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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)

O.A No. 140/AN/2013

Date of Order: 18.7.19.

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihisal, Administrative Member

J.Arun Anand Raj,
S/o Shri M.James Raj,
R/o Supply Lane,
Port Blair,
South Andaman,
Pin-744101.

---Applicant

Versus

1. Union of India
Service through the Secretary
Ministry of Home Affairs,
Department of Police,
New Delhi - 110002.
2. The Director General of Police,
Andaman & Nicobar Police,
Port Blair-744101.
3. The Deputy Inspector General of Police (HQ),
Andaman & Nicobar Police,
Port Blair-744101.

----Respondents

For the Applicants: Mr. K.Rao, Counsel
For the Respondents: Mr. S.K.Mandal, Counsel

ORDER

Per: Ms. Bidisha Banerjee, Member (J):

The applicant, who has assailed the entire departmental proceedings including its culmination with penalty order and Appellate

Order has sought for the following reliefs:

"a. To set aside and quash the Memorandum No.
DIGP/DE-78/2007-08/62 dated 29/02/2008.

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- b. To set aside and quash the order vide Order Book No. 7879 dated 25/08/2012 passed by the Disciplinary Authority.
- c. To set aside and quash the Order Book No. 9392 dated 18/10/2012 passed by the Appellate Authority.
- d. To pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."

2. Article of charges and indictments against the applicant as leveled vide charge memo dated 29.02.2008 are as under:

(extracted with supplied emphasis for clarity)

"ARTICLE-I

That PC/1181 J.Arun Anand Raj absented from duties from 13.04.2007 while he was posted as the dealing hand in the Loan and Deposit Fund and when he was supposed to handover his charge to other person, without either applying for any kind of leave or obtaining permission from the competent authority. Later it was also learnt that he travelled from Port Blair by air on fake name.

That, the above act of J. Arun Anand Raj (U/S) amounts to grave misconduct and deliberate disobedience which is in contravention of the mandatory provision under Rule 8.46 of A & N Police Manual, 1963, thus unbecoming of a member of Police force and therefore, renders him liable for punishment under 9.3 of said Police Manual.

ARTICLE-II

That, the cash book, receipt books (Forms LD-2), advice notes, alongwith bills and paid vouchers which were in operation during 13.04.2007, were found missing from the Almirah at Police Lines, in which the documents and cash pertaining to the Loan and Deposit Fund were stored. Later the same documents were recovered from the residence of PC/1181/J.Arun Anand Raj (U/S) during house search.

That the above acts of J.Arun Anand Raj (U/S) amounts to grave misconduct, deliberate disobedience, doubtful integrity and misuse of official position which is in contravention of the mandatory provisions under Rules 8.45, 8.46 and 8.47 of A & N Police Manual, 1963, thus unbecoming of a member of Police force and therefore, renders him liable for punishment under Rule 9.3 of the said Police Manual.

ARTICLE-III

That, PC/1181 J.Arun Anand Raj, instigated and fled away with Smti, K. Baby Srija, wife of Shri, Bijumon alongwith her minor daughter Kumari Geetu and money amounting to Rs. 15,000/- and gold ornaments worth 120 grams from house.

That the above act of PC/1181 J.Arun Anand Raj (U/S) amounts to grave misconduct, deliberate disobedience and moral turpitude which is in contravention of the mandatory

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provisions under Rules 8.45, 8.46 and 8.47 of A & N Police Manual, 1963, thus unbecoming of a member of Police force and therefore, renders him liable for punishment under Rule 9.3 of the said Police Manual.

ARTICLE-IV

That, PC/1181 J.Arun Anand Raj was dealing with the Load and Deposit Fund and he was the custodian of the cash and records pertaining to the Loan and Deposit Fund of A & N Police Force at the relevant time. Many irregularities and lapses have been detected on the part of PC/1181 J.Arun Anand Raj (U/S) during the period from 18.10.2006 to 14.04.2007 in which he was the custodian and dealing hand of the said fund. Cash deficit amounting to Rs. 58,832/- was detected in the audit of the Loan and Deposit Fund of A & N Police done by Chartered Accountant Shri Ravi Chandran of Ravi Chandran & Thangaraj Associates, ordered on 19.4.2007.

That the negligent dealing in such an important official position in which he was custodian of the money of other members of the force and misappropriation of funds amounts to grave misconduct, gross indiscipline, deliberate disobedience, doubtful integrity and misuse of official position which is in contravention of the mandatory provisions under Rules 8.45, 8.46 and 8.47 of A & N Police Manual, 1963, thus unbecoming of a member of Police force and therefore, renders him liable for punishment under Rule 9.3 of said Police Manual.

