Union Of India vs Dalbir Singh on 21 September, 2021

Equivalent citations: AIR 2021 SUPREME COURT 4504, AIRONLINE 2021 SC 756

Author: Hemant Gupta

Bench: V. Ramasubramanian, Hemant Gupta

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5848 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 24095 OF 2019)

UNION OF INDIA & ORS.

VERSUS

DALBIR SINGH

JUDGMENT

HEMANT GUPTA, J.

1. Leave granted.

2. The order dated 11.4.2019 passed by the Division Bench of the High Court of Delhi at New Delhi is the subject matter of challenge in the present appeal whereby the order of dismissal passed by the Competent Authority on 24.5.2014, appellate order dated 9.10.2014, and revisional order dated 13.2.2015 were set aside. The respondent1 was hence directed to be reinstated and also was found entitled to arrears of pay from the date of dismissal of service till the date he actually joins the duty.

3. The writ petitioner was a General Duty Constable in the Central Reserve Police Force (CRPF). An FIR No. 16/1993 was lodged 1 Hereinafter referred to as the 'writ petitioner' against the writ petitioner for an offence under Section 302, 307 of the Indian Penal Code, 18602 and Section 27 of the Arms Act, 1959 when the writ petitioner was accused to have fired from his service revolver on Head Constable Shri Harish Chander and Deputy Commandant Shri Hari Singh resulting in the death of Shri Harish Chander and injuries to Shri Hari Singh. The writ petitioner was convicted by

the learned trial court on 11.3.1996 and sentenced to life imprisonment. However, in appeal, the High Court of Punjab and Haryana acquitted him of the charges framed against him by giving benefit of doubt for the reason that 20 cartridges were fired but only 7 empties were recovered whereas none of the bullets have been recovered. In view of the said finding, the High Court doubted the prosecution version as the Investigating Agency had failed to collect the evidence. Criminal Appeal No. 117 of 2006 filed by the State was dismissed by this Court relying upon the aforesaid finding of the High Court.

4. The writ petitioner was initially served with a chargesheet on 27.6.1993. Article-I from the Statement of Article of charges reads thus:

> " ARTICLE-I That the said No.880957136 Ct. Dalbir Singh of D/36 BN CRPF while functioning as CT(GD) at BN HQ Fatehbad on 11.04.1993 has committed an act of misconduct in his capacity as member of the force U/s 11(1) of CRPF Act, 1949 in that he has committed misconduct and disobedience of lawful orders and refused to perform fatigue duty between 0900 hrs. to 1000 hrs." 2 For short, the 'IPC'
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> 5. In the statement of imputation of misconduct or misbehaviour in support of the above said Article of charge, it was stated that the writ petitioner returned to the Unit Headquarter after 60 days of earned leave on 10.4.1993 and was detailed for fatigue duty.

Instead of performing such fatigue duty, the writ petitioner sat at the tailor shop. BHM Harish Chandra asked for non-compliance of the orders, the writ petitioner however arrogantly misbehaved with the officers. It is admitted that the proceedings of the chargesheet were not concluded.

6. The writ petitioner was dismissed from service on 21.12.1996 on account of his conviction in the criminal trial in pursuance of the FIR lodged. However, since he was granted benefit of doubt in appeal by the High Court and was subsequently acquitted, the writ petitioner was reinstated vide order dated 20.7.2012 by the Deputy Inspector General of Police, CRPF, Patna. The following were the directions issued in the order of reinstatement:

> "(i) The punishment of dismissal from service awarded to No. 880957136 CT/GD Dalbir Singh of 36BN, CRPF by disciplinary authority i.e. Commandant 36 BN vide order No. I-X-2/93-EC-II dated 21.12.1996 is hereby set aside.
>
> (ii) The appellant No. 880957136 CT/GD Dalbir Singh of 36BN, CRPF is reinstated into service immediate effect (i.e. from the date of reporting in 36BN).
>
> (iii) Since the appellant i.e. Ex. CT/GD Dalbir Singh has been acquitted by criminal court, he shall not be punished departmentally on the same charge or similar charge upon the evidence cited in the criminal case Rule 27 (ccc) of CRPF Rules, 1955. If some other misconduct on other ground is made out then it is upto disciplinary authority to decide whether any Departmental Enquiry is called for or not under Rule

GOI decisions No. 5 below Rule 19 of CCS (CCA) 1965."

