IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 368 OF 2017

DISTRICT : THANE

Shri Ravindranath. H Aangre)
Occ-Nil, Ex. Police Inspector,)
Last Posting at Aheri, Dist-Gadchiroli,)
R/o: 1604, Sarovar Darshan,)
Chandanwadi, Thane [W].)...**Applicant**

Versus

1. The Director General & Inspector)
General of Police, M.S, Mumbai,)
Having office at Old Council Hall,)
S.B Marg, Mumbai 400 039.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member) (A)

RESERVED ON : 27.08.2024

PRONOUNCED ON : 10.01.2025

J U D G M E N T

1. The Applicant prays that 'Order' dated 2.5.2014 for his 'Dismissal from Service' from post of 'Police Inspector passed by 'Disciplinary Authority" and 'Order' dated 11.5.2016 passed by 'Appellate Authority' be quashed and set aside. The Applicant who was serving on post of 'Police Inspector' be thereupon granted all consequential 'Service Benefits'.

2. The learned Advocate for Applicant proceeded to narrate the backdrop of events which had resulted in institution of 'Departmental Enquiry'. The Applicant while working as 'Police Inspector' in 'Anti Extortion Squad' under establishment of 'Commissioner of Police, Thane' sometime in 2005 was alleged to have pressurized one Mr. Ganesh Wagh the complainant; to give 70% partnership in property which was being developed by Mr. Ganesh Wagh. However, when Mr Ganesh happened to demand money from Applicant to be invested against partnership venture; it was alleged that Applicant had threatened his 'Family' on 24.04.2007. Further when complainant Mr. Ganesh Wagh was admitted in 'Hinduja Hospital, Mumbai,' it was alleged that Applicant had threatened and slapped him and demanded that property be given in name of his 'Wife'. The Applicant it was alleged had also threatened complainant at Point of Revolver to obtain his 'Signatures' on set of 'Blank Papers'. The Applicant it was alleged

had also forcibly taken away 'Two Vehicles' i.e., 'Jeep' and 'Car' owned by complainant Mr Ganesh Wagh. The Applicant it was even alleged had tried to force complainant Mr Ganesh Wagh to 'Consume Poison' by putting false blame on local 'MLA'. Therefore; it was for all these allegations made by complainant Mr Ganesh Wagh; that 'Departmental Enquiry' against Applicant was instituted by 'DGP, Maharashtra State' by charging him for disrepute & misconduct unbecoming of 'Police Persoonnel'. The 'Departmental Enquiry' which was for 8 'Articles of Charges' was conducted by 'DCP Economic Offences Wing; Thane City'.

3. The learned Advocate for Applicant drew attention to the fact that complainant, Mr. Ganesh Wagh had also lodged 'FIR' on 10.10.2007 against Applicant in Navpada Police Station, and offence was registered against Applicant as C.R.No.445/2007 under Sections 452 & 117, 323, 504, 506, 507 read with 'Section 34' of the 'Indian Penal Code' and 'Sections 3' and 'Section 25' of the 'Indian Arms Act'.

4 The learned Advocate for Applicant relied on Judgment dated 09.03.2011 of 'Judicial Magistrate, First Class, 1st Court, Thane' in 'Regular Criminal Case No. 204/2008' to emphasize that even after acquittal of Applicant; surprisingly Respondent No. 1 issued 'Charge Sheet' to Applicant on 12.10.2012. The alleged incidents

relating to Mr Ganesh Wagh were of period from 2005 to 2007. The 'Departmental Enquiry' was initiated much later on 12.10.2012 and this undue delay remained unexplained by 'DGP, Maharashtra State'. So; this was deliberate action taken by 'DGP, Maharashtra State' to frame the Applicant without taking due cognizance of his acquittal in 'Regular Criminal Case No. 204/2008'.

5. The learned Advocate for Applicant submitted that after trial in 'Regular Criminal Case' No. 204/2008 wherein Applicant had been acquitted from all charges levelled against him by complainant, Mr Ganesh Wagh; then it was binding on 'DGP, Maharashtra State' to exonerate Applicant from 'Departmental Enquiry'.

6. The learned Advocate for Applicant raised many shortcomings about procedures which were required to be followed by 'DGP, Maharashtra State' for fair conduct of 'Departmental Enquiry'. He submitted that no 'Presenting Officer' had been appointed for 'Departmental Enquiry' and 'DCP; Economic Offences Wing, Thane City' as 'Enquiry Officer' had himself asked questions to Applicant which could not have been done by him in role of 'Enquiry Officer'. The 'Enquiry Officer' should have acted in

complete independent manner and not as representative of 'DGP, Maharashtra State' who was 'Disciplinary Authority'.

7. The learned Advocate for Applicant highlighted that in this 'Departmental Enquiry' no evidence was tendered which came to be considered by 'Enquiry Officer'. None of '8 Articles of Charges' which were levelled against Applicant were proved by any 'Statement of Witnesses'; because it was necessary on the part of 'Presenting Officer' to get all documents to prove them in 'Departmental Enquiry'.

