* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.10.2019
Date of decision: 01.04.2022

\+ W.P.(C) No. 1240/2011

SATISH SACHIV BABA ..... Petitioner

Through: Ms. Deepali Gupta, Advocate.

versus

CPWD (M.R.D.) ..... Respondent

Through: Mr. Ripu Daman Bhardwaj, CGSC with Mr.T.P.Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The petitioner, vide the present petition seeks the setting aside of the impugned judgment/order dated 20.10.2020 of the Presiding Officer, Labour Court-XIX, Karkardooma Courts, Delhi in LIR No.213 of 2006/ LIR No.221 of 2010/ Unique Case I.D.No.02402C0042922002 titled as "Sh. Satish Sachiv Baba Vs. C.P.W.D. (M.R.D.)" and also seeks the issuance of a writ of certiorari against the order dated 08.03.2000 of the Executive Engineer, PWD Division, whereby, the services of the petitioner had been terminated apart from a prayer made by the petitioner seeking that the respondent be directed to take the petitioner back into service with back wages and all other consequential benefits.

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2. The reference made by the Secretary (Labour), Government of NCT of Delhi vide Labour notification No. S-11011/2/75/DK (1A) of the industrial dispute between the petitioner and the CPWD (M.R.D.), was as under:-

> ***"Whether services of Satish Sachiv Baba S/o Sh.Ratan Lal have been terminated illegally and/ or unjustifiably by the management and if so, to what sum of money as monetary relief alongwith other consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect."***

3. On service of notice of the reference, the petitioner had filed the statement of claim praying for passing an award in his favour and against the management with the direction to the management to reinstate him in service with continuity of service, full back wages along with consequential benefits and seeking a declaration that the order of termination dated 10.03.2000 issued by the management was illegal and unjustified.

4. The management contested the claim by filing the written statement and on completion of pleadings in the matter, the issue framed by the Presiding Officer, Labour Court-XIX on 12.09.2003 was "***as per terms of reference***".

5. The evidence was led by the workman and in as much as, it was observed during the proceedings that there was a departmental inquiry held before the termination of the claimant, the additional issue then had been framed to the effect:-

> ***"Additional Issue:- Whether enquiry conducted by the management was proper and fair?",***

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whereafter, the parties were given liberty to adduce evidence, which was led by both sides.

6. An application for amendment was filed by the workman, which was dismissed vide order dated 23.01.2009, however, in the LPA No.243/2009 & CM. No. 7655 & 7871/2009 filed by the workman before the Hon'ble Division Bench of this Court, the workman was allowed to file the amended statement of claim which was filed by the workman on 03.09.2009, wherein, he incorporated that he was working w.e.f. 23.09.1980 and continuously worked thereafter but due to some technical reasons and policy of government a proper certificate for confirming the workman could not be issued and he was confirmed w.e.f. 30.03.1991 and in the amended written statement, the management stated that the workman was engaged as a Beldar on the muster-roll in the year 1980 and was appointed as a regular Beldar in the year 1991 who joined duty only on 15.04.1991 and in the statement of claim, the workman had admitted that he was allowed to join duty on 16.04. 1991, in as much as, the submission made in the amended claim was admitted by the management, no additional issue was framed but the parties were given an opportunity to adduce additional evidence, whereafter, additional evidence was also led by the workman, though, no additional evidence was led by the management thereafter.

7. As regards the additional issue framed to the effect whether the enquiry conducted by the management was proper and fair, vide the impugned order, the learned Presiding Officer, Labour Court-XIX,

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Karkardooma Courts, Delhi in LIR No.221 of 2010 held that the management had conducted a proper and fair enquiry against the workman and that there was nothing on the record even to suggest that there had been any violation of the principles of natural justice and that the workman had fully participated in the enquiry proceedings and was duly assisted by the defence assistant who had fully cross examined all witnesses of the Department and had also examined defence witnesses and all written submissions had also been duly considered by the Enquiry Officer.

8. The petitioner through the present petition has assailed this finding of the learned Presiding Officer, Labour Court-XIX, Karkardooma Courts, Delhi submitting to the effect that though the petitioner had been permitted to present his case, the enquiry officer had proceeded with a pre-decided mind as to its outcome in a biased manner solely with a view to terminate the services of the petitioner and had failed to consider the case of the petitioner on merits.