ANNEXURE - II

Statement of imputation of misconduct or misbehavior in support of the article of charge framed against PC/1181 J. Arun Anand Raj of A & N Police Force (U/S).

ARTICLE - I

That, on the complaint of HC/76 D.N. Barraik, IRBn., regarding excess recovery of monthly subscription in Loan and Deposit Fund, certain irregularities were detected on the part of PC/1181 Arun Anand Raj, who was dealing with the Load and Deposit Fund. Upon this, Superintendent of Police (AP), on 12-04-1007 ordered for a departmental enquiry against PC/1181 J. Arun Anand Raj and further directed that the charge pertaining to Loan and Deposit Fund be handed over on PC/732 Pankaj Rai. This direction was conveyed to PC/1181 J. Arun Anand Raj by Inspr. Rameshwar Singh, CLI, who, in turn, assured to hand over the charge on the next day, i.e., on 13/04/2007.

That, PC/1181 J. Arun Anand Raj did not turn up for duty on 13/04/2007 and absented from duty without any authority. The charge of Loan and Deposit Fund was also not handed over to PC/732 Pankaj Rai as directed by the Superintendent of Police (AP). On 14/04/2007 two constables were deputed to ascertain the whereabouts of PC/1181 J. Arun Anand Raj and the enquiry revealed that he had left his house in the early hours, in the morning. It was also revealed that PC/1181 J. Arun Anand Raj had obtained an air ticket in a fake name viz. Surest from Jet Airways.

Thus, the above act of PC/1181 J. Arun Anand Raj unauthorisedly absenting from duty amounts to grave misconduct, deliberate disobedience and dishonesty which is in contravention of the mandatory provisions under Rule 8.46 of A & N Police Manual, 1963 and is highly unbecoming of a member of Police force and therefore, renders him liable for punishment under Rule 9.3 of said Police Manual.

ARTICLE-II

That, on 16/04/2007 u/s 366/361 IPC was registered at P.S Pahargaon against PC/1181 J. Arun Anand Raj escaping out of Andaman, the Department felt the need to break upon the Almirah pertaining to the Loan and Deposit Fund to ascertain about any mis-appropriation. Accordingly a committee was formed with the approval of the competent authority and the Almirah was broken open by the said committee and the inventory list of the items prepared. It was found that the cash book, receipt books, (Forms LD-2), advice notes alongwith bills and paid vouchers which were in operation during 13/04/2007 were missing from the Almirah. Upon this, a case, vide Crime No. 357/07 dated 14/04/2007 was registered against PC/1181 J. Arun Anand Raj u/s 381/409 IPC at P.S Aberdeen on the complaint of Shri H.P. Hareesh, Dy.SP (AP). During the investigation one case book, two receipt books, advice notes, bills and other related documents were recovered from the house of PC/1181 J. Arun Anand Raj, which was the official residence of his father ASI James.

Thus, the above act of PC/1181 J. Arun Anand Raj amounts to grave misconduct, deliberate disobedience, dishonesty, criminal intent and abuse of official position which is in contravention of the mandatory provisions under Rules 8.45, 8.46 & 8.47 of A & N Police Manual, 1963 and is highly unbecoming of a member of Police force and therefore, renders him liable for punishment under Rule 9.3 of said Police Manual.

ARTICLE - III

That, on 16/04/2007 a case vide Crime No. 497/2007 u/s 366/361 IPC was registered at P.S Phargaon against PC/1181 J. Arun Anand Raj on the complaint of Shri Bijumon, Driver(STS) R/o Garacharma alleged that PC/1181 J. Arun Anand Raj had fled away with his wife namely, Smti K.Baby Srija and younger daughter namely Kumari Geetu, aged 10 yrs, alongwith ornaments worth 120 grams and cash amounting to Rs.15,000/- which was kept at home.

That, such act of fleeing away with someone's wife alongwith a minor child and money amounts to most objectionable behavior, grave misconduct and moral turpitude on the part of PC/1181 J. Arun Anand Raj, which is in contravention of the mandatory provisions under Rules 8.45, 8.46 and 8.47 of A & N Police Manual, 1963, thus unbecoming of a member of Police force and therefore, renders him liable for punishment under Rule 9.3 of said Police Manual.

