

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 29311 of 2008

**Smt. Sibani Baskey
-Vs-
Union of India & Ors.**

For the Petitioner : Mr. K.B.S. Mahapatra
Mr. Aditya Shit

For the Respondents : Mr. Susmita Saha Dutta
Mr. Uttam Basak

Judgment on : 22.05.2026

Ananya Bandyopadhyay, J.:-

1. The petitioner has prayed for a writ in the nature of mandamus commanding the respondent authorities for quashing or set aside the impugned departmental proceedings, including the purported Final Order being no.V-15017/Disc/UR-36(22)/DNB/07-08/4135 dated 26.05.2008 and to pay the petitioner all benefits of service to which the husband of the petitioner would have been entitled to, had there not been the purported proceedings and penalty.
2. A purported memorandum of charge was framed against the petitioner under Rule 36 of CISF Rules 2001 on the following charge:-

“No.742310845 ASI/Exe D.N. Baskey (U/S) was detailed for “C” Shift duty as In-charge of Seetalpur Railway Siding “A” patrolling area of SBP Camp from 21:00 of 04.10.2007 to 05:00 hrs of 05.10.07. During his duty hours at about 03:00 hrs., on 05.10.07 about 100-150 miscreants entered inside the SRS premises and looted coal from siding which was noticed by Mr. Senapati Singh, loading clerk of SRS area. At about 04:30 hrs Shri GS Mishra, Sales manager of ECL informed the matter to Insp/Exe T Singha, IC/SRP camp over phone. After getting this information Insp/Exe T Singha IC/SBP camp rushed to the spot and searched the village area, i.e adjacent colony just touching the siding boundary at at SSRS area along with Srhi GS Mishra, Sales Manager,/ECL, Mr. Mantu Ruidas, Labour supply contractor land Mr. R Pukar, Munshi of N.C.Pal Transport Co and they found aprox 4.5 tons of coal scattered in that area and thereafter they seized the three No.s of bullock darts fully loaded with coal and then unloaded the coal from bullock carts at SRS premises. But being the duty sentry of SRS “A” Patrolling area, constable RC De failed to prevent theft of coal and the same time such type of coal theft was quite impossible unless there was direct involvement and connivance of on duty Const. No. 881401480 R C De”.

3. The petitioner’s husband was employed in the Central Industrial Security Force (here-in-after called the CISF) from the year 1974, and since then the petitioner had been performing his duties with dedication and devotion. For his dedication and devotion he was elevated to the post of Assistant Sub-Inspector. But after his transfer to the CISF Unit, ECL, Seetalpur, his

dedication and devotion was being looked into in a squint eye and efforts were made to victimize him. But the husband of the petitioner was always very honest and hardworking, and as such there was no scope for the concerned respondents to raise any finger towards him.

4. Surprisingly enough by an order dated 6th October, 2007 he was placed under suspension without any prima facie case being existed against the husband of the petitioner. Thereafter, by a Memorandum dated 17th October 2007, it was inter alia alleged that the husband of the petitioner had failed to prevent theft of coal and at the same time such type of coal theft was quite impossible unless there was direct involvement and connivance of the petitioner. It was alleged that the said allegation was leveled on the basis of complaint received from the senior officers of the undertaking. In Memorandum, list of the witnesses, by whom the article of charge was proposed to be sustained, was mentioned. But none of the said independent witnesses has supported the allegations.
5. By his reply dated 29th October 2007 the husband of the petitioner denied the allegations and submitted the factual incident and requested to withdraw the charge sheet, and it was further submitted by him that in the event it has already been decided to proceed with the charge Sheet, then the documents as mentioned therein may be supplied to him for his defence.
6. The Disciplinary Authority who had already prejudged the issue and who had already decided the fate of the proceedings, without any examination of the reply submitted by the husband of the petitioner appointed Respondent

No.6 as enquiry officer and Shri Sudhir Thapa was appointed as Presenting Officer by Orders dated 05th November 2007.

7. By letter dated 8th November 2007 the Disciplinary Authority informed that the rules do not provide for making available the relevant documents to the charge officials for submission of his defence statement. It was further informed that the petitioner is given an opportunity to inspect the documents/ available in the case file which has already been handed over to the enquiry officer. Thereafter, the Enquiry Officer by his letter dated 28th November 2007, informed that all the documents which have been requested were not available with the Enquiry Officer and only P.E. report was available with him.
8. The petitioner further stated that the Assistant Commandant/Adm., by his letter dated 30th November 2007 asked the Enquiry officer to supply the documents. But the documents as was prayed for were not supplied. Thereafter, the Enquiry Officer started the enquiry proceedings whimsically and arbitrarily with the sole intention of anyhow proving the charges. Because of the proven bias of the enquiry officer, the petitioner by his application dated 24th December 2007 requested the Disciplinary Authority to change the Enquiry Officer, but the Disciplinary Authority by his letter dated 3rd January 2008 rejected the prayer of change of enquiry officer.
9. The petitioner further stated that the Enquiry Officer during the course of the Enquiry produced recorded statement of Shri C B Sood, Chief General Manager, but said Prosecution witness was not produced for examination by the husband of the petitioner for which he was highly prejudiced. However,

in his recorded statement Shri C B Sood has stated that he had reported the matter on the basis of information received from NK Bagri Dy Chief Sales manager, Sonpur Bazari area. Shri NK Bagri, Dy., Chief Sales Manager, in his statement stated that he reported the matter on the basis of information received by him from Shri GS Mishra, Sales Manager. Shri GS Mishra, Sales Manager in his statement stated that he has received the information from Shri Mantu Ruidas, a staff of the siding contractor and on the basis of the said information he has reported the matter.

10. The petitioner further stated that Shri Mantu Ruidas, a staff of N.C. Pal transport contractor in his statement stated that he had received the telephonic message from one Shri Ram Pukar and on being received the said information he has passed the same information. Surprisingly enough Shri Ram Pukar in his statement has stated that at about 04:30 hrs., he found that G.S. Mishra, Sales Manager was present at SRS Gate when Shri G S Misshra has said he got an information about jamming of Railway Track by coal pilferers and asked him to see the fact. In the meantime, CISF Inspector Shri T Singha reached the area and they boarded a vehicle and went outside the SRS area. On the way they found two bullock carts with coal and they took the bullock carts to the Railway Siding area and unloaded the coal there.

11. The petitioner further stated that Shri Senapati Singh, Loading clerk, in his statement states that up to 03:00 hrs., he was present at the loading side and thereafter at 03:30 hrs., he went to Railway Weigh Bridge with the particulars, till such time there was no coal pilferer. But at about 0345 hrs

he received a message over telephone that coal pilferer entered the area. He also received instruction from Shri GS Mishra, Sales Manager. At about 03:50 hrs., he went to the SRS area and noticed that some people near SRS area and ASI/Exec D.N. Baskey was driving them away.

12. The petitioner further stated that the enquiry officer also recorded statements of Shri T Singha, Inspector, who due extraneous reason has manufactured the report. From the statements of the prosecution witnesses it would reveal that the entire story was manufactured by Shri T Singha, Inspector due to extraneous reason. The enquiry officer had recorded the first plea, but he did not record the second plea. However, the Enquiry Officer recorded the statement of the petitioner and the petitioner was examined by the Enquiry Officer. The petitioner's husband had produced two Defence Witnesses, DW-1 and DW-2, who had deposed before the Enquiry officer in favour of the husband of the petitioner. The Presenting Officer in his brief did not discuss the important relevant evidences and he prepared a perverse and confusing report, wherein even though he did not prove the involvement of the husband of the petitioner but he traveled on surmise and conjecture and he concluded that some wrong elements were there.
13. The petitioner further stated that as per the Rule, the Presenting Officer presents the evidences on behalf of the Disciplinary Authority and the prosecution brief was the brief of the evidences and opinion by the Disciplinary Authority himself. The enquiry officer should not have exceeded the prosecution brief, and the Enquiry Officer should have given importance to the statements of the independent witnesses, but he whimsically,

arbitrarily and tendentiously prepared the enquiry report and arrived at a findings that the allegations leveled against the husband of the petitioner was proved, which was contrary to the Prosecution brief. The enquiry report and findings prepared by the enquiry officer was communicated to the husband The Enquiry report and of the petitioner by memorandum dated 28th March 2008.

14. The petitioner further stated that the Order of Suspension was also revoked by an Order dated 28th march 2008. By his representation dated 8th April 2008, the husband of the petitioner inter alia contended that the report of the Enquiry Officer is perverse and not maintainable, and prayed that the said purported findings may be reversed.
15. The petitioner states that thereafter the Commandant being the Disciplinary Authority by his purported Final order dated 26th May 2008, arbitrarily, whimsically and without any application of mind inflicted the penalty of Removal From service.
16. Being aggrieved by and dissatisfied with the said purported Final order her husband preferred a Statutory Appeal dated 9th June 2008 before the appellate Authority on the grounds as set out therein. Due to shock and humiliation, the husband of the petitioner died on 23rd July 2008, during the pendency of the appeal. The petitioner thereafter approached her learned advocate in connection with her grievances and her advocate in turn send a notice dated 5th September 2008 to the respondents requesting them to quash the said purported Final Order and treat as if the husband of the petitioner has died in harness.

17. The writ petition, as unfolded through the pleadings placed before the Court, presents a challenge to a disciplinary proceeding initiated against the petitioner, a member of the Central Industrial Security Force, culminating initially in the penalty of removal from service and subsequently modified in appeal to compulsory retirement. The petitioner seeks judicial intervention for setting aside the disciplinary and appellate orders and for restoration of all consequential service benefits which, according to him, would have accrued had the impugned proceedings never been undertaken.
18. The factual narrative originates from an incident alleged to have occurred during the intervening night of 4th and 5th October, 2007 at the Seetalpur Railway Siding "A" under the ECL establishment. The petitioner, Constable R.C. De, bearing Force No. 881401480, was detailed for "C" Shift sentry and patrolling duty from 21:00 hours of 4th October, 2007 till 05:00 hours of the following morning. According to the memorandum of charge framed under Rule 36 of the CISF Rules, 2001, a large body of miscreants, numbering approximately one hundred to one hundred and fifty persons, allegedly entered the SRS premises during the night hours and committed theft and pilferage of coal from the siding area.
19. The charge-sheet records that the occurrence first came to the notice of one Shri Senapati Singh, Loading Clerk of the SRS area, and thereafter information was allegedly transmitted through various officials connected with ECL and the transport contractor. Shri G.S. Mishra, Sales Manager of ECL, reportedly informed Inspector/Executive T. Singha, In-Charge of the SRP Camp, over telephone at around 04:30 hours. Upon receipt of such

information, the said officer, accompanied by Shri G.S. Mishra, labour contractor Mantu Ruidas and one Ram Pukar, Munshi of N.C. Pal Transport Company, proceeded to the locality adjoining the siding area and allegedly discovered scattered coal measuring approximately 4.5 tonnes together with three bullock carts loaded with coal. The coal was thereafter seized and unloaded within the SRS premises.

20. Upon the aforesaid foundation, the charge proceeded beyond mere negligence and introduced an imputation of active complicity. The memorandum alleged that such an extensive theft could not possibly have occurred unless there existed “direct involvement and connivance” on the part of the petitioner who was on sentry duty at the relevant point of time. The conduct attributed to the petitioner was described as gross negligence, dereliction of duty and misconduct unbecoming of a member of a disciplined force.

21. The petitioner, in assailing the proceedings, asserted that he had joined the CISF in the year 1988 and had throughout his career discharged his obligations with sincerity, diligence and devotion. It was contended that after his transfer to the CISF Unit at ECL, Seetalpur, efforts were persistently made to victimize him despite the absence of any blemish upon his service career. He further stated that he was abruptly placed under suspension by an order dated 6th October, 2007 although no prima facie material existed warranting such action.

22. The petitioner stated by a Memorandum dated 17th October 2007, it was inter alia alleged that the petitioner has failed to prevent theft of coal which

was otherwise impossible unless there was direct involvement and connivance of the petitioner. It was alleged that said allegation was leveled on the basis of complaint received from the senior officers of the undertaking.

23. The petitioner contended the allegations incorporated in the memorandum dated 17th October, 2007 rested entirely upon assumptions and suspicions. According to him, the independent witnesses named in Annexure IV to the charge memorandum did not substantiate the allegations of connivance or participation. By his written reply dated 29th October, 2007, the petitioner denied every accusation levelled against him and requested withdrawal of the charge-sheet. Simultaneously, he prayed for supply of the documents relied upon by the disciplinary authority so as to enable him to prepare an effective defence in the event the enquiry was to proceed further.
24. The grievance regarding denial of procedural fairness occupies a substantial part of the petitioner's challenge. It is alleged that the disciplinary authority, even before considering the petitioner's reply in its proper perspective, appointed an Enquiry Officer and Presenting Officer by orders dated 5th November, 2007, thereby exhibiting a predetermined and closed state of mind. The petitioner further alleged that by communication dated 8th November, 2007 he was informed that the relevant rules did not contemplate supply of the requested documents and that he might merely inspect the records available with the Enquiry Officer. Subsequently, by letter dated 28th November, 2007, the Enquiry Officer informed him that the requested documents were not available and that only the preliminary enquiry report

remained in his custody. Although the Assistant Commandant by letter dated 30th November, 2007 requested the Enquiry Officer to furnish the documents, the same, according to the petitioner, were never supplied.

