]IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

WP.CT 20 OF 2022

DEBNATH SWARNAKAR
-Vs-
THE STEEL AUTHORITY OF INDIA & ORS.

For the Petitioners:	Mr. Debasis Lahiri, Adv., Mr. Supratim Barik, Adv., Mr. Sampaan Laha, Adv.
For the Respondent:	Mr. L.K. Gupta, Sr. Adv., Mr. Subhasish Pachhal, Adv.
Hearing concluded on:	05.05.2026
Judgment on:	12.05.2026

PARTHA SARATHI SEN, J. : –

1. In this writ petition as filed under Article 226/227 of the Constitution of India the subject matter of challenge is the order dated 14.12.2021 passed in OA 350/00110/2015 by the Central Administrative Tribunal, Kolkata Bench, Kolkata (hereinabove referred to as the 'said Tribunal' in short) at the instance of the writ petitioner/ original applicant. By the impugned order the said

Tribunal declined to interfere with the finding of the disciplinary authority, the first appellate authority and the reviewing authority in connection with the departmental enquiry proceeding as initiated against the writ petitioner/ original applicant wherein the said three authorities found that the charge of misconduct as framed against the delinquent has been proved and thus the consequential punishment as imposed upon him is justified.

2. For effective adjudication of the instant *lis* we are at the very outset propose to deal with some factual events which are as under:

(i) On 21.07.2003 a registered deed of lease was executed between the respondent no. 1 authority (lessor) and the present writ petitioner and one Smt. Lily Swarnakar [lessee(s)] whereby and whereunder two numbers of quarter, particulars of which are mentioned in the schedule of the said deed of lease, were leased out in favour of the said lessee(s). It is pertinent to mention herein that at the time of execution and registration of the said deed of lease the first lessee that is the writ petitioner/ original applicant was employed with the respondent no. 1 authority as Senior Technician attached to wagon repair shop of the self same authority.

(ii) Sometimes in the year 2010 and 2011 the respondent no. 1 authority and/or its instrumentalities noticed that the lessee no. 1 that is the writ petitioner/ original applicant herein has constructed a brick wall structure and raised a fencing by encroaching the land of the respondent no. 1 authority without any permission and accordingly,

by issuing several letters namely; letters dated 19.11.2010, 21.01.2011 and 08.06.2011, the writ petitioner was requested to remove the fencing and the wall with a further request not to encroach any land of the respondent no. 1 authority.

(iii) Since the writ petitioner/ original applicant did not adhere to the request of the respondent authorities as issued to him under cover of the aforementioned letters, a show-cause notice dated 09.09.2011 was served upon the writ petitioner/ original applicant.

(iv) Under cover of his letter dated 13.09.2011 the writ petitioner/ original applicant replied to such show-cause however, the same was not accepted by the respondent authorities which culminated issuance of a charge-sheet dated 01.11.2011 together with a statement of allegation levelled against him.

(v) The writ petitioner/ original applicant under cover of his letter dated 08.11.2011 made an attempt to justify his alleged action however, such explanation was not accepted by the respondent authorities and accordingly, on 29.11.2011 the respondent authorities initiated enquiry proceeding against the writ petitioner on the basis of the charge as framed against him vide charge-sheet dated 01.11.2011.

(vi) In the enquiry proceeding the writ petitioner/ original applicant participated and put his all plausible defense however, the enquiry officer on conclusion of such enquiry proceeding in his report dated 07.09.2012 came to a finding that the charge as against the writ

petitioner regarding "unauthorized use of company's land" has been established.

(vii) The disciplinary authority on receipt of the report of the said enquiry proceeding and on consideration of the submission in writing as made by the delinquent came to a finding that the alleged misconduct of the writ petitioner/ original applicant namely "unauthorized use of company's land" is duly proved and thus imposed a punishment of "reduction of existing basic pay by 1(one) stage in his existing scale of pay" with cumulative effect as a disciplinary measure with effect from the date of imposition of punishment.

(viii) The writ petitioner/ original applicant preferred a departmental appeal before the appellate authority which was also not considered favourably by the appellate authority by its order dated 24.12.2012.

