IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 2nd OF APRIL, 2025

WRIT PETITION No. 2907 of 2012

ASHOK KUMAR TRIPATHI

Versus

STATE OF M.P AND OTHERS

Appearance:

Shri Prashant Sharma - Advocate for petitioner.

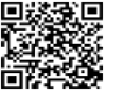
Shri Shailendra Singh Kushwaha – Government Advocate for State.

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

> 7.1 यह कि, रिस्पोडेन्ट क्रमांक 5 द्वारा पिटीशनर को दिये गया दण्डादेश तथा रिस्पा0 क्र. 2 द्वारा कन्फर्म किये गये उपरोक्त दण्डादेश का दिनांक 18/3/08 को निरस्त फरमाया जाकर पुनः सेवा में वहाल किया जावे।
>
> 7.2 यह कि रिस्पा0 क्र. 2 लगा0 5 को यह भी निर्देशित किया जावे कि पिटीशनर को पारित दण्डादेश निरस्त फरमाया जाकर उसको सेवाओं में वहाल तो किया ही जावे साथ ही उसके प्राप्त होने वाले हक व आमोल्यूमेन्ट्स को उसे प्रदान करें।
>
> 7.3 यह माननीय न्यायालय सेनानी 5वी बटालियन, विसबल मुरैना द्वारा पारित आदेश दिनांक 31.12.2007 को एवं पुलिस महानिदेशक द्वारा पारित आदेश दिनांक 09.08.2011 को अपास्त करने की कृपा करें।

2. It is submitted by counsel for petitioner that departmental charge-sheet was



issued to petitioner on the charges that he was posted in bungalow No.16 allotted to High Court Judge at Gwalior in the capacity of Gaurd. An information was received that petitioner was sleeping on duty. When he was awaken by concerning Judge, then it was found that petitioner was under influence of alcohol and accordingly, he was sent for medical examination. In the medical examination, presence of alcohol was found in the breath of petitioner. It was also mentioned that earlier when petitioner was posted in bungalow No.5, he was found sleeping during normal petrolling. On the next day when petitioner was called in the office of Guard Commander, then he accepted his mistake and pleaded for mercy and accordingly, he was pardoned after giving warning. Therefore, chargesheet was issued on the charge that on 04.08.2007 at about 6:00 a.m. while petitioner was posted in bungalow No.16 as a Guard, he was found sleeping under the state of intoxication. This conduct of petitioner is in violation of Clause 3 of Civil Services Conduct Rule 1969**.**

3. The petitioner submitted his reply and denied the allegation. It was claimed that petitioner was unwell and he was suffering from cold and cough. Therefore, he had consumed syrup which might be containing alcohol and on account of excessive consumption, presence of alcohol might have been found in the breadth of petitioner. Since matter is of High Court Judge and petitioner is a member of uniform and disciplined force, therefore, he cannot say anything. Even doctor has mentioned the presence of alcohol and not liquor. Petitioner also claimed that in between 3 to 6 a.m. nobody consumes liquor, although he may have consumed syrup on account of ill health. In all, he denied that he was found sleeping or he was found under the influence of alcohol.

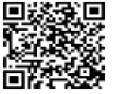
4. Departmental enquiry was conducted and evidence of Dr. A.K. Saxena (PW-15) was recorded. The evidence of Dr. A.K. Saxena which is important for

adjudication of this case reads as under:-

> "मैं डॉ. ए.के. सक्सेना मेडिकल ऑफीसर जिला चिकित्सालय मुरार (ग्वा०) कथन करता हूँ कि दिनांक 4-8-07 को मेरी डियूटी जिला चिकित्सालय मुरार में थी तब पुलिस आर 0 408 अशोक कुमार उम्र 39 वर्ष को मेडिकल परीक्षण हेतु मेरे पास पुलिस के कर्म 0 1805 जगदीश शर्मा आदि लेकर आये आर० अशोक कुमार का मेडिकल परीक्षण मेरे द्वारा किया गया जिसका नं. RN. NO 2784 दिनांक 4-8-07 पर इन्द्राज है। आर. अशोक कुमार के मेडिकल परीक्षण में पाया कि वह पूर्ण होश हबास में थे तथा उन्होंने मेरे द्वारा पूछे गये सभी सवालों का उत्तर सही दिया अतः वह समय एवं जगह आदि से पूरी तरह अबगत थे <u>उनके श्वांस में शराब की बू थी</u> किन्तु वे अपने होश हबास पर पूर्ण नियंत्रण में थे इस परीक्षण रिपोर्ट पर मेरे ही हस्ताक्षर है। यह EXP-19 है इसे मैं पुनः हस्ता० कर प्रमाणित करता हूँ मेरा यही कथन है। कथन पढ़कर हस्ता० किये।
>
> <u>प्रतिपरीक्षण दवारा आरोपी.</u>
>
> प्र0.1 जब आप मुझे मेडिकल कराने हॉस्पीटल ले गये थे तब मैं किस स्थिति में था?
>
> उ0. मेडिकल कराने ले जाते समय आप नोर्मल स्थिति में थे।
>
> प्र02. मेडिकल करते समय डाक्टर ने हमारी उल्टी कराई या कोई जांच की थी क्य ?
>
> उ0. नही मेरे सामने कोई जांच नहीं की और नहीं उल्टी कराई थी।