ARTICLE-IV

That, PC/1181 J. Arun Anand Raj was dealing with the Loan and Deposit Fund and he was the custodian of the case

and records pertaining to the Loan and Deposit Fund of A & N Police Force at the relevant time. Many irregularities and lapses have been detected on the part of PC/1181 J. Arun Anand Raj (U/S) during the period from 18-10-2006 to 14-04-2007 in which he was the custodian and dealing hand of the said fund. Cash deficit amounting to Rs.58,832/- was detected in the audit of the Loan and Deposit Fund of A & N Police done by Chartered Accountant Shri Ravi Chandran of Ravi Chandran & Thangarai Associates ordered on 19-04-2007. The report submitted by the committee constituted to ascertain about the misappropriation of the fund reveals that:

- a) The case book was not maintained properly and no entries were made after 27/11/2006.
- b) That, no money was deposited in the Bank between the period from 15/02/2007 to 14/04/2007 whereas a huge amount of approximately Rs.6,90,000/- would have accumulated by way of subscription of recovery of loan. By not depositing such a huge sum in the Bank PC/1181 J. Arun Anand Raj has deprived the Fund, the opportunity of earning the interest on the above said money.
- c) That twelve number of cheques which was to be issued to the applicants were found lying pending un-disbursed for more than five months.
- d) That the monthly subscription amount was recovered from the salary of CI/021269 Sakra Pandi towards the recovery of loan from the salary for the month of March 07, whereas the loan was disbursed to him in the month of April 2007 only.
- e) That an amount of Rs.10,000/- was released in favour of S.I K.M Basheer and in another case an amount of Rs.25,000/- was released in favour of PC/1396 Sanjay Kumar without their loan being actually sanctioned.
- f) That excess recovery amounting to Rs.2000/- was effected, towards the repayment of loan from the pay of PC/2377 Sanjay Yadav. In another instance, the recovery of the loan in respect of HC/76 Debnath Barriak of IRBn was completed in the month of December 2006. But recoveries of monthly subscription were also effected from his salary for the month of January 2007 and March 2007, causing excess recovery of an amount of Rs.2500/-.

That, such negligent attitude of PC/1181 J. Arun Anand Raj while posted in an important official position in which he was custodian of the money of other members of the force and misappropriation of official funds amounts to grave misconduct, gross indiscipline, deliberate disobedience, doubtful integrity and misuse of official position which in contravention of the mandatory provisions under Rule 8.45, 8.46 & 8.47 of A & N Police Manual, 1963, thus unbecoming of a member of Police force and therefore, renders him liable for punishment under Rule 9.3 of said Police Manual."

3. The manner in which the I.O attempted to get the charges proved was quite astonishing. His findings are as under:

"xxx xxx xxxduring regular hearing the following listed witnesses and additional witnesses have been examined which is as follows:

1. PW-1 SI K M Basheer, Accountant PHQ:- Recorded statement and also exhibited documents in which he has given his statement to the Accountant, Loan & Deposit Fund, Police Lines and he has identified his signature containing in the document which have been marked as EX S-1 and EX S-1/1 respectively.

2. PW-2 PC/2377 Sanjay Yadav, PHQ:- Recorded statement and also exhibited documents in which he has given his statement to the Accountant, Loan & Deposit Fund, Police Lines in which it is mentioned that Rs. 2000/- was excess recovered later the same amount was returned to him by the Charged Officer and he has identified his contents of his statement and signature containing the document which have been marked as EX S-2 and EX S-2/1 respectively.

3. PW-3 PS/1396 Sanjay Kumar, Driver, Raj Niwas:- Recorded statement and also exhibited documents in which he has given his statement to the Accountant, Loan & Deposit Fund, Police Lines in which it is mentioned that he has taken Rs. 25000/- from LDF on request prior to sanction of his application later he has returned the same amount to the Accountant LDF on 16/04/2007 and he has identified the contents of the statement and his signature containing the document which have been marked as EX S-3 and EX S-3/1.

4. PW-4 HC/1877 Ajit Kumar Halder, IRBn, Haddo Warf:- Recorded statement and also exhibited documents in which he has given an application to the Accountant, Loan & Deposit Fund, Police Lines regarding non issuance of receipt amounting to Rs. 8350/- which was deposited to the Charged Officer by him being the balance amount with the interest of the especial loan of Rs. 25000/- and he has identified his letter content and signature containing in the document which have been marked as EX S-4 and EX S-4/1 respectively.

5. PW-5 HC/76 Debnath Barriak of IRBn:- Recorded statement and also exhibited documents in which he has given an application to the Commandant, IRBn regarding to recoup his excess recovery of loan installment and he has identified his signature containing the document which have been marked as EX S-5 and EX S-5/1 respectively.