8. The learned Advocate for Applicant relied on the 'Statements of Witnesses' viz. Mr. Ganesh Wagh, Mr. Mahesh Wagh and Ms. Pooja Wagh to emphatically argue that 'Enquiry Report' submitted to 'DGP Maharashtra State' as 'Disciplinary Authority' did not establish any of '8 Articles of Charges' against Applicant and that no evidence had been brought on record against Applicant by these 'Three Witnesses' in their deposition before 'Enquiry Officer' during course of 'Departmental Enquiry'.

9. The learned Advocate for Applicant referred to 'Circular' dated 26.6.2006 issued by 'D.G.P, Maharashtra State', regarding holding of 'Departmental Enquiries'.....Procedural Irregularities,

Lapses, Omissions etc.' and specifically relied on its 'Para (2)' of 'Annexure 'B'.

10. The learned Advocate for Applicant referred to 'Show Cause Notice' dated 21.10.2013 issued to Applicant by the 'D.G.P, Maharashtra State,' to contend that he had pre-meditatively made up his mind to impose harsh penalty of 'Dismissal from Service' without going through detailed reply filed by Applicant on 21.02.2014 for which he was given just 15 days. Even after detailed reply was submitted by Applicant on 21.02.2014 to 'Show Cause Notice' dated 21.10.2013, the 'DGP, Maharashtra State' as 'Disciplinary Authority' did not properly go through its contents while passing the 'Order' dated 11.05.2006 to disproportionately impose 'Penalty' under Section 25 of the Maharashtra Police Act, 1951 for 'Dismissal from Service' of Applicant. Hence; there was no 'Application of Mind' at all by 'DGP Maharashtra State' as Disciplinary Authority. The 'Appellate Authority' also did not do so while passing Order dated 11.06.2016.

11. The learned Advocate for Applicant in support of the submissions made by him relied on following Judgments of Hon'ble Supreme Court of India:-

(i) **Union of India & ORs. Versus Ram Lakhan Sharma reported in (2018) 2 SCC (L & S) 356**.

(ii) **Roop Singh Negi Vs. Punjab National Bank & Ors, (2009) 2 SCC 570.**

(iii) **2004 Vol. 2, Mh.L.J 532 Unique Coordinators Vs. Union of India & Ors**.

12. The learned CPO per contra relied on 'Affidavit-in-Reply' dated 30.8.2018 filed by 'DGP Maharashtra State', through Shri Rajiv Motiram Chawde, Deputy Assistant Inspector General of Police (D.E). She pointed that there was no specific provision in law or rules that appointment of 'Presenting Officer' was mandatory; so as to establish charges against any delinquent 'Government Servant'. Moreover, as Applicant had gone through 'Examination-In Chief' and 'Cross Examination' of Witnesses during Departmental Enquiry; she did not came across any instance of 'Leading Questions' which had been put by 'Enquiry Officer' and there was no manifestation of any kind of bias against Applicant during conduct of 'Departmental Enquiry' by DCP Economic Offences Wing, Thane City'. In support of her submissions learned C.P.O. has relied on Judgment of 'Full Bench' of Hon'ble Supreme Court of India in the case of **Union of India Versus T.R. Varma, AIR 1957 S.C 882**.

13. The learned C.P.O submitted that 'DCP Economic Offences Wing, Thane City' as 'Enquiry Officer' had come to definitive conclusion on basis of evidence recorded by Mr. Ganesh Wagh, Mr. Mahesh Wagh and Ms. Pooja Wagh. The 'Enquiry Officer' had duly considered all evidence which came to be recorded during 'Departmental Enquiry'. The 'DCP Economic Offences Wing, Thane

City' had concluded that all '8 Articles of Charges' against Applicant were of very serious nature. The 'DGP Maharashtra State' who is 'Disciplinary Authority' while passing 'Order' dated 02.05.2016 for 'Dismissal from Service' of Applicant had clearly examined the detailed reply submitted by him on 21.02.2024 and specifically referred to principles enunciated by 'Judgment' of Hon'ble Supreme Court of India dated 30.11.2012 in Civil Appeal No 8513 of 2012 arising out of SLP (C) No. 31592/2008, The Dy. Inspector General of Police & Anr Vs. S. Samuthiram.

14. The learned C.P.O emphasized that all '8 Articles of Charges' against Applicant which were of extreme grave nature had been proven in 'Departmental Enquiry' conducted by 'DCP Economic Offences Wing, Thane City'. Therefore, 'Order' dated 02.05.2014 passed by 'DGP, Maharashtra State' was after due 'Application of Mind' and hence need not be interfered with; especially when 'Appellate Authority' had ratified the decision taken by 'DGP Maharashtra State' as 'Disciplinary Authority'. The 'Appellate Authority' while passing 'Order' dated 11.05.2016 was not required to give any detailed reason for confirmation of 'Order' dated 02.05.2016 passed by 'DGP Maharashtra State' as 'Disciplinary Authority'.

