CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 4481/2015
MA No. 4114/2015

Order Reserved on: 04.09.2019

Order Pronounced on: 11.09.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Swatantra Kumar,
S/o late Bachchu Singh,
R/o House No.44A,
Akashwani Road,
Khajpura PO-BV College,
PS Rajeev Nagar,
Town & District-Patna (Bihar)
Pin-80014

...Applicant

(By Advocate: Mr. Sumit Kumar)

Versus

1. Union of India
Through Secretary (Revenue)
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001

2. Under Secretary,
Central Board of Excise & Customs,
6th Floor, Hudco Vishala Building,
Bhikaji Cama Place,
RK Puram, New Delhi-66

3. Union Public Service Commission,
Through Secretary,
Dholpur House, Shahjahan Road,
Delhi-110001

4. Chairman,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001

5. The Director General (Vigilance)
Central Board of Excise & Customs,
2nd Floor, Samrat Hotel, Chanakya Puri,
Kautilya Marg, New Delhi-110021

6. The Commissioner
Central Excise & Service Tax,
Patna-1, 3rd floor, CR Building (Annexee),
Veer Chand Patel Marg,
Patna-800001 - Respondents

(By Advocate : Mr. YP Singh)

O R D E R

The applicant has filed this OA, seeking the following reliefs:-

> "(a) To quash order no.25 of 2015 in F.No.C-14011/58/2005-Ad.V/6323 dated August, 2015 passed by the Respondent No.1;
>
> (b) To pass such other order/orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case."

2. Brief facts of the case are that applicant – Addl. Commissioner, who retired on superannuation from service on 31.7.2011, was issued a charge Memo dated 5.3.2009 in relation to the incident of 1998 when he was discharging the duties of Additional Commissioner, which was received by him on 18.3.2009. The article of charges reads as under:-

> "**Article-1**
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> That on 27.11.1998, Forbesganj Police had effected a seizure of 7360 metres of Chinese silk cloth from Tata Sumo Car bearing Registration No.UP 42C-9763 under seizure Memo dated 27.11.1998. The seizure consignment was handed over to Shri Manoranjan Prasad, Inspector, Bhimnagar, Customs under proper acknowledgement by the Police. Shri Swatantra Kumar, Additional Commissioner, while

functioning as Assistant Commissioner, Customs (Preventive), Forbesganj Division, during year 1998, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant inasmuch as he tried to suppress the seizure of aforesaid 7360 meters of Chinese silk cloth by way of getting another seizure memo dated 28.11.2008 made describing the seized goods as polyster instead of silk which resulted in loss of Govt. revenue. Thus, Shri Swatantra Kumar, the then Assistant Commissioner, violated Rule 3(1)(i),(ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article-II

That on 28.11.1998, Shri Swantantra Kumar, while functioning as Assistant Commissioner (Preventive), Forbesganj Division, failed to maintain absolute integrity, devotion to duty and acted in a manner which was unbecoming of a Govt. servant inasmuch as he supervised the entire formalities of the aforesaid seizure wherein Mohd. Abdullah, Sub-Divisional Police Officer, Birpur Police Station, on requisition of Shri Om Prakash, Inspector, prepared another seizure Memo on 28.11.1998 showing therein the description of seized goods as “Chinese silk ka label, laga hua polyster jaisa” thereby managing fabrication of previous Seizure Memo dated 27.11.98. Thus, the said Swatantra Kumar, the then Assistant Commissioner violated the Rule 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article-III

That on 28.11.1998, Shri Swantantra Kumar, while functioning as Assistant Commissioner (Preventive), Forbesganj Division, failed to maintain absolute integrity, devotion to duty and acted in a manner which was unbecoming of a Govt. servant inasmuch as he supervised the entire formalities of the aforesaid seizure case wherein the names and address of the witnesses were incomplete and were not traceable. The trade opinion obtained in respect of the goods under seizure was subsequently found to be fake. He thus, failed to follow the prescribed procedure for ascertaining the quality of seized goods and himself fixed the price of the said seized goods in irregular manner while disposing of the seized goods to M/s. NCCF causing loss to Govt. revenue. Thus, the said Swatantra Kumar, the then Assistant Commissioner

violated the Rule 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article-IV

That said Shri Swantantra Kumar, while functioning as Assistant Commissioner (Preventive), Forbesganj Division during the year 1998, failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant inasmuch as he did not take steps to get the aforesaid seized goods deposited in the godown immediately and the goods remained in the custody of Shri Anil Kumar Prasad, the then Inspector from 28.11.1998 to 04.06.1999 i.e., for more than 6 months from the date of seizure. Thus said Shri Swatantra Kumar, Assistant Commissioner violated the Rule 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964."