7. The writ petitioner was served with another chargesheet on 27.8.2012. The said chargesheet was withdrawn when the writ petition filed by the writ petitioner was pending before the High Court of Delhi. Consequently, the Writ Petition (C) No. 6354 of 2012 was disposed of on 21.11.2012, giving liberty to the appellant to charge sheet the writ petitioner. The relevant extract from the order reads as thus:

> "15. However, learned counsel for the respondents submits that the issue pertaining to the departmental instructions with reference to safe custody of arms and ammunition issued to force personnel while on duty, which was not the subject matter of a criminal trial can always be gone into at a departmental inquiry. Learned Counsel submits that an official arm and ammunitions issued to a force personnel if found to be used in an incident resulting in the death of force personnel would certainly require an accountability to be given by the officer concerned who was issued the arm and ammunitions.
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> 16. The offending chargesheet which has been challenged in the writ petition has been withdrawn by the respondents and therefore the writ petition is disposed of as infructuous observing that it would be permissible for the respondents to issue a chargesheet but not in relation to the death of Battalion Havaldar Major Harish Chander and the injuries caused to Dy. Comdt. Hari Singh. The respondents would be entitled to hold an inquiry with respect to the arm and ammunitions issued to the writ petitioner on day of incident and seek petitioner's accountability in relation thereto."

8. It is thereafter that another chargesheet was issued on 25.2.2013.

Article I of the said chargesheet reads thus:

> " ARTICLE 1 That during his posting at Amritsar Punjab No. 880957136 CT/GD Dalbir Singh of 36, BN, CRPF, on 11.04.1993 without having the order from Competent Officer fired from his service rifle (SLR Butt No. 417 Body No. 150410-59), issued for his Govt. duties and hence misused the Government weapon and ammunition and committed remissness of duties. The abovesaid misconduct is a serious offence U/s 11(1) of CRPF Act read with Rule 27 of CRPF Rules. Therefore, the constable while being the member of the force has misused his service rifle and ammunition without having the order of competent officer which is a serious offence and misconduct and the same is also against the discipline and management of the force and is also a punishable offence."

9. In the enquiry proceedings, the appellants had examined six witnesses. The first departmental witness was Havaldar Dayamai Banerjee (PW-1). He had deposed that on 11.4.1993 around 11 o' clock, when he was doing camp maintenance work, he

> heard the sound of firing coming from the Head Office. He reached the place of firing which was 150 meters away from his place of work and found some persons were holding the writ petitioner. There is nothing substantial in the cross-examination conducted. He had reached the place of firing after the incident but had deposed about the time of incident of firing.
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> 10. PW-2 Havaldar Bal Singh deposed that he heard the noise of about 15-20 fire shots at around 11 o' clock on 11.4.1993. He reached the place of occurrence and found Constable Dilip Mishra holding the writ petitioner as the latter was trying to free himself. He further deposed that people around the writ petitioner were saying that the writ petitioner fired inside the camp by his personal weapon. Nothing material has come out in the cross-examination.

He also however reached the place of firing after the incident but both the above witnesses have deposed regarding of timing of firing i.e., around 11 o' clock.

11. PW-3 Havaldar Hetlal Deepankar was deployed for quarter guard duty from 10-12 o' clock on 11.4.1993. Around 11 o' clock, he heard the sound of gunfire. The firing stopped after 15-20 minutes. The writ petitioner was immobilized and was brought to the quarter guard. In the cross-examination, he stated that the firing took place at about 11:45 and that the distance between the quarter guard and the Head Office was about 70-80 yards.