15. The Hon'ble Supreme Court of India in **Ram Lakhan Sharma (supra)** has held as under"-

31. A Division Bench of the Madhya Pradesh High Court speaking through Justice R.V. Raveendran, CJ (as he then was) had occasion to consider the question of vitiation of the inquiry when the Inquiry Officer starts himself acting as prosecutor in Union of India and ors. vs. Mohd. Naseem Siddiqui, ILR (2004) MP 821. In the above case the Court considered Rule 9(9) (c) of the Railway Servants (Discipline & Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well recognised facets in paragraph 7 of the judgment which is to the following effect:

"7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets:

(i) The adjudicator shall be impartial and free from bias,
(ii) The adjudicator shall not be the prosecutor,
(iii) The complainant shall not be an adjudicator,
(iv) A witness cannot be the Adjudicator,
(v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,
(vi) The Adjudicator shall not decide on the dictates of his Superiors or others,
(vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.

If any one of these fundamental rules is breached, the inquiry will be vitiated."

32. The Division Bench further held that where the Inquiry Officer acts as Presenting Officer, bias can be presumed. In paragraph 9 is as follows:

> "9. A domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Inquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Inquiry Officer is in position of a Judge or Adjudicator. The Presenting Officer is in the position of a Prosecutor. If the Inquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Inquiry Officer

conducts the examination-in- chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross- examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Inquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Inquiry Officer does not have an open mind."

"34. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in facts situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context reference is made of a case of this Court in Punjab National Bank and others vs. Kunj Behari Misra, 1998 (7) SCC 84. In the above case, this Court had occasion to consider the provisions of Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in paragraph 10 of the judgment is as follows:

"10……7. Action on the enquiry report.—(1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and

> record its own findings on such charge, if the evidence on record is sufficient for the purpose.
>
> (3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.
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> (4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

35. The question which was debated before this Court was that since Regulation 7(2) does not contain any provision for giving an opportunity to the delinquent officer to represent before disciplinary authority who reverses the findings which were in favour of the delinquent employee, the rules of natural justice are not applicable. This Court held that principle of natural justice has to be read in Regulation 7(2) even though rule does not specifically require hearing of delinquent officer. In paragraph 19 following was held:

> "19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

36. Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as

prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High court giving rise to Civil Appeal No.2608 of 2012.

16. The Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank & Ors, (2009) 2 SCC 570**.

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

20. This Court referred to its earlier decision in Capt. M. Paul Anthony v. a Bharat Gold Mines Ltd. 13 to opine: (Narinder Mohan Arya case, SCC p. 729. paras 41-42)
41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and RBI v. S. Manil. Each case is, therefore, required to be considered on its own facts……..

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been

> assigned. If the enquiry officer had relied upon the confession, made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.
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> 42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it would be lawful to do so. In RB this Court observed: (SCC p. 116, para 39)
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> > 39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out."

In that case also, the learned Single Judge proceeded on the basis that the disadvantage of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating: (Narinder Mohan Arye case, SCC p. 730, paras 44-45)

> 44.... No such finding has been arrived at even in the disciplinary proceedings nor was any charge made out as against the appellant in that behalf. He had no occasion to have his say thereupon, Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with

the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

45. The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an enquiry officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of the court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error."

17. The Hon'ble Bombay High Court in **2004 Vol. 2, Mh.L.J 532 Unique Coordinators Vs. Union of India & Ors**. has observed as follows:

6. It is needless to mention that the appellate authority is expected to deal with each and every contention of the appellant, in short if the order is an order of confirmation of the order passed by the authorities below. In the case of order of confirmation, it is not necessary to pass a detailed order, but atleast it must demonstrate application of mind on the part of the authority, especially when the order can be a subject matter of challenge before the higher forum. Recording of reasons is necessary in order to enable the litigant to know the reasons which weighed in the mind of the Court or authority in determining the question and also enable the higher Court to know the reasons. [See V. V. Shroff vs. New Education Institute, AIR 1986 S.C. 2105]. The reasons act as a live link between the evidence on record and the findings recorded on the basis of such evidence. It inspires the confidence of the litigant in the institution of Courts.

18. The Hon'ble Supreme Court of India Judgment of **T.R. Verma (supra)**, has held as under:-

> "10. Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law.
>
> Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.
>
> If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

19. We have gone through the 'Statements of Witnesses' who had deposed in 'Departmental Enquiry' before DCP, Economic Offences Wing, Thane City'. The records shows that 'Enquiry Officer' had examined complainant, Mr. Ganesh Wagh, besides Mr. Mahesh Wagh, Wife of Mr. Ganesh Wagh as also 'C.A' & partner of Mr Ganesh Wagh. The evidence recorded by 'Enquiry Officer' is reproduced as follows:-

दिनांक
०५/०३/२०१३

१) सरकारी साक्षीदार क्र १:- श्री गणेश सुरेश वाघ रा १०२ आनंदव्हयु बाबुभाई पेट्रोलपंपाच्या बाजूला ठाणे- हजर २) अपचारी पोनि/आर एच आंग्रे नेमणुक अहेरी जि गडविरोली – हजर

सरतपास :-

अपचारी पोनि/आर.एच. आग्रे, यांच्या विरुध्दच्या विभागीय चौकशीतील सरकारी साक्षीदार क्रमांक १:- श्री गणेश सुरेश वाघ रा १०२ आनंद व्हयु बाबुभाई पेट्रोलपंपाच्या बाजूला ठाणे समक्ष विचारले वरुन लिहून देतो की, मी दिनांक १०/१०/२००७ रोजी नौपाडा पो.स्टे येथे श्री रविंद्र आग्रे यांचे विरोधात तक्रार दिलेवरुन पोनि/ आंग्रे यांचे विरुध्द नौपाडा पो.स्टे ठाणे शहर येथे गुरजि नं.४४५/०७ भादवि कलम ३९२, ३८६, ४५२, ११७,५०६ (२) ३२३,५०४, ५०६,५०७,०३४ भा.ह.का.क ३,२५ अन्वये गुन्हा दाखल करण्यात आला होता.