25. The petitioner thereafter questioned the impartiality of the Enquiry Officer and alleged that the enquiry proceeded in an arbitrary and partisan manner intended solely to secure a finding of guilt. On that premise, an application dated 24th December, 2007 was submitted seeking change of the Enquiry Officer. The disciplinary authority, however, rejected the said request by communication dated 3rd January, 2008.

26. A further and more serious criticism of the enquiry process was directed against the nature of the evidence relied upon in support of the charge. The petitioner asserted that the prosecution case rested almost entirely upon hearsay statements transmitted through successive layers of officials. It was pointed out that Shri C.B. Sood, Chief General Manager, had merely acted upon information allegedly received from Shri N.K. Bagri, Deputy Chief Sales Manager. Shri N.K. Bagri, in turn, stated that he had derived information from Shri G.S. Mishra, Sales Manager. Shri G.S. Mishra allegedly acted on information supplied by Shri Mantu Ruidas, who himself claimed to have received telephonic information from Shri Ram Pukar. The petitioner emphasized that the chain of allegations thus travelled through multiple intermediaries without any direct eyewitness account establishing either negligence or connivance on his part.

27. The petitioner further stated that surprisingly enough Shri Ram Pukar in his statement has stated that at about 0430 hrs he found that GS Mishra, Sales

Manager was present at SRS Gate when Shri G S Misshra has said he got information about jamming of Rly Track by coal pilfereres and asked him to see the fact. In the mean time CISF Inspector Shri T Singha reached the area and they boarded a vehicle and went outside the SRS area. On the way they found two bullock carts with coal and they took the bullock carts to the Railway Siding area and unloaded the coal there.

28. The petitioner further stated that Shri Senapati Singh, Loading clerk, in his statement states that up to 03:00 hrs he was present at the loading side and thereafter at 03:30 hrs he went to Railway Weigh Bridge with the particulars, till such time there was no coal pilferer. But at about 0345 hrs he received a message over telephone that coal pilferer entered the area. He also received instruction from Shri GS Mishra, Sales Manager. At about 03:50 hrs he went to the SRS area and noticed that some people near SRS area and A.S.I./Exec D N Baskey was driving them away.
29. The petitioner further stated that the enquiry officer also recorded statements of Shri T Singh, Inspector, who due extraneous reason has manufactured the report. From the statements of the Prosecution witnesses it would reveal that the entire story was manufactured by Shri T Singha, Inspector due to extraneous reason.
30. The petitioner further stated that the enquiry officer had recorded his first plea, but he did not record the second plea. However, the Enquiry Officer recorded the statement of the petitioner and the petitioner was examined by the Enquiry Officer.

31. The petitioner further stated that he had produced two Defence Witnesses, DW-1 and DW-2, who had deposed before the Enquiry officer in favour of the petitioner.
32. The petitioner further asserted that Shri C.B. Sood, whose statement formed part of the enquiry materials, was not produced for cross-examination, thereby depriving the petitioner of the opportunity to test the veracity of the allegations. Attention was also drawn to alleged inconsistencies in the statements of the witnesses themselves, particularly concerning the timing and source of information relating to the alleged pilferage activity near the railway siding.
33. According to the petitioner, the Presenting Officer, even in his own brief, failed to establish direct involvement of the petitioner and proceeded merely upon conjecture and suspicion. The petitioner maintained that the Enquiry Officer exceeded the permissible scope of the prosecution brief and arrived at conclusions unsupported by the materials on record. The enquiry report dated 28th March, 2008 allegedly ignored the statements of independent witnesses and adopted an inferential approach unsupported by concrete evidence.
34. The petitioner further stated that as per the Rule, the Presenting Officer presents the evidences on behalf of the Disciplinary Authority and the prosecution brief is the brief of the evidences and opinion by the Disciplinary Authority himself. The enquiry officer should not have exceeded the prosecution brief, and the Enquiry Officer should have given importance to the statements of the independent witnesses, but he whimsically, arbitrarily

and tendentiously prepared the enquiry report and arrived at a findings that the allegations leveled against the petitioner is proved, which was contrary to the Prosecution brief prepared by the Enquiry Officer was communicated to the petitioner by memorandum dated 28th March 2008.

35. The suspension order was subsequently revoked on 28th March, 2008. The petitioner thereafter submitted a detailed representation dated 8th April, 2008 challenging the enquiry report as perverse, unsustainable and contrary to the evidence on record. Notwithstanding such representation, the disciplinary authority by final order dated 26th May, 2008 imposed the punishment of removal from service.

36. The petitioner preferred a statutory appeal on 9th June, 2008. The appellate authority, by order dated 14th August, 2008, modified the punishment from removal to compulsory retirement. Yet the petitioner maintained that even the modified penalty rested upon a proceeding vitiated by procedural irregularity, denial of reasonable opportunity and absence of legally acceptable evidence.

37. The writ petition thus proceeds upon the central assertion that the disciplinary authorities acted mechanically and with a preconceived determination to punish the petitioner; that the enquiry stood contaminated by denial of relevant documents, refusal of effective opportunity of defence, reliance upon hearsay materials and exclusion of material witnesses from cross-examination; and that the ultimate findings were founded not upon substantive evidence but upon suspicion, conjecture and inferential

assumptions inconsistent with the standards expected in a disciplinary adjudication involving grave civil consequences.

38. Learned Counsel appearing for the petitioners addressed a comprehensive challenge to the disciplinary proceedings, the findings recorded therein, and the consequential orders of punishment, contending that the entire process stood vitiated by procedural irregularities, denial of a fair opportunity of defence, reliance upon hearsay material, preconceived conclusions embedded in the charge memorandum, and findings resting upon conjecture rather than legally sustainable evidence.
39. At the forefront of the challenge, it was argued that despite repeated requests made by the petitioners during the course of the disciplinary proceeding, several documents of substantial relevance were withheld. The petitioners had specifically prayed for supply of listed documents, yet the same were not furnished, as reflected at page 25 of the writ petition. Further requests seeking additional records necessary for an effective defence also met the same fate, as recorded at page 29 of the writ petition. According to the petitioners, such withholding of material documents impaired their ability to meet the allegations levelled against them and thereby struck at the foundation of a fair enquiry.
40. The grievance was extended further by contending that the refusal to supply the requisite records displayed a discernible predisposition against the delinquent employees. Particular reliance was placed upon page 33 of the writ petition, where it was asserted that the denial of documents prevented the petitioners from furnishing an appropriate reply to the charges.

41. Learned Counsel for the petitioner drew attention to the statutory framework governing disciplinary proceedings under the CISF Rules. It was submitted although the petitioners were informed that the requested documents were not available, no notice contemplated under Rule 36(11) and Rule 36(12) was ever issued by the Enquiry Officer. Such omission, according to the petitioners, constituted a direct infraction of a mandatory procedural safeguard and thereby thwarted the disciplinary process at its very source. Reference in this regard was made to page 34 of the writ petition.
42. It was further alleged that the disciplinary proceeding ceased to retain the character of an impartial enquiry after intervention by the Assistant Commandant, a functionary who neither occupied the position of Enquiry Officer nor possessed any authority to influence the adjudicatory process. It was contended that his interference in the disciplinary enquiry disclosed a concerted effort to secure affirmation of the charges by administrative means rather than through an objective appraisal of evidence. This aspect was highlighted with reference to page 35 of the writ petition.
43. The apprehension of bias, according to Learned Counsel for the petitioner, became explicitly pronounced whereby the petitioners formally sought replacement of the Enquiry Officer. The request stemmed from the belief that the officer conducting the proceeding had ceased to maintain the detachment expected of a quasi-judicial authority. Despite such representation, the disciplinary authority declined to appoint another Enquiry Officer, thereby compelling the petitioners to continue before an

officer whose neutrality had already been questioned. Reliance was placed upon pages 35 and 37 of the writ petition.

44. A substantial vehemence was then directed against the evidentiary foundation of the enquiry. Learned Counsel for the petitioner submitted that the Enquiry Officer relied upon the recorded statement of Shri C.B. Sood, Chief General Manager, although the said witness was never produced for cross-examination. It was further argued that reliance upon such material deprived the petitioner of the elementary right to test the veracity of the statement through adversarial scrutiny.
45. The Learned Advocate for the petitioners painstakingly traced what was described as a chain of hearsay. According to the materials relied upon in the enquiry, Shri C.B. Sood claimed to have received information from Shri N.K. Bagri. Shri N.K. Bagri, in turn, stated that the information had emanated from Shri G.S. Mishra. Shri G.S. Mishra referred to information received from Shri Mantu Ruidas, while Shri Mantu Ruidas attributed the information to one Ram Pukar. It was contended that such cascading transmission of information, each link dependent upon another, deprived the evidence of direct probative value.
46. Reliance was placed upon the statement of Ram Pukar, who allegedly stated that at about 4:30 a.m. he found Shri G.S. Mishra present at the SRS gate after receiving information concerning obstruction of the railway track by local pilferers. It was argued that this statement, even if accepted at face value, did not establish any participation by the petitioners in coal theft or connivance with pilferers.

47. Reference was drawn to the statement of Shri Senapati Singh, Loading Clerk, who stated until 3:00 a.m. he remained present at the loading side and thereafter proceeded towards the railway weighbridge at about 3:30 a.m. According to him, no pilferers were noticed till that point of time. When he returned to the SRS area at approximately 3:50 a.m., he noticed certain persons near the siding and observed ASI/Exe D.N. Baskey driving them away. Learned Counsel for the petitioner submitted that this evidence, rather than incriminating the petitioners, reflected efforts by CISF personnel to disperse suspected trespassers.
48. On the strength of these materials, the petitioners contended that no ingredient of misconduct stood established. It was argued that the allegation of coal theft had been manufactured through assumptions and speculative inferences. Particular emphasis was laid upon the allegation that Inspector T. Singha had prepared a report motivated by extraneous considerations rather than by objective facts.
49. Learned Counsel for the petitioner criticised the role adopted by the Enquiry Officer, contending that instead of maintaining the neutrality expected of a quasi-judicial authority, he travelled beyond the prosecution brief and selectively preferred departmental evidence while disregarding testimony emanating from independent sources. The resultant report, according to the petitioners, represented a predetermined conclusion rather than an impartial adjudication.
50. A further challenge was directed against the conduct of the disciplinary authority itself. It was submitted that Rule 26(21)(i) obligated the disciplinary

authority, where it was not acting as the Enquiry Officer, to independently examine the record and record its own findings on each article of charge. According to the petitioners, no such independent determination was undertaken. The disciplinary authority merely adopted the conclusions of the Enquiry Officer without recording separate findings on Charge No. I and Charge No. II. Such omission, it was argued, rendered the final order legally infirm.

51. The Learned Advocate for the petitioner also characterised the findings as perverse. The memorandum of charge alleged that while posted as duty sentry at the Seetalpur Railway Siding "A" PTL area, the petitioner failed to prevent theft of coal. Learned Counsel argued that no evidence had been adduced to establish either active participation or deliberate connivance. On the contrary, the allegation itself presupposed that a theft had occurred and simultaneously attributed responsibility to the petitioner without demonstrating the factual basis for such attribution.
52. Particular stress was laid upon the absence of evidence connecting the petitioner with the alleged pilferage. Learned Counsel submitted that no witness established that the petitioner participated in removal of coal, facilitated transportation, or derived any benefit from the alleged occurrence. The conclusion of guilt, therefore, rested upon suspicion rather than proof.
53. It was further argued that the alleged recovery itself occurred beyond the area entrusted to them for security duties. According to the materials on record, the coal was recovered from a labour colony separated from the petitioner's area of responsibility by a perimeter wall. Consequently, any

attempt to fasten responsibility upon the petitioner on the basis of such recovery lacked both factual and legal foundation.

54. Another circumstance emphasised by Learned Counsel for the petitioner concerned the absence of any complaint of theft from the owner of the coal. It was argued that Eastern Coalfields Limited, the alleged victim of the occurrence, never lodged any report asserting theft of coal. This omission, according to the petitioners, considerably weakened the departmental narrative and raised serious doubts regarding the very occurrence upon which the charges were founded.

55. It was also contended that the memorandum of charge itself revealed a concluded determination regarding guilt. The language employed therein, according to learned Counsel, conveyed far more than a statement of allegations requiring investigation. It reflected a settled opinion that the petitioner was responsible for the misconduct alleged against him. Such language, it was submitted, frustrated the enquiry from its inception and deprived the petitioner of a genuinely open-minded adjudicatory process.

