MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 13 of 2017 (DB)

1. Meena W/o Hiraman Gedam,
Aged 48 years, Occ. at Present Nil,
R/o Hanuman Ward Desaiganj,
District Gadchiroli.

2. Sudhakar S/o Dudhramji Titarmare,
Aged about 48 years, Occ. at present Nil,
R/o Chop Tahsil Desaiganj, Dist. Gadchiroli.

Applicants.

Versus

1) The State of Maharashtra,
through its Additional Chief Secretary,
Public Works Department having its office at
Mantralaya, Mumbai-400 032.

2) The Additional Director General of Police,
(Administration) having office at
Near Regal Theatre,
Colaba Mumbai.

3) Deputy Inspector General of Police,
Gadchiroli Range, Administrative
Building No. 1, Civil Lines, Nagpur.

4) The Superintendent of Police Gadchiroli,
District Gadchiroli.

Respondents.

Shri S.P.Palshikar, Ld. counsel for the applicant.
Shri M.I.Khan, ld. P.O. for the respondents.

Coram :- **Shri Shree Bhagwan, Vice-Chairman and**
Shri M.A. Lovekar, Member (J).

Date of Reserving for Judgment : 29th September, 2022.

Date of Pronouncement of Judgment: 20th October, 2022.

JUDGMENT

Per : Member (J).

(Delivered on this 20th day of October, 2022)

Heard Shri S.P.Palshikar, ld. Counsel for the applicant and Shri M.I.Khan, ld. P.O. for the respondents.

2. Facts leading this original application are as under. At the relevant point of time applicants 1 & 2 were working at A.O.P. in Malewada in Gadchiroli District as Assistant Sub Inspector and Naib Police Shipai, respectively. It is the case of the respondents that on 03.01.2008, at about 07:30 p.m. two naxalite persons entered Pankaj Bhojanalaya situated at village Malewada. They were armed with a gun. In the scuffle which ensued police personnel Dadaji Khapre died and Santosh Maraskolhe sustained severe injuries. Regarding this incident First Information Report was lodged against the applicants and nine others. Crime No. 2/2008 was registered under Sections 302, 307, 109, 120-B, 121, 147, 149 of Indian Penal Code and 3/25 of Arms Act as well as 13, 18, 20 and 23 of Unlawful Activity (Prevention) Act. The case was committed to the Court of Session at Gadchiroli. It bore Session case no. 59/2009. The respondent department also contemplated holding departmental inquiry against the applicants. Preliminary inquiry was conducted. At the end of this inquiry conclusion was reached that there was material to initiate regular departmental inquiry against the applicants. Accordingly chargesheet (A-5)

was issued against and served on the applicants. On 21.05.2012 inquiry officer was appointed. He issued a show cause notice (A-6) to the applicants. Thus, the departmental inquiry started. The applicants appointed a next friend to defend them in the departmental inquiry. The department proposed to examine 18 witnesses during the departmental inquiry. The departmental inquiry concluded and the inquiry officer submitted his report (A-7) holding that the charges against the applicants were proved. On receipt of report of the inquiry respondent no. 4 issued show cause notice to both the applicants on 09.07.2013 (A-8) proposing punishment of dismissal from service and calling upon them why said punishment be not imposed. In the meantime, by Judgment dated 20.02.2013 (A-4) the Session Court had acquitted the applicants as well as the nine co-accused of all the offences. It was a clear acquittal. In reply to the show cause notice the applicants pointed out this fact as well as other relevant facts before respondent no. 4. However, respondent no. 4 proceeded to pass order of dismissal on 08.01.2014 (A-3) against both the applicants. The applicants preferred appeal before respondent no. 3 against order dated 08.01.2014. It was dismissed by order dated 11.09.2014 (A-2). Against the order dated 11.09.2014 the applicants preferred a revision (A-9) before respondent no. 2. The revision was also dismissed by respondent no. 2 by order dated 28.04.2016 (A-1). Hence, this original

application assailing the orders dated 08.01.2014 (A-3), 11.09.2014 (A-2) and 28.04.2016 (A-1) passed by respondents 4, 3 & 2, respectively.

3. Aforesaid orders are impugned on the following grounds:-

(i) The charges levelled against the applicants were concocted as can be gathered from the order of clear acquittal passed by Session Judge, Gadchiroli.

(ii) Though the alleged incident which led to initiation of departmental inquiry took place on 03.01.2008, inquiry officer was appointed more than 4 years thereafter i.e. on 21.05.2012.

(iii) The Session case as well as the departmental inquiry were based on set of allegations. The Session case ended in clear acquittal. This would show that the findings recorded by the inquiry officer in the departmental inquiry were unsustainable and these findings were mechanically endorsed by the appellate authority and the revisional authority.