(ix) Challenging the finding of the enquiry officer and the punishment as imposed by the disciplinary authority as well as the appellate authority a review petition was preferred before the reviewing authority which came to be disposed of on 28.10.2014 whereby and whereunder the said reviewing authority found no reason to interfere with the punishment as imposed against the writ petitioner/ original applicant.

(x) By preferring OA 350/00110/2015 the writ petitioner/ original applicant impugned all the aforementioned orders of the said

authorities however, the same was not again considered favourably by the said Tribunal.

3. At the time of hearing Mr. Lahiri, learned Advocate appearing on behalf of the writ petitioner/ original applicant at the very outset draws attention of this Court to page nos. 64 to 78 of the instant writ petition (Annexure P-2) being a copy of Sail Scheme for Leasing of Houses to Employees, 2000 ('Scheme' in short). Attention of ours is drawn to Clauses 5.4, 8.2 and 17.3 of the said Scheme. It is argued on behalf of the writ petitioner/ original applicant that on conjoint perusal of the said clauses of the said Scheme it would reveal that the appurtenant land (beyond 1.5 times of plinth area) to the leased out quarter was permitted to be used for horticultural purpose by the respondent no. 1 authority.

4. Further attention of ours is also drawn to Annexure P-19 of the instant writ petition being a copy of the aforesaid registered deed of lease dated 21.07.2003 more specifically, the schedules thereof. It is further submitted on behalf of the writ petitioner/ original applicant that on careful perusal of the two schedules of the said registered deed of lease it would reveal that the plinth area(s) (328 sq.ft.) of the leased out quarters are/ were situated on piece/pieces of land measuring about 988 sq.ft. It is further submitted that in the event the aforementioned clauses of the said Scheme are compared with the schedules of the said registered deed of lease, it would reveal further that the lessees of the said two quarters were permitted to use the appurtenant land adjoining to the said quarters for horticultural purpose and, therefore, the charge-sheet dated

01.11.2011 together with statement of allegation labeled against the writ petitioner/ original applicant alleging "unauthorized use of company's land" has got no basis at all which the said Tribunal failed to visualize, and thus, a serious miscarriage of justice occurred for non-consideration of relevant materials which may be interfered with in judicial review.

5. In his next fold of submission Mr. Lahiri contends before this Court that on execution of the aforementioned registered deed of lease in favour of the writ petitioner and his wife in respect of the schedule mentioned two quarters a contractual relationship between the respondent no.1 authority and the writ petitioner and his wife was established. It is further submitted that for the sake of argument even if it is admitted that there occurred a breach of covenant on the part of the lessee(s) in respect of the said registered deed of lease, the proper course of action would be on the part of the respondent authorities to initiate a proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred as the 'said Act' in short). It is further argued for the alleged violation of the terms and conditions of the said registered deed of lease the respondent authorities wrongfully resorted to Clause 29 (Acts of misconduct) of the standing order of 1997 ('standing order' in short) which is not legally permissible and is beyond the scope of a disciplinary proceeding as wrongly initiated by the respondent authority. In this regard, reliance is placed upon a judgment of Bombay High Court in the case of ***Nandita B. Palekar vs. Y.S. Kasbekar & Ors.*** reported in ***1985 Mh.L.J. 405***.

6. Drawing attention to paragraph 7 of the impugned judgment it is further submitted on behalf of the writ petitioner/ original applicant that the said Tribunal while passing the impugned order considered Clause 13.6 of the said Scheme which prohibits a lessee to encroach in a common portion or service area. It is further submitted that the said Tribunal however failed to observe the charge-sheet dated 01.11.2011 as submitted against the writ petitioner/ original applicant where the charge levelled against the writ petitioner was "unauthorized use of company's land" and not encroachment of common portion which is prohibited. It is thus submitted on behalf of the writ petitioner/ original applicant that the said Tribunal while passing the impugned order failed to differentiate the true meaning and implication of encroachment of a common portion and "unauthorized use of company's land" and thus misdirected itself while passing the impugned order causing serious miscarriage of justice.