56. In support of the plea relating to fairness and natural justice, reliance was placed upon *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262, wherein the Supreme Court recognised that the principles of natural justice permeate administrative as well as quasi-judicial proceedings and exist to secure fairness in decision-making. Learned Counsel for the petitioner relied upon the observations that adjudicatory processes must remain free from bias and must afford a meaningful opportunity of hearing.

57. Reliance was also placed upon *M.V. Bijlani v. Union of India*, (2006) 5 SCC 88, where the Supreme Court held that although departmental proceedings are governed by the principle of preponderance of probabilities, the Enquiry Officer must base conclusions upon relevant materials and cannot rely upon conjecture, surmise, or irrelevant considerations. The Learned Advocate for the petitioner invoked this authority to contend that the findings in the present case lacked a sound evidentiary foundation.
58. Further reliance was placed upon *Union of India v. Gyan Chand Chattar*, (2009) 12 SCC 78, wherein the Supreme Court observed that charges of a grave and quasi-criminal character require cogent proof and cannot be sustained merely on probabilities. Learned Counsel for the petitioner submitted that allegations pertaining to serious civil consequences demand a degree of evidentiary certainty far beyond speculative inference.
59. The Learned Advocate for the petitioner also relied upon *Roop Singh Negi v. Punjab National Bank*, (2009) 2 SCC 570, where the Supreme Court held that a departmental enquiry possessed a quasi-judicial character and that findings must emerge from legally admissible material placed on record. The Court further held that suspicion cannot take the place of proof and that conclusions founded upon mere ipse dixit, conjecture, or unsupported assumptions cannot survive judicial scrutiny. The petitioners contended that the present case falls squarely within those principles.
60. To challenge the very framing of the charges, reliance was placed upon *State of Odisha v. Satish Kumar Ishwardas Gajbhiye*, (2021) 17 SCC 90, wherein the Supreme Court found fault with a charge-sheet reflecting a

predetermined opinion regarding guilt. Learned Counsel for the petitioner submitted that the language employed in the memorandum of charge in the present matter disclosed a similar pre-judgment and therefore offended the requirement of impartial adjudication.

61. Reference was additionally made to *Oryx Fisheries (P) Ltd. v. Union of India*, (2010) 13 SCC 427, where the Supreme Court held that a person receiving a show-cause notice must receive a genuine impression that his explanation would be considered by an authority possessing an open and impartial mind. The Learned Advocate for the petitioner argued that such assurance was conspicuously absent in the present proceeding.

62. On the cumulative strength of these submissions, learned Counsel contended that the enquiry suffered from denial of relevant documents, violation of statutory safeguards, interference by persons lacking adjudicatory authority, refusal to address legitimate concerns regarding bias, dependence upon hearsay material, absence of direct evidence, failure of the disciplinary authority to record independent findings, and a memorandum of charge revealing a preconceived conclusion. It was therefore urged that the disciplinary proceeding, the findings recorded therein, and the consequential orders of punishment merit annulment, together with restoration of all attendant service and retiral benefits flowing from such relief.

63. At the threshold, learned Counsel appearing for the respondents raised a preliminary objection to the maintainability of the writ petitions. It was contended that the petitioners had invoked the writ jurisdiction of this Court without first resorting to the statutory remedy of revision available under the

governing service rules. The respondents maintained where the legislature had provided a complete departmental mechanism for redressal of grievances, recourse to writ jurisdiction ought not to be entertained save in narrowly defined and exceptional situations. According to the respondents, no circumstance involving jurisdictional infirmity, breach of natural justice, or challenge to the validity of any statutory provision had been either pleaded or demonstrated by the petitioners.

64. In support of such proposition, reliance was placed upon *State of U.P. v. Mohd. Nooh*, AIR 1958 SC 86, wherein the Supreme Court recognised that the exercise of writ jurisdiction remains discretionary when efficacious statutory remedies are available. Reference was also directed to *Union of India v. T.R. Varma*, AIR 1957 SC 882, emphasising exhaustion of departmental remedies constituted the normal course before constitutional remedies were invoked. The respondents further relied upon *Whirlpool Corporation v. Registrar of Trademarks*, (1998) 8 SCC 1, to submit departure from the rule of alternative remedy was confined to limited categories of cases, none of which arose in the present proceedings.

65. Proceeding to the merits, Learned Counsel for the respondents submitted that the disciplinary proceedings were conducted in meticulous conformity with the provisions governing members of the Central Industrial Security Force. The petitioners were served with the charge memorandum, supplied with the relevant documents, afforded opportunity to examine and cross-examine witnesses, and granted full liberty to place their defence before the Enquiry Officer. The entire proceeding, according to the respondents,

reflected scrupulous adherence to procedural fairness and provided every safeguard contemplated by law. No procedural lapse capable of vitiating the enquiry was demonstrated.

66. To reinforce this submission, reliance was placed upon *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, wherein the Supreme Court delineated the narrow contours of judicial review in disciplinary matters and held that courts did not sit as appellate authorities over departmental findings when the prescribed procedure had been followed and the conclusions were founded upon evidence.

67. The Learned Advocate for the respondents thereafter addressed the evidentiary basis of the findings recorded in the enquiry. Particular emphasis was laid upon the testimony of PW-3, the Sales Manager of Eastern Coalfields Limited, and PW-4, the Loading Clerk attached to the SRS siding. Both witnesses personally visited the location and witnessed the movement of coal pilferers, observed coal-laden bullock carts proceeding towards Ukhra, and noticed scattered as well as stacked coal in proximity to the SRS boundary. Their evidence, resting upon direct observation rather than inference, furnished a substantial factual basis for the conclusions reached by the Enquiry Officer.

68. It was further contended that departmental proceedings were not governed by the strict rules of admissibility applicable to criminal trials and the existence of material possessing probative value was sufficient to sustain disciplinary findings. Reliance was placed upon *State of Haryana v. Rattan Singh*, (1977) 2 SCC 491, wherein the Supreme Court held that the presence

of "some evidence" carrying probative worth was adequate for sustaining conclusions in departmental proceedings.

69. Learned Counsel for the respondents further submitted that the petitioners' own admissions constituted a powerful corroborative circumstance. During the enquiry, admissions were made concerning the seizure of coal-laden bullock carts and the unloading of coal at the SRS siding. These admissions, according to the respondents, remained intact throughout the proceedings and were never followed by any contemporaneous denial, clarification, or retraction. The respondents argued that such admissions substantially fortified the departmental case and provided an independent foundation for the findings recorded against the petitioners.

70. Reliance was placed upon *Narayan Bhagwantrao Gosavi v. Gopal Vinayak Gosavi*, AIR 1960 SC 100, where admissions were recognised as substantive evidence of considerable evidentiary weight. Reference was also made to *Union of India v. Gyan Chand Chattar*, (2009) 12 SCC 78, for the proposition that findings resting upon admissions cannot be characterised as perverse.

71. The Learned Advocate for the respondents next addressed the petitioner's contention concerning territorial jurisdiction. It was argued that the plea founded upon recovery from a labour colony situated beyond the immediate jurisdictional limits of the petitioner lacked factual merit. The enquiry materials, according to the respondents, established a continuous chain of events demonstrating that the coal originated from the SRS siding, was transported across the relevant boundary during the course of active pilferage, and was ultimately seized and unloaded by the petitioners

themselves. In such circumstances, the attempt to isolate the place of recovery from the broader factual matrix was described as artificial and legally unsustainable.

72. For this proposition, reliance was placed upon *State of U.P. v. Om Prakash Gupta*, (2020) 16 SCC 492, wherein surrounding circumstances and attendant conduct were recognised as relevant factors in assessing misconduct. The respondents also sought to distinguish the authorities cited by the petitioners, namely *State of Odisha v. Satish Kumar Gajbhiye*, (2021) 17 SCC 90, and *Oryx Fisheries (P) Ltd. v. Union of India*. It was submitted that those decisions dealt with situations where the disciplinary process stood tainted at its inception by a predetermined approach or by language suggestive of a concluded mind. In the present matter, according to the respondents, the charge memorandum merely set forth allegations requiring examination, while the determination of guilt emerged only after completion of a comprehensive enquiry founded upon evidence and procedural safeguards. Consequently, the ratio of those authorities was stated to have no application.

73. The Learned Advocate for the respondents further contended that the enquiry conclusively established grave derelictions on the part of the petitioner. The evidence disclosed failure to prevent large-scale pilferage of coal, failure to communicate the developing situation to the Control Room or CIC with the promptitude expected of members of a disciplined force, and gross negligence during duty hours. Such conduct, it was argued, strikes at the very core of organisational discipline and operational integrity.

74. Reliance was placed upon *Union of India v. J. Ahmed*, (1979) 2 SCC 286, to contend that negligence of a serious character amounting to dereliction of duty may constitute misconduct warranting disciplinary action.
75. Learned Counsel for the respondents then emphasised the standard of proof applicable to departmental proceedings. The findings of the Enquiry Officer, it was submitted, were required to satisfy the test of preponderance of probabilities and not the stricter standard applicable in criminal prosecutions. The petitioners, by seeking a reassessment of the entire evidentiary record, were effectively inviting this Court to undertake an appellate exercise beyond the permissible limits of judicial review under Article 226 of the Constitution.
76. In support of this submission, reliance was placed upon *Nirmala J. Jhala v. State of Gujarat*, (2013) 4 SCC 301, recognising preponderance of probabilities as the governing standard in disciplinary proceedings. Reference was also made to *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584, wherein the Supreme Court held that writ courts do not ordinarily re-evaluate evidence as if exercising appellate jurisdiction.
77. On the question of punishment, learned Counsel submitted that the appellate authority had already adopted a measured and compassionate approach. The original penalty stood modified to compulsory retirement coupled with pensionary benefits. Such modification reflected due consideration of all relevant circumstances and demonstrated that the authorities had tempered disciplinary requirements with proportionality.

78. Reliance was placed upon *Union of India v. G. Ganayutham*, (1997) 7 SCC 463, wherein the Supreme Court held that interference with punishment is warranted only where the penalty is so disproportionate as to shock the judicial conscience.
79. On the cumulative strength of these submissions, the respondents urged that the writ petition suffer from a basic defect arising from non-availment of the statutory revisional remedy. Even otherwise, the disciplinary proceedings were conducted in accordance with law, the findings were supported by oral evidence, documentary materials, and admissions of the petitioners, and the punishment ultimately imposed bore a rational nexus with the gravity of the misconduct established. The respondents therefore prayed for dismissal of the writ petitions, contending that no ground exists for exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution.
80. The controversy brought before this Court arises out of a disciplinary proceeding initiated against the petitioner, a member of the Central Industrial Security Force, upon allegations relating to large-scale coal pilferage said to have occurred during the night intervening 4th and 5th October, 2007 at Seetalpur Railway Siding "A" under the ECL establishment. The proceeding culminated initially in the punishment of removal from service which, in appeal, was modified to compulsory retirement. The petitioner has invoked the constitutional writ jurisdiction seeking interference with the disciplinary and appellate orders on grounds of procedural illegality, perversity of findings and denial of reasonable opportunity.

81. The records reveal that the petitioner was posted as a sentry in the concerned patrolling area during the relevant hours. The memorandum of charge alleged that nearly one hundred to one hundred and fifty miscreants entered the premises and committed theft of coal from the siding area and that such occurrence could not have taken place without the direct involvement and connivance of the petitioner. The charge thus travelled beyond mere negligence and proceeded into the far more serious domain of active complicity.
82. The petitioner, from the inception of the proceeding, consistently denied the allegations and asserted that the accusation rested not upon direct evidence but upon suspicion nurtured through assumptions and inferential conclusions. It was further contended that the enquiry was conducted in a manner inconsistent with the requirements of fairness expected in a proceeding capable of inflicting grave civil consequences.
83. The respondents, on the other hand, maintained that adequate opportunity had been afforded to the petitioner and that the findings recorded by the Enquiry Officer were supported by materials available on record. According to the respondents, the writ Court cannot re-appreciate evidence or substitute its own conclusions for those arrived at by the departmental authorities.
84. The contours of judicial review in matters arising out of disciplinary proceedings are no longer *res integra*. The writ Court does not function as an appellate forum over departmental adjudication. Reassessment of factual sufficiency, comparative appreciation of evidence or substitution of

administrative conclusions ordinarily lies outside the province of judicial review. Nevertheless, such restraint does not denude the constitutional Court of its duty to intervene where the decision-making process stands contaminated by procedural unfairness, disregard of natural justice, reliance upon inadmissible considerations, exclusion of relevant materials or conclusions so irrational that no reasonable adjudicatory authority properly instructed in law could have arrived thereat.

85. The present matter requires examination not merely of the ultimate conclusion but of the integrity of the process through which such conclusion emerged.

86. The Hon'ble Supreme Court has held the following in **SATYENDRA SINGH VS THE STATE OF UTTAR PRADESH**¹:-

“14. In the case of Roop Singh Negi¹¹, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under: -

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

¹2024 INSC 873

...