सदर प्रकरणी सहाय्यक पोलीस आयुक्त, नौपाडा विभाग यांचेकडे सुरु असलेल्या प्राथमिक चौकशीमध्ये माझा दि.२०/११/२००८ रोजी जबाब घेण्यात आला होता सदरचा जबाब आज रोजी मला दाखविण्यात आला व तो मला वाचण्यासाठी दिला असुन त्या जबाबातील मजकुर मी स्वतः वाचुन पाहिला तो मजकुर मी लिहुन दिल्याप्रमाणे बरोबर व खरा आहे. त्या जबाबातील हकीकती शिवाय मला आता अधिक काही सांगावयाचे नाही त्या जबाबाचे शेवटी असलेली स्वाक्षरी माझीच असल्याचे मी ती स्वाक्षरी पाहुन व ओळखुन सांगत आहे.

माझा वरील जवाब मी वाचुन पाहिला तो माझ्या सांगण्याप्रमाणे बरोबर व खरा आहे.

समक्ष सरकारी साक्षीदाराची सही

SD/-
(डॉ. सुधाकर पठारे) अपचारी यांची सही
विभागीय चौकशी अधिकारी तथा
पोलीस उप आयुक्त Sd/-
आर्थिक गुन्हे शाखा, ठाणे शहर

अपचारी यांनी सरकारी साक्षीदारांची घेतलेली उलट तपासणी

प्रश्न १	माझे विरुध्द केलेली केस पुर्णपणे खोटी होती?
उत्तर	सदर केस बाबत मा न्यायालयाने दिलेला निकाल मला मान्य असुन यापेक्षा मला काही एक सांगावयाचे नाही.

समक्ष सरकारी साक्षीदाराची सही

SD/-
(डॉ. सुधाकर पठारे) अपचारी यांची सही
विभागीय चौकशी अधिकारी तथा
पोलीस उप आयुक्त Sd/-
आर्थिक गुन्हे शाखा, ठाणे शहर

विभागीय बौकशी अधिकारी यांनी साथीदारांची घेतलेली फेरतपासणी

प्रश्न १	तुमचा जबाब नोदविणे बाबत तुमच्यावर काही दवाव आहे का? तुम्हाला काही धमकी आली आहे काय?
उत्तर	माझेवर कोणाचाही दवाव नाही व धमकी वैगरे काही नाही.
प्रश्न २	तुम्ही दिलेल्या फिर्यादीवरुन नौपाडा पो.स्टे येथे पोनि/आंग्रे यांचे विरुध्द दाखल

	असलेल्या गुन्हयानी संधास्थिती काय आहे ?
उत्तर	सदरच्या गुन्हयाचा निकाल लागला असुन त्यामध्ये पोनि/आआंग्रे हे निर्दोष सुटले आहेत एवढेच मला माहिती आहे.

समक्ष

SD/-
(डॉ. सुधाकर पठारे)
विभागीय चौकशी अधिकारी तथा
पोलीस उप आयुक्त
आर्थिक गुन्हे शाखा, ठाणे शहर

सरकारी साक्षीदाराची सही

अपचारी यांची सही

Sd/-

The other witnesses also have confirmed the contents of statements recorded during 'Police Investigations' as being true and correct. It is to be noted that recording of evidence in trial of 'Criminal Case' is altogether different from evidence recorded in 'Departmental Enquiry'. In 'Criminal Case' the contents in the statements recorded by 'Police Officers' under (old) 'Section 161' of 'CrPC' are required to be proved through the Statement of witnesses which are taken under Oath. The contents in FIR are also to be strictly proved from the informant under Oath in the 'Witness Box'. However, 'Enquiry Officer' is not expected to be a Judge who is well conversant with complicated procedural law of recording of evidence. The 'Enquiry Officer' may not be even be 'Law Graduate'. Therefore; he is never expected to follow either evidence or procedure of Criminal Law while bringing evidence on record of the witnesses during Departmental Enquiry. The 'Enquiry Officer' has to follow the 'Principles of Natural Justice'. There should not be any arbitrariness or bias and witness depose before

'Enquiry Officer' to elaborate about the incident by recording of statements about the incidents. We do understand that 'Enquiry Officer' sometimes do not record all the details of the incidents; but instead they rely on previous statements recorded during 'Police Investigations' of these witnesses and this is how the allegations are proved during Departmental Enquiry. We called upon learned Advocate for Applicant to show us specific directions given and law laid down by Hon'ble Supreme Court of India about in what manner evidence in 'Departmental Enquiry' shall have to be recorded. We could not get any such precedent on this point. Thus, by applying common sense and logically analyzing the incidents they can be proved in 'Departmental Enquiry' only through the statement of witnesses. Thus contentions raised by learned Advocate about non availability of any evidence in 'Departmental Enquiry' against Applicant to hold him guilty is not sustainable.