12. PW-4 Havaldar J.N. Tripathi was working in the mess of the Headquarters, which was about 50 meters away from the place of firing. He also saw some persons immobilizing the writ petitioner. In the cross-examination, he stated that the firing was done by the writ petitioner near the Head Office. The location of firing may be 10 meters away from the Head Office.

13. PW-5 Brij Kishore Singh deposed that at about 11:00 am, after he handed over his charge to the writ petitioner, who was the runner of Deputy Commandant Shri Hari Singh as he wanted to have his food. He heard the sound of firing of about 15-20 bullets continuously while he was eating his food. After the firing went off, he ran towards the control room and saw 4-5 people were holding the writ petitioner and Constable Dilip Mishra was also one of them.

3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. He also stated that people were saying that the writ petitioner had fired from his personal weapon. He further deposed that the writ petitioner fired with his weapon without any meaningful purpose inside the camp.

14. The most important witness is PW-6 Constable D.K. Mishra. He was performing the duty of runner on 11.4.1993. He heard firing when he had gone to get the documents signed by the officer in the Head Office. He saw from lope hole that the writ petitioner was in a kneeling position and was firing. He caught hold of the writ petitioner from behind when he was changing the magazine. He was then handed over to guard commander and three sentries of quarter guard. In the cross-examination, he deposed that he caught the writ petitioner alone and later the guard

commander and three sepoys from quarter guard came for help.

15. The Commandant, punishing authority, returned a finding considering the evidence led by the Department that the writ petitioner has misused his service weapon and is thus not entitled to be retained in the disciplinary force. Such order was affirmed by the appellate and the revisional authority.

16. The High Court in the writ petition filed by the writ petitioner examined the question as to whether service rifle was issued on 11.4.1993. The High Court found that on 27.6.1993, when the first chargesheet was issued, the writ petitioner was not on duty as he was to perform fatigue duty but he sat in a tailor shop instead. The Court found that this contradicts with the charges mentioned in the chargesheet dated 25.2.2013 that while on duty, he misused the 'government weapon'. The High Court returned the following finding:

> "14. While it is possible that notwithstanding the pendency of a criminal case there could be disciplinary proceedings on the same issue, in the present case it is seen that Respondents are confused on facts. On the one hand, they charge-sheeted the Petitioner on 27th June 1993 for not performing his fatigue duty but instead sitting at a tailor's shop, while nearly two decades later on 25th February 2013 they have charged him with misusing the service weapon issued to him. This contradiction in the stand of the Respondents is fatal to the disciplinary proceedings. The charge that he misused the weapon issued to him falls flat if he was in fact not even present at the place of duty. This was a case based on no evidence. The Respondents had to prove that the weapon which was issued to the Petitioner was misused by him. This it has failed to do by credible evidence."

> 17. We find that the High Court has exceeded its jurisdiction while exercising the power of judicial review over the orders passed in the disciplinary proceedings which were conducted while adhering to the principles of natural justice.

> 18. The High Court failed to notice the fact that in the charge sheet issued on 27.6.1993, the allegation was that the writ petitioner failed to perform his fatigue duty from 9 to 10 am and was disobedient to the lawful orders issued to him. There was no allegation of use of a fire arm leading to death of Shri Harish Chander and injuries to Shri Hari Singh.

> 19. The writ petitioner completed his fatigue duty at 10 am and then reported for duty at the Headquarters. In the later Charge Sheet dated 25.2.2013, the departmental witnesses have uniformly deposed that the noise of firing of 15-20 gun shots was heard around 11 am on 11.4.1993. In fact, PW-6 Constable D.K. Mishra is the one who immobilized the writ petitioner when he was in the process of loading another magazine in the self-loading rifle. Still further, PW-5 Brij Kishore Singh has deposed that 3-4 soldiers had taken the self-loaded rifle of the writ petitioner. Such self-loaded rifle is the one which was issued to the writ petitioner.

20. The statement of some of the departmental witnesses was that they heard that the writ petitioner used his personal weapon but such part of the statements is hearsay evidence. It was open to the writ petitioner to lead evidence that he was not using the official weapon but a personal weapon to rebut the stand of the Department.