19. *The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...”*

87. The Hon’ble Supreme Court has held the following in **MAHARANA PRATAP**

SINGH VS THE STATE OF BIHAR:-²

“35. *If there is a flaw from the inception of the disciplinary proceedings, i.e., the charge-sheet is not issued conforming to the relevant rules and the charged officer finds it difficult to meet the charges because it is vague, indefinite, not specific and lacking in material particulars, the charge-sheet itself becomes susceptible to vulnerability. We are reminded of the decision of this Court in Surath Chandra Chakrabarty v. State of West Bengal²⁸ where this Court ruled that:*

6. Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. ... The entire proceedings show a complete disregard of Fundamental Rule 55 insofar as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not

²2025 INSC 554

having been supplied to him. In this situation, for the above reason alone, the Trial Judge was fully justified in decreeing the suit.

42. We do not consider that the Inquiry Officer was justified in the approach he adopted while conducting the inquiry. Findings had to be returned by him neither on his ipse dixit nor surmises and conjectures but on the basis of legal evidence. A Constitution Bench of this Court, speaking through Hon'ble P.B. Gajendragadkar, J., in *Union of India v. H.C. Goel*²⁹ pointed out that in carrying out the purpose of rooting out corruption, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. Although technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, nevertheless, the principle that in punishing the guilty scrupulous care should be taken to see that the innocent is not punished, AIR 1964 SC 364 applies as much to regular criminal trials as to disciplinary enquiries held under statutory rules. This has, thus, been the well-settled position of law for decades and bearing such law in mind, we have no hesitation to hold that the reason for which the Inquiry Officer doubted the version of PW-2 in his cross-examination was not available to be assigned without first returning a finding attributing the fault for the delay to the appellant.

43. At this juncture, it is imperative to further underline that the chargesheet against the appellant was issued based on the written complaint of the informant. Law is again clear to the effect that mere production of a document does not constitute proof. If chargesheet is issued on the basis of a written complaint, the author/complainant has to be produced. The decision of this Court in *Bareilly Electricity Supply Co. Ltd. vs. Workmen & Ors.*³⁰ is an authority for this proposition. Notably, in the instant case, the informant/complainant had not been examined. This, we hold is one other glaring error in the decision-making process.

46. The aforesaid discussion on the first issue seals the fate of the respondents. However, since arguments were advanced in respect of this issue too, we propose to briefly answer the same.

47. While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in *G. M. Tank (supra)*, since reinforced by a decision of recent origin in *Ram Lal v. State of Rajasthan*³¹."

88. The Hon'ble Supreme Court has held the following in **UNION OF INDIA & ORS VS GYAN CHAND CHATTAR**³:-

"26. *In Surath Chandra Chakravarty v. The State of West Bengal, AIR 1971 SC 752, this Court held that it is not permissible to hold an enquiry on a vague charge as the same does not give a clear picture to the delinquent to make an effective defence because he may not be aware as what is the allegation against him and what kind of defence he can put in rebuttal thereof. This Court observed as under :*

"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

27. *In a case where the charge-sheet is accompanied with the statement of facts and the allegation may not be specific in charge- sheet but may be crystal clear from the statement of charges, in such a situation as both constitute the same document, it may not be held that as the charge was not specific, definite and clear, the enquiry stood vitiated. (Vide State of Andhra Pradesh & Ors. vs. S. Sree Rama Rao, AIR 1963 SC 1723). Thus, where a delinquent is served a charge-sheet without giving specific and definite charge and no statement of allegation is served along with the charge- sheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice.*

28. *In Sawai Singh v. State of Rajasthan, AIR 1986 SC 995, this Court held that even in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against that the charges are vague, that does not save the enquiry from being vitiated for*

³ AIR ONLINE 2009 SC 561

the reason that there must be fair-play in action, particularly, in respect of an order involving adverse or penal consequences.

32. *In fact, it was a simple case where the respondent employee failed to prove to be a tactful person or possessing a high standard administrative capability or firmness or a man of possessing quality of leadership. It might be a case of his indecisiveness or lack of presence of mind. It cannot be held that any of the aforesaid charges except Charge No. 6, may warrant imposition of major punishment of removal. Thus, no interference is required in the matter.”*

89. The Hon’ble Supreme Court has held the following in **THE STATE OF UTTAR PRADESH VS RAM PRAKASH SINGH⁴**:-

“13. *In Roop Singh Negi v. Punjab National Bank and Others¹⁶, it was held that an officer conducting an enquiry has a duty to arrive at findings in respect of the charges upon taking into consideration the materials brought on record by the parties. It has also been held therein that any evidence collected during investigation by an investigating officer against the accused by itself could not be treated to be evidence in the disciplinary proceedings.*

33. *Resting on the aforesaid reasoning, the answer to the basic question (majority view) in B. Karunakar (supra) is found in paragraph 29 reading as follows:*

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

If the chargesheet does not specifically mention some overt act about the employee so charged, the same has not been categorically expressed by witnesses in disciplinary proceedings through evidence recorded, whether the proceedings can be sustained and can the writ courts interfere to reappraise evidence and come to a positive opinion?

⁴2025 INSC 555

90. The Hon'ble Supreme Court in the case of **ANIL GILURKER VS BILASPUR**

RAIPUR KSHETRIA GRAMIN BANK⁵, held the following:-

*“4. The appellant then filed a Writ Petition before the Madhya Pradesh High Court challenging the order of removal passed by the disciplinary authority. After the reorganization of the Madhya Pradesh in the year 2000, the Writ Petition was transferred to the Chhattisgarh High Court and was heard by a learned Single Judge of the Chhattisgarh High Court. The learned Single Judge in his judgment dated 22.02.2010 found that in the charge-sheet, there is no reference to any specific documents or to the names of the persons who had not been given the loan amounts and accordingly took the view that in the charge-sheet there were no specific charges. Relying on the decisions of this Court in *Surath Chandra Chakrabarty v. State of West Bengal* [(1970) 3 SCC 548], *Sawai Singh v. State of Rajasthan* [(1986) 3 SCC 454] and *Union of India & Ors. v. Gyan Chand Chattar* [(2009) 12 SCC 78], the learned Single Judge held that when the charges levelled against the delinquent officer in the charge-sheet were vague and not specific and the entire enquiry is vitiated. The learned Single Judge quashed the orders of the disciplinary authority and the appellate authority and directed reinstatement of the appellant in service with continuity in service and without loss of seniority in the post to which he would be entitled to. The learned Single Judge further directed that the appellant will be entitled to compensation of Rs.1.5 lacs in lieu of arrears of his salary.*

The Division Bench of the High Court, however, held that as the disciplinary authority had disagreed with the findings in the inquiry report, he should have furnished his reasons for the disagreement to the appellant before passing the order of punishment. The Division Bench of the High Court further held that the disciplinary authority cannot conduct further enquiry suomotu to fill up the lacuna in the enquiry. The Division Bench of the High Court allowed both the appeals and directed that the disciplinary authority will consider the inquiry report, the evidence recorded by the Enquiry Officer and the documents relied upon in the charge-sheet and take a fresh decision in accordance with law. The Division Bench of the High Court further observed in the impugned order that if the disciplinary authority takes a view on reconsideration of the

⁵2011 AIR SCW 5327

matter not to take any further action against the appellant, he shall be given all the consequential benefits along with reinstatement.

10. This position of law has been reiterated in the recent case of *Union of India & Ors. v. Gyan Chand Chattar (supra)* and in Para 35 of the judgment as reported in the SCC, this Court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.”

91. The Hon’ble Supreme Court in the case of **GENERAL MANAGER (OPERATION)**

... VS KRISHNA KUMAR BHARDWAJ⁶, held the following:-

“9. The admitted fact is that the finding of guilt in reference to charge nos. 1,2 and 3 which was proved by the inquiry officer as indicated in the report of inquiry was confirmed by the disciplinary authority and also by the appellate authority and as a matter of fact, the appellate authority while upholding the guilt in reference to charge nos. 1, 2 and 3 took a lenient view and modified the punishment vide its Order dated 14th November, 1998. The High Court had proceeded further and recorded a finding that charge no. 1 was completely vague and better particulars were completely missing and after holding that charge no.1 was not specific and clear the respondent was deprived to reply, set aside the disciplinary proceedings and the order of penalty by its judgment and order dated 19th February, 2021 which is a subject matter of challenge in appeal before us.

20. So far as the finding which has been recorded by the High Court in reference to charge no. 1 being vague and unclear, which has deprived the respondent delinquent in submitting reply is concerned, it is factually incorrect. The article of charge no. 1 is clear and specific and leaves no ambiguity in understanding the delinquent in submitting his response. Even it was never the case of the respondent that because of charge no. 1 being vague or unclear, he was unable to submit reply to participate in the course of inquiry.”

⁶2022 INSC 204

92. The Hon'ble Supreme Court in the case of **NARINDER MOHAN ARYA VS**

UNITED INDIA INSURANCE CO. LTD. & ORS⁷ , held the following: -

"(3) The sufficiency of proof like a criminal charge is not required in the departmental proceedings nor the strict provisions of Indian Evidence Act are applicable. The moment it is established to the conscious of the Court that the opinion formulated by the inquiry officer could be reasonably formulated by an ordinary prudent man, then in such eventuality such decision of the Inquiry Officer should not be interfered with."

Yet again in Sher Bahadur V. Union of India & Ors. [2002 (7) SCC 142] this Court observed:

"It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the

⁷ AIR 2006 SUPREME COURT 1748

judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

93. The Hon'ble Supreme Court in the case of **M/S STANZEN TOYOTETSU INDIA**

P.LTD VS GIRISH V & ORS⁸, held the following: -

"10. We may also refer to the decision of this Court in *Capt. M Paul Anthony v. Bharat Gold Mines Ltd*, (1999)...

(iii) *Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.*

11. In *HPCL v. Sarvesh Berry* (2005) 10 SCC 471 the respondent was charged with possessing assets disproportionate to his known sources of income. The question was whether disciplinary proceedings should remain stayed pending a criminal charge being examined by the competent criminal Court. Allowing the appeal of the employer-corporation this Court held:

"A crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case 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 enquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law..... Under these circumstances, what is required to be seen is whether the departmental enquiry 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."

⁸ AIR 2006 SUPREME COURT 1748

12. *It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge leveled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the Court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly. In Paul Anthony (supra) this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway. To the same effect is the decision of this Court in State of Rajasthan v. B.K.Meena 1996(6) SCC 417, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:*

“there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can enunciated in that behalf. The only ground suggested in the above questions as constitution a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. While it is not possible to

enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. ... Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him."

94. The charge levelled against the petitioner was undoubtedly grave. A member of a disciplined force entrusted with protection of industrial assets occupies a position carrying heightened obligations of vigilance and institutional fidelity. Any dereliction in such sphere is required to be viewed with seriousness. Yet the gravity of an allegation cannot dilute the obligation to establish the charge through a process that is procedurally fair and evidentially sustainable.
95. The memorandum of charge, when examined in the backdrop of settled principles governing disciplinary jurisprudence, discloses several structural and evidentiary infirmities which substantially weaken its legal sustainability. The defects are not confined merely to insufficiency of proof emerging during the enquiry; rather, they are embedded within the very architecture of the charge itself. The following deficiencies assume particular significance.
96. The charge-sheet proceeds upon broad and generalized assertions without furnishing precise particulars demonstrating the petitioner's alleged involvement. While it alleges that large-scale coal theft occurred during the

petitioner's duty hours, it fails to specify any overt act, omission or conduct directly attributable to him. No material particulars are furnished regarding the manner in which the petitioner allegedly facilitated or connived at the occurrence. A disciplinary charge, particularly one carrying serious civil consequences, cannot rest upon vague insinuation.

97. The memorandum simultaneously alleges "failure to prevent theft" and "direct involvement and connivance." These are conceptually distinct imputations requiring entirely different evidentiary foundations. Negligence may arise from omission or lack of vigilance, whereas connivance imports conscious participation and deliberate complicity. The charge-sheet, however, blends the two without clarifying whether the petitioner is accused of dereliction simpliciter or active collusion. Such ambiguity strikes at the fairness of the disciplinary process because the delinquent employee is left uncertain regarding the precise nature of the accusation he is required to defend.

98. The crucial allegation in the memorandum states that such theft "was quite impossible unless there was direct involvement and connivance" of the petitioner. This language itself reveals that the accusation is inferential and presumptive. The charge is not founded upon any disclosed factual circumstance demonstrating participation; rather, guilt is presumed from the occurrence of the incident itself. Departmental proceedings, though not governed by strict criminal standards, nevertheless require factual allegations and not speculative deduction masquerading as evidence.