20. The Hon'ble supreme Court in **UNION OF INDIA & ORS Vs. RAM LAKHAN SHARMA, (2018) 2 SCC (L & S) 356** has held as under**:-**

> 7. The fact and pleadings in other civil appeals being more or less similar they need to be only briefly noted.
>
> 28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry.

It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that theHigh Court found breach of principles of natural justice in Inquiry Officer acting as the prosecutor against the respondents. The Inquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceed to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

31. A Division Bench of the Madhya Pradesh High Court speaking through Justice R.V. Raveendran, CJ (as he then was) had occasion to consider the question of vitiation of the inquiry when the Inquiry Officer starts himself acting as prosecutor in Union of India and Ors. vs. Mohd. Naseem Siddiqui, ILR (2004) MP 821. In the above case the Court considered Rule 9(9) (c) of the Railway Servants (Discipline & Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well recognised facets in paragraph 7 of the judgment which is to the following effect:

"7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle
consists of seven well recognised facets:

(viii) The adjudicator shall be impartial and free from bias,
(ix) The adjudicator shall not be the prosecutor,
(x) The complainant shall not be an adjudicator,
(xi) A witness cannot be the Adjudicator,
(xii) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,
(xiii) The Adjudicator shall not decide on the dictates of his Superiors or others,
(xiv) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.

If any one of these fundamental rules is breached, the inquiry will be vitiated."

The 'Statutory Provisions' thus do not mandate appointment of 'Presenting Officer' for conduct of 'Departmental Enquiry'. The 'Enquiry Officer' even in absence of 'Presenting Officer' in fairness can conduct 'Departmental Enquiry' without any prejudice or bias against delinquent Government Servant by giving him adequate opportunity to 'Cross Examine' all witnesses during conduct of 'Departmental Enquiry'.

21. The 'DGP, Maharashtra State' as 'Disciplinary Authority' had issued Order dated 02.05.2014 to impose penalty of 'Dismissal from Service' of Applicant under provisions of 'Section 25(1)' of Maharashtra Police Act 1951. The provisions of 'Section 25(1)' of Maharashtra Police Act 1951 lays emphasis on deviant attributes which if observed in any 'Police Personnel' would render him deserving to be awarded severe penalties, such as 'Compulsory Retirement'; 'Removal from Service' and 'Dismissal from Service'. Such deviant attributes have been categorized as being 'Cruel', 'Reverse'; 'Remiss' or 'Negligent' or Unfit for Discharge of Duties'. The 'DGP, Maharashtra State' accordingly as 'Disciplinary Authority' justiciably had issued 'Order' dated 02.05.2014 after due observance of 'Principles of Natural Justice' including by granting 'Personal Hearing' to Applicant on 07.04.2014. The extracts of the reasoned 'Order' dated 02.05.2014 passed by 'DGP,

Maharashtra State' for 'Dismissal from Service' of Applicant reads as follows:-

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पो.नि. आंग्रे यांनी कारणे दाखवा नोटीसला दिलेल्या उत्तरात असा मुद्या उपस्थित केला आहे की, त्यांच्याविरुद्धच्या फौजदारी स्वरुपाच्या गुन्हयात त्यांना निर्दोष मुक्त केलेले असल्याने त्यांच्या विरुद्ध विभागीय चौकशी करता येणार नाही. सदर मुद्याबाबत छाननीअंती मी अशा निष्कर्षाप्रत आलो आहे की, एखाद्या सरकारी कर्मचाऱ्या विरुद्ध फौजदारी स्वरुपाचा गुन्हा केल्याबाबत करण्यात आलेली कारवाई ही त्या सरकारी कर्मचाऱ्याने फौजदारी गुन्हा केल्याबाबत असते. तर विभागीय चौकशीमध्ये केलेली कारवाई ही त्या सरकारी कर्मचाऱ्याने केलेल्या remiss, negligent, cruel or perverse इ. प्रकारच्या वर्तनामुळे केलेली असते. पो.नि. आंग्रे यांच्याविरुद्ध ठेवण्यात आलेले दोषारोप हे त्यांनी फौजदारी स्वरुपाचा गुन्हा केल्याबद्दलचे नसून, पो.नि. आंग्रे यांनी केलेल्या अत्यंत भ्रष्ट, बेशिस्त, बेजबाबदार, जनमानसामध्ये पोलीसांच्या विश्वासार्हते बद्दल प्रश्नचिन्ह निर्माण करणारे व पोलीसांची प्रतिमा डागाळणारे वर्तन केले असल्याबाबत आहेत. या निष्कर्षाप्रत येण्याकरिता मी, मा. सर्वोच्च न्यायालयाने Civil Appeal No 8513 of 2012 (Arising out of SLP (C) No. 31592 of 2008) मध्ये The Deputy Inspector General of Police & Anr. V/s S.Samuthiram या प्रकरणात दिनांक ३०/११/२०१२ रोजी दिलेल्या आदेशावर विसंबून राहत आहे. कारण त्यात मा. सर्वोच्च न्यायालयाने ही बाब स्पष्ट केलेली आहे की, एखाद्या सरकारी कर्मचाऱ्या विरुद्ध फौजदारी स्वरुपाचा गुन्हा केल्याबाबत करण्यात आलेली कारवाई ही त्या सरकारी कर्मचाऱ्याने फौजदारी स्वरुपाचा गुन्हा केल्याबाबत असते तर विभागीय चौकशीमध्ये केलेली कारवाई ही त्या सरकारी कर्मचाऱ्याने केलेल्या remiss, negligent, cruel or perverse इ. प्रकारच्या वर्तनामुळे केलेली असते. त्यामुळे पो.नि. आंग्रे यांनी उपस्थित केलेल्या मुद्यात काहीही तथ्य आढळून येत नाही.