6. PW-6 PC/2364 O Ibrahim, Police Line:- Recorded statement and also exhibited documents in which he has given an application to the Accountant, Loan & Deposit Fund, Police Lines regarding non issuance of receipt amounting to Rs. 14500/- which was deposited to the Charged Officer by him in four installments being the balance amount with the interest of the especial loan of Rs. 25000/- sanctioned to him

and he has identified his letter content and signature containing in the document which have been marked as EX S-6 and EX S-6/1 respectively.

7. PW-7 Shri Bijumon, Driver, STS Department R/O Garacharma:- Recorded the statement in which he has stated tat he has lodged an FIR No. 197/07 dated 16/04/07 U/s 363/366 IPC at PS Pahargaon against the Charged Officer. He has identified the signature containing in the FIR which have been marked as EX S-7/1.

8. PW-8 Inspr. Rameshwar Singh, CLI Police Lines:- Recorded his statement in which he has stated the various misconduct done by the Charged Officer during his posting in the LDF section and he has also stated that how the Charged Officer kept the official record in his father's residence where he was also dwelling and how the same record was seized by the SHO Aberdeen the contents of the seizure and his signature have been marked as EX S-8 and EX S-8/1. He further stated that he has handed over the various documents pertaining to LDF to the committee for the purposes of inspection vide order No. R/DIGP(Int.)/07/43 dated 15/04/07. He has identified his signature contained in the handing over memo which has been marked as EX S-8/2.

9. PW-9 Inspr. M.K Shukla, the then SHO Aberdeen:- Recorded his statement in which he has stated that the process of recovery made from the house of Charged Officer's father in the premises of fire head quarter, Aberdeen Bazar and seized various documents mentioned in the seizure memo has also identified his signature contained in the seizure memo dated 14/04/07 which has been marked as EX S-9/1. He has further stated that on the written complaint of the then DySP(AP) Shri Hareesh HP an FIR was lodged against the Charged Officer vide Cr. No.357/07 dated 14/04/07 U/s 381/409 IPC. He has also identified his signature containing the FIR which have been marked as EX S-9/2.

10. PW-10 Shri Suresh Ex. Inspr. Fire Service:- Recorded his statement in which he has stated that he was also one of the witnesses of the seizure memo dated 14/04/07 which was conducted in the house of the father of the Charged Officer at Fire Head Quarter, Aberdeen Bazar. He has also identified his signature containing the seizure memo which has been marked as EX S-10/1.

11. PW-11 Shri V P Pandey, DySP (CID):- Recorded his statement in which he has stated that he was one of the members of te enquiry team to find out the various aspects of Loan & Deposit Fund of Police Department vide order No.R/DIGP(Int.)/07/43 dated 15/04/07. After conducting inquiry a report was furnished to SP (AP) on 23/04/07 which reflects the misconduct of the Charged Officer. He has identified his signature contained in the report which has been marked as EX S-11/1.

The listed prosecution witness Shri Hareesh HP, DySP who is presently working under Delhi Police have been summoned several times but he has not responded and he has been dropped as the case is getting delayed badly. Thereafter the Presenting Officer insisted to call additional prosecution witnesses which have been found necessary to be examined in this case. Hence, the following additional prosecution has been examined which is as follows:-

APW-1 Shri S Ravi Chandran, Chartered Accountant, R/o Phonexbay:- Recorded his statement in which he has stated that he conducted audit of LDF for the period from 18/10/06 to 14/04/07 and found that cash deficit of Rs. 58,832/-. He has identified the contents of the audit report prepared by him and also his signature contained in the audit report which have been marked as EX-SAPW-1 and EX SAPW-1/1 respectively.

APW-2 Shri R N Dubey, SI, PTS, Police Lines:- Recorded his statement in which he has stated that while he was posted at PS Pahargaon a case on Crime No. 197/07 dated 16/04/07 U/s-366/363 IPC was registered against the Charged Officer on the complaint of Shri Bijumon, Driver, STS Department, R/O Garacharma. He identified his signature contained in the FIR which has been marked as EX-APW-2/1.

After recording statement of the listed/additional prosecution witnesses. The Charged Officer in spite of producing any defense witnesses he has produced his hand written defense statement in which he has accepted the article of charge-1, article of charge-2, partial article of charge-3 and he has partially accepted the article of charge-4.

In article of charge-3 he stated that it is a fact that he has not instigated Smti K Baby Srija and minor daughter with money amounting 15000/- with 120 grms. Gold ornaments but he further accepted that Smti-K Baby Srija traveled him on her won willing.