5. Thus, it is clear that Dr. A.K. Saxena had specifically stated in his examination in chief that there was a smell of alcohol in the breath of petitioner. Although petitioner had an opportunity to cross-examine Dr. A.K. Saxena with regard to presence of smell of alcohol in his breath, but he did not put any question to him in that regard. Only one question was put to Dr. A.K. Saxena that at the time of medical examination he was in his senses and he was properly answering the questions put to him.

6. After considering the evidence which has come on record, it was found that charges levelled again the petitioner were proved and accordingly, punishment of compulsory retirement has been imposed. Appeal as well as mercy petition filed



by petitioner was also dismissed.

7. Challenging the order of compulsory retirement, it is submitted by counsel for petitioner that since Dr. A.K. Saxena had found that petitioner was not under intoxication, therefore, it is not correct to suggest that petitioner had consumed liquor while he was on duty.

8. It is not out of place to mention here that petitioner had applied for voluntary retirement which was accepted by order dated 15.10.2007 but as the departmental enquiry was pending, therefore, the said order was cancelled on the same day.

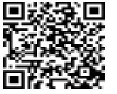
9. Considered the aforesaid submissions made by counsel for petitioner.

10. Before considering the factual aspects of the case this Court would like to consider the scope of judicial review or departmental proceedings.

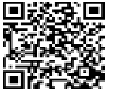
11. The Supreme Court in the case of **Kanwar Amninder Singh Vs. The Hon'ble High court of Uttarakhand at Nainital Through its Registrar General decided on 17/09/2021 in Petition(s) for Special Leave to Appeal (c) No(s).2507/2021**, has held as under:-

> "The case diary which the petitioner wants to be exhibited was not permitted by the Enquiry Officer on the ground of lack of proof for the said document as required under the provisions of the Evidence Act. Strict rules of evidence are not applicable to a Departmental Enquiry. There is no prejudice caused to anyone if the case diary is placed on record. The case diary which is shown as exhibit 44 in the application by the petitioner shall be exhibited as a document in the departmental enquiry. The departmental enquiry may be expedited and completed soon."

12. The Supreme Court in the case of **State of Rajasthan and Others Vs. Heem Singh** reported in **(2021) 12 SCC 569** has held as under:-



"37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The Judge does not assume the mantle of the disciplinary authority. Nor does the Judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the Judge to be more appropriate. To do so would offend the first principle which has been outlined



above. The ultimate guide is the exercise of robust common sense without which the Judges' craft is in vain.

****

40. In the present case, the respondent was acquitted of the charge of murder. The

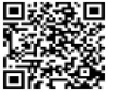
circumstances in which the trial led to an acquittal have been elucidated in detail above. The verdict of the criminal trial did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial. True, even on the more relaxed standard which governs a disciplinary enquiry, evidence of the involvement of the respondent in a conspiracy involving the death of Bhanwar Singh would be difficult to prove. But there are, as we have seen earlier, circumstances emerging from the record of the disciplinary proceedings which bring legitimacy to the contention of the State that to reinstate such an employee back in service will erode the credibility of and public confidence in the image of the police force."

13. The Supreme Court in the case of **State of Karnataka and another Vs. N. Gangraj** reported in **(2020) 3 SCC 423** has held as under:

"8. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision- making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

9. In State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723, a three-Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under : (AIR pp.1726-27, para 7)

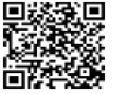
"7. … The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a



> departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

10. In B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80], again a three Judge Bench of this Court has held that power of 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 eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under : (SCC pp. 759-60, paras 12-13)

> "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 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 the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the

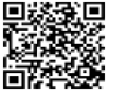


authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive 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 each case.

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 p. 728 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."

11. In High Court of Bombay v. Shashikant S.Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144, this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under : (SCC p. 423, para 16)

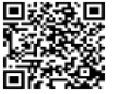
"16. The Division Bench [Shashikant S. Patil v. High



> Court of Bombay, 1998 SCC OnLine Bom 97 : (2000) 1 LLN 160] of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

12. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584:(2011) 1 SCC (L&S) 721, this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:(SCC pp. 587-88, paras 7 & 10)

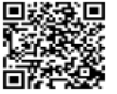
> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy



of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C.Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806 and Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036, High Court of Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144].)