9. As regards the issue "***as per the terms of reference***" in relation to the contention of the petitioner that his services had been illegally terminated, it was submitted by the petitioner that he had been acquitted by the criminal Court of the offences with which he had been charged that is of the alleged commission of an offence punishable under Section 342/34 of the Indian Penal Code, 1860 in relation to which, the FIR No.191/91, PS Kashmere Gate had been registered on 09.05.1991, in as much as, the petitioner had been acquitted along with other co-workers vide judgment dated 04.12.1999 by the Court of the learned MM and that the management could thus,

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not have punished him on the basis of the enquiry proceedings in relation to the very same incident of the date 09.05.1991 qua which the petitioner had already been acquitted.

10. It was also submitted by the petitioner that the other three co-accused in the FIR No.191/1991, PS Kashmere Gate who had been suspended along with him from duty on 13.05.1991 in relation to FIR No.191/1991, PS Kashmere Gate under Sections 342/34 of the Indian Penal Code, 1860 had filed an Industrial Dispute bearing No.ID 562/93 challenging their termination and vide order dated 15.01.2001 in ID No.562/93, the termination of the other three workers i.e. Jagan Nath, Rakesh and Charan Singh had been declared to be wrongful and it was submitted by the petitioner herein that he however, had chosen to file an appeal to the management seeking his reinstatement and that pursuant to his negotiations with the management, the petitioner was re-instated on 10.01.2000 to be terminated again on 10.03.2000 on the basis of the findings of the Disciplinary Enquiry.

11. The disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were instituted against the petitioner, the Beldar posted in Sub-Division-V and when subsequently in Sub-Division-IV of PWD Division No. VI vide this office Memo No.5(2)/PWD-VI/DA/1995 dated 28.6.91 and the articles of charge framed against the petitioner were to the effect:-

> *"**Charge:***
>
> *1. There is allegation of inciting and provoking the employees posted in the Office at Jamuna Bazar on 9.5.91 under Division-24.*

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2. Shri Satish, Beldar is alleged to have indulged into unbecoming acts of misbehaviour of causing physical and mental agony to Assistant Engineer Shri S.P.Garg and other Junior Engineers with the help of other employees at the place cited at Sl. No.1.

3. The above said Shri Satish Beldar is charged of having remained absent without information and permission from the work site on 9.5.91.",

and the statement of imputation of misconduct or misbehaviour against the petitioner was to the effect:-

"Article-1:

Assistant Engineer-4, Division-24 lodged an FIR with the P.S. Kashmere Gate vide letter No. Camp/Division Office/ A.E.-4/ PD-24/ DP/2 dated 9.5.91 and according to which said Shri Satish, Beldar is charged of inciting and provoking the staff present at Jamuna Bazar Sub Division-4 at 9.30 A.M. and picketed the employees from working and caused an obstruction in the government work by declaring himself as Secretary of the All India C.P.W.D. Workers' Union. In addition to this the act of inciting the staff for sit in Dharna is not only an unbecoming act for a Govt. servant but is also a violation of CCS Conduct Rules, 1964 and for which Shri Satish Beldar in unbecoming of a govt. servant.

Article-2:

Shri Satish Beldar posted in Division-6 indulged into abuses and physical intimidation along with Shri Rakesh, Charan Singh and other workers against Shri Garg, Assistant Engineer and Junior Engineers and bolted the Sub Division Clerk Officer from outside and

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forced the above said officers inside the room and kept them confined inside the room and also deprived them of the facilities of power and water. Thus he kept on abusing for about seven hours and did not allow Shri Garg, Assistant Engineer to have water or toilet facility and hang a garland of shoes outside the door of the room. Such of the activities by Shri Satish Beldar of insulting a Gazetted Officer and to make him feel slighted and to cause mental agony is a proof of the fact that said Shri Satish Beldar not only committed violation of the CCS Conduct Rules, 1964 by his aforesaid acts against a gazette officer but also committed acts rendering him unbecoming of a government servant.

Article-3:

Said Shri Satish Beldar is charged with the act of absence from duty on 9.5.91 from his work site without intimation and permission and his said act of remaining absent from his place of duty and to cause obstruction in the Govt. work by picketing other staff members and causing physical and mental injury to a Gazetted Officer is an act of grave misconduct and thereby said Shri Satish Beldar has violated the CCS Conduct Rules, 1964 and has rendered himself as unbecoming of a Govt. servant."