2.1 In relation of the aforesaid incident, CBI registered a case on 28.2.2003 and the same was pending till disposal of the present disciplinary proceedings case.

2.2 The inquiry officer /Prosecution Officer were appointed by the disciplinary authority and after completion of inquiry proceedings, the IO gave his finding holding all the charges framed against the applicant as proved vide its report dated 28.6.2013. Thereafter applicant submitted his reply against the said inquiry report, which was considered by the disciplinary authority. The disciplinary authority tentatively decided to reject his representation and make a reference to UPSC for its advise. Thereafter UPSC advice was sought and the UPSC has recommended for a penalty of "withholding of 30% of the monthly pension, otherwise admissible to him for a period of five years. Accordingly, after examining the case records, inquiry report UPSC advice, submission of the

applicant on UPSC advice, the disciplinary authority vide order No.25/2015 dated August 2015 imposed penalty of "withholding of 30% of the monthly pension, otherwise admissible to him for a period of 5 years. Being aggrieved by the aforesaid Order, the applicant has filed this OA, seeking the reliefs as quoted above.

3. Counsel for the applicant submitted that the applicant has alleged that the respondents had issued charge sheet dated 30.11.2006, 29.11.2006 and 27.09.2006 for the same allegation under the said Rule against three other charged officials, namely, Sri Helal Ahmad, Superintendent and Sri Om Prakash and Sri Anil Kumar Prasad both Inspectors and had also appointed the same enquiring authority and presenting officer for all the charged officials and once the departmental inquiry was initiated against all the charged officials, including the applicant through a single departmental enquiry, it should have been initiated by following the procedure laid down under the said rule 18 of the CCS CCA rules wherein it is stipulated that "Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings and note appended below Rule 18 further clarified that if authorities competent to impose the penalty of dismissal on

such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others. He has thus pleaded that the order of the common proceedings should be from the highest authority i.e., the 'President of India' indicating therein regarding common disciplinary authority and as to whether the procedure under Rule 14, 15 or 16 shall be following in the proceeding or not. The applicant has also alleged that there is no communication of such an order to him and Sri Kishori Lal (IO) had virtually conducted common proceedings by including the case of Sri Helal Ahmed, Anil Kumar Prasad and Om Prakash in the illegal & malafide manner without any valid authority and his inquiry report is not valid document under Rule 14 of the CCS (CCA) Rules 1965 for consideration by any of the disciplinary authorities of this case. The applicant has further pleaded that once common proceeding is started, it should not have been separated in his case herein.

3.1 Counsel for the applicant further submitted that on 22.07.2005, the Commissioner of custom, Patna sent a report to the Chief Commissioner of Customs (prev) Patna Zone regarding the trade opinion of M/s Kumartoli consumer co-operative society given in his favour and observed that the

observation that the seized goods were silk instead of polyster did not get substantiated.

3.2 Counsel for applicant further submitted that once the status quo order was passed by CAT in OA No. 646/2015, the enquiry officer ought to have maintained the status quo in respect of the entire proceedings in view of the fact that the entire proceeding was a common proceeding against all the charged officers which was being conducted for the same allegation. He has thus submitted that concluding the inquiry was in total disregard to the above order.

3.3 Counsel further submitted that the respondents have not taken into account even the report of the DG vigilance working under Central board of Excise and Customs dated 05/04/2005 wherein it has been found that there is no loss of revenue and there is no proof that the seized goods were not polyster clothes and the same had been sold or otherwise and no prosecution is warranted against any officers in this case. The applicant has also submitted that the adjudication on the said seized goods were done by the Joint Commissioner, customs Patna and in the said adjudication that clothes were mentioned and disposed as per the description given by the inspector, who was working under the applicant and further that in NCCF had lifted the said goods from the office of the respondents as polyester clothes only and not as silk clothes.