In article of charge-4 he stated that he has embezzled any LDF amount but he has accepted that irregularities pertaining to records may have occurred due to burden of work as he was the only person posted in the LDF section.

After completion of regular DE proceedings the Presenting Officer Inspr. M A Azeez, PTS, Prothrapur has submitted his prosecution brief in which he has mentioned that all the charges framed against the Charged Officer is proved. (Copy enclosed).

Thereafter, the copy of prosecution brief was handed over to the Charged Officer PC/1181 J Arun Anand Raj (U/s) and the Charged Officer submitted his defense brief in which he has mentioned that he has taken the official record of LDF in his residence to complete the entries and all as he was the only staff posted in the LDF Section and he was to look after all the LDF works alone. Therefore, due to burden of work he took the records of LDF in his residence. He further mentioned

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that on 10-11/04/2007 he has deposited 10 lakhs of LDF cash in the Syndicate Bank so how can he make the cash deficit of Rs. 58,832/-. Therefore, the CO believes that in his absence all the records were not seized and handed over to the enquiry committee or the Chattered Accountant and thereby a cash deficit of Rs. 58,832/- appeared in their respective report. The copy of the defense brief of the Charged Officer is also enclosed.

CHARGE WISE ANALYSIS OF THE FACT:

Charge-1:- The article of charge-1 is proved as the Charged Officer has accepted the contents of the article of charge-1 in his defense statement submitted in his own hand written letter.

Charge-2:- The article of charge-1 is also proved as he has accepted the contents of the article of charge-2 as he has mentioned in his defense statement as well as in his defense brief that due to burden of work he used to take some record of LDF in his residence of complete the entries and all as he was the only person posted in the LDF section. The plea of the Charged Officer cannot be accepted as if he had any burden of work in the LDF work he should report the matter to the immediate in-charge of his section but he never did so. Therefore, the article of charge-2 is proved.

Charge-3:- The Charged Officer denied that he has taken away Smti K Baby Srija and minor daughter with money amounting 15000/- with 120 gms. Gold ornaments but he further accepted that Smti K Baby Srija traveled him on her own willing. The statement of Shri Bijumon, the husband of Smti K Baby Srija and the document showing an FIR against the Charged Officer at PS Pahargaon (please see EX S-7/1) shows that the article of charge-3 is proved.

Charge-4:- The Charged Officer denied that he has taken any government money (LDF Money). The statement of Shri Ravi Chandran regarding conducting of audit of LDF for the period from 18/10/2006 to 14/04/2007 with its audit report documents EX-SAPW-1 shows that an amount of cash deficit of Rs. 58,832/- was found in the LDF. Hence, the article of charge-4 also proved.

FINDINGS

On the basis of the statements of the listed and additional prosecution witnesses as well as listed and additional exhibited documents the charges framed against PC/1181 J. Arun Anand Raj (U/s), Charged Officer by the disciplinary authority vide Memorandum No. DIGP/DE-78/2007-08/62 dated 29/02/2008 is proved."

The findings reveal no cross examination by the applicant. It seemed to be absolutely a non sided affair.

4. The applicant on the other hand had responded to the findings stating as under:

1. That I never accepted Article 3 and Article 4 of charge as the same are totally false. No evidence/record has been adduced during the Inquiry which connects me with alleged Article of charges leveled against me. The Inquiry Officer has erroneously come to the conclusion that the charges leveled against me are proved.

2. That it will be clear from the record that I was on medical rest w.e.f. 13.04.2007 and I have intimated department through proper channel that I was on medical rest. Thus the Article 1 of charge is only partially accepted.

3. That as per the Article 2 of charge made against me that I have taken the cash book, receipt book (forms LD-2), advise book along with bills and paid voucher which were in operation during 13.04.2007 were found missing in the almirha and which was recovered in my house/resident. That it will be very much clear that if our esteemed Department go through the statement of Shri K.M. Basheer (accountant) in his cross examination he has stated that in his period of Loan and deposit Fund there was one **Head Constable and two Police Constables** were assisted to the fund after that it has been transferred to Police Line.

At that point of time I was transferred to Police Line single handed of LDF section which is not at all possible to look after Loan and Deposit Fund without superior or an assistant. It was not possible to complete the documents at office single handedly so I tried to complete all the documents at my home in good faith and it was under the lock and key in my place. So as per the articles of charge 2 made against me, I never tried to cheated/changed the documents of Loan and Deposit Fund.

