Central Administrative Tribunal, Calcutta Bench (for short 'Tribunal') dismissing the petitioner's challenge to the impugned office order dated 01.09.2008 whereby the petitioner was removed from service, without any disqualification for future employment. The petitioner had also challenged the order dated 29.05.2009, passed by the appellate authority confirming the punishment.

3. Before the Tribunal, the petitioner primarily raised issues regarding non-supply of the documents requested by him. He was also aggrieved by the fact that he was not allowed representation by a lawyer, as his defense assistant. He also made submissions regarding the proceeding being concluded by an order of removal without even examining the complainant, one Mr. H. L. Saha. No witnesses were examined by the Presenting Officer in support of the charge.

4. It is submitted that the writ petitioner also gave a list of 26 documents, copies of which he had requested for, since prior to issuance of the present charge memo dated 01.11.2006. Identical charge memos, (two) were issued earlier; and on the grounds of non-supply of documents, the same were successfully assailed by the writ petitioner. Despite the earlier two charge memos being interfered with by the Tribunal and judicial forum, the authorities committed the same mistake while issuing the charge memo dated 01.11.2006. The petitioner repeatedly requested for being supplied the documents, which were never supplied to him. The same, therefore, resulted in violation of the principles of natural justice.

5. It is further submitted that the nature of allegations disclosed in the charge memo made out a misconduct which was incapable of being committed by the petitioner himself. The allegations pertained to passing of certain bills and overtime allowance claims (OTA for short), which were forwarded to the petitioner by one Mr. Vijay Shankar. The bills, thereafter, were verified by the Drawing and Disbursing Officer,

Mr. H. L. Saha. The alleged misappropriation of funds, therefore, involved a collective responsibility.

6. It is submitted that Mr. H. L. Saha was also proceeded against but was awarded a lesser punishment, being the recovery of certain alleged defalcated amount from his pensionary dues. The other person, Mr. Vijay Shankar was also proceeded against and he was dismissed. The petitioner also was dismissed.

7. The Drawing and Disbursing Officer, who was responsible for verifying the bills with reference to the documents, before forwarding it for payment, was dealt with by a very light punishment. The persons below the Drawing and Disbursing Officer including the petitioner an Upper Division Clerk, were made a scapegoat.

8. It is further submitted that the charges disclosed an allegation of criminal breach of trust. The ingredient of entrustment was not established in the enquiry. In absence of any ingredient of entrustment and any malice at the time of entrustment, the allegation could not be established. The findings of the Disciplinary Authority, therefore, in absence of the above two ingredients being established are unsustainable.

9. It is further submitted that during the enquiry, the Enquiry Officer posed a question to the writ petitioner. The Enquiry Officer thus assumed the role of the Presenting Officer. Referring to decision of the Hon'ble Apex Court in the case of ***Roop Singh Negi –Vs.- Punjab***

National Bank and Others reported in ***(2009) 2 SCC 570*** it is submitted that the Enquiry Officer performing a quasi-judicial function is expected to be an impartial adjudicator. The moment he assumes the role of a Presenting Officer, the independence of the adjudication is lost. The circumstances, therefore, strike at the root of fairness in the proceeding and the proceeding stands vitiated.

10. In support of his other submission, he has relied on the decisions of the Hon'ble Apex Court in the case of ***Jai Prakash Saini –Vs.- Managing Director, U.P. Cooperative Federation Ltd. & Ors.*** reported in ***[2026] 4 S.C.R. 286***; ***United Bank of India –Vs.- Biswanath Bhattacharjee*** in ***Civil Appeal No. 8258 of 2009***; ***Union of India & Ors. –Vs.- Ram Lakhan Sharma*** in ***Civil Appeal No. 2608 of 2012***; ***Sengara Singh and Others -Vs.- State of Punjab and Others*** reported in ***(1983) 4 SCC 225***, ***Punjab & Sind Bank –Vs.- Sh. Raj Kumar*** in ***Civil Appeal No. 847 of 2026***; ***Maharana Pratap Singh –Vs.- State of Bihar and Others*** reported in ***2025 SCC OnLine SC 890*** and a decision of a coordinate Bench of this Hon'ble Court in the case of ***Asim Kumar Paul –Vs.- Union of India & Ors.*** in ***WP.CT 75 of 2010***.

11. Lastly it is submitted that the petitioner was also proceeded against for the self-same allegations in a criminal trial. The trial ended in his acquittal. Referring to the decision of the Hon'ble Apex Court in the case of ***G.M. Tank vs State Of Gujarat & Anr.*** reported in ***2006 (5) SCC 446***, he submits that in the present case, the self-same allegations are

the subject matter of the disciplinary proceeding as well as the criminal trial. The material relied upon in both the proceedings is one and the same. Therefore, in case of acquittal in a criminal trial, benefit of the same is to be extended to the charge-sheeted employee in a departmental proceeding.