(iv) There were four witnesses who had deposed in the Session case as well as before the inquiry officer in the departmental inquiry.

(v) During the departmental inquiry two witnesses examined by the department could not be effectively cross-

examined by the applicants as their next friend was not available to cross examine them.

(vi) Order of acquittal dated 20.02.2013 passed in the Session case has attained finality as the same has not been challenged in the Hon'ble High Court.

(vii) In any case the punishment of dismissal imposed on the applicants is shockingly disproportionate to the charges held to have been proved.

4. Reply of the respondents is at pages 68 to 74. They have resisted to O.A. on the following ground:-

(i) During pendency of the Session case departmental inquiry was initiated against the applicants. S.D.P.O., Gadchiroli conducted it. He recorded statements of 16 witnesses. He submitted his inquiry report to the disciplinary authority i.e. respondent no. 4.

(ii) Respondent no. 4 called upon the applicants to show cause why punishment of dismissal from service be not imposed. The applicants filed their reply. It was found to be unsatisfactory. Hence, respondent no. 4 proceeded to impose the proposed punishment.

(iii) Respondents 3 & 2, while exercising Appellate and Revisional Jurisdiction, respectively maintained the order passed by respondent no. 4 by recording proper reasons.

(iv) For conducting the inquiry Rule (4) of the Bombay Police (Punishment and Appeal) Rules, 1956 was pressed into service.

(v) Mere acquittal in Session case cannot suffice to successfully assail orders passed in the departmental inquiry.

5. Following charges were laid against the applicants in the departmental inquiry :-

"आर्टीकल क्रमांक (१)-अपचारी १) सफौ/१२१ मिना गेडाम पोलीस मदत केंद्र, मालेवाडा येथे नेमणूकीस असतांना आपले पती हिरामन गेडाम यांचेवर कलम १०७, ११६, (३) जा. फौ. ची कार्यवाहीबाबत राग मनात धरून पोहवा/१०१७ संतोष मरसकोल्हे यांस मारण्याकरीता नामे पोलसु जानु उसेंडी, धंदा मांत्रीक रा. सतीटोला यांना भेटुन त्यास घरी बोलावुन पोहवा/१०१७ संतोष मरसकोल्हे यास जादुटोना करून जीवे ठार मारण्यांस सांगीतले.

आर्टीकल क्रमांक (२)- अपचारी नापोशि/१६९१ सुधाकर तितीरमारे, पोलीस मदत केंद्र मालेवाडा येथे नेमणुकीस असतांना पोहवा/१०१७ संतोष मरसकोल्हे यांचे सागणेवरून अपचारी यास मदतगारीचे टेबलावरून काढले असा मनात राग धरून पोहवा/१०१७ संतोष मरसकोल्हे यास जिवे ठार मारण्याकरीता कट रचला.

आर्टीकल क्रमांक (३)- दिनांक ०३.०१.२००८ रोजी अपचारी नापोशि/१६९१ सुधाकर तितीरमारे यांनी मौजा येटसकुही येथे असलेल्या नक्षलवाध्यांना आणन्याकरीता स्वत:ची मोटारसायकल क्र.एम.एच.-३१, बि.यु-९८५५ नामे विनायक दानसु नैताम यांचेसोबत पाठवुन पोहवा/१०१७ संतोष मरसकोल्हे यांस जिवे ठार मारण्याकरीता घेउन येण्यास सांगीतले. तसेच आपण अपचारी नापोशि/१६९१ सुधाकर तितीरमारे सोबत अपचारी

मसफौ/१२१ मिना गेडाम यांचेसोबत स्वत:चे मोटारसायकलने मौजा खोब्रामेंढा येथे जाउन नक्षल दलमच्या जवळीक असलेल्या मानसाला भेटण्याकरीता शांताबाई जनार्धन धुर्वे, आंगणवाडी सेवीका हिचेकडे विचारपुस करून नक्षलवाद्यांचे जवळीक असलेले (१) नामे आबाजी चंदनखेडे, रा. मालेवाडा, (२) तुळशिराम रामसु मडावी, (३) रमेश दानशा मडावी, दोन्ही रा. एडसकुही यांचे माफतीने नक्षलवाद्यांना सांगुन गुन्हयासंबंधी कट रचुन गुन्हा घडवुन आणला, त्यामुळे आपणांस दिनांक ०१.१०.२००८ रोजी गुन्हयात अटक करण्यांत आली.