4. That as per the Article 3 of charge made against me that I have filed with smti. K. Baby Srija, W/o K. Bijumon along with her minor daughter namely Kumari Geetu and money amounting of Rs. 15,000/- (Fifteen thousand rupees only) with gold ornaments worth of 120 grm from her house. The above said lady herself admitted in front of Ld. Court below of Honorable Chief Judicial Magistrate at Port Blair that she has travelled with her own consent and her willful and also not forced or under pressure of any one. So it is not possible to take any person without her will along with her minor child until she is a unsound mind even though she is a married woman.

5. That as per the Article 4 of charge made against me that any irregularities and lapses have been detected during

the period of 18.10.2006, 14.04.2007 and was were found deficit of Rs. 58,832/- (fifty eight thousand eight hundred **thirty two rupees only**). I submit that in the LDF section, it is not possible for anyone to cheat our **esteemed Department** as per the bylaws. The accountant should maintain certain receipt and cash book with regard the above said section. The Inquiry Officer could not produce any documents which goes against me as per the bylaws. That I have neither taken any amount nor taken any advantage from the LDF section. I further submit that I have deposited a sum of Rs. 10,000.00 (ten lakh rupees only) in Syndicate Bank of LDF accounts before two or three days of the said incident. Hence it itself shows that my intention was not tried to cheat/mislead our esteemed Department.

6. That I further submit that I have got married and having a six month old baby and I am struggling a lot. At present if this esteemed Department will takes any serious order against me then myself and my family would be put into great hardship for daily bread. Further I assure that I will not repeat any such kind of misconduct in my future.

Therefore I request with my folded hands humbly yours good self to take a lenient view and pass a favorable order considering the above mentioned facts. Hence I humbly request I may kindly be pardon at first and last time.

5. The Disciplinary Authority being the Deputy Inspector General of Police, while offering an opportunity to the applicant of making representation on the proposed penalty of dismissal from service, gave his tentative findings as follows:

"I have carefully and dispassionately perused the Enquiry Report submitted by the Enquiry Officer alongwith the relevant records and also considered his written reply dated 03-02-2012. He was also heard in person in Orderly Room by the undersigned on 12/06/2012. The Charged Officer, PC/1181 J.Arun Anand Raj (U/S) has taken the following stands in his defense.

1. That he has never accepted the charges in Article 3 & Article 4 and the Enquiry Officer has erroneously arrived at the conclusion that charges against him stands proved.
2. That he was on medical rest with effect from 13/04/2007 and it was intimated to the Department. Hence charge in Article -I is only partially accepted.
3. That he took all the official records to his home only with the intention to clear the documentation work as he was not finding it possible to complete all the work in the office

time due to excessive work load. He never tried to cheat the Department as alleged in Article-2.

4. That, the lady, Smt. K. Baby Srija w/o K. Bijumon traveled with him of her own wish. It would not have been possible to take a married lady against her wish until she is mentally unstable as alleged in Article-3.
5. That he had submitted a sum of Rs. 10,00,000/- in the LDF Account with the Syndicate Bank only two or three days prior to the incident which shows that he was not intended to cheat the department as alleged in Article-4.

The Charged Officer has raised only capricious reasons in response to the findings served upon him. With respect to his contention in para (1) above, the Enquiry Officer has nowhere stated in his findings that the Charged Officer has accepted the charges in Article 3 & Article-4.

The contentions raised by the Charged Officer in his written reply dated 03/02/2012 in para (2), (3), (4) & (5) are nothing but his afterthoughts to justify his misdemeanor. Records shows that since the Charged Officer was absenting since 13/04/2007, the then DySP (AP) had issued an order on 14/04/2007, ordering Inspector Rameshwar Singh to enquire about the absence of the Charged Officer since 13/04/2007. The report submitted by Inspector Rameshwar Singh also clearly speaks that the Charged Officer was absenting from duty on 13/04/2007.

The contention in para 3 that he was overburdened with work load for which he took the official documents to home to complete the job is also not a justifiable act. If the situation was so, he could have apprised about the situation to the senior officials & sought appropriate remedies.

The contention of the Charged Officer that the lady, Smt. K. Baby Srija traveled with him of her own wish does not hold any merit as the husband of the lady has filed a complaint at PS Pahargaon alleging that Police Constable, J. Arun Anand Raj has prompted his wife and fled away with her wife and daughter disturbing his family life. Even if the contention of the Charged Officer is taken into consideration for argument sake that she had traveled with the Charged Officer of her own wish, it was the bounded responsibility upon the Charged Officer to inform the husband of the lady at least that the lady and the child are traveling with him. By doing so, he could have averted the embarrassing situation for the department. The Charged Officer had not only failed to do so, but also traveled from Port Blair to Chennai in a fake name. A member of the Police Department who is responsible to protect the interest of the public and follow the law is never expected to indulge in such illegal and fraudulent acts.