3.4 Counsel also submitted that the enquiry officer has also not relied on the opinion of the Kumartoli Consumer Cooperative Society, which supported the case of the applicant and which clearly established that he had committed no misconduct or misbehaviour.

3.5 Counsel also submitted that as per the CVC advice dt. 08.11.2005, the common charge memorandum was drafted in consultation with CBI and issued to all charged officer for inquiry of individual role. Hence separate inquiry by the different inquiry authorities were necessity for true compliance of CVC advice. Accordingly the Disciplinary Authority of the Applicant appointed Sri Kishori Lal, Commissioner of Customs (Prev.), Patna as inquiry officer (IO) in accordance with the provision of Rule 14 of the CCS (CCA) Rule 1965 and he has not been appointed IO for conducting common inquiry proceedings under Rule 18 of the CCS (CCA) Rules 1965. It is submitted that only the disciplinary authority of the Applicant was competent to order for the common inquiry proceedings under Rule 18 of the CCS (CCA) Rules 1965 in the present case and no other authorities like the Chief Commissioners and/or Commissioners can convert the above proposed inquiry under Rule 14 to be held under Rule 18 of the CCS (CCA) Rules 1965. It is submitted that the IO has not conducted regular inquiry proceedings under Rule 18 of the CCS (CCA) Rule 1965.

3.6 Counsel for the applicant further alleged that that the IO has submitted report without exhibiting or giving the original/authenticated relief upon documents, without allowing examination of prosecution witnesses in the presence of charged officers and passed ex-parte daily order sheet without communicating the date of hearing. The disciplinary authority has inherent and wide powers under Rule 14(3), (4) & (5) of the CCS (CCA) Rules 1965 to either withdraw or modify the charge memorandum and/or pass appropriate order as may deem fit for the purpose of finalization of charge memorandum and these three provisions should be read together to come on the conclusion. The disciplinary authority has to exercise such power before regular inquiry and/or after regular inquiry. The Applicant had already submitted written statement vide letter dt. 10.04.2009 to the disciplinary authority under Rule 14(3) of the CCS (CCA) Rules 1965 immediately after receipt of the impugned charge memorandum and requested the disciplinary authority to either withdraw or modify the charge memorandum and/or pass appropriate order as may deem fit without holding regular inquiry. In this context, he had submitted another supplementary written statement dt. 31.12.2010 in view of new additional facts to the disciplinary authority with similar request. However, the Disciplinary authority has malafide not decided the said application.

3.7 Counsel further submitted that during the follow up action of the prosecution case of CBI , the parallel charge memorandum for imposing major penalty have been issued to him, Helal Ahmed, Om Prakash and Anil Kumar Prasad by the respective Disciplinary Authorities separately whereas no charge memorandum has been issued to R.R. Sinha because he managed everything probably on the basis of money power, although the CVC has advised for minor penalty proceedings to be initiated against him also through same CVC advice dt. 27.05.2005. The applicant has also alleged that even in the case of Md. Abdullah, DSP Of Bhiar Police, no proceedings for major penalty has been initiated by the Disciplinary Authority.

4. On the other hand, counsel for the respondents by referring to their counter affidavit submitted that the disciplinary proceedings were started against all the charged officers including the applicant by following the procedure laid down under the Rule 18 of CCS (CCA) Rules, 1965, which does not make it mandatory to initiate common Disciplinary Proceedings against all the Charged Officers, liable for punishment by difference Disciplinary Authorities.

4.1 Counsel also submitted that the allegations of the applicant that once common proceedings are started, it should not have been separated in the case of applicant, have

drawn our attention to the Rule 18 of the CCS (CCA) Rules, 1965 which clearly stipulates as under:-

> "Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding."