उपरोक्त नमूद विवेचनाच्या आधारावर पो.नि. आंग्रे यांनी कारणे दाखवा नोटीसला दिलेल्या उत्तरात उपस्थित केलेले मुद्दे व प्रत्यक्ष वैयक्तीक सुनावणीच्यावेळी उपस्थित केलेल्या मुद्यांमध्ये गुणवत्तेच्या आधारावर काहीही तथ्य आढळून येत नाही. पो.नि. आंग्रे यांच्याविरुद्ध विभागीय चौकशीत ठेवण्यात आलेले दोषारोप हे गंभिर स्वरुपाचे असल्याने आणि अपचारी पो.नि. आंग्रे हे पोलीस दलात नोकरीस असल्याने त्यांना प्रदान असलेल्या अधिकाराचा गैरवापर करणारे व त्यात पो. नि. आंग्रे यांचे वर्तन उद्धटपणाचे असल्याचे दिसून येते. कारण पो.नि. आंग्रे यांनी त्यांना प्रचलित कायद्यानुसार प्रदान असलेल्या अधिकाराचा गैरवापर, त्यांच्या स्वतःच्या फायद्याकरिता करणे ही बाब देखील अत्यंत चुकीची असल्याचे दिसून येते. पो.नि.आंग्रे यांचे अशाप्रकारचे वर्तन हे फक्त पोलीस दलासारख्या शिस्तप्रिय खात्यास अडचणीत टाकणार आहे इतकेच नव्हे तर, पोलीस दलातील प्रचलित कायद्यांचे काटेकोरपणे पालन करणाऱ्यांच्या समर्थतेवर प्रश्नचिन्ह निर्माण करणारे देखील आहे. महाराष्ट्र पोलीस दलाचे निद वाक्य हे "सद्रक्षणाय खलनिग्रहणाय" असे आहे. तथापि, पो.नि. आंग्रे यांनी या प्रकरणात जे काही गैरवर्तन केलेले आहे ते उपरोक्त नमूद पोलीस दलाच्या निद वाक्याचे पूर्णपणे उल्लंघन करणारे आहे. अशाप्रकारे पो.नि. आंग्रे यांनी केलेले गैरकृत्य, गैरवर्तन जे विभागीय चौकशीअंती सिद्ध झाले आहे. अशा परिस्थितीत त्याबाबत योग्य ती खातेनिहाय कारवाई न केल्यास, अशाप्रकारे गैरवर्तन करणाऱ्या पोलीस अधिकाऱ्यांची पाठराखण पोलीस दलाकडून केली जाते असा अत्यंत प्रतिकूल संदेश जनमानसात जाईल. त्यामुळे अशाप्रकारे गैरवर्तन करणाऱ्या पोलीस अधिकारी आणि कर्मचारी यांच्याविरुद्ध योग्य ती खाते निहाय कारवाई करुन, त्याबाबत पोलीस दलाच्या तीव्र भावना, संदेश हा फक्त जनमानसात पोहचविणे

आवश्यक नसून असा संदेश पोलीस दलातील अन्य सभासदांना देखील पोहचविणे पोलीस दलाच्या शिस्तीच्या दृष्टीकोनातून अत्यंत आवश्यक आहे. बेशिस्तपणाचे कृत्य खपवून घेतले जाणार नाही असा संदेश पोलीस दलात व जनमानसात जाणे आवश्यक आहे. त्यामुळे पो.नि. आंग्रे यांना कारणे दाखवा नोटीस मध्ये प्रस्तावित केलेल्या शिक्षेत कोणताही बदल करण्याची सबळ करणे मला आढळून येत नाहीत. त्यामुळे, सक्षम प्राधिकारी म्हणून मी, महाराष्ट्र पोलीस अधिनियम १९५१ मधील कलम २५ अन्वये, मला प्रदान असलेल्या अधिकारान्वये पुढील प्रमाणे आदेश देत आहे :-

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अंतिम आदेश :-

मी संजीव दयाल, पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई याद्वारे पो.नि., रविंद्र हरिश्चंद्र आंग्रे यांना "शासन सेवेतून बडतर्फ करणे" ही शिक्षा अंतिम आदेशात देत आहे.

२. सदर शिक्षेने कसूरदार हे व्यथित होत असतील तर, हे आदेश मिळाल्याच्या दिनांकापासून ६० दिवसांचे आत ते शासनास अपील करु शकतात.