The contention of the Charged Officer that he had deposited Rs. 10,00,000/- in the LDF Account with Syndicate

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Bank few days prior to the incident which substantiate that he did not intend to cheat the Department, does not absolve him from the responsibility of the deficit sum of Rs. 58,832/- in the LDF account. The Charged Officer who is given the responsibility of maintaining proper accounts and safe guard the government money has failed to justify the deficit amount of Rs. 58,832/- which is a gross misconduct.

During his personnel hearing on 12/06/2012 also, he could not bring forward any new facts other than those mentioned in his written reply dated 03/02/2012. Under the aforesaid circumstances, the undersigned find no reason to disagree with the findings of the Enquiry Officer. The Charged Officer who is a member of the disciplined police force has not only absented from duty but left the place of posting without obtaining permission and traveled using fake name, but the records pertaining to LDF account were also not traceable in the office where it should have been kept. Later the same were recovered from the residence of the Charged Officer.

The Charged Officer, by using fake name, left Port Blair to Chennai with Smt. K. Baby Srija, wife of Shri Bijumon along with her minor daughter Kumari Geetu, without even informing the husband of the lady. Being a member of law enforcing agency, such conduct on the part of the Charged Officer has brought bad name to the department and shows that he has scant regard for the rule of the law.

The Charged Officer is solely responsible for the cash deficit of Rs. 58,832/- from the LDF account and has failed to manage the government money properly.

The misconduct on the part of Charged Officer is serious and had brought bad name to the whole department. Keeping such person in the discipline force will not only erode the confidence of common man in the police force but also affect the morale of other disciplined members adversely. Therefore, it is proposed to inflict the penalty of dismissal from service against Charged Officer for his misconduct."

In reply, the applicant informed the authority about pendency of a criminal proceeding before the Court of Chief Judicial Magistrate and Additional Sessions Judge, A&N Island, Port Blair. Although, he admitted the charge of having traveled with the lady, along with her child, but denied the allegation of fleeing away with her as she on her own volition sought to be accompanied by the applicant. He also submitted that in regard to Article 1, 2 and 4, criminal proceedings were pending and no document was exhibited during inquiry to establish misappropriation of

any money or that he had traveled in a fake name. On 25.08.2012, having noticed that the departmental proceedings and criminal proceedings proceed in different manner, the standard of evidence and proof being different and having noticed that retaining such persons, as the present applicant, in a disciplined force will not only erode the confidence of common man in the police force also adversely affect the moral of other disciplined members, the proposed penalty was confirmed.

6. The applicant preferred an appeal against the penalty order wherein he stated that before inflicting the penalty, he was acquitted in the criminal charges in regard to offence under Section 366/363 of the IPC by the Additional Session Judge/Port Blair, which was not taken into account by the Disciplinary Authority although both were initiated on same set of facts and evidences. The applicant had also pleaded that there was no evidence on record that he had taken Rs. 15,000, along with Gold Ornaments, as nothing to that effect was charged by the lady whom he had accompanied and it was simply on the ground that the husband of the lady, viz. Bijumon, had filed a complaint. Further, no documents were produced to prove that an amount of Rs. 58,832/- was found deficit from the account. No audit record was furnished and no document was served upon him to prove as evidenced or any evidence that led to prove that he had committed any misconduct.

The Appellate Authority while issuing his order of 18.10.2012 held that acquittal in criminal case was not determinative of the commission of misconduct or otherwise. The approach and objective of the proceeding being entirely different, the Appellate Authority

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recorded that the applicant had admitted traveling by fake name in his defence statement dated 31.10.2012. The said authority also concluded that the appellant have been a member of a disciplined police force where highest degree of integrity and trustworthiness are necessary and inbuilt requirement, not only misused his official position but also misappropriated departmental funds and instead of maintaining an exemplary conduct before the general public, he was involved in the act of eloping with somebody's wife, along with his child, which act cannot be tolerated in any disciplined police force. Having held as such, the Director General of Police, A&N Island, being the Appellate Authority, affirmed the dismissal from service.