7. In course of his argument Mr. Lahiri further draws attention of this Court to paragraph nos. 17 to 20 of the instant writ petition. It is submitted that in the said paragraphs a specific pleading has been made on behalf of the writ petitioner/ original applicant that the alleged misconduct as mentioned in the said charge-sheet is no way connected in faithful discharge of his duty and service and, therefore, the respondent authorities ought not to have proceeded with the said enquiry proceeding on the basis of a charge which is not sustainable in the eye of law. It is thus submitted that since the writ petitioner has not done any misconduct in relation to his service within the meaning of

Clause 29 of the said standing order, the instant writ petition may be allowed by quashing the order impugned as well as the orders as passed by the disciplinary authority, appellate authority and the reviewing authority.

8. Per contra, Mr. Gupta, learned Senior Advocate appearing on behalf of the respondent authority and its instrumentalities also places his reliance upon page nos. 98 and 99 of the instant writ petition being the copy of the charge-sheet dated 01.11.201 together with statement of allegation levelled against the delinquent. It is submitted that from the said charge-sheet as well as the statement of allegation it would reveal that the writ petitioner and his wife were given two quarters on lease however, the departmental authorities have found that the writ petitioner had constructed a brick wall structure as well as net fencing over the land of the respondent no. 1 authority encroaching thereby to the extent of 4620 sq.ft. which tantamount to an act of misconduct within the meaning of Clause 29(xix) of the said standing order. It is submitted that from the materials as placed before this Court it would reveal further that despite issuance of several letters of request by the officials of the respondent no. 1 authority the writ petitioner/ original applicant was bent upon not to remove such illegal construction and fencing and thus, the submission of charge-sheet dated 01.11.2011 against the writ petitioner/ original applicant by the respondent authorities is very much justified.

9. It is further submitted that the reported decision of ***Nandita B. Palekar (Supra)*** has got no manner of application in the instant lis. It is further submitted that the ratio as decided in the case of ***Nandita B. Palekar (Supra)***

is quite distinguishable from the facts and circumstances as involved in the instant writ petition inasmuch as in the said case the Hon'ble Bombay High Court found that in absence of any rules for breach of discipline so as to warrant initiation of disciplinary proceeding against the employees of the authority for the violation of the terms of agreement no proceedings, criminal or disciplinary can be initiated. It is further argued by Mr. Gupta that on perusal of the Clause 29(xix) of the standing order it would reveal that unauthorized use of company's quarters of land by an employee of the respondent no. 1 authority tantamounts to misconduct.

10. It is further submitted by Mr. Gupta that in course of enquiry proceeding, the enquiry officer came to a factual finding with regard to genuineness of the charge as framed against the delinquent and thus there cannot be any occasion to discard such factual finding in judicial review in absence of any contrary material on record. It is further argued by Mr. Gupta that the disciplinary authority, the appellate authority and the reviewing authority prior to passing their respective orders had given due chance of hearing to the delinquent, applied their independent minds over the subject matters as placed before them and thus, rightly held that the charge as framed against the writ petitioner has been duly proved. It is submitted on behalf of the respondents that in absence of any procedural regularity and/or any materials to show that principle of natural justice has been violated in the in-house proceeding against the writ petitioner/ original applicant, there is hardly any scope to interfere with the decision of the enquiry authority, disciplinary

authority, appellate authority and the reviewing authority as rightly held by the said Tribunal in the impugned orders.

11. It is further submitted by Mr. Gupta that the punishment as imposed upon the writ petitioner/ original applicant is no way disproportionate to the charge as proved against the delinquent in terms of Clause 30(2)(a) of the said standing order which deals with stoppage of increment in case of major penalty. It is further submitted by Mr. Gupta that proper interpretation of Clause 30(2)(a) of the said standing order indicates that in so many words the disciplinary authority is not prohibited to impose stoppage of increment with cumulative effect. Mr. Gupta thus submits that it is a fit case for dismissal of the instant writ petition.

12. We have meticulously gone through the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates for the contending parties.

13. On careful perusal of the said Scheme it reveals that a policy decision was taken by the respondent authorities to grant long term lease of the respondent no. 1's houses and flats to its employees/ ex-employees/ spouses of the deceased employees for gainful utilization of assets created by the respondent no. 1 company. It further appears that while fixation of the premium of such lease, another policy decision was taken by the respondent no. 1 authority that the appurtenant land (beyond 1.5 time of plinth area of the leased out premises) may be used by the lessee for horticultural purpose.