****

10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality

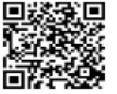


> by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

13. In another judgment reported as Union of India v. P. Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554, this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

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

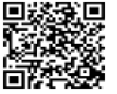
14. On the other hand the learned counsel for the respondent relies upon the judgment reported as Allahabad Bank v. Krishna Narayan Tewari, (2017) 2 SCC 308 : (2017) 1 SCC (L&S) 335, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the writ court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The inquiry officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.



> 15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said judgment has not noticed the larger Bench judgments in State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723 and B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law."

14. The Supreme Court in the case of **State Bank of India and others Vs. Ramesh Dinkar Punde** reported in **(2006) 7 SCC 212** has held a under:

> "6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:
>
> > "Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority." (See Govt. of A.P. v. Mohd. Nasrullah Khan [(2006) 2 SCC 373 : 2006 SCC (L&S) 316], SCC p. 379, para 11.)
>
> 9. It is impermissible for the High Court to reappreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.
>
> 12. From the facts collected and the report submitted by the inquiry officer, which has been accepted by the disciplinary authority and the Appellate Authority, active connivance of the respondent is eloquent enough to connect the respondent with the issue of TDRs and overdrafts in favour of Bidaye.

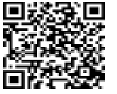


15. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] it is held as under: (SCC p. 623, para 15)

> A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. (SCR p. 219)

16. In Union of India v. Parma Nanda [(1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30] it is held at SCC p. 189, para 27 as under:

> "27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is



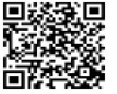
> certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

17. In Union Bank of India v. Vishwa Mohan [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129] this Court held at SCC p. 315, para 12 as under:

> "12. After hearing the rival contentions, we are of the firm view that all the four charge-sheets which were enquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him."

18. In Chairman and MD, United Commercial Bank v. P.C. Kakkar [(2003) 4 SCC 364 : 2003 SCC (L&S) 468] this Court held at SCC pp. 376- 77, para 14 as under:

> "14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] it is no defence available to say that there



was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

19. In Regional Manager, U.P. SRTC v. Hoti Lal [(2003) 3 SCC 605 : 2003 SCC (L&S) 363] it was pointed out as under: (SCC p. 614, para 10)

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

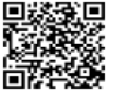
20. In Cholan Roadways Ltd. v. G. Thirugnanasambandam [(2005) 3 SCC 241 : 2005 SCC (L&S) 395] this Court at SCC p. 247, para 15 held:

"15. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry." "

15. This Court in the case of **Santosh Sondhia Vs. State of M.P.** reported in **2023 (2) MPLJ 404** has held that:-

"**15.** It is well established principal of law that this Court cannot act as an appellate authority and findings of fact recorded by the enquiry officer and approved by the disciplinary authority cannot be interfered with until and unless the finding of fact is based on no evidence or is perverse.

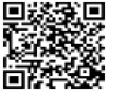
16. It is the case of the petitioner himself that the witnesses have supported the allegations leveled in the charge. It is not mentioned in the writ petition as 10 how the finding of fact



recorded by the enquiry officer are perverse or based on no evidence.

17. Furthermore, the scope of judicial review in a departmental enquiry is very limited and this Court can only look into the procedural aspect and cannot substitute its own finding of fact. It is well established principal of law that the departmental enquiry is to be decided on preponderance of probabilities and strict rule of evidence is not applicable. The Supreme Court in the case of Union of India and others vs. Subrata Nath decided on 23-11-2022 in Civil Appeal No.7939-7940/2022 [2022 MPLJ Online (S.C.) 25 has held as under:

> 17. In State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwava, a two Judge Bench of this Court held as below:
>
> "7.It is now well settled that the Courts will not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, Courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B. C. Chaturvedi vs. Union of India, Union of India vs. G. Ganayutham, Bank of India vs. Degala Suryanarayana and High Court of Judicature at Bombay vs. Shashikant S. Patil). [Emphasis laid].
>
> 18. In *Chairman and Managing Director, V.S.P. and others vs. Goparaju Sri Prabhakara Hari Babu*, a two Judge Bench of this Court referred to several (2011) 4 SCC 584,



(1995) 6 SCC 749, (1997) 7 SCC 463, (1999) 5 SCC 762, (2000) 1 SCC 416, (2008) 5 SCC 569 Civil Appeal Nos. of 2022 @ SLP(C) No. 3524 of 2022 precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that:-

"21. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."