The respondents have thus submitted that from plain reading of the above rule, it can be ascertained that there is no bar on the competent authority for common proceedings as the phrases used here is "competent authority may make an order". Therefore, the applicant contention is not valid. However, as per CCS (CCA) Rules, the disciplinary authority is separate, for different category of officers such as the category of group A officer and group B officer. Counsel also submitted that in respect of the applicant, the Disciplinary Authority was the Hon'ble President of India and in respect of other Charged Officers the Disciplinary Authority was the Commissioner, Central Excise & Service Tax, Patna. Hence, it was not deemed proper to make orders for common Enquiry Proceedings. regarding the preliminary observations of the Additional Director General of Vigilance.

4.2 Counsel for the respondents further that IO was conducting enquiry separately but simultaneously in respect of the applicant and other officials and the same was not common enquiry under the provisions of Rule 18 of the

Central Civil Services (Classification, Control and Appeal) Rules, 1965.

4.3 Counsel also submitted that the opinion of M/s Kumartoli consumer co-operative society given in favour of the applicant is itself under suspicious, as the same appears to have been inserted subsequently because the original report indicated only two opinions and it was 3rd opinion. Moreover, the Kumartoli Consumer Cooperative Society is purportedly based in Patna whereas the seizure had taken place at Forbesganj. There is no valid reason as to why trade opinion was taken from a Cooperative society based at Patna. Further, seizure report and the trade opinion were taken on the same day i.e., 28.11.1998 and it would not have been feasible to call somebody from Patna and obtain the opinion on the same day. Hence, it seems that the applicant failed to supervise the seizure formalities properly.

4.4 Counsel also submitted that the averment of the applicant that the status quo order passed by the CAT in OA 239/2013 was in the context of Shri Om Praksh, Inspector and Shri Anil Kumar Prasad, Inspector and the applicant is nowhere concerned in the order passed, as it had not ordered to stay the proceedings against the applicant but had ordered to maintain status quo in respect of other Charged Officers.

4.5 Counsel further submitted that so far as the plea of the applicant that the Charge Sheet was contrary to the findings

dated 05.04.2005 of the Competent Authority, i.e., the Additional Director General (Vigilance), CBEC, observing that neither there is any loss to the Government nor any prosecution is warranted against the applicant is not sustainable, is concerned, the Central Vigilance Commission had observed, referring to the Director General (Vigilance), CBEC's, U.O. Note No. V.557/10/2000 dated 24.10.2005, in their 1st Stage Advice 004/CEX/223/9767 dated 08.11.2005 that *"Considering the position explained, the Commission in agreement with the Director General (Vigilance), CBEC would advice initiation of major penalty proceedings against S/Sh. Swatantra Kumar, ...The Commission would advice the Department to draft the Charge sheet in consultation with CBI."* Counsel further contended that prosecution was also sanctioned against the Applicant by the competent authority and communicated vide letter V.557/10/2000/5535 dated 11.11.2005 of Additional Director General (Vigilance), Central Board of Excise & Customs, New Delhi, as advised by the Central Vigilance Commission, vide their Office Memorandum No. 004/CEX/223/92 dated 27.05.2005 that *"The case was discussed in the Commission with the officers of Vigilance Directorate, CBEC and the Central Bureau of Investigation in a joint meeting held on 16.05.2005, and after considering the overall facts and circumstances of the case and after going through the relevant documents, it is quite apparent that the concerned Customs officers have prepared fake*

documents.....". The Commission further observes that this is a fit case for launching Prosecution against the said officers (including the Applicant).

4.6 Counsel for the respondents has also drawn our attention to the Advice F.3/256/2014-S.I, dated 21.04.2015 of the UPSC which reads as under:

> "At Para-3.3 (Pg.4) that "The above documentary evidence and statement of witnesses confirmed that the CO, in conspiracy with Shri Om Prakash, Inspector caused manipulation of records, altering the description of seized cloth from the higher value silk to a lower value polyester, which resulted in a loss of Revenue to the Exchequer."
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> At para-3.6 (Pg.5) that "That alteration of the description of the cloth is confirmed by SW-5, Sh. Manoranjan Prasad, who has confirmed in his deposition before inquiry that silk cloth labelled as Chinese Silk had been seized by the Police and that the description silk was altered from silk to polyester in his absence."
>
> At Para-3.6 (Pg. 6) that "The CO had, in his wireless message dated 28.11.1998 to the Commissioner clearly informed about seizure of Polyester Cloth, without even mentioning that the cloth carried a silk label. This clearly indicates that the fabrication of previous Seizure Memo dated 27.11.1998 was done with the consent of the CO."
>
> At Para-3.9 (Pg.7) that "Thus, it is evident that either Trade Opinion was not obtained at all or it was a manipulation done to camouflage the substitution of silk fabric by polyester fabric."