14. At this juncture, if we look to the two schedules of the registered deed of lease dated 21.07.2003 as has been executed in favour of the writ petitioner and his spouse, it would reveal that under cover of the said two deeds of lease quarter nos. 12T and 12S having plinth area of 328 sq.ft. each were leased out to them and the said two quarters are situated on a piece of land measuring about 988 sq.ft. each.

15. Materials have been placed before us that in the year 2010 and onwards the respondent authorities found that the writ petitioner had constructed a brick wall structure and made a fencing by encroaching the respondent no. 1 authority's land without obtaining permission and accordingly, the delinquent was repeatedly requested to remove such encroachment. On perusal of page no. 84 of the instant writ petition being a copy of the letter dated 06.06.2011 it reveals to us that the writ petitioner/ original applicant did not concede to such request and on the contrary he had taken a stand that he had raised the fencing after obtaining verbal consent from the higher officials of the respondent no. 1 authority.

16. Sufficient materials have also been placed that even after receipt of the show-cause letter dated 09.09.2011 the writ petitioner/ original applicant was found to be adamant in not removing the illegal construction as well as shifting of the fencing within permissible limits as a result whereof he was served with a charge-sheet dated 01.11.2011 together with statement of allegation labeled against him.

17. At the time of hearing learned Advocate appearing on behalf of the writ petitioner/ original applicant placed reliance upon the judgment of the Bombay High Court in the case of ***Nandita B. Palekar (Supra)***. It is strongly contended that the alleged action of the writ petitioner/ original applicant by no stretch of imagination can be terms as "an act of misconduct". It has been argued further that for the alleged violation of the terms and conditions of the registered deed of lease an appropriate action might be taken under the said Act of 1971 and not by way of a disciplinary proceeding which the Tribunal miserably failed to visualize.

18. In order to assess as to whether the proposition of law as decided in the case of ***Nandita B. Palekar (Supra)*** as decided by a Division Bench of the Bombay High Court is at all applicable in the case or not, we propose to look to some of the relevant paragraphs of the said judgment which are quoted hereinbelow in verbatim:

> *"**4.** The tenements, one of which was allotted to the appellant, were admittedly constructed under the Low Income Group Housing Scheme and could be allotted to any of the applicants eligible under the Rules irrespective of whether they were employees of the Board or not. In other words, the allotment was not restricted to the employees of the Board. In pursuance of the allotment, the allottees were put in possession of the tenements on payments of the prescribed amount and upon executing a hire purchase agreement agreeing to be bound by the rules governing the Board. The agreement and the rules merely stipulate that upon breach of the terms the allotment was liable to be cancelled and the allottee evicted from the tenement. No other consequence of the breach of the condition of the allotment is laid down by the rule, or*

agreed to between the parties. Upon breach of the terms of the agreement, no proceedings criminal or disciplinary are envisaged against the allottee of the tenement either under the agreement or the said scheme. If any allottee other than an employee of the Board were to commit a breach of the agreement such as is now alleged against the appellant, the Board could not have taken any action except cancelling the allotment and seeking eviction of the allottee from the tenement. Merely because the appellant happens to be an employee of the Board, she cannot be visited with any further civil consequences. For a variety of reasons, as person may not be able to fulfil the terms of the agreement. Although the allottee may have undertaken to pay the instalments of the hire purchase amount due under the agreement, he may not able to honour that agreement; should such a person be exposed to disciplinary action when there is no specific rule of conduct to that effect ? What would have been the position if the tenements were allotted exclusively to the employees of the Board under a scheme specially formulated for its employees and the scheme itself laid down that breach of any condition of such allotment would constitute breach of discipline, it is not for us to consider in this case. Admittedly there is no specific rule of conduct or discipline rendering the breach of such agreement misconduct. The obligations arising under the said scheme are purely contractual. A breach of contract even if deliberate cannot, in the circumstances referred to above be deemed to be a breach of discipline so as to warrant initiation of disciplinary proceedings against the employees of the Board. We are however clear in our mind that in the absence of any such specific stipulation or rule, no greater liability could be imposed upon the employees than what could be imposed on other allottees who are not the employees of the Board. Imposition of any such additional liability on the employees of the Board would be unreasonable. Even though the employees of the Board may from a class by themselves, in the absence of a specific rule or stipulation to that effect, upon contravening the terms of the said agreement no disciplinary

proceedings could be taken for it is not breach of discipline but breach of contract.