आर्टीकल क्रमांक (४)- (१) अपचारी मसफौ/१२१ मिना गेडाम व (२) अपचारी नापोशि/१६९१ सुधाकर तितीरमारे आपले सांगण्यावरून दिनांक ०३.०१.२००८ रोजीचे १९.४५ वा. चे सुमारास पंकज भोजनालय पोमके मालेवाडा येथे पोहवा/१०१७ संतोष मरसकोल्हे व नापोशि/दादाजी खापरे पोमके मालेवाडा हे जेवन करण्यांकरीता गेले असता, कुरर्खेडा व टिपागढ नक्षल दलमच्या नक्षलवाद्यांनी त्यांचेवर पाळत ठेवुन गैरकायद्याची मंडळी जमवुन विनाकारन शस्त्र बाळगुन त्यांचेवर कु-हाडीने व लाठीकाठीने मारहान करून गंभीर जखमी केले, त्यात नापोशि/९०९ दादाजी खापरे हे उपचारादरम्यान मरण (शहीद) पावले, असुन पोहवा/१०१७ संतोष मरसकोल्हे हे गंभीर जखमी झाले. अशाप्रकारे आपण आपले कर्तव्यांत अत्यंत बेशिस्तपणाचे व बेजबाबदारपणाचे कृत्य केले आहेत."

6. It was submitted by Shri S.P.Palshikar, ld. Counsel for the applicant that following four witnesses were examined during the trial before the Session Judge as well as during the departmental inquiry:-

"*1) Police Head Constable 1176 Keshav Banbale, Police Headquarter, Gadchiroli.*

2) Police Head Constable 1017 Santosh Shankarrao Maraskolhe, Police Station, Armori.

3) Rajkumar Tukaram Dakhane, Occ. Labour.

4) Suresh @ Jairam Manaru Harami."

Correctness of this submission is borne out by record. Names of these four witnesses feature in the list of witnesses as reproduced in the report of the inquiry officer:-

"९. पोहवा/११७६ केशव बानबले पो. मुख्या. गडचिरोली.

१०. पोहवा/१०१७ संतोष शंकरराव मरसकोल्हे पो.स्टे.आरमोरी.

११. राजकुमार तुकाराम दखने वय २५ वर्ष धंदा-मंजुरी रा. फरी ह.मु मालेवाडा.

१६. सुरेश ऊर्फे जयराम मनरू हारामी वय ४४ वर्ष धंदा मंजुरी रा. इंदाळा ता. गडचिरोली."

There is reference in para no. 5 of the Judgment in the Session Case to these four persons having been examined during the trial as P.W.-9, P.W.-8, P.W.-4 and P.W.-14, respectively. It was submitted that since these four witnesses were examined in both the proceedings – departmental as well as Judicial no finding ought to have been recorded in the subsequently concluded departmental inquiry that all four charges against the applicants were proved since in the Session case both the applicants as well as the nine co-accused were acquitted. In support of this submission reliance is placed on **G.M. Tank Vs. State of Gujarat and another, AIR 2006 Supreme Court 2129.** In this case following observations in **Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. And Another (1999) 3 SCC 679** were quoted:-

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be

unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand."

In para no. 32 it was observed:-

"*In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually pressed between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed*"

7. The applicants have further relied on **Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Another (2020) 9 SCC 636.** In this case following observations in Radheshyam Kejriwal's case (2011) 2 SCC (Cri) 721 have been quoted:-

"39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

8. The respondents, on the other hand have relied on following rulings:-

1. **Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Srivastava (2021) 2 SCC 612**. In this case it is held that in exercise of jurisdiction of judicial review, courts would not interfere with findings of facts arrived at in disciplinary proceedings except in case of malafides or perversity i.e. where there is no evidence to support such finding or finding is such that no reasonable man could arrive at. Where there is some evidence to support finding arrived at in departmental proceedings, same must be sustained.

In this case following observation in **B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749** have been relied upon:-

"*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, this Court held at SCR p. 728 (AIR p. 369, para 20) 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.*"

2. **State of Andhra Pradesh & Ors. Vs. Chitra Venkata Rao (1975) 2 SCC 557.** In this case it is held:-

"*The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court 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. Second, 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 to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

3. **Shashi Bhushan Prasad Vs. Inspector General, Central Industrial Security Force & Ors. (2019) 7 SCC 797.**

In this case it is held:-

"*It is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the*

disciplinary jurisdiction of the authority. This is what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court."

4. Karnataka Power Transmission Corporation Limited Represented by Managing Director (Administration and HR) Vs. C. Nagaraju & Another (2019) 10 SCC 367. In this case it is held that acquittal by criminal court does not preclude departmental inquiry since these proceeding are entirely different, operate in different field and have different objective. Disciplinary authority is not bound by the Judgment of criminal court where evidence produced in departmental inquiry is different from that produced in criminal trial. It is further held:-

"*The object of departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence*

available to the criminal court, is justified and needed no interference by the High Court."