7. The order dated 20.07.2012 passed by the Additional Sessions Judge/A&N Island, Port Blair in Sessions Case No. 27/2007 (Sessions Trial No. 99/2010) in regard to offence under Section 366/363 of IPC records as under:

"Further during cross examination by Ld. Lawyer for the accused, victim lady Smt. K.Baby Shreeja as PW-1 clearly admitted that accused never forced her to accompany the accused and she (PW-1) only went with the accused with her children with the addition that at that time her children were with her and she (PW-1) only took her children with her, with further addition that she (PW-1) had to go away leaving the house of her husband as she (PW-1) failed to bear up torture inflicting on her by her husband.

Thus from the evidence of victim lady Smt. K.Baby Shreeja there is nothing against the accused in the way that the accused took away the victim lady to compel her to marry against her will or to have sexual intercourse with anyone against her will, which are the most important requirement for the offence u/s 366 IPC. As I stated earlier, prosecution did not examine defacto complainant Shri M.Biju Mone who filed the jabanivadi (Ext.2) and then he was brought as a witness by court and examined as court witness no.1 and then he (CW-1) simply stated that he has nothing to say.

These are the only evidences in this case and I find that there is nothing in any way to support the charge as framed against the accused.

*It is, therefore,
ordered,*

That for want of sufficient evidence, accused J. Arun Anand Raj is not found guilty of the charge u/s 366/365 IPC and he is acquitted u/s 235(1) Cr.PC and it is also directed that he be released from the bail bond at once."

8. Ld. Counsel for the applicant would strenuously urge that the entire proceedings were conducted in arbitrary and gross violation of procedural law inasmuch as the daily order sheets were not furnished to him. The Respondents have failed to make out a stealing case or of misappropriation. The accusation of the Appellate Authority on misappropriation was bad having traveled beyond the scope of allegations of the charges leveled against him.

9. Per contra, Ld. Counsel for the Respondents vehemently opposed the submission defending the inquiry which, according to him, was held in scrupulous observation of all the procedural law. Ld. Counsel would also submit that charges being very grave in nature and the proposed punishment being of highest form, a second show cause was given with Inquiry Officer's report, which was replied to, and that one of the criminal cases is still pending against the applicant. Further, Ld. Counsel would draw our attention to the demand of call by the applicant and his prayer for pardon. Referring to the decision of the B.C. Chaturvedi, Ld. Counsel would submit that in absence of any procedural law or denial of opportunity to meet the charges, penalty imposed for such serious charges was absolutely commensurate to the offence alleged.

10. We heard Ld. Counsels for both the parties and perused the materials on record.

11. In the case of **Roop Singh Negi Vs. Punjab National Bank** (2009) 2 SCC 570, the Hon'ble Apex Court observed as under:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled 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".

In **M.V. Bijlani vs. Union of India** (2006) 5 SCC 88, the Hon'ble Apex Court ruled:

"...Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

Hon'ble Supreme Court in **B.C. Chaturvedi Vs. Union of India & Ors.**, (1995) 6 SCC 749, held as under:

"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 the eye of the court.

When an inquiry is conducted on charges of 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 are 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. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts where appeal is presented the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its 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 or 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 that case".

It further held:

"the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof".

12. We note that criminal charge in regard to defalcation of money etc. is yet to be proved. There is no direct proof of misappropriation of fund by the applicant. He was never given an opportunity to defend on that count, yet the Authorities have concluded against him, as extracted supra. The applicant was not supplied with the copies of deposition but he has never agitated upfront on that score. However, none of the findings reveal that he was offered opportunity of cross examination by the delinquent which constitute a grave flaw in the conduct of proceedings. The applicant was acquitted in the criminal case having found not guilty of eloping with someone else's wife and fleeing with money although he admitted having traveled with her, which fact was not taken into consideration by the Disciplinary Authority and Appellate Authority. The remaining charges are not so grave as to attract the gravest form of penalty of dismissal from service. But the applicant has not challenged quantum of punishment inflicted upon him.

However, for the ends of justice and having noted the legal lacuna as above, we quash the order of the Disciplinary Authority and Appellate Authority and remand the matter back to the Disciplinary Authority to decide taking into account his acquittal of the criminal charge and absence of direct evidence of stealing or misappropriation, the correctness of conclusion on the charges by the Inquiry Officer on his misappropriation etc. and, accordingly, decide the quantum of the punishment to be inflicted on the applicant in regard to the charges leveled against him of taking leave and retaining office files, that is whether such allegations would still attract the gravest form of penalties as of dismissal or removal from service etc. Let appropriate

orders be issued within a period of three months from the date of communication of this order. Till such time the applicant may be placed on suspension.

(N. Neihial)
Administrative Member

(B. Banerjee)
Judicial Member

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