99. The memorandum nowhere alleges that the petitioner was seen assisting the miscreants, communicating with them, facilitating transportation, abandoning his post or deriving any benefit from the alleged theft. The absence of any direct allegation linking the petitioner with the actual occurrence renders the accusation of connivance exceedingly fragile.
100. The narrative incorporated within the charge-sheet itself demonstrates that the prosecution story travelled through multiple intermediaries. Information allegedly moved from one individual to another in a chain of communication before reaching the authorities. The memorandum does not disclose any primary witness who directly implicated the petitioner. Thus, even at the stage of framing of charge, the accusation appears rooted in hearsay transmission rather than firsthand factual assertion.
101. The materials relied upon by the petitioner suggest that the alleged seizure of coal occurred from an area outside the petitioner's immediate jurisdiction or assigned operational responsibility. The charge-sheet, however, does not delineate the exact territorial limits of the petitioner's duty post nor explain how the petitioner exercised operational control over the area from which the coal was ultimately recovered. In the absence of such clarity, the allegation of failure of duty remains uncertain and imprecise.
102. A charge alleging connivance ordinarily requires accompanying circumstances capable of generating reasonable inference of complicity — such as suspicious conduct, unauthorized absence, prior association with offenders, unexplained movements, communication records or recovery of incriminating materials. The memorandum is conspicuously silent regarding

any such circumstance. The allegation of connivance thus stands unsupported by foundational facts.

103. The wording employed in the memorandum carries traces of preconceived conclusion. Instead of merely framing imputations for adjudication, the language strongly suggests that the authorities had already formed an opinion regarding the petitioner's guilt. A charge memorandum should initiate enquiry, not pronounce culpability in advance.

104. The incident allegedly involved intrusion by nearly one hundred to one hundred and fifty persons. The memorandum does not explain whether the operational circumstances, manpower deployment, security arrangements or supervisory mechanisms were independently examined before attributing personal culpability to a single constable. In large-scale security breaches, institutional and systemic factors require examination before fastening individual blame.

105. Though the memorandum refers to recovery of coal and seizure of bullock carts, no allegation is made that such recovery occurred from the petitioner's possession or at his instance. The recovery narrative therefore does not establish any direct nexus between the petitioner and the alleged pilferage activity.

106. The gravest component of the charge — namely connivance — is unsupported by any disclosed material. The memorandum does not specify whether the allegation arises from witness statements, surveillance, intelligence inputs or documentary records. Mere assertion without

disclosure of foundational basis renders the charge vulnerable to challenge as arbitrary.

107. A delinquent employee must receive clear notice of the exact misconduct alleged so as to prepare an effective defence. The present memorandum, by employing broad expressions such as “quite impossible unless there was direct involvement,” leaves the accusation suspended between suspicion and formal charge. Such drafting weakens the procedural integrity of the disciplinary process.

108. Even if the entirety of the charge-sheet is accepted at face value, the allegations primarily establish that theft occurred during the petitioner’s duty hours. The memorandum does not independently establish how that circumstance, by itself, translates into proof of collusion. Thus, the charge-sheet contains an evidentiary leap unsupported by disclosed factual foundations.

109. These deficiencies, when viewed cumulatively, lend substantial force to the petitioner’s contention that the disciplinary proceeding proceeded more upon suspicion generated by the occurrence of the incident than upon a clearly articulated and factually substantiated accusation.

110. Ordinarily, the writ Court, while exercising jurisdiction under Article 226 of the Constitution, does not assume the role of an appellate forum for reassessment of evidentiary sufficiency in departmental proceedings. The constitutional limitation upon judicial review is rooted in institutional restraint and recognition of administrative autonomy in matters of discipline. Yet such self-imposed restraint cannot mature into judicial abdication where

the findings recorded by the disciplinary authority are demonstrated to be founded upon no legally sustainable evidence, upon exclusion of material considerations, or upon inferential assumptions so disproportionate to the evidentiary record that the conclusion ceases to retain the character of rational adjudication. In such exceptional circumstances, examination of the evidentiary substratum becomes not an impermissible re-appreciation of facts but an indispensable exercise to ascertain whether the finding itself possesses any juridical foundation. The present case clearly falls within that narrow but vital sphere of judicial scrutiny. The allegation of “connivance” levelled against the petitioner was sustained not upon direct testimony, incriminating recovery, circumstantial coherence or demonstrable conduct indicative of complicity, but substantially upon the presumption that because the incident occurred during the petitioner’s duty hours, his involvement must necessarily be inferred. The prosecution narrative travelled through successive layers of hearsay communication without identifying any primary source directly implicating the petitioner. In such circumstances, the Court cannot remain confined to superficial examination of procedural form while ignoring the substantive fragility of the findings themselves. Judicial review, though supervisory in nature, does not compel constitutional courts to place their imprimatur upon conclusions resting merely upon suspicion elevated into administrative certainty. Where evidentiary evaluation discloses manifest perversity, selective appreciation, disregard of exculpatory materials and conclusions unsupported by any reasonable evidentiary nexus, the writ Court is not only empowered but

constitutionally obligated to interfere in order to preserve the discipline of fairness which underlies all exercises of State authority.

111. Upon scrutiny of the materials disclosed before this Court, certain features of the proceeding assume considerable significance.

112. Firstly, the prosecution case appears substantially founded upon a cascading chain of hearsay communications. The alleged incident travelled from one official source to another through successive intermediaries. The materials placed before the enquiry do not disclose any direct eyewitness account demonstrating participation, connivance or conscious facilitation on the part of the petitioner.

113. No witness claims to have seen the petitioner assisting the miscreants, communicating with them, abandoning his assigned post, facilitating removal of coal or deriving any benefit from the alleged occurrence. The prosecution case thus lacks the elementary factual substratum ordinarily expected where an allegation of connivance is levelled against a public servant.

114. Even if the departmental standard of proof does not demand strict application of the rules governing criminal trials, disciplinary findings nevertheless require some demonstrable evidentiary foundation capable of sustaining rational inference. Suspicion, however grave, cannot by itself mature into proof merely because the proceeding is departmental in nature.

115. Equally absent are the circumstantial indicators from which conscious complicity could reasonably be inferred. No incriminating article was recovered from the possession of the petitioner. No suspicious conduct,

unexplained movement, prior association or pecuniary linkage was brought on record. The disciplinary authorities were therefore not confronted with a chain of circumstances pointing towards guilt; rather, they were confronted merely with the fact that an incident occurred during the petitioner's duty hours.

116. It is precisely here that the proceeding assumes a legally impermissible trajectory.

117. Learned Counsel appearing for the respective parties placed reliance upon a considerable body of precedent governing disciplinary jurisprudence, judicial review, principles of natural justice, evidentiary standards and the doctrine of alternative remedy. Since the rival submissions draw support from apparently competing streams of authority, it becomes necessary to examine their true import in the factual setting of the present case.

118. The respondents have, at the threshold, relied upon *State of U.P. v. Mohd. Nooh*, AIR 1958 SC 86, *Union of India v. T.R. Varma*, AIR 1957 SC 882 and *Whirlpool Corporation v. Registrar of Trademarks*, (1998) 8 SCC 1, in support of the contention that the writ petition ought not to be entertained owing to non-exhaustion of the revisional remedy.

119. The proposition flowing from the aforesaid decisions admits of no dispute. Those authorities recognise the salutary principle that where a statutory forum is available, a litigant should ordinarily pursue such remedy before invoking constitutional jurisdiction. At the same time, those very authorities acknowledge well-recognised exceptions where the impugned action suffers

from breach of natural justice, patent perversity, absence of jurisdiction or manifest illegality.’

120. To embolden such proposition reliance can be cast on the following decisions:-

- i. The Hon’ble Supreme Court, in the case of **M/S. GODREJ SARA LEE LTD. VS THE EXCISE AND TAXATION OFFICER CUM ASSESSING AUTHORITY⁹**, has held the following:-

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the

⁹ 2023 INSC 92

alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.”

- ii. The Hon’ble Supreme Court, in the case of **GENPACT INDIA PRIVATE LIMITED**

VS DEPUTY COMMISSIONER OF INCOME TAX¹⁰, has held the following:-

“15. We now turn to the question whether the High Court was justified in refusing to entertain the writ petition because of availability of adequate appellate remedy. The law on the point is very clear and was summarised in Commissioner of Income Tax and others v. ChhabilDass Agarwal² as under:-

“11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the 2 (2014) 1 SCC 603 Civil Appeal No. 8945 of 2019 @ SLP(C) No.20728 of 2019 Genpact India Private Limited v. Deputy Commissioner of Income Tax & Anr.”

- iii. The Hon’ble Supreme Court, in the case of **STATE OF A.P. VS A.P. STATE**

WAKF BOARD¹¹, has held the following:-

¹⁰AIRONLINE 2019 SC 1979

¹¹CIVIL APPEAL NO. 10770 OF 2016

“72. It was argued that even if there was an alternative remedy 34 (2021) SCC Online SC 1003 35 (2009) 2 SCC 630 36 1992 Supp (1) SCC 496 37 AIR 1959 SC 725 38 (1998) 8 SCC 1 39 (2020) 2 SCC 442 available, the High Court still has the jurisdiction in the following matters- (1) where the impugned action is in breach of natural justice, (2) where the challenge is to an action which is patently erroneous and ex facie without jurisdiction, (3) or the vires of legislation is challenged, (4) or where the writ petition has been filed for enforcement of fundamental rights protected by Part III of the Constitution. It was argued that there has been a violation of principles of natural justice as State has been recorded as owner of the disputed land in the revenue records since 1912-13 and that the Wakf Board failed to file objections before the land was transferred in favour of the Corporation in 2005.

...

79. The High Court has quoted the principles laid down by this Court to the effect that a writ would lie even if there is an alternative efficacious remedy if the impugned action is in breach of natural justice or the action is patently erroneous and ex facie without jurisdiction. However, the said principle was not applied in the writ petition before the High Court. A challenge to the validity and legality of a notification issued by the Wakf Board is admittedly not a matter which the Wakf Tribunal is required to determine under the 1995 Act. Reliance has been placed upon Harbans Lal Sahnia v. Indian Oil Corp.⁴², RadhaKrishan Industries v. State of Himachal Pradesh⁴³ and Bal Krishna v. Union of India & Anr.⁴⁴

...

107. In K.K. Kochunni’s case, the Constitutional Bench held that mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the existence of a fundamental right and a breach - actual or threatened, is alleged and is prima facie established by the petition. It was a case where the constitutionality of an Act was challenged as violative of Article 19(1)(f) or Article 31(1) of the Constitution.

...

110. In Committee of Management, the refusal to grant approval to the proposal of the Managing Committee of the appellant of removal of a member of the teaching faculty was challenged by way of writ petition before the High Court. The petition was dismissed in view of an alternative remedy available with the appellant. This Court held that it is beyond any doubt or dispute that availability of an alternative remedy by itself may not be a ground for the High Court to refuse to exercise its jurisdiction. It was held that the High Court may exercise its writ jurisdiction despite the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one. It was held that in the case of this nature, where the appellant not only questioned the validity of the Act but

also alleged commission of jurisdictional error on the part of the Vice Chancellor in implementing the provisions of a statute, such being an intricate question should ordinarily fall for determination by the High Court itself.

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well. 27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law. 27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

....

117. The reliance of Mr. Dewan on ChhabilDass Agarwal is again not tenable for the reason that challenge in the aforesaid appeal was to the quashing of a notice for assessment under Section 148 of the Income Tax Act. This Court held as under:

“12. The Constitution Benches of this Court in *K.S. Rashid and Son v. Income Tax Investigation Commission* [AIR 1954 SC 207], *SangramSingh v. Election Tribunal* [AIR 1955 SC 425], *Union of India v. T.R. Varma* [AIR 1957 SC 882], *State of U.P. v. Mohd. Nooh* [AIR 1958 SC 86] and *K.S. Venkataraman and Co. (P) Ltd. v. State of Madras* [AIR 1966 SC 1089] have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted.”

- iv. The Hon'ble Supreme Court has held the following in **PHR INVENT EDUCATIONAL SOCIETY VS UCO BANK**¹²:-

“14. The law with regard to entertaining a petition under Article 226 of the Constitution in case of availability of alternative remedy is well settled. In the case of Satyawati Tondon (supra), this Court observed thus:

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

...

¹²2024 INSC 297

28. *Insofar as the contention of the Borrower and its reliance on the judgment of this Court in the case of Mohammad Nooh (supra) is concerned, no doubt that non-exercise of jurisdiction under Article 226 of the Constitution on the ground of availability of an alternative remedy is a rule of self- restraint. There cannot be any doubt with that proposition. In this respect, it will be relevant to refer to the following observations of this Court in the case of Commissioner of Income Tax and Others v. Chhabildass Agarwal*¹¹:

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.” (2014) 1 SCC 603

29. *It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.

30. *It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.”*

121. The following context of the document with the writ petition derive utmost importance to be discerned with precision.

Annexure –II: Statement of imputation of misconduct in support of the Articles of Charge framed against NO.742310845 ASI/Exe D.N. Baskey of SBP Camp, CISF Unit ECL, Seetalpur.