19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in *Union of India and others vs. P. Gunasekaran* held thus:-

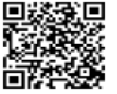
"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also 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 Articles 226/227 of the Constitution of India. shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

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

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

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the



evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

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

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

13 (2015) 2 SCC 610 Civil Appeal Nos. of 2022 @ SLP(C) No.3524 of 2022

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

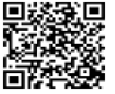
(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

20. In *Union of India and others vs. Ex. Constable Ram Karan*, a two Judge Bench of this Court made the following pertinent observations:

"23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open

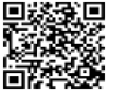


for the Courts to assume and usurp the function of the disciplinary authority.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the Court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the Court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."

21. A Constitution Bench of this Court in *State of Orissa and others (supra)* held that if the order of dismissal is based on findings that establish the prima facie guilt of great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent 14 (2022) 1 SCC 373 Civil Appeal Nos.____ of 2022 @SLP(C) No. 3524 of 2022 employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order becomes unassailable and the High Court ought to forebear from interfering. The above view has been expressed in *Union of India vs. Sardar Bahadur.*

22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate



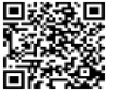
> Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.

16. Thus, it is clear that this Court cannot act as an Appellate Authority and cannot substitute its own finding unless and until the findings of facts recorded by authorities are found to be based on no evidence.

MLC of the petitioner reads as under:-

> *"Pt. is fully conscious well oriented to time place and surroundings*
>
> *Pupils are equal and reacting.*
>
> *Smell of alcohol present in breath.*
>
> *Gait is normal speech is normal.*
>
> *He has consumed alcohol but is not under intoxication."*

17. In the MLC, it was specifically mentioned that smell of alcohol is present in breath of petitioner and petitioner has consumed alcohol, but is not under intoxication. The only question for consideration is as to what was the meaning of

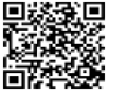


"but is not under intoxication". Consumption of alcohol and presence of smell of alcohol in breath was specifically mentioned in the MLC. It is well established principal of law that departmental enquiry is to be decided on the basis of propondence of probabilities and strict rules of evidence are not applicable and allegations are not required to be proved beyond reasonable doubt. If a person has consumed liquor, then with passage of time he would start regaining his consciousness on account of reduction of effect of alcohol. It cannot be said that if a person has consumed liquor, then he would not remain in consciousness unless and until entire effect is washed out from the body. On account of reduction of effect of alcohol in the blood, a person would start gaining consciousness. At the most it can be said that petitioner might have consumed liquor about 3 to 4 hours prior to the medical examination and therefore, he had started regaining his consciousness. Howerever, presence of alcohol in the breath undoubtedly proves that petitioner has consumed liquor. This Court has already reproduced the evidence of Dr. A.K. Saxena. Not a single question was put to the concerned witness by petitioner regard to the presence of smell of alcohol in his breath or finding with regard to consumption of alcohol. Since finding with regard to consumption of alcohol and presence of smell of alcohol in breath have remained unchallenged, therefore it cannot be said that finding recorded by disciplinary authorities with regard to the consumption of alcohol is based on no evidence.

18. Now the next question for consideration is as together the punishment of compulsory retirement is disproportionate to charge levelled against the petitioner or not.?

19. The Supreme Court in the case of **Union of India and Another v. K.G. Soni reported in (2006) 6 SCC 794** has held as under:

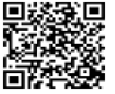
> "14. The common thread running through in all these



> decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. 15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed. 16. The above position was recently reiterated in Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain [(2005) 10 SCC 84 : 2005 SCC (L&S) 567]."

20. The Supreme Court in the case of **Om Kumar and Others Vs. Union of India reported in (2001) 2 SCC 386** has held as under:-

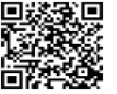
> "70. In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the



> court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham [(1997) 7 SCC 463:1997 SCC (L&S) 1806]. 71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

21. The Supreme Court in the case of **Mithilesh Singh v. Union of India and others reported in (2003) 3 SCC 309** has held as under:-

> "9. The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. Reference may be made to a few of them. (See: B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44], State of U.P. v. Ashok Kumar Singh [(1996) 1 SCC 302 : 1996 SCC (L&S) 304 : (1996) 32 ATC 239], Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806], Union of India v. J.R. Dhiman [(1999) 6 SCC 403 : 1999 SCC (L&S) 1183] and Om



Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039].)"

22. Petitioner was posted as a Guard and it was his duty to remain vigilant. If a Guard is allowed to consume liquor during his duty hours, then it cannot be said to be a misconduct having no seriousness. A person whose duty is to protect, then consumption of alcohol is a very serious misconduct.

23. Considering the misconduct which was alleged and found proved agaisnt the petitioner, this Court is of considered opinion that punishment of compulsory retirement cannot be said to be shockingly disproportionate to the charge which was lavelled against him.

24. Considering the totally of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting intereference. Petition fails and is hereby **dismissed**.

(G. S. AHLUWALIA)
JUDGE

Rashid