(संजीव n;ky)
पोलीस महासंचालक,
महाराष्ट्र राज्य, मुंबई

22. The 'Appellate Authority' has thereafter passed Order dated 11.05.2016 confirming earlier 'Order' dated 02.05.2014 of 'DGP Maharashtra State' as 'Disciplinary Authority'. The 'Dismissal from Service' of Applicant was unequivocally upheld by the 'Appellate Authority' as is reflected in conclusions recorded as follows:-

निष्कर्षः सदर प्रकरणी अपिलार्थी यांची बाजु ऐकूण घेण्यात आली. तसेच उपलब्ध असलेली कागदपत्र तपासली. अपिलार्थी श्री. आंग्रे यांनी कोणताही संयुक्तीक मुद्दा उपस्थित केलेला नाही. अपिलार्थी यांनी त्र्यांना प्रदान करण्यात आलेल्या अधिकाराचा गैरवापर स्वतःच्या लाभासाठी केल्याचे दिसून येते. त्यांनी केलेले गैरवर्तन विभागीय चौकशीअंती सिध्द झालेले आहे. त्यांचेवरील दोषारोप हे अत्यंत गंभीर व पोलीस दलात न शोभणारे आहेत.

उपरोक्त बाबीचा विचार करता, शिस्तभंग प्राधिकारी यांनी अपिलार्थी यांना दिलेली "**सेवेतून बडतर्फ**" ही शिक्षा कसूरीच्या मानाने योग्य असून सदर शिक्षेमध्ये बदल करणे उचित होणार नाही, असा निष्कर्ष मा. राज्यमंत्री, गृह (शहरे) यांनी काढलेला आहे. त्यानुषंगाने अपिलार्थी श्री. रविंद्र हरिश्चंद्र आंग्रे, माजी पोलीस निरीक्षक, ठाणे शहर पोलीस दल यांचा अपील अर्ज फेटाळण्यात येत असून शिस्तभंग प्राधिकारी तथा पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांनी दिलेली "**सेवेतून बडतर्फ**" ही शिक्षा कायम करण्याचा निणर्य मा. राज्यमंत्री, गृह (शहरे) यांनी दिलेला आहे. सदर निर्णयास अनुसरुन संबंधितानी आवश्यक ती कार्यवाही करावी.

23. The flagrant delinquency of Applicant was not amongst the 'Run Of The Mill' relating to non-observance of some rules or regulations or being negligent about performance of duties and responsibilities assigned to any Police Personnel; but it was outrightly of extreme serious nature involving 'Extortion of Property' and 'Threat to Life' in respect of a group of 'Private Persons' which was not at all within sphere of any role assigned to Applicant as 'Police Inspector' of 'Anti Extortion Squad' in establishment 'Commissioner of Police, Thane'. Irony of the case of Applicant was that he had directly indulged in those very nefarious activities which he was obligated to prevent while holding post of 'Police Inspector' of 'Anti Extortion Squad' in establishment of Commissioner of Police, Thane.

24. The extent of anguish of DGP, Maharashtra State, as the Head of Police Force' regarding nefarious activities in which Applicant was directly involved is writ large on the face of 'Order' dated 02.05.2014 about 'Dismissal from Service' of Applicant. The initial few lines of 'Order' dated 2.5.2014 passed by 'DGP, Maharashtra State' for 'Removal from Service' of Applicant which was reproduced below must be appreciated as reflection of the strong conviction with which he had decided it to weed out Applicant from 'Police Force'.

अत्यंत भ्रष्ट, बेशिस्त, बेजबाबदार, जनमानसामध्ये पोलीसांच्या विश्र्वासार्हते बद्दल प्रश्न चिन्ह निर्माण करणारे व पोलीसांची प्रतिमा डागळणारे असे वर्तन की ज्यात तुम्ही पोलीस

निरीक्षक, रविंद्र हरिश्चंद्र आंग्रे (सध्या निलंबित), खंडणी विरोध पथक, ठाणे शहर येथे कार्यरत असतांना, खालील प्रमाणे कसूरी करून कर्तव्यात गंभीर स्वरूपाचे गैरवर्तन केल्याचे दिसून आले आहे.

25. The Hon'ble Supreme Court of India in Commissioner of Police, New Delhi & Anr Vs. Mehar Singh, AIR 2013 SC 2861, had expressed deep reservation about 'Police Personnel' being appointed even on 'Compassionate Grounds' due to clouded antecedents although the person concerned was acquitted in 'Criminal Cases' for want of evidence or happened to be discharged on account of compounding in 'Criminal Case'. Thus; when even 'Compassionate Appointment' of 'Police Personnel' had been affirmatively turned down by Hon'ble Supreme Court of India; it would be imperative to appreciate the message sent loud and clear that there would be no room at all to even tolerate those were serving as 'Police Personnel' holding senior positions in an 'Uniformed Service'. The pertinent observations in 'Para 28' as reproduced below gives much better insight as to why 'Order' dated 2.5.2014 may have been passed by 'DGP, Maharashtra State', for 'Removal from 'Service' of Applicant.

"28. *The police force is a discipline force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a*

possibility of his taking to the life of crimes poses a threat to the discipline of the police force.... In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating.....