“No.742310845 ASI/Exe D.N.Baskey (U/S) of SBP Camp, CISF Unit ECL Seetalpur was detailed for "C" shift duty as In-charge of Seetalpur Railway Siding from 21:00 hrs., of 04.10.07 to 05:00 hrs., of 05.10.07. During his duty hours at about 03:00 hrs., on 05.10.07 at about 100-150 miscreants entered inside the Seetalpur Railway Siding premises & looted coal from siding which was noticed by Mr. Senapati Singh, Loading clerk of SRS area. At about 04:30 hrs., G.M. Mishra, Sales Manager of ECL informed the Insp./Exe., T. Singha CIC/SBP camp over phone. After getting this information INSP/Exet., T. Singha, CIC/SBP Camp rushed to the spot and searched the village area i.e. adjacent colony just touching the of SRS area along with Shri G S Mishra, Sales Manager of ECL, Mr. Mantu Ruidas Labour supply contractor and Mr. R. Pukar, Munshi of N.C. Pal Transport Co. and they found approx 4.5 tones of coal scattered in that area and thereafter they seized three(03) nos. of bullock carts fully laoded with coal and then unloaded the Coal from bullock carts at Seetalpur Railway Siding premises. But being the in-charge of SRS area of the intervening night No.742310845 ASI/Exe D.N. Baskey (u/s) failed to prevent the theft of coal and at the same time such type of coal theft was quite impossible

unless there was direct involvement and connivance of No.742310845 ASI/Exe D. N. Baskey and the personnel working under him.

Reply to memorandum no.V-15017/ECL/DISC/UR-36(22) DNB/07-8988 dated 17th October, 2007 (Page 29):-

“13. However, if it has already been decided to proceed with the charge sheet, and it is proceeded, then the following documents may kindly be supplied to me for preparation of my defence and also for supplementary reply :-

- a) The basis of conclusion by Inspector T Singha that there was connivance,*
- b) The basis of submitting report after 4/5 days by the Chief General Manager, as he says in his report that for the past 4/5 days such incident was going on,*
- c) The basis on which the Chief General Manager says that the theft was well under control from 25th September to 3rd October 2007, and the documents in support of such conclusion,*
- d) The P.E. report and findings prepared by the Preliminary enquiry officer,*
- e) Copies of the statements recorded during the preliminary enquiry,*
- f) Details of the physical security available in the area, and the measures taken for improvement in the physical security system in the yard,*
- g) Details of the action taken to remove the slums in the area,*

- h) Details of the action taken to restrict the bullock carts in the area,*
- i) Particulars of the bullock carts which were seized and the name of the drivers of the said bullock carts,*
- j) Police investigation report, since the seizure was made, Police investigation report can throw some light,*
- k) It is requested that the above docents may kindly be supplied for my defense before proceedings further, and I may kindly be given an opportunity of submission of supplementary reply. It is also requested that 15 days time may kindly be sanctioned for submission of supplementary reply from the date of receipt of the above documents.*
- l) In view of the inconsistency and contradictions in the listed documents itself, it is also requested that the suspension may kindly be revoked, and for this act of kindness I shall remain ever grateful to you Sir,*

Thanking you Sir.”

The opinion of the Presenting Officer, inter alia, stated as follows:-

“ANALYSIS:-

After going through the statements recorded during the course of enquiry and exhibits produced, following facts are revealed-

- a) On dated 04/10/07 ASI/Exe DN Baskey was detailed as in-charge of Seetalpur Railway Siding.*

- b) *As per the statement of charged official ASI/Exe D N Baskey some people were found in "A" PTL and "B" PTL area. Also as per the statement of PW-3 & PW-4 some people were found there.*
- c) *As per the statement of PW-1, PW-3 and PW-5 scattered coal has been found in the adjacent village of "A" PTL area outside SRS boundary wall.*
- d) *As per the statement of PW-1, PW-3, PW-6, DW-1, DW-2 and Charged official 03 nos. of bullock cart has been seized and unloaded in SRS premises.*

OPINION:-

After going through the statements of PW-5 and PW-6 it seems that they have changed their previous statement given during P.E. due to some unknown reason or under some influence. However it is quite clear that some wrong elements were there inside "B" PTL area as the people driven away by charge official & "B" PTL sentry cannot be employs or workers. Coal has been found outside "A" PTL area also coal loaded bullock cart has been seized. No help from NCD control or CIC was sought by the charged official.. SRS is the nearest source of coal for nearby village where coal loaded bullock cart and scattered coal was found.. It seems that the seized coal was illegal as no one came forward in protest when coal loaded bullock carts was seized. Considering all these facts and circumstances it seems that the charge leveled against ASI/Exe., D N Baskey seems to be correct however it is not clear whether there was any direct involvement and connivance of the individual.

Certified that all reasonable opportunities have been given to the Charged Official during the course of enquiry and D.E has been conducted as per CISF Rules”.

The report of the Enquiry Officer, inter alia, stated as follows:- Page 73

“... statement that he seized one coal laden bullock cart from outside SRS area as per the instruction of Sales Manager Shri G. S. Mishra. This clearly indicates that theft of coal happened during 4/5.10.07 night at Siding area and the illegal coal traders were transporting the stolen coal by the bullock carts. Except the siding area there are no nearby available source of coal and it is the normal tendency of illegal coal traders to dispatch the stolen coal in the very night of stealing coal.

b) Although PW-1. IPW-3, PW-4, PW-6 stated that the Charged Official Seized three nos., of coal laden bullock carts from outside the SRS boundary area, but it is not at all clear that why the Charged Official did not ask for any help either from the Control room or from the CIC despite disturbance by the coal pilferers as stated by PW-4 and also the Charged Official stated during examination by the E.O that the 'B' Ptl sentry informed him regarding the movement of some people outside 'B' Ptl area.

c) From the statement of PW-1, PW-3, PW-5, DW-1 and DW-2 it is quite clear that 2/3 coal laden bullock carts were standing at the nearby village of adjacent SRS A'Ptl boundary area which were seized by the CISF personnel and the Charged Official also deposed during his statement that he seized 02

coal laden bullock carts along with the other 'C' shift SRS duty personnel and unloaded the coal at the Siding area. PW-3 also produced the coal receipt from the ECL management in support of the depositing coal at SRS. As per the statement of PW-5, PW-6 and the Charged Official no resistance or protest were made by the local villagers at the time of seizure of 02 coal laden bullock carts from the adjacent village area of SRS. Hence it is not at all acceptable that the coal which was loaded on the bullock carts were domestic coal. The coal must have been stolen from Siding area on 4/5.10.07 night and loaded into the bullock carts and were waiting for further dispatch.

d) From the statement of PW-1. PW-3, PW-5 it clearly shows that a huge quantity of coal was lying scattered inside the village, area of adjacent 'A' Ptl boundary. As there are no nearby source of coal except the siding area, the coal might have been stolen from siding area on 04/05.10.07 night but the coal pilferers were not able to load the same into the bullock carts due to the sudden intervention by the ECL and CISF authority on that very night.

FINDINGS

a) No 742310845 ASI/Exe D N Baskey of SBP Camp was detailed in 'C' shift on 04.10.07 at Seetalpur Rly Siding as the I/C.

b) During the night hours on 04/05.10.07 the coal pilferers pilfered coal from the siding area and stacked the coal at nearby village adjacent to the SRS 'A' Pil boundary wall and also loaded several bullock carts out of which three bullocks carts were seized by the CISF party.

(c) The Sales manager Shri G. S. Mishra arrived at SRS area at about 04:15 hrs on 05.10.07 when he got msg., regarding some disturbance by the coal pilferers at SRS area and also informed Insp/Exe T Singha, CIC SBP who also reached the spot immediately.

c) Three coal laden bullock carts were seized and 06 Mt., coal was deposited at SRS for which the ECL management issued a receipt which may be treated as the property certificate by the management.

d) A huge quantity of coal was found lying scattered in the nearby adjacent village of SRS and the coal might have been stolen from the Siding on 4/5.10.07 night but the coal pilferers failed to load the coal on the bullock carts due to the sudden intervention by the ECL management and CISF authority.

e) The Charged Official ASI/Exe D N Baskey failed miserably to protect the property of ECL (theft of coal) for which he was detailed at the Siding area as the IC and due to the theft of huge quantity of coal from Siding area his connivance with the coal pilferers cannot be ruled out.

CONCLUSION:-

After carefully going through all the available records in case file and the statements deposed by the PW's, DW's, the Prosecution exhibits, defence statement and the brief of the Presenting Officer, the Enquiry Officer is of the opinion that the Article of Charge leveled against No.742310845 ASI/Exe DN Baskey vide Commandant CISF Unit ECL Seetalpur charge memo No. V-

15017/ECL/Disc/UR-36(22)/DNB/07-8988 dated 17.10.07 is "FULLY PROVED BEYOND ANY DOUBT".

It is also certified that the enquiry has been conducted as per the laid down procedure of CISF Rules 2001."

122. The statement of Insp/Exe. T. Singha, CIC/SBP, CISF Unit ECL Seetalpur is replicated herein below:-

"I No. 744270028 Insp/Exe. T. Singha serving in this unit since December 2006 and at present looking after the duties of SBP Camp as CIC. On dated 05-10-01, when I was at my quarter at about 0430 hrs, I got an information over cellphone from G.S. Mishra, Sales Manager of ECL that huge quantity of coal are being looted by the miscreants in presence of the duty personnel at SRS gate at that time. I had talked with him about the incident and enquired into the matter accompanied by Shri G.S. Mishra, Ram Pukar, ... of NC Pal Company, Mantu Ruidas labour supplier of SRS Siding. On reaching at SRS gate it was found that one bullock cart was going unloaded which was loaded with coal and was brought by ASI/Exe. D.N Baskey as stated by G.S. Mishra. After that accompanied by above mentioned personnel took round near villages i.e. back side of the 'A' PTL area which is very adjacent and distance of the same 150 meters from 'A' PTL area and were found two bullock carts loaded with coal were parked to that place. After that we entered inside the village (basti) and it was noticed that lot of coal were being found scattered and the quantity of the same may be two tonnes. In the meantime the night duty personnel were relieved and who were also reached to the spot. On their arrival on query they could not give any satisfactory reply. However, it is learnt from Ram Pukar and from Mantu Ruidas that the incident took place in the night at 'A' PTL and 'B' PTL area. In this regard matter was informed to CGM over cellphone by Sh. G.S. Mishra, Sales Manager. For which CGM directed Sh. Mishra and me to meet with him at Glass House at 06:00 hrs., dated 05-10-07 thus the night duty personnel were ordered by me to unload the above two bullock carts Coal at railway siding. After that, myself and Shri G.S. Mishra left for Glass House to meet with C.G.M.

This is my statement, it is also mentioned here in this context a G.D. entry has been made and special report has been sent to office for further necessary action which I am producing here as prosecution exhibits.

The statement has been read over by me and understand in the language understood by me and I signed.

The charged official was offered to cross-examine PW-1:-

Question 1: When you reached at SRS gate after receiving the message from Sales Managers Shri G.S. Mishra?

Answer: I reached at SRS gate at about 05:00 hrs.

Question 2: After receiving the message what you have done?

Answer: After receiving the message I called my govt. vehicle and reached at SRS gate.

Question 3: Whether any CISF personnel or STF party were accompanied you when you reached at SRS gate?

Answer: No, I was alone.

Question 4: Why no CISF personnel or STF party were accompanying you?

Answer: Being the CIC I am competent/empowered to move alone and there is no provision in CISF to move with others being an Inspector.

Question 5: After reaching at SRS, did you meet any SRS PTL personnel?

Answer: When I reached at SRS gate you being the SRS I/C you were readily available there. I talk to you enquired into the incident as alleged by Shri G.S. Mishra, Sales Managers in his presence but you could not give any satisfactory reply simply you were keeping mum. Thus, it was not important to meet the PTL personnel whenever being SRS I/C already I talked to you.

Question 6: When you searched/made round of the near by village there were no CISF personnel accompanying you. Instead the ECL personnel were accompanying you at the time.....why?

Answer: As because as information received through Sales Managers, ECL and the complainant were Mr. Ram Pukar and Mr. Mantu Ruidas. But it is a matter of great regret after the incident not any kind of information being received from you or by any other duty personnel and it is very much essential to say that by the help of 'C' shift duty personnel the seizure was made.

Question 7: In your statement you have stated that about two tons coal found scattered in the nearby village of SRS. What you have done of that coal?

Answer: After the arrival of 'C' shift duty personnel at the village already it has been ordered by me to hand over all the coal to Railway Siding.

Question 8: Whether you have made weighment of the two coal loaded bullock carts which you have seized at the nearby village of SRS?

Answer: As I ordered you to take control of the same and unloaded at the Siding, you can tell it better than me. But I can produce the receipt copy of the management of the seized coal.

Question 9: How it is assumed by you the coal scattered inside the village are the coal of SRS?

Answer: It is already being reported by Mr. Ram Pukar and Mr. Mantu Ruidas that the coal pilfered during you duties from A and B Ptl., area, which is already been narrated by me in my statement.

Question 10: How far NCD control room is situated from SRS?

Answer: It is around 4 to 5 km.

Question 11: Then why you have made G.D. entry at 11:10 hrs., when the incident took place early in the morning on 05.10.07?