5. **Arthur Viegas Vs. MRF India Ltd., Goa & Ors. 2021 (6) Mh.L.J. 643.** In this case it is held:-

"*The jurisdiction of this court to interfere with the findings of fact is quite limited. Unless it is demonstrated that the findings are vitiated by perversity, normally it is not for this court to review the findings of fact. The contention based upon the acquittal by this court, was no doubt formidable and that is the reason why acquittal orders were taken into account by me having regard to the principles laid down in M. Paul Anthony (supra), or G.M.Tank (supra). Further, as noted earlier, such matters have to be decided on their peculiar facts, and in the facts of the present, it cannot be said that dismissal of the petitioner was unfair, unjust, or oppressive. Ultimately, the object of criminal proceedings and domestic inquiries is quite different. That is the reason why the standard to be applied in criminal proceedings is that of proof beyond reasonable doubt and the standard to be applied in domestic inquiries is only that of a preponderance of probabilities.*"

Both the judgments relied upon by the applicants are distinguishable on facts. In G.M.Tank Vs. State of Gujarat and another (supra) it was found that facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference. In the instant case, during the departmental inquiry 16 witnesses were examined. Out of these 16 only 4 witnesses were examined during the trial held before the Session Court. Therefore, by no stretch of imagination it can be said that facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference.

In the case of Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI & Another (supra) on the one hand there were adjudication proceedings and on the other hand there was prosecution. It was held that in case it was found on merits that there was no contravention with the provisions of the act in the adjudication proceedings, the trial of the concerned persons shall be an abuse of the process of the court. Here, factual scenario is quite different. It is the contention of the applicants that because they have been acquitted in the session case, charge against them in the departmental inquiry ought not to have been held to be duly proved. As mentioned earlier, out of the 16 witnesses examined during the departmental inquiry only 4 were

examined during the trial before the session court. Further, in the trial proof beyond reasonable doubt was required whereas in the departmental inquiry material satisfying the test of preponderance of probability was sufficient. This legal position is reiterated in the rulings relied upon by the respondents.

9. Though in their reply respondents have contended that no regular inquiry was conducted and the departmental proceeding was held as per Rule 4 (2) of the Bombay Police (Punishment and Appeals) Rules, 1956, this submission is contrary to record. The impugned punishment was imposed as per Rule 3 (1) (iii) of the Rules of 1956. Rule 4 of Rules of 1956 reads as under :-

> "*4.(1)No punishment specified in clauses (a-2), (i), (i-a), (ii) and (iii) of sub-rule (1) of rule 3 shall be imposed on any Police Officer unless a departmental inquiry into his conduct is held and a note of the inquiry with the reasons for passing an order imposing the said punishment is made in writing under his signature.*
>
> *(2) Without prejudice to the foregoing provisions, no order imposing the penalty specified in clauses (i), (ii), (iv), (v) and (vi) of sub-rule (2) of rule 3 on any Police Officer shall be passed unless he has been given an adequate opportunity of making any*

representation that he may desire to make, and such representation, if any, has been taken into consideration before the order is passed:

Provided that, the requirements of this sub-rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

Note:- The full procedure prescribed for holding departmental enquiry before passing an order of removal need not be followed in the case of a probationer discharged in the circumstances described in paragraph (4) of the explanation to rule 3. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the grounds on which it is proposed to discharge him and his reply (if any) is duly considered before orders are passed."

In fact it is clear on record that regular departmental inquiry was conducted as provided under rule 4 (1) of the Rules of 1956. Punishment of dismissal from service could not have been imposed except in accordance with the procedure laid down in Rule 4 (1) of the Rules of 1956.

10. We have referred to the rulings relied upon by the respondents. In these rulings, while explaining the scope of judicial review, it is reiterated that findings of fact recorded in disciplinary proceeding cannot be upset unless there are malafides or perversity and such findings which are based on some evidence cannot be interfered with. Interference with such findings of fact is permissible only if it is a case of "no evidence". Having gone through the evidence recorded by the inquiry officer we have come to the conclusion that this is not a case of "no evidence". The applicants availed remedies of appeal and revision. The appellate as well as revisional authority concurred with the order passed by the disciplinary authority. We find no infirmity in the same. For the reasons discussed hereinabove the O.A. is liable to be dismissed. It is accordingly dismissed with no order as to costs.

(M.A.Lovekar) **(Shree Bhagwan)**
Member(J) **Vice Chairman**
aps
Dated – 20/10/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno	:	Akhilesh Parasnath Srivastava.
Court Name	:	Court of Hon'ble Vice Chairman&Member(J).
Judgment signed on and pronounced on	:	20/10/2022.
Uploaded on	:	21/10/2022.