12. The learned advocate for the Union of India, however, submits that from the proceedings before the Enquiry Officer it is evident that the petitioner was made available all such documents requested by him which were relevant, and available with the authorities. The petitioner's request in this regard was considered and the relevant and available documents were communicated vide office memorandum dated 20.06.2008. By this communication the authority considered the relevance of each and every document the petitioner had requested. 20 out of 26 documents requested for by the petitioner, were found to be irrelevant to the enquiry, as these documents were not relied upon to support the charges mentioned in charge memo dated 01.11.2006.

13. It is apparent from the records that thereafter, the petitioner participated in the enquiry. The proceeding dated 18.07.2008 before the Enquiry Officer reveals that he was confronted with the register showing some entries forming the basis of the alleged misconduct which were not disputed by the writ petitioner. He feigned ignorance regarding repeated representation of the same demand draft for an amount of Rs. 58,957/- day after day leading to repeated payment on account of the same demand draft. The petitioner stated that he put

his signature in the register, in support of such transactions, by mistake.

14. The learned advocate for the Union of India, therefore, submits that the substance of the allegations was established before the Enquiry Officer with reference to documents, which were not disputed by the writ petitioner. The plea of mistake raised by the petitioner cannot be made the basis of absolving the petitioner of the financial misconduct committed.

15. It is submitted that in the enquiry the petitioner was given all the documents that were considered relevant and available with the authorities. The plea in this regard, therefore, is unsustainable.

16. Insofar as the allegation regarding parity with the other accused persons namely, Mr. H. L. Saha it is submitted that the role and responsibility of the Drawing and Disbursing Officer, acting on the basis of the file noting put up before him ; and the staff/officer who actually checked and processed the bills prior to being placed before the Drawing and disbursing officer, in the alleged transactions are not one and the same. The plea of parity in the grant of punishment, therefore, with Mr. H. L. Saha, the Drawing and disbursing officer, is unsustainable.

17. Learned advocate for the Union of India also relied on the decision of the Hon'ble Apex Court in the case of ***Punjab and Sind Bank vs. SH. Raj Kumar*** (Civil Appeal No. 847 of 2026, decided on April 2, 2026), to

submit that the disciplinary authority is the best judge of the situation, and the requirements of maintaining discipline within the work force, and the writ court should generally refrain from re-appreciating evidence or substituting its judgment for that of the disciplinary authority, intervening only in exceptional cases.

18. It is submitted that the Tribunal's order, therefore, rejecting the Original Application requires no interference in exercise of jurisdiction under Article 226 of the Constitution of India since no procedural irregularities/illegalities have been highlighted by the petitioner in the proceeding. In view of the petitioner's admission on 18.07.2008, the other submissions lost their force whatsoever.

19. Upon consideration of the rival submission, perusal of the record and the judgments cited at the bar we find no substance in the grievance of the petitioner that he was not allowed to be requested by a lawyer. It appears from the perusal of the enquiry report that such grievance is devoid of any substance whatsoever. His requests in this regard was rejected in writing by the Disciplinary Authority in the proceedings dated 30.6.2008. The petitioner was allowed opportunity to take help of a defense assistant from next date in the proceeding, but with a prior intimation regarding the proposed defense assistant. The petitioner sought some more time to decide as to who would be his defense assistant, but chose not to challenge the written rejection of his claim for engaging a lawyer as his defense representative. Therefore, we find no force in such a plea now being raised by the petitioner. The petitioner

did not challenge the rejection of his claim for engaging a lawyer as his defense assistant. He, therefore, cannot now be permitted to raise any grievance in this regard.

20. The plea regarding non-supply of documents is also in our opinion unsustainable. The claim for 26 documents was admittedly considered and such documents, which were considered relevant were made available to the petitioner under an Office Memorandum dated 20.06.2008. Upon receipt of such relevant documents the petitioner participated in the enquiry without any objection. Therefore, the plea regarding non-supply of documents also in our opinion is an afterthought and devoid of any substance.

21. Insofar as the petitioner's case that the nature of allegations forming the charge was incapable of commission by him alone and that there was a collective responsibility of the persons involved in passing of the Over Time Allowance (OTA) Bills, we fail to understand how such submission can in any way be the basis to absolve the petitioner of his responsibility based on his role in passing of the OTA bills; and repeated payments on the basis of same bills.

22. The other two persons involved in the process namely Sri Vijay Shankar, functioning as Bill Clerk; and Drawing and Disbursing Officer Mr. Saha were also proceeded against and visited with penal consequences. Vijoy Shankar was visited with the same penal consequence of removal as the petitioner. Mr. Saha Drawing and Disbursing Officer, however, was visited with lesser punishment.

Therefore, we find that the three persons, including the petitioner, who discharged a role in passing of the OTA Bills leading to misappropriation of government funds, were all proceeded against, and a commensurate punishment awarded by the employer. Therefore, there is no occasion for the petitioner to raise a grievance that he was punished for the charges based on commission of misconduct which cannot be attributed to the petitioner.