4.7 The respondents' counsel further contended that on perusal of Daily Order Sheet dated 09.04.2013, it is found

that the Applicant was absent during the enquiry proceedings and hence the allegation made by him is not correct. Counsel further contended that the respondents have denied the argument of the applicant that the IO had submitted report without exhibiting or giving the original/authenticated relied upon documents, without allowing examination of prosecution witness in the presence of charged officers and passed ex-parte daily order sheet without communicating the date of hearing and further submitted the applicant was given adequate opportunity during the disciplinary proceedings before the inquiry officer and the whole disciplinary proceedings are undertaken as per the Rules specified under CCS (CCA) Rules, 1965 and after issuance of charge memo, the applicant was given opportunity for filing his submission and after receiving the written statement the authority had carefully examined and appointed IO/PO as per the Rules. Therefore at each level the disciplinary authority has examined the documents.

4.8 The respondents' counsel has also submitted that Disciplinary Proceedings were initiated against all the Charged Officers on the basis of the findings of Central Vigilance Commission and the Union Public Service Commission. They have submitted that the Central Government has no control over Md. Abdullah, Dy. Superintendent of Police, Government of Bihar and prima

facie also it is evident that Md. Abdullah, Dy. Superintendent of Police had no role to play in the said Seizure proceedings, initiated under the provisions of the Customs Act, 1962. His role was limited to detention and handing over of the said seized goods to the Customs Authorities. During the prosecution case of CBI, parallel charge memorandum for imposing major penalty had been issued to applicant, Helal Ahmed, Om Praksh and Anil Kumar Prasad by the respective Disciplinary Authority separately whereas no charge memorandum has been issued to R.R. Sinha. In this regard, it is stated that every officer was issued charge memo for their individual role in the case. So allegation of the applicant that no charge memorandum had been issued to R.R.Sinha or no proceedings for major penalty has been initiated by the disciplinary authority of Md. Abdullah, DSP of Bihar Police are baseless and not tenable.

4.9 Counsel also submitted that the applicant's allegations that the IO is most dishonest officer and he is not above board to conduct fair and objective judicious inquiry in accordance with existing laws, are baseless and without documentary evidence. They have thus submitted that the penalty of "withholding of 30% of the monthly pension, otherwise admissible to him for a period of 5 years" has been imposed by the disciplinary authority in exercise of powers vested under Rule 9 of CCS (Pension) Rules, 1972 on the

proven charge of grave misconduct which was done by following the due procedure of Law and counsel further prayed that the OA is liable to be dismissed.

5. Heard learned counsel for the parties and perused the pleadings available on record.

6. Before adverting on the claim of the applicant, it is pertinent to note that the law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(1). In the case of ***K.L.Shinde Vs. State of Mysore*** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

> "9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada - bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that

statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
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> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

(2) Again in the case of ***B.C.Chaturvedi Vs. UOI & Others*** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this

> Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(3) In the case of ***Union of India and Others Vs. P.Gunasekaran*** (2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-

> "Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:
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> a. the enquiry is held by a competent authority;
> b. the enquiry is held according to the procedure prescribed in that behalf;
> c. there is violation of the principles of natural justice in conducting the proceedings;
> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence."

7. Keeping in view the aforesaid observations of the Apex Court, this Court finds that in this case charge levelled against the applicant, who was discharging the duties of Asst. Commissioner, was in relation of failure on his part to discharge his duties as alleged in the Charge Memo. The disciplinary authority ordered initiation of inquiry in the matter and upon completion of inquiry proceedings, the IO gave his finding holding all the charges framed against the applicant as proved vide its report dated 28.6.2013. Thereafter applicant submitted his reply against the said inquiry report, which was considered by the disciplinary authority. The disciplinary authority tentatively decided to reject his representation and make a reference to UPSC for its advice. Thereafter UPSC advice was sought and the UPSC has recommended for a penalty of "withholding of 30% of the monthly pension, otherwise admissible to him for a period of five years. Accordingly, after examining the case records, inquiry report UPSC advice, submission of the applicant on UPSC advice, the disciplinary authority vide order No.25/2015 dated August 2015 imposed penalty of "withholding of 30% of the monthly pension, otherwise admissible to him for a period of 5 years.