5. *When the reversion of an employee is by way of punishment it must be for breach of discipline or misconduct. The impugned reversion is for contravention of the conditions of allotment of a tenement. The allotment of tenement in favour of the appellant is not in the course of the employment or by virtue of the employment; it is made in her favour as in favour of any other member of the public. Any contravention of the conditions of such allotment is outside the scope of the appellant's employment and also not related to any question of discipline. Such contravention cannot be a ground for taking any disciplinary proceedings against her.*

6. *In Indian Express and Chronicle Press v. M. C. Kapur [1974-II L.L.J. 240 at 242], the employee who was a lino-operator in the employer-company and was also a treasure of the Employees Co-operative Society charged with riotous and disorderly behaviour outside the working hours. On enquiry he was found involved in financial irregularities and defalcation of funds of the Co-operative Society and his services were terminated by the Company. When the Company made an application under S. 33(2)(b) of the Industrial Disputes Act, 1947 for approval of the Industrial Tribunal, the Tribunal found that the Co-operative Society was altogether an independent concern in which the Company had no interest and over which it had no control and that the employee's conduct in regard to Co-operative Society's affairs did not affect the working of the Company. The Tribunal held that although the report of the Enquiry Officer was not mala fide or arbitrary, "the employee's misconduct was outside the purview of the Standing Orders governing him". The Tribunal therefore declined to approve the dismissal of the employee. The Supreme Court on appeal upheld the order of the Tribunal as fully justified observing :*
"No one charged ... (the employee) with riotous or disorderly behaviour during the working hours. The only other head under which he could be charged was that he had committed an act subversive of discipline. The charges which were preferred against him did not seem to relate, in any manner, to the question of discipline."

The Court further observed :

> *"..... We are wholly unable to accede to the contention ..... that the charges which were preferred and which were found proved by the Enquiry Officer and on the basis of which the dismissal was ordered by the General Manager, constituted acts subversive of discipline."*
> *Even in the instant case there is no rule of conduct or of discipline which renders the contravention of the conditions of allotment of a tenement under the Low Income Group Housing Scheme an act of misconduct or of breach of discipline warranting initiation of any disciplinary proceedings. No punishment for contravention of such a condition of allotment could, therefore, be imposed on the appellant."*
>
> *(Emphasis Supplied by us)*

19. As rightly argued by Mr. Gupta that the proposition of law as decided in the case of ***Nandita B. Palekar (Supra)*** has no manner of application in the instant case inasmuch as the Hon'ble High Court of Bombay rightly noticed that in absence of any rule/scheme that violation of contractual obligation would be deemed to be a breach of discipline so as to warrant initiation of disciplinary proceeding against the delinquent, the authority is not empowered to treat a breach of the terms of the agreement as misconduct.

20. At this juncture, we propose to look to Clause 29 of the said standing order which reads as under:

> "**29. Acts of Misconduct:**
> Without prejudice to the general meaning of the term "Misconduct", the following acts and omissions shall be treated as misconduct.
>
> (i) ……..
> (ii) …….
> (iii) ……..
> (iv) ……..
> (v) ……..
> (vi) ……..

(vii) ……..
(viii) …….
(ix) ……..
(x) ……..
(xi) ……..
(xii) ……..
(xiii) ……..
(xiv) ……..
(xv) ……..
(xvi) ……..
(xvii) ……..
(xviii) ……..
(xix) Unauthorised use of company's quarters or lands.
(xx) ……..
(xxi) ……..
(xxii) ……..
(xxiii) ……..
(xxiv) ……..
(xxv) ……..
(xxvi) ……..
(xxvii)……."

21. Keeping in mind the implication of Clause 29(xix) of the said standing order if we look to the factual aspects as involved in the instant writ petition, it appears that on behalf of the respondent authorities sufficient materials have been placed that the writ petitioner being a lessee of the leased out two quarters had raised fencing beyond the permissible limit as mentioned in Clause 8.2 of the said Scheme and has also raised pucca construction unauthorisely over the land of the respondent no. 1 authority which has been practically admitted by him in his reply letter dated 13.09.2011 to the show-cause notice as well as in his reply letter dated 17.09.2012 to the disciplinary authority in relation to finding of enquiry by the enquiry officer.