Answer: I was engaged with some meeting with CGM and other officials about the alleged incident. The G.D. has been made as asked by you.

Question 12: In your special report, why you have not mentioned the time of G.D. entry?

Answer: Whenever the G.D. extract follows the special report it is not mandatory to mention the time.

Question 13: In your G.D. you have only mentioned coals were found scattered inside the village but not mentioned the quantity of the same whereas in special report you have mentioned approximately 2 mt., coal were scattered in the village.why?

Answer: G.D. means only to reflect the summary of the incident but special report means elaboration of facts in details.

Question 14: Whether you have lodged any FIR when such huge quantity of coal theft occurred?

Answer: As lodging of an FIR against the CISF personnel may lead to a bad name to CISF so as per request of Sales Manager Shri G.S. Mishra, the entire coal were unloaded at SRS by your people. As I already stated in my statement.

Question 15: Then how did you say that the theft of coal occurred at SRS when no FIR lodged on your part because in case of any theft lodging of FIR is a must?

Answer: If no theft occurred then which coal were seized and deposited at SRS and I have already stated that to avoid a bad name of CISF no FIR was lodged as per the request of the Sales Manager. Moreover, for more clarification in this regard it can be asked to the Sales Manager.”

123. PW-5 stated the coal theft to be a consequence of domestic issue of Eastern Coal Field employees. PW-5 indicated the nature of the coal to be domestic. D. N. Baskey, since deceased, was asked by PW-3 to catch hold of the coal laden bullock carts moving outside the SRS which was confronted by the petitioner since deceased. PW-5 further confirmed the coal was not stolen from SRS area. PW-6 along with “Sh Mishra” and went outside by the SRS area by a vehicle and witnessed bullock carts loaded with coal to proceed on the way to Ukhra. Thereafter, they alighted from the vehicle, summoned D.N.

Baskey as aforesaid deceased employee and ordered him to unload the bullock carts at the siding area. Moreover, the railway track was clear without any obstruction and clutter.

124. The grievance raised by the petitioner regarding non-supply of relevant documents does not appear to have received consideration from the authorities. The communications forming part of the record reveal that though the petitioner repeatedly sought documents relied upon in support of the charge, he was informed at one stage that the rules did not contemplate furnishing such documents and was subsequently told that many of the requested records were not available with the Enquiry Officer. The right to effectively defend oneself in a disciplinary proceeding is not an ornamental formality. Where reliance is placed upon materials adverse to the delinquent employee, denial of reasonable access thereto inevitably affects the fairness of the proceeding unless the authority demonstrates absence of prejudice. No such satisfactory demonstration emerges from the record.

125. The petitioner's complaint regarding the role assumed by the Enquiry Officer cannot be brushed aside as wholly unsubstantial. The defence consistently alleged that the Enquiry Officer travelled beyond the prosecution brief and returned findings unsupported even by the tenor of the presenting case. The records placed before this Court indicate that substantial emphasis was laid upon inferential assumptions rather than direct evidentiary demonstration. An Enquiry Officer occupies the position of an impartial adjudicator within the departmental framework and cannot descend into the arena in a manner suggestive of prosecutorial alignment.

126. The proceeding also reveals inadequate consideration of the defence version and of the defence witnesses produced on behalf of the petitioner. Administrative adjudication acquires legitimacy not merely from recording conclusions but from demonstrable engagement with the competing versions placed before the authority.
127. The present case falls within such recognised exceptions. The challenge mounted by the petitioner is not confined to the correctness of the findings but extends to the very fairness of the enquiry, the vagueness of the charge, denial of material documents, reliance upon hearsay evidence and findings allegedly resting upon no evidence. Consequently, the objection founded upon availability of revisional remedy cannot operate as an absolute bar to exercise of jurisdiction under Article 226 of the Constitution. Since violation of the principle of natural justice has been writ large as enumerated above.
128. The evidence recorded to be assessed on the basis of ‘preponderance of probabilities’ should convince the Court that the allegation was more likely to be true than not true. The instant case reflected suspicion as assumptions which compelled this Court to assess both the documentary and oral evidence to decipher and comprehend the likelihood of the accusations which had been preposterous for lack of evidentiary value.
129. The respondents have next relied upon *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584, and *Nirmala J. Jhala v. State of Gujarat*, (2013) 4 SCC 301, to contend that this Court cannot reassess the evidentiary record as an

appellate forum and that departmental proceedings are governed by the principle of preponderance of probabilities.

130. The legal principles enunciated therein are equally well settled. A writ Court does not ordinarily substitute its own view merely because another interpretation of the evidence is possible. Likewise, disciplinary proceedings are not governed by the stringent standard of proof applicable in criminal prosecutions.

131. The difficulty for the respondents, however, lies in the factual foundation upon which those authorities proceed. Each of those decisions presupposes the existence of some legally acceptable evidence from which guilt may reasonably be inferred. The present case stands on a distinctly different footing.

132. Here, the charge itself proceeds upon the assumption that coal theft was "quite impossible unless there was direct involvement and connivance" of the petitioner. The charge-sheet identifies no overt act, no communication with the alleged offenders, no recovery from the petitioner, no pecuniary gain, and no circumstance indicating conscious participation. The departmental authorities were therefore not confronted with competing evidentiary interpretations but with a fundamental absence of material connecting the petitioner with the charge of connivance.

133. Judicial restraint does not compel constitutional courts to affirm findings founded upon conjecture merely because they emerge from a departmental proceeding. The distinction between insufficiency of evidence and absence of evidence remains decisive. The former ordinarily falls beyond judicial review;

the latter invites judicial correction. The respondents have also placed reliance upon *State of Haryana v. Rattan Singh*, (1977) 2 SCC 491, for the proposition that departmental proceedings may be sustained on the basis of "some evidence" possessing probative value.

134. The principle is beyond controversy. Yet the expression "some evidence" cannot be expanded to include suspicion, surmise or administrative presumption. Even under the liberal evidentiary standard applicable to disciplinary proceedings, there must exist some material having rational nexus with the charge.

135. In the present matter, the evidence relied upon by the department primarily consists of a chain of information transmitted through successive intermediaries. Shri C.B. Sood relied upon information from Shri N.K. Bagri; Shri N.K. Bagri relied upon information from Shri G.S. Mishra; Shri G.S. Mishra relied upon information from Shri Mantu Ruidas; and Shri Mantu Ruidas referred to information allegedly received from Ram Pukar. None of these witnesses furnished direct evidence of connivance by the petitioner.

136. Consequently, the respondents cannot derive assistance from *Rattan Singh*, for that authority sanctions reliance upon evidence possessing probative content; it does not legitimise findings resting solely upon inference generated from the occurrence of an incident itself.

137. The respondents have further relied upon *Narayan Bhagwantrao Gosavi v. Gopal Vinayak Gosavi*, AIR 1960 SC 100, and *Union of India v. Gyan Chand Chattar*, (2009) 12 SCC 78, to emphasise the evidentiary significance of admissions.

138. The argument does not advance the respondents' case.
139. The admissions relied upon pertain to the seizure of bullock carts and unloading of coal at the SRS premises. Such facts were never in serious dispute. The real issue, however, is whether those admitted circumstances establish conscious participation in theft or connivance with coal pilferers.
140. An admission regarding recovery or unloading of coal cannot automatically transform itself into an admission of misconduct. The existence of bullock carts and recovered coal does not bridge the evidentiary gap between occurrence of theft and culpability of the petitioner. The authorities cited by the respondents therefore operate in an altogether different factual setting.
141. The respondents have also invoked *State of U.P. v. Om Prakash Gupta, (2020) 16 SCC 492*, to contend that surrounding circumstances may legitimately be considered while assessing misconduct.
142. There can be little disagreement with the proposition. Circumstantial evidence frequently constitutes a valid foundation for disciplinary findings. Yet circumstances can sustain a finding only when they form a coherent chain leading towards a reasonable inference of guilt.
143. In the present matter, no such chain emerges from the record. The alleged recovery occurred in a labour colony separated from the petitioner's area of deployment by a boundary wall. No witness described the petitioner as participating in removal of coal. No material demonstrates communication with the alleged offenders. No evidence establishes any motive or benefit. Consequently, the surrounding circumstances relied upon by the

respondents remain insufficient to generate the inference of connivance recorded in the enquiry report.

144. The respondents have further placed reliance upon *Union of India v. J. Ahmed*, (1979) 2 SCC 286, to contend that grave negligence may itself amount to misconduct.
145. The principle is unexceptionable. However, the charge in the present case was not framed merely as one of negligence or operational lapse. The department specifically alleged "direct involvement and connivance" in theft of coal. Having chosen to frame the charge in those terms, the respondents assumed the burden of establishing conscious participation and not merely imperfect performance of duty.
146. The distinction is of considerable importance. Evidence sufficient to establish negligence may not necessarily establish connivance. The enquiry authorities, however, treated the two concepts as interchangeable and thereby diluted the evidentiary burden inherent in the charge itself.
147. Turning now to the authorities relied upon by the petitioner, substantial assistance is derived from *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262.
148. The decision emphasises that principles of natural justice are not confined to courts and tribunals but permeate administrative processes whenever civil consequences ensue. The petitioner's grievance regarding non-supply of documents, refusal to address allegations of bias and denial of an effective opportunity to defend himself falls squarely within the concerns articulated in *Kraipak*.

149. Equally relevant is *Oryx Fisheries (P) Ltd. v. Union of India*, (2010) 13 SCC 427. The Supreme Court observed therein that a person receiving a notice must reasonably perceive that his explanation will be examined by an authority possessing an open mind.
150. The charge-sheet in the present matter stated that the theft "was quite impossible unless there was direct involvement and connivance" of the petitioner. Such language travels considerably beyond narration of allegations requiring investigation. It conveys a conclusion regarding culpability even before commencement of the enquiry. The ratio of *Oryx Fisheries* therefore assumes direct relevance.
151. The same principle finds reinforcement in *State of Odisha v. Satish Kumar Ishwardas Gajbhiye*, (2021) 17 SCC 90. There also the Supreme Court expressed concern where the language employed in the charge memorandum reflected a predetermined view regarding guilt.
152. The respondents attempted to distinguish the authority by contending that the present charge-sheet merely narrated allegations. This Court is unable to accept such submission. The language employed in the memorandum is not tentative. It does not state that connivance is suspected or requires investigation. Rather, it proceeds upon the premise that the occurrence itself could not have happened without the petitioner's involvement. Such formulation carries a clear imprint of pre-judgment.
145. Strong reliance was also placed by the petitioner upon *M.V. Bijlani v. Union of India*, (2006) 5 SCC 88.

146. The ratio of that decision directly illuminates the controversy at hand. The Supreme Court cautioned that findings in disciplinary proceedings must emerge from relevant evidence and cannot be sustained upon conjecture, surmise or suspicion. The observations contained therein assume particular significance because the enquiry report in the present case repeatedly draws conclusions unsupported by direct evidence.
147. The authority in *Roop Singh Negi v. Punjab National Bank*, (2009) 2 SCC 570, furnishes even stronger support to the petitioner's case. The Supreme Court recognised that departmental proceedings possess a quasi-judicial character and that findings must be based upon evidence capable of withstanding rational scrutiny. Suspicion, however grave, cannot substitute proof.
148. The present matter reveals a striking resemblance to the concerns identified in *Roop Singh Negi*. The departmental authorities inferred connivance largely because theft allegedly occurred during the petitioner's duty hours. Such inference does not arise from proved facts but from administrative assumption.
149. The petitioner also relies upon *Union of India v. Gyan Chand Chattar*, (2009) 12 SCC 78. Although the respondents have cited the same authority, its observations concerning the need for cogent evidence where allegations possess serious civil consequences actually strengthen the petitioner's challenge. The charge here was not one of minor negligence but of conscious connivance in theft of public property. Such allegation necessarily demands a higher degree of evidentiary assurance than what is discernible from the record.

150. Accordingly, upon a careful examination of the authorities cited by both sides, this Court finds that the precedents relied upon by the respondents primarily govern cases where disciplinary findings are supported by some legally sustainable evidence and where the challenge merely invites re-appreciation of factual conclusions.
151. The present matter belongs to a different category. The charge-sheet itself bears traces of pre-judgment; the alleged misconduct is unsupported by direct evidence; the circumstantial framework remains incomplete; the enquiry suffers from procedural deficiencies; and the ultimate findings rest substantially upon suspicion elevated into certainty.
152. The authorities cited on behalf of the petitioner therefore possess greater factual and legal affinity with the controversy presently before the Court and furnish the more appropriate guiding principles for adjudication of the issues involved.
145. The respondents have urged that the disciplinary authorities concurrently recorded findings of guilt and that the writ Court ought not to embark upon re-appreciation of evidence while exercising jurisdiction under Article 226 of the Constitution.
146. The rival contentions require examination in the backdrop of the nature of the charge itself.
147. The memorandum of charge did not attribute any specific overt act to the petitioner. No allegation was made that he was seen assisting the alleged miscreants. No allegation was made that he abandoned his post, facilitated transportation of coal, communicated with the offenders or derived any

pecuniary advantage from the occurrence. The charge merely stated that theft of coal had taken place during the relevant hours and that such theft was "quite impossible unless there was direct involvement and connivance" of the petitioner.