8. This Court also perused the said Order of the disciplinary authority. We do not find any illegality in the said order. We also perused the aforesaid judgment of learned Court of Special Judge CBI-2, Patna dated 25.4.2017 and also found that the applicant was acquitted from all the charges leveled against him in the said criminal case by giving him the benefit of doubt. The said acquittal on the face of it cannot be said to be an honourable acquittal. It is further relevant to mention here that the trial court after giving due consideration to the evidence placed on record and examining the witness may do any of the following :-

- Convict the person.
- Acquit the person unconditionally. In other words, it is a simpliciter acquittal.
- Acquitting the person by extending the "benefit of doubt" or due to the failure on the prosecution side to prove the guilt "beyond reasonable doubt".

In this regard, it would be commonsensical to quest for the reason behind the incorporation of the words "beyond reasonable doubt" and "benefit of doubt" while acquitting a person without which we cannot fully appreciate the distinction between acquittal and honorable acquittal. At this stage, it is worth referring to certain Articles of ***"The Universal Declaration of Human Rights"***. Article 11 (1) provides that everyone charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees

necessary for his defense. Further, Article 14(2) states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Besides, Article 6(1) of ***"Convention on Civil and Political Rights"*** states that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. Article 9(1) says that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as is established by law. Article 14(2) envisages that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law and shall be entitled to minimum guarantees detailed therein. Thus, great emphasis has been added to the age old maxim ***"innocent until proven guilty".*** The Hon'ble Supreme Court in ***Bachan Singh vs State Of Punjab (1980 (2) SCC 684)*** has held that the above requirements of these clauses are substantially the same as the guarantees or prohibitions contained in Articles 19 and 21 of our Constitution. Thus, the onus lies on the prosecution to prove the guilt of the accused beyond reasonable doubt except in the cases of insanity or statutory defense taken up by the accused. Further, from those set of facts narrated supra, it can also be inferred that the criminal courts can very well make use of the term "beyond reasonable doubt"

and “benefit of doubt” while acquitting a person even though those words are not precisely defined under Indian Evidence act or any other procedural laws in force. The term “Honorable acquittal” is nowhere defined under our laws and it is the invention of Indian judiciary. The factum of acquittal and the distinction between ‘honorable acquittal’ and ‘acquittal on benefit of doubt’, has been explained by the ***Division Bench of Hon’ble Madras High Court in W.A.No.1287 of 2008, dated 02.09.2009***. The relevant portion is extracted below

> *“……..In the absence of any definition in the code of Criminal Procedure, it is very difficult to define what is the meaning of the words “honourable acquittal”. Again it depends upon the facts and circumstances of each case. The Court could reasonably presume that if an accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving the benefit of doubt, it may not amount to an honourable acquittal. On the other hand, if an accused is acquitted after full consideration of evidence because the prosecution witnesses are disbelieved and the prosecution has miserably failed to prove the charges, it would amount to an honourable acquittal. In the event the Court while acquitting an accused neither say that the case against him is false nor does it say that the accused has been acquitted on the ground of benefit of doubt, then the acquittal may be honourable acquittal or acquittal of all blame.”*

Further, the Hon’ble Supreme Court *in* ***Deputy Inspector of Police and ors Vs. S. Samuthiram, (2013) 1 SCC 598*** had

the opportunity to discuss in brief about the "Honorable acquittal". The relevant portion of the said judgement *inter alia* reads as follows:

> *"…. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal (1994) 1 SCC 541…… It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted"*

Thus, from the findings of the Hon'ble Courts extracted above, it can be apparently inferred that if an accused is acquitted not because of the fact that he is innocent but owing to the failure on the part of prosecution to prove the guilt with sufficient evidence, it would not be considered as Honorable acquittal. In other words, if an accused is acquitted by extending the benefit of doubt, then it would not amount to Honorable acquittal. But, on the other hand if an accused is acquitted after giving full consideration to the evidence placed on record and if the court is of the opinion that *prima facie* no case is made out against the accused, it may very well come within the ambit of the term "Honorable acquittal".