22. We have also noticed that the enquiry authority, disciplinary authority, appellate authority and the reviewing authority independently applied their own minds while passing the impugned orders before the said Tribunal regarding unathorised use of the respondent no. 1's land by the delinquent which we do not want to disturb in absence of any contrary materials sitting in judicial review. On careful perusal of Clause 29(xix) of the said standing order it further appears that the alleged action of the delinquent very much comes under the purview of act of misconduct and, therefore, the writ petitioner/ original applicant cannot escape from the clutches of his misconduct by taking recourse to the provisions of the said Act of 1971 stating that the alleged action can be at best called violation of the terms and conditions of the said registered deed of lease. In view of such, we thus find no reason to interfere with the impugned order of the Tribunal whereby and whereunder the said Tribunal declined to interfere with the orders impugned before it.

23. At this juncture, we propose to look to the proportionality of the punishment as imposed by the disciplinary authority upon the delinquent. The scope of interference with regard to the disproportionality of punishment in any disciplinary proceeding has been lucidly dealt with by the Hon'ble Supreme Court in the case of ***Union of India vs. P. Balasubrahmanayam*** reported in ***(2021) 5 SCC 662*** wherein the following has been held:

> *"**21.** It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence*

and has received consideration inter alia of this Court [S.R. Tewari v. Union of India, (2013) 6 SCC 602 : (2013) 2 SCC (L&S) 893] . This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the authority concerned to impose punishment; losing site of the fact that the allegations qua bribery had not been found against the respondent."

24. Similar such view was taken by the Hon'ble Supreme Court in the case of ***S.R. Tiwari vs. Union of India*** reported in ***(2013) 6 SCC 602***. On perusal of the aforementioned judgment as passed in the case of ***P. Balasubrahmanayam (Supra)*** and ***S.R. Tiwari (Supra)*** it thus appears to us that the High Court sitting in judicial review is within its limit to interfere with the disproportionate punishment in the event it is found that the same is manifestly disproportionate, excessive and harsh.

25. At this juncture, if we look to Clause 30 of the said standing order it reveals that stoppage of increment has been included in the category of major penalties. The relevant portion of Clause 30 of the said standing order is as under:

*"**30. Penalties for Misconduct:***
The following penalties may for good and sufficient reasons be imposed for misconduct.
(1).....
(2) The following shall constitute major penalties:
a) Stoppage of increment.
b) .....

c) .....
d) .....
Explanation:
.....”

26. On perusal of the order of punishment dated 06.11.2012 (Annexure P-15) of the writ petition it appears that the disciplinary authority imposed the following punishment:

> *“**Reduction of existing basic pay by 1(one) stage in his existing scale of pay.**”*
> *Accordingly, the basic pay of Sri D. N. Swarnakar, Sr. Technician, T. No. 338746, is hereby reduced by 1(one) stage, i.e., from Rs. 19,216/- to Rs. 18,705/- per month in his existing scale of pay from the date of this Order and with cumulative effect as a disciplinary measure. His date of normal increment will remain unchanged.”*

27. On comparative study of Clause 30(2) of the standing order and the punishment order dated 06.11.2012 it appears to us that Clause 30(2) of the said standing order speaks about stoppage of increment as major penalty however, it does not say that such stoppage of increment would be with cumulative effect also. However, on perusal of the punishment dated 06.11.2012 as imposed upon the delinquent it appears that the disciplinary authority imposed punishment upon the delinquent to the effect reduction of existing basic pay by 1(one) stage in his existing scale of pay from the date of the said order and with cumulative effect as a disciplinary measure.