23. Insofar as his submission regarding parity of punishment we find that one Shri Vijay Shankar who forwarded the bill including the OTA Bills to the petitioner was also visited with the penal consequence of dismissal. In so far as the Drawing and Disbursing Officer is concerned it is apparent that the DDO verified the bills after checking and processing of the bills by the petitioner, and Mr. Vijay Shankar. The DDO, therefore, had no role in checking and processing of the bills. Still, for verifying such bills he has been visited with a penal consequence, being the recovery of a certain defalcated amount from his pensionary dues. Since the role attributed to the petitioner was not at par with the role attributed to the DDO there is no scope for a claim for parity in the matter of grant of punishment to the petitioner.

24. Decision in the Case of ***Sengara Singh*** (*supra*), relied upon by the learned advocate for the petitioner also does not apply to the facts and circumstances of the present case. In the case of ***Sengara Singh*** (*supra*) the apex Court found absence of any distinguishing feature between the case of the appellant and others with whom he was

claiming parity, and who were reinstated. As noticed above, no such parity is made out by the present writ petitioner who claims benefit of apex Court's decision in the case of ***Sengara Singh*** (*supra*)

25. The judgment in the case of ***Punjab and Sind Bank*** (*supra*) also does not sustain the petitioner's plea in this regard as the premise for claim of parity in the matter of grant of punishment based on parity in the role discharged by the petitioner *vis-a-vis* the DDO was not made out by the writ petitioner. Therefore, there is no scope for claiming benefit of the apex Court's decision in the case of ***Punjab and Sind Bank*** *(supra*).

26. The last submission advanced by the petitioner was for claiming benefit of acquittal in the criminal trial to be extended in the departmental proceeding. We find no force in such submission. The law now is well settled that benefit of acquittal in the criminal trial, though on the self-same charges, cannot be claimed automatically in a departmental proceeding. departmental proceedings may proceed simultaneously in respect of the self-same charges as the standard of proof in the departmental proceeding is lesser than the standard of proof applicable to a criminal trial, conducted on the strict rules of evidence. Therefore, the very same charges which could not be substantiated in a criminal trial, may be proved, in the departmental enquiry, considering the material placed, and on a preponderance of probability. Our consideration is founded on decisions of the apex Court in the case of ***Captain M. Paul Anthony vs. Bharat Gold Mines***

reported in ***(1999) 3 SCC 679*** and ***G.M. Tank*** *(supra*). Also, it is the onus of the delinquent to substantiate that such a parity exists and that as a result finding of guilt in the departmental proceeding would be onerous and unsustainable, in the case of an acquittal in the criminal trial.

27. No such circumstance has been made out by the learned Advocate for the appellant in the present case. We therefore find no substance in the submission of the learned Advocate for the appellant in this regard.

28. The petitioner also placed reliance on the case of ***Maharana Pratap Singh*** (*supra*). The decision in this case does not inure to the petitioner's benefit. In the judgment of ***Maharana Pratap Singh*** *(supra)* the apex Court found the conclusion regarding charges being proved against the writ petitioner therein to be unsustainable following his acquittal in criminal proceeding since the apex Court found identical charges, evidence, witness and circumstances. No such parity on all scores arose for consideration in the present case, to claim benefit of decision in the case of ***Maharana Pratap Singh*** (supra) or decision of the coordinate bench in the case ***Asim Kumar Paul*** (*supra*).

29. In so far as the decision of the apex court in the case of ***Roop Singh Negi*** (*supra*) is concerned, we fail to understand as to how the petitioner is claiming any benefit of the said judgment. The enquiry report reveals that the enquiry officer has considered the entire record including various registers produced in the enquiry. The petitioner in response to certain queries clearly admitted the fact that he used to record the

particulars of the bills in the bill register received through the encashment register signed by the DDO directly; and not through the Bill Register. The petitioner further stated that he did not consider such modus to be irregular and was of the view that it was being done as regular practice.

30. The fact that the petitioner adopted such procedure, therefore, was clear before the Enquiry Officer. Therefore, we find no force in the reliance placed by the writ petitioner on the decision of the Apex Court in the case of ***Roop Singh Negi*** *(supra)* and ***Jai Prakash Saini*** *(supra)* in support of his contention that there was no material in support of charge. Insofar as decision in the case of ***Ram Lakhan Sharma*** *(supra)* is concerned. We find no application of the said judgment to the facts and circumstances of the present case in view of the material considered hereinabove, which is not in dispute. Therefore, an issue regarding any doubt on the independence of the Enquiry Officer does not arise. There is no scope in the writ petitioner to place reliance on decision of the Apex Court in the case of ***Ram Lakhan Sharma*** *(supra).*

31. We find force in the argument of the learned Advocate for the respondent, that the petitioner has failed to make out any case that the findings of the disciplinary authority are based on no evidence, suffer from perversity, or that the punishment is so disproportionate that it shocks the conscience of the court. Therefore, we are of the considered opinion that no case was made out by the petitioner calling for interference with the order impugned in the instant appeal.

32. No other submission having been made we find no reason to interfere with the judgment of the CAT dated 22.03.2013, dismissing the petitioner's Original Application (OA No. 1129 of 2009).

33. There is no scope for interfering with the decision of the CAT in exercise of judicial review under Article 226 of the Constitution of India.

34. The writ petition, and pending application/s, if any are dismissed.

35. Urgent certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Partha Pratim Roy, J.)