9. In ***South Bengal State Transport Corpn. v. Swapan Kumar Mitra***, reported in JT 2006 (2) SC 307, the Hon'ble Apex Court has held that in a criminal case, the charges have to be proved beyond reasonable doubt, while in departmental proceedings, the standard of proof required is mere preponderance of probabilities and therefore, in spite of acquittal in the criminal proceeding, an order of dismissal emanating from departmental proceeding can be sustainable. As per this decision, it is clear that mere acquittal in a criminal proceeding would not "*ipso facto*", nullify the departmental proceeding.

10. At this juncture, we find it reasonable to refer to the ruling of the Apex Court with regard to law of precedents in the decision, ***Uttaranchal Road Transport Corpn. v. Mansaram Nainwal,*** reported in (2006) 6 SCC 366, which reads as follows :

> "13... According to the well-settled theory of precedents, every decision contains three basis postulates :
>
> (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what is actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent."

As per this ruling, the essence of a decision is its ratio and not every observation made there in to be construed as *ratio decidenti* and as such being a binding precedent.

11. In the above said case, the Hon'ble Apex Court, after considering the ratio laid down in ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.*** (1999 (3) SCC 679), has clearly ruled that mere acquittal in a criminal case, would neither sufficient to direct for an automatic reinstatement in service, nor render a departmental proceeding invalid, by itself.

12. It is seen that learned Special Judge, CBI-2 Patna has recorded acquittal by judgment dated 25.4.2017 in the criminal case in Special Case No.53/2011 (under Sections 120(b), 409, 457, 468, 471, 201 IPC read with Section 13 (1) (C) of Prevention of Corruption Act, 1988), only by giving benefit of doubt to the applicant. Therefore, we are of the considered view that the said acquittal cannot be construed as an Honourable one.

13. As held by the Hon'ble Apex Court, in the decision ***T.N.C.S.Corpn. Ltd., v. K.Meerabai***, reported in 2006 (2) SCC 255, a criminal proceeding is different from departmental enquiry, with regard to standards of proof required. In a criminal case, unless the guilt against a person

is not proved beyond reasonable doubt, one cannot be punished and the benefit of doubt should be given only to the accused, but in the departmental enquiry, it is not so. In the departmental enquiry, it is clear that preponderance of probability is sufficient to prove the charges. As contended by the learned counsel for the respondents, the criminal court has acquitted the accused, only by giving benefit of doubt in favour of the appellant. Therefore, it cannot be construed as a honourable acquittal.

14. In view of the above, and for the foregoing reasons, having regard to the aforesaid observations of the Hon'ble Supreme Court in the aforesaid cases, especially in the case of ***Union of India and others vs. P. Gunasekaran*** (supra), we do not find any justifiable reason to interfere with the impugned order as Court finds that in this case charge levelled against the applicant, who was discharging the duties of Asst. Commissioner, was in relation of failure on his part to discharge his duties as alleged in the Charge Memo. The disciplinary authority ordered initiation of inquiry in the matter and upon completion of inquiry proceedings, the IO gave his finding holding all the charges framed against the applicant as proved vide its report dated 28.6.2013. Thereafter applicant submitted his reply against the said inquiry report, which was considered by the disciplinary authority. The disciplinary authority tentatively decided to

reject his representation and make a reference to UPSC for its advise. Thereafter UPSC advice was sought and the UPSC has recommended for a penalty of "withholding of 30% of the monthly pension, otherwise admissible to him for a period of five years. Accordingly, after examining the case records, inquiry report UPSC advice, submission of the applicant on UPSC advice, the disciplinary authority vide order No.25/2015 dated August 2015 imposed penalty of "withholding of 30% of the monthly pension, otherwise admissible to him for a period of 5 years. Accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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