28. At this juncture, the moot question arises for our consideration is that in absence of any provision for stoppage/ reduction of increment with cumulative effect the disciplinary authority is at all competent to impose such punishment. The Hon’ble Supreme Court while passing the judgment in the case of ***Vijay***

Singh vs. State Of U.P.& Ors. reported in ***(2012) 5 SCC 242*** had occasion to consider similar such aspect and in doing so the following was held:

> *"**11.** Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of the 1991 Rules. Integrity of a person can be withheld for sufficient reasons at the time of filling up the annual confidential report. However, if the statutory rules so prescribe, it can also be withheld as a punishment. The order passed by the disciplinary authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the 1991 Rules, since the same could not be termed as punishment under the Rules. The Rules do not empower the disciplinary authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the Rules as a result of disciplinary proceedings cannot be awarded.*
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> ***12.** This Court in State of U.P. v. Madhav Prasad Sharma [(2011) 2 SCC 212 : (2011) 1 SCC (L&S) 300] dealt with the aforesaid 1991 Rules and after quoting Rule 4 thereof held as under : (SCC p. 216, para 16)*
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> *"16. We are not concerned about other rule. The perusal of major and minor penalties prescribed in the above Rule makes it clear that 'sanctioning leave without pay' is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishments prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of 'no work no pay' cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms."*
>
> *(emphasis added)*

> ***13.*** *The authority has to act or purport to act in pursuance or execution or intended execution of the statute or statutory rules. (See Poona City Municipal Corpn. v. Dattatraya Nagesh Deodhar [AIR 1965 SC 555] ; Municipal Corpn., Indore v. Niyamatullah [(1969) 2 SCC 551 : AIR 1971 SC 97] ; J.N. Ganatra v. Morvi Municipality, Morvi [(1996) 9 SCC 495 : AIR 1996 SC 2520] and Borosil Glass Works Ltd. Employees' Union v. D.D. Bambode [(2001) 1 SCC 350 : 2001 SCC (L&S) 997 : AIR 2001 SC 378] .)*
>
> ***14.*** *The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide Bachhittar Singh v. State of Punjab [AIR 1963 SC 395] , Union of India v. H.C. Goel [AIR 1964 SC 364] , Mohd. Yunus Khan v. State of U.P. [(2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180] and Coal India Ltd. v. Ananta Saha [(2011) 5 SCC 142 : (2011) 1 SCC (L&S) 750] .)*
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> ***15.*** *Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."*
>
> *(Emphasis Supplied by us)*

29. In the case of ***Ravindra Kumar Rajnegi vs. State of Madhya Pradesh, Th. Its Principal Secretary and Ors.*** reported in ***(2023) SCC OnLine MP 2414*** a Single Bench of the High Court of Madhya Pradesh (authored by one of us Hon'ble Justice Sujoy Paul, Chief Justice) as His Lordship then was in Madhya Pradesh High Court while dealing with the self same subject held thus:

*"**10.** I am unable to persuade myself with the line of stand taken by the State for the simple reason that if respondents are talking about punishments inflicted on the petitioner, they must satisfy that the said orders of 'Ninda' are indeed statutory punishments under the Regulations. Learned Govt. Advocate could not point out any provision from the regulation which includes 'Ninda' or 'censure' as a punishment. It is trite that only a punishment prescribed in the rule can be treated to be a 'punishment' under the law. In (2012) 5 SCC 242 (Vijay Singh v. State of U.P.) it was held that-*

*"**20.** Unfortunately, a too trivial matter had been dragged disproportionately which has caused so much problem to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that (sic it cannot be left to) the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct. [See Glaxo Laboratories (I) Ltd. v. Presiding Officer [(1984) 1 SCC 1 : 1984 SCC (L&S) 42 : AIR 1984 SC 505] and A.L. Kalra v. Project and Equipment Corpn. of India Ltd. [(1984) 3 SCC 316 : 1984 SCC (L&S) 497 : AIR 1984 SC 1361]]*

***21.** Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law."*

The necessary corollary of the ratio of this judgment is that only such punishments can deprive the petitioner from right of consideration which are statutorily prescribed.

***11.** In this view of the matter, there was no valid reason to deprive the petitioner from the right of consideration for promotion. Right of consideration is not only a statutory right it is a fundamental right under the Constitution flowing from the Articles 14 and 16 of the Constitution (See : (2022) 12 SCC 579 Ajay Kumar Shukla and Ors. Vs. Arvind Rai and Ors.). The said right of petitioner is taken away for a reason which cannot sustain judicial scrutiny."*

(Emphasis Supplied by us)

30. It thus appears to us that it is the consistent view of the High Court as well as the Hon'ble Supreme Court that it would be highly unjust to impose penalty by a disciplinary authority against a delinquent which is not provided either in the statute or in the rules dealing with punishment as a result of misconduct proved in a disciplinary proceeding. We have no doubt in our mind that in the event the authorities are permitted to impose punishment against a delinquent which is not prescribed either in the statute or in the rule governing the field, that would encourage arbitrary exercise of the power of the executive which by no stretch of imagination can pass the yardstick of reasonableness.