26. The Hon'ble High Court of Andhra Pradesh in another Judgment dated 9.7.2012 in Government of Andhra Pradesh & Ors Vs. Palla Vekata Ratnam & Ors, 2012 SCC Online AP 988, had the occasion to deal with an appeal of State Government regarding 'Police Personnel' in rank of 'SDPO/DSP' whose 'Probation Period' was terminated and she was discharged from service but it had been set aside by 'APAT' in O.A No. 660/2012 on 05.03.2012. The delinquent 'Police Personnel' in rank of 'SDPO / DSP' was involved in 'Settling Civil Disputes' and 'Demanding Illegal Gratification' from 'Private Persons' which is much similar to nefarious acts committed by present Applicant. The following observation in 'Para 56' made by Hon'ble High Court of Andhra Pradesh in this 'Judgment' helps bring further contextual clarity about why decisive course of action was taken by DGP, Maharashtra State, Mumbai by passing Order dated 02.05.2015 for Dismissal from Service of Applicant.

"The fact that the mala fides alleged against the DGP are not established, gives credibility to the facts finding enquiry. In the absence of malafides and also in view of the grounds of discharge and the language used in the reports of IGP and DGP recommending discharge of the applicant cannot be taken nor this Court is convinced with any of the submissions of the applicant. The Supreme Court and this Court have repeatedly laid down that the police officers cannot interfere in civil disputes. If an allegation is made that an officer of the rank of SDPO is involved in settling

civil disputes and demanded illegal gratification for the same, it is the primary duty of the immediate controlling authorities as well as DGP as the Head of the Police Department to act promptly and take necessary action. In that view of the matter, the action which commenced at the instance of the IGP and culminating in the order of the Government discharging the applicant in our considered opinion, is sustainable on facts and law.

27. The **Hon'ble Supreme Court** in Civil Appeal No. 8513 of 2012 (Arising out of SLP (C) No. 31592 of 2008), The Deputy Inspector General of Police & Anr Vs. S. Samuthiram, which is quoted in 'Order' dated 02.05.2014 passed by DGP Maharashtra State had after examining the issue of 'Dismissal from Service' against backdrop of acquittal in 'Criminal Case' reiterated that order of dismissal can still be passed by Disciplinary Authority even if delinquent Government Servant had been acquitted of Criminal Charges by observing as follows:-

> 17. This Court in Southern Railway Officers' Association Vs. Union of India (2009) 9 SCC 24, held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Court reiterated that order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge."

28. The Hon'ble Supreme Court of India in Civil Appeal No. 8513 of 2012 (Arising out of SLP (C) No. 31592 of 2008), The Deputy Inspector General of Police & Anr Vs. S. Samuthiram with regard to specific issue of effect of outcome of 'Criminal Case' on 'Departmental Enquiry' held that 'Disciplinary Authority' imposing

punishment of 'Dismissal from Service' cannot be held to be disproportionate nor non-commensurate to the delinquency by pertinently observing as follows:-

"19. In a later judgment of this Court in Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G Vittal Rao (2012) 1 SCC 442, this Court after a detailed survey of various judgments rendered by this Court on the issue with regard to the effect of criminal proceedings on the departmental enquiry, held that the Disciplinary Authority imposing the punishment of dismissal from service cannot be held to be disproportionate or non-commensurate to the delinquency."

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29. The Hon'ble Supreme Court in catena of following landmark 'Judgments' has delineated limited scope of 'Judicial Review' of 'Orders' passed by 'Disciplinary Enquiry' and 'Appellate Authority'. The insightful observations in these landmark judgments are reproduced as below:-

A. The **Hon'ble Supreme Court in (1995) 6 SCC 749 (B.C. Chaturvedi v/s. Union of India and Others)** observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in 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. 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 coextensive 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 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.

B. The **Hon'ble Supreme Court in (2011) 4 SCC 584 (State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya)** has 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.

C. The **Hon'ble Supreme Court in (2008) 5 SCC 569 (Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu)**, on the Doctrine of

Proportionality of order of punishment passed by the Disciplinary Authority has 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."

D. The **Hon'ble Supreme Court in (2015) 2 SCC 610 (Union of India and Others v. P. Gunasekaran)** observed as under:-

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."

E. The **Hon'ble Supreme Court in (2022) 1 SCC 373 (Union of India and Others v. 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."

30. We relied on precise outlines marked out for 'Judicial Review' of Order of 'Disciplinary Authority and Appellate Authority' by catena of judgments of Hon'ble Supreme Court of India to

closely scrutinize all aspects of 'Departmental Enquiry' conducted by DCP Economic Offences Wing, Thane City' into the bizarre incidents of personal behaviour of Applicant. The compelling factors which influence us can be summarized as (a) Need to carefully preserve the Public Image of Police Force (b) Nonelective conduct of Departmental Enquiry upon acquittal in Criminal Cases (c) Narrow Scope of Judicial Review of decisions taken by Disciplinary Authority & Appellate Authority. Hence, we are of the considered view that Order dated 2.5.2014 passed by 'Disciplinary Authority' for 'Dismissal from Service' of Applicant and 'Order' dated 11.5.2016 passed by 'Appellate Authority' to confirm 'Dismissal from Service' of Applicant does not merit any interference. Hence the following order.

O R D E R

(i) The O.A No. 368/2017 stands Dismissed.

(ii) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai.
Date : 10.01.2025
Typed by A.K Nair