21. A three-Judge Bench of this Court in State of Haryana & Anr. v.

Rattan Singh3 was dealing with the issue of non-examination of passengers when the allegation against the conductor was non- issuance of the tickets. This Court held that in a domestic enquiry, strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and that all materials which are 3 (1977) 2 SCC 491 logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. This Court held as under:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. ....."

22. This Court in Union of India & Ors. v. P. Gunasekaran4 had laid down the broad parameters for the exercise of jurisdiction of

4 (2015) 2 SCC 610 judicial review. The Court held as under:

"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;

(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."

23. In another Judgment reported as B.C Chaturvedi v. Union of India & Ors.5, it was held that the 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. The Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is to examine as to whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. This Court held 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 5 (1995) 6 SCC 749 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 [(1964) 4 SCR

718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] 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."

24. This Court in Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited v. M. Chandrasekaran6 held that in exercise of power of judicial review, the Labour Commissioner exceeded his jurisdiction in reappreciating the evidence adduced before the enquiry officer and in substituting his own judgment to that of the disciplinary authority. It was not a case of no legal evidence. The question as to decision of the disciplinary authority of dismissing the respondent is just and proper could be assailed by the respondent in appropriate proceedings. Considering the fact that there was adequate material produced in the departmental enquiry evidencing that fatal accident was caused by the respondent while driving the vehicle on duty, the burden to prove that the accident happened due to some other cause than his own negligence was on the respondent. The doctrine of res ipsa 6 (2016) 16 SCC 16 loquitur squarely applies to the fact situation. The Court held as under:

> "11. The respondent on the other hand contends that the Commissioner has applied the well-settled legal position that there can be no presumption of misconduct by the employees. That, charge must be proved by the Department during the inquiry. Non-examination of the material witnesses such as eyewitnesses present on the spot, conductor and passengers, travelling on the same bus was fatal. For, it entails in not substantiating the charges against the respondent and failure to discharge the initial onus resting on the Department to prove the charge as framed. According to the respondent, no fault can be found with the tangible reasons recorded by the Commissioner as noticed by the Single Judge (reproduced above); and resultantly, the conclusion of the Commissioner of not according approval to the order of dismissal is just and proper. It is submitted that the Single Judge was justified in allowing the writ petition preferred by the respondent and issuing direction to the appellant to reinstate him with back wages and continuity of service and all attendant benefits accrued to him."
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> 25. This Court in Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.7 held that 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.

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. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". It was held as under:

> "11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it

is otherwise permissible. In our judgment, the law is fairly well settled.

7 (2005) 7 SCC 764 Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The 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 the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. 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. 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. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside ." (Emphasis Supplied)

26. This Court in Noida Entrepreneurs Association v. NOIDA & Ors.8 held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:

> 8 (2007) 10 SCC 385 "11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [(1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , Hindustan Petroleum Corpn. Ltd. v.

Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

"8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the

public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short 'the Evidence Act']. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

27. This Court in Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya & Ors.9 held that in the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment. It was held as under:

> "7. ...There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed." (Emphasis Supplied)

28. Mr. Yadav, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition before the High Court, 9 (1997) 2 SCC 699 the appellants were given opportunity to produce the registers of the entrustment of S.L.R. to the writ petitioner. But it was stated that record was not available being an old record as the incident was of 1993. The enquiry was initiated in 2013 after the acquittal of the writ petitioner from the criminal trial. Therefore, in the absence of the best evidence of registers, the oral evidence of use of official weapon stands proven on the basis of oral

testimony of the departmental witnesses.

29. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time.

30. Consequently, we find that the order passed by the High Court is not sustainable. Hence, the same is set aside and the order of punishment of dismissal passed on 21.12.1996 as affirmed in appeal and revision stands restored. Accordingly, the appeal is allowed.

.....J. (HEMANT GUPTA) .....J. (V. RAMASUBRAMANIAN) NEW DELHI;

SEPTEMBER 21, 2021.