148. Such formulation of charge discloses a fundamental infirmity. A charge-sheet is the foundation of a disciplinary proceeding. It must disclose with reasonable precision the misconduct alleged and the factual particulars constituting such misconduct. The delinquent employee must know not merely the conclusion sought to be reached but the factual basis upon which such conclusion is proposed to rest.

149. The present charge-sheet proceeds in the reverse direction. Instead of narrating facts from which connivance may be inferred, it presumes connivance from the occurrence itself. The charge is therefore founded upon assumption rather than accusation. The distinction is neither semantic nor technical. It strikes at the heart of fair disciplinary jurisprudence.

150. An allegation of connivance imports conscious participation. Such allegation carries serious consequences touching reputation, integrity and career. The burden resting upon the employer in such circumstances is not discharged by demonstrating that an incident occurred during duty hours. There must exist some material capable of establishing a rational nexus between the employee and the alleged misconduct.

151. Upon examination of the evidence adduced during the enquiry, this Court finds a complete absence of such material.

152. None of the prosecution witnesses claimed to have witnessed the petitioner assisting any coal pilferer. None stated that the petitioner was present at the place where the coal was allegedly removed. None spoke of any prior arrangement, communication or association between the petitioner and the alleged offenders.
153. The evidence reveals a chain of information passing through successive intermediaries. Shri C.B. Sood acted upon information received from Shri N.K. Bagri. Shri N.K. Bagri acted upon information received from Shri G.S. Mishra. Shri G.S. Mishra relied upon information received from Shri Mantu Ruidas. Shri Mantu Ruidas in turn acted upon information allegedly received from Shri Ram Pukar. The entire prosecution narrative thus travels through multiple layers of hearsay without identifying any witness possessing direct knowledge implicating the petitioner.
154. What emerges from the evidence is merely that some quantity of coal was allegedly recovered outside the SRS area and that bullock carts carrying coal were subsequently intercepted.
155. Significantly, the materials themselves indicate that the alleged recovery was effected from an adjacent colony touching the boundary of the SRS area and not from the specific location where the petitioner had been assigned sentry duty. The theft itself was therefore not shown to have occurred within the immediate precincts of the petitioner's assigned post. No evidence establishes that the petitioner exercised control over the locality from where the coal was allegedly recovered.

156. The distinction assumes considerable importance because the disciplinary authorities proceeded upon the premise that occurrence of theft during the petitioner's duty hours itself established his complicity. Such reasoning overlooks the elementary requirement that negligence, dereliction of duty and connivance are distinct concepts carrying different evidentiary burdens.
157. Even if a lapse in vigilance were assumed, the same would not automatically establish conscious participation in theft.
158. The prosecution witnesses themselves furnish circumstances inconsistent with the theory of connivance. The evidence of Senapati Singh indicates that the petitioner was seen driving away suspicious persons from the vicinity. Such conduct, far from supporting the allegation, tends to negate the theory of participation.
159. The defence version was further supported by two defence witnesses. The enquiry report, however, reflects no meaningful analysis of their testimony. A quasi-judicial determination cannot attain legitimacy by selective extraction of inculpatory fragments while ignoring exculpatory materials appearing on record.
160. The role assumed by the Enquiry Officer also warrants scrutiny.
161. An Enquiry Officer occupies the position of an impartial adjudicator. He is neither an investigator nor an auxiliary prosecutor. His obligation is to objectively evaluate the evidence adduced by both sides and arrive at conclusions supported by the record.
162. The report in the present matter reveals that the Enquiry Officer proceeded beyond the prosecution evidence and supplied inferential links absent from

the evidentiary record. Such exercise falls outside the permissible boundaries of adjudicatory neutrality. Where the prosecution evidence fails to establish a charge, the deficiency cannot be cured by conjectural reconstruction undertaken by the adjudicator himself.

163. The petitioner also complained throughout the proceeding that relevant documents sought for effective defence were not supplied. The responses furnished by the authorities were themselves contradictory. Initially it was stated that the rules did not contemplate supply of documents. Subsequently it was stated that the documents were not available with the Enquiry Officer. Such position falls short of the procedural fairness expected in a proceeding capable of terminating a long and distinguished service career.

164. The respondents have placed considerable reliance upon decisions emphasizing limited judicial review in disciplinary matters.

165. The principle itself admits of no controversy.

166. The writ Court does not function as a court of appeal over departmental findings. Re-appreciation of evidence is ordinarily impermissible. Findings supported by some evidence generally remain immune from judicial substitution.

167. Yet the authorities relied upon by the respondents proceed upon the existence of evidence capable of supporting the conclusions reached by the disciplinary authority.

168. The present case stands on a different footing.

169. This is not a case where two views are possible upon the same evidence. Nor is it a case where adequacy of evidence is questioned. The challenge strikes at the existence of any legally sustainable evidentiary foundation connecting the petitioner with the charge of connivance.
170. The distinction between "insufficient evidence" and "no evidence" remains fundamental.
171. Where some admissible material points towards guilt, the writ Court ordinarily refrains from reassessment. Where the conclusion is founded solely upon suspicion, presumption and administrative surmise, the finding ceases to possess the character of an adjudicatory determination and enters the realm of speculation. In such circumstances judicial intervention becomes not only permissible but necessary.
172. This Court is conscious that interference with disciplinary proceedings involving members of a uniformed force must be exercised with circumspection. Institutional discipline constitutes the backbone of such organizations and judicial review cannot be permitted to erode administrative control in matters affecting operational integrity. Yet institutional discipline derives its moral authority not merely from severity of punishment but from fairness of procedure. The strength of disciplinary administration lies as much in procedural rectitude as in enforcement of accountability.
173. At the cost of repetition it is further reiterated as to why this Court has considered it prudent to be a distinctive case of exercise its jurisdiction to interfere, re-appreciate evidence and not to remand it for availing the

revisional jurisdiction on the face of gross violation of the principle of natural justice.

174. The memorandum of charge itself states that the theft "was quite impossible unless there was direct involvement and connivance" of the petitioner. The language employed is of profound significance. The charge does not disclose discovered facts establishing connivance; instead, it presumes connivance from the occurrence of theft itself. Such reasoning reverses the very structure of disciplinary adjudication. Guilt is not established through evidence; evidence is sought to be inferred from presumed guilt.
175. The distinction between suspicion and proof cannot be diluted merely because the proceeding is departmental in character. While strict rules of criminal evidence may not apply to disciplinary enquiries, findings carrying severe civil consequences must nevertheless rest upon some legally acceptable evidentiary foundation. Administrative convenience cannot substitute the discipline of proof. A constitutional court cannot sustain punitive action merely because suspicion appears administratively plausible.
176. The evidentiary architecture of the prosecution further reveals substantial fragility. The materials on record demonstrate that the allegations travelled through successive layers of hearsay communication. One officer acted upon information received from another; that officer, in turn, derived information from yet another intermediary. The narrative thus moved through multiple channels without identifying any primary source directly implicating the petitioner. The proceeding therefore lacked not only direct evidence but also dependable circumstantial coherence.

177. The Court also finds substance in the petitioner's grievance relating to denial of procedural fairness during the enquiry. The records disclose repeated requests for supply of relevant documents relied upon in support of the charge. At one stage, the petitioner was informed that the rules did not contemplate furnishing such documents; subsequently, it was stated that many of the records were unavailable with the Enquiry Officer. Such responses do not satisfy the requirements of fair disciplinary procedure.
178. The right to defend oneself in a departmental proceeding is not a ceremonial entitlement existing merely in theory. Where serious charges capable of destroying service career and reputation are levelled, reasonable access to relied-upon materials becomes integral to procedural fairness itself. Absence of effective disclosure impairs the ability of the delinquent employee to test the prosecution case, challenge inconsistencies and present meaningful defence.
179. The role assumed by the Enquiry Officer also gives rise to legitimate concern. The petitioner consistently alleged that the Enquiry Officer travelled beyond the prosecution brief and returned conclusions unsupported even by the presenting case. A departmental enquiry does not authorize the Enquiry Officer to compensate for deficiencies in the prosecution narrative through inferential reconstruction. The Enquiry Officer occupies the position of an impartial adjudicator and not that of a supplementary prosecutor.
180. The treatment accorded to the defence evidence similarly reflects imbalance in appreciation. The defence witnesses produced on behalf of the petitioner do not appear to have received meaningful consideration. Administrative

adjudication acquires legitimacy not through severity of language but through demonstrable fairness in evaluative process. An enquiry report which selectively engages with inculpatory circumstances while remaining substantially silent regarding exculpatory materials risks losing the neutrality expected of quasi-judicial determination.

181. The appellate authority, though modifying the punishment from removal to compulsory retirement, also failed to address the foundational deficiencies infecting the proceeding. Modification of punishment does not validate an enquiry otherwise unsustainable in law. The appellate order proceeds more upon affirmation of administrative conclusion than upon independent examination of the procedural and evidentiary objections raised by the petitioner.

182. This Court is fully conscious that members of disciplined forces are expected to maintain the highest standards of vigilance and responsibility. Lapses affecting public property and industrial security cannot be viewed lightly. Yet the seriousness of an allegation cannot relieve the administration of its obligation to establish misconduct through lawful procedure and rational evidence. Institutional discipline derives enduring legitimacy not from punitive severity alone but from fidelity to fairness.

183. The present matter, in the considered view of this Court, falls within that class of cases where the findings are not merely based upon inadequate evidence but upon no legally sustainable evidence capable of supporting the ultimate conclusion of connivance. The distinction assumes decisive importance. A writ Court may refrain from reassessing sufficiency of

evidence, but it cannot remain silent where punitive findings emerge from conjecture elevated into administrative certainty.

184. This Court is also unable to ignore the extraordinary lapse of time. The incident pertains to October, 2007. The petitioner has endured the consequences of the impugned disciplinary action for nearly two decades. To remit the matter now for fresh consideration would neither advance the interests of justice nor restore procedural fairness. Such course would merely prolong uncertainty and afford an opportunity to reconstruct a proceeding whose foundational deficiencies existed from inception. Remand is not to be employed as a mechanism for repairing incurable defects embedded within the original charge itself.

185. Accordingly, this Court holds that the disciplinary proceeding culminating in the order dated 26th May, 2008 and the appellate order dated 14th August, 2008 cannot withstand judicial scrutiny and are liable to be set aside.

186. The impugned orders are therefore quashed.

187. The legal position is firmly settled. Constitutional courts have repeatedly drawn a sharp distinction between death occurring during the domestic inquiry versus death occurring at the appellate or writ stage after a punishment order has already been passed.

188. Supreme Court in *A.K.S. Rathore (Dead) through LRs v. Union of India & Anr.* (Civil Appeal No. 7028 of 2022) emphasised the locus classicus on the point of abatement when finality had not been reached, confirming that the legal representatives (LRs) inherit the right to the benefits stating, inter alia, "*Today even if we dismiss the above appeal, no final order can be passed in*

the disciplinary proceedings, against a dead person. The disciplinary proceedings have actually abated. In other words, the dismissal of the above appeal will not enable the disciplinary authority to pass a final order against a dead person. Consequent upon the disciplinary proceedings having abated, the legal representatives of the original appellant will be entitled to all the benefits."

189. Supreme Court in *Rameshwar Manjhi (Dead) through LRs v. Management of Sangramgarh Colliery*(1994) 1 SCC 292 , the Apex Court explicitly rejected the application of *actio personalis moritur cum persona* (a personal action dies with the person) to service and labor disputes where estate rights (back wages/pension) are involved, affirming that legal heirs can prosecute the matter. It was inter alia observed that: *"The maxim 'actio personalis moritur cum persona' has been applied with some limitations in the past, but its application in the field of industrial adjudication or service law cannot be extended to deny relief to the legal heirs. If an action is initiated by an employee... why should it not survive to the legal representatives when he dies during the pendency of the action? The death of the workman during the pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased."*

190. Therefore, where the employee passes away, the employer loses the jurisdiction to impose any post-death punitive cuts or penalties in the absence of explicit statutory rules allowing the continuation of proceedings

against dead persons. Consequently, the legal heirs are entitled to the full release of retiral benefits, gratuity, and family pension.

191. Having regard to the prolonged deprivation suffered by the husband of the petitioner owing to a disciplinary action which this Court finds legally unsustainable, the respondents are further directed to release all consequential financial benefits admissible to the petitioner within a period of four months from the date of communication of this order. The arrears payable shall carry interest at the rate of 6% per annum from the date the benefits became due until actual disbursement.

192. In view of the above discussions, the instant writ petition being WPA 29311 of 2008 is allowed.

193. Accordingly, WPA 29311 of 2008 stands disposed of.

194. There is no order as to costs.

195. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)