31. The matter can be viewed from another angle also. In order to understand the true implications of withholding increment simpliciter and with cumulative effect, we propose to look to the reported decision of the Hon'ble Supreme Court in the case of ***Punjab State Electricity Board now Punjab State Power Corporation Ltd. vs. Raj Kumar Goel*** reported in ***AIR 2015 SC 533 : (2014) 15 SCC 748*** wherein it was held thus:

> *"**10.** At this juncture, reference to Punjab State v. Ram Lubhaya [Punjab State v. Ram Lubhaya, (1983) 2 SLR 410] would be apposite. The High Court has correctly opined as follows: (SLR p. 413, para 6)*
>
> *"6. Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simpliciter i.e. without cumulative effect, and with cumulative effect. For example, if an employee is getting Rs 100 at the time of imposition of penalty of withholding of increments, and the penalty is without cumulative effect for a period of two years and the annual increments were to be of Rs 5, then in that case for two*

years he will continue to get Rs 100 per month but after the expiry of two years, he will get at the time of next increment, Rs 115, including the increment for the past two years during which period they remained withheld."

11. *In Rang Nath Rai v. State of Bihar [Rang Nath Rai v. State of Bihar, (1997) 2 PLJR 421] the Court while interpreting the withholding of increments with cumulative effect opined that the increments earned by an incumbent were cut off as a measure of penalty forever in his upward march for earning higher scale of pay. The clock is put back to a lower stage in the time scale of pay and on expiry of the punishment period the clock would start working from that stage afresh and, therefore, the effect of stoppage of increment with cumulative effect is that the employee is reduced in his time scale of pay for the period in question and it is in perpetuity during the rest of the tenure of his service. As the increments that would have earned for those years would not be counted in the time scale of pay as a measure of penalty.*

12. *The High Court of Delhi in Uttam Kumar v. Delhi Jal Board [Uttam Kumar v. Delhi Jal Board, (2001) 58 DRJ 342 : (2001) 4 AD (Del) 166] has laid down the same principle and opined that there is a distinction between the withholding of increment without cumulative effect and withholding of increment with cumulative effect. The former is in the realm of minor penalty and the latter is in the compartment of major penalty. In the latter one, there is permanent postponement of the increment, whereas in the former one it is for a specified period, to be released after expiration of the said period.*

13. *In our considered opinion the view expressed in the aforesaid decisions is in consonance with the sound legal principle and we approve them."*

32. If we apply the propositions of law as decided in the case of ***Punjab State Electricity Board (Supra)*** in the facts and circumstances as involved in the instant writ petition, it appears to us that the punishment as imposed

upon the writ petitioner in relation to charge and the statement of imputation appears to be bit harsh and shockingly dispropertioinate.

33. It thus appears to us that the disciplinary authority by its impugned order of punishment dated 06.11.2012 was not at all justified in imposing punishment upon the writ petitioner/ original applicant of reduction of existing basic pay by 1(one) stage in his existing scale of pay from the day of passing of the said order with "*cumulative effect*" in absence of any provision in Clause 30 of the said standing order.

34. In view of such, the finding of the disciplinary authority vide its order dated 06.11.2012 regarding reduction of existing basic pay by 1(one) stage in his existing scale of pay with the date of its order is found to be correct and is hereby upheld however, the observation of the said authority regarding such punishment with "*cumulative effect*" is hereby quashed and set aside.

35. The instant writ petition is thus allowed to the extent indicated hereinabove.

36. Since it is reported at the bar that the writ petitioner has already retired from his service on attaining his age of superannuation, the respondent no. 1 authority and its instrumentalities are directed to disburse the arrears of pay and the retiral dues to the writ petitioner on account of modification of the order of punishment in this writ petition positively within 180 working days from the date of communication of the server copy of this judgment together with simple interest of 3% per annum from the date of his superannuation till

the actual payment. The time limit as fixed by this Court is preemptory and mandatory.

37. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, C.J.)

(PARTHA SARATHI SEN, J.)