12. Through the counter affidavit filed on behalf of the respondents, the contentions raised by the petitioner were denied and it was submitted to the effect that the petitioner who had been appointed as a Beldar vide appointment letter No. E-5/119(O)/939 dated 30.3.1991 had joined the Department on 15.04.1991 and had

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illegally confined and manhandled Sh. S.P. Garg. Assistant Engineer, PWD, Division-24 under whose Administrative Control the workman was working and that an FIR was lodged against the workman Sh. Satish Sachiv Baba, Beldar i.e. the petitioner herein on 09.05.1991 with the Kashmere Gate, Police Station as a consequence of which he was arrested and was released on bail on 10.05.2001 and the case was proceeded in the Court of the learned Metropolitan Magistrate, Delhi and in the meanwhile the petitioner was charge sheeted by the department on 28.06.1991 on account of his misbehavior under the Central Civil Services (Conduct) Rules, 1964 and that though the petitioner and his other co-workers were acquitted vide order dated 04.12.1999 and an enquiry committee was set up by the department and enquiry proceedings were initiated and in as much as, the workman represented to the management after his acquittal, as a result of which he was re-instated on 10.1.2000 and continued working with the management, in as much as the Articles I & II of the charges in the Departmental Enquiry were proved, consequently the penalty of removal from service was imposed on the workman under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in terms of the enquiry report dated 30.08.1994.

13. That the workman appealed to the management against the against the dismissal order date 8.03.2000 under the Central Civil Services (Conduct) Rules, 1964 which appeal was rejected by the Superintending Engineer, PWD, Circle 2 (NCTD), New Delhi vide letter dated 18.09.2000 and that the workman i.e. the petitioner herein

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filed a case against the management in the Court of the Labour Tribunal, KKD Courts, New Delhi against his termination, whereafter, the impugned order was passed by the learned Presiding Officer Labour Court-XIX, Karkardooma Courts, Delhi holding to the effect that a proper and fair enquiry had been conducted under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

14. *Inter alia* the respondent has submitted that the petitioner was employed and not appointed as Beldar on purely temporary basis i.e. on muster roll on 23.09.1981 and that the certificate issued by the department was issued only to indicate the date of joining as Beldar on muster roll only, which was not treated as date of appointment as WC (work charge) staff in department. *Inter alia* it was submitted by the respondent that the Enquiry Committee had followed all enquiry procedures and charges against the petitioner of Articles I & II have been proved. It was also submitted by the respondent that merely because the petitioner was acquitted in the criminal trial was no ground to set aside the Departmental Enquiry findings which had conclusively established that the petitioner had committed misconduct and thus, after a fair and proper enquiry held by the Department with Articles I & II of the charge having been held to have been established against him, he had been punished for his misbehavior by termination of his service. The respondent has thus, submitted that the petitioner is not entitled to the relief claimed by him.

15. Vide Enquiry report dated 30.08.1994, the Enquiry Officer, Sh.S.K.Sharma after consideration of the evidence led by the

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Department and the petitioner herein, i.e. six witnesses of the Department and five witnesses of the petitioner herein observed that the departmental witnesses had given details of the events that took place on 09.05.1991 and had pin pointed to the mis demeanor and aggressive part played by the charged officer and had deposed to the effect that Sh.S.P.Garg had been manhandled and was locked up and gheraoed by several workers who were personally led by the charged officer i.e. the petitioner herein and there was absolutely nothing on the record to contradict the testimony and that the departmental witnesses were cross examined at length and DWs were also examined at length and there was not even a suggestion to the said witnesses that they were deposing falsely to their knowledge nor it was so deposed by any of the defence witnesses and that none of the defence witnesses had also deposed to the effect that the charges against the charged officer were false to their knowledge and at all. The Enquiry Officer thus, held that the Articles I & II of the charge established though the charge against the charged official put forth by Article III of his being absent without leave was not accepted, in as much as, the absence had been treated subsequently as casual leave which had been sanctioned.

16. The findings on the Articles I & II of the charge of imputation against the petitioner vide the inquiry report dated 30.08.1994 are to the effect:-

> **"<u>ARTICLE-I OF CHARGE</u>:**
>
> *The only DW who was present on the spot at the time of occurrence of the alleged events, is Shri Jai Kishan. DW-5. He has deposed that it was the CO who led the workers in the act of illegal confinement and*

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manhandling as well as foul treatment by abusive language to Shri S.P. Garg. DW-5 admitted that illegal confinement, manhandling and foul treatment to Shri Garg actually took place and that the leading role there in was performed by the CO. That the events factually took place under the leadership of the CO, is corroborated by the evidence tendered by SWs. That the events, whatever they by, were unpleasant and were under the leadership of the CO, is pleaded by the CO himself in his written-brief. The events have been testified to by SWs by personal knowledge, but even if their evidence is assigned a corroborative value only to support DW-5 Article-I of charge is proved on the strength of DW-5 deposition and CO's own claim to be the leader of the workers on the spot in relation to the events of 9.5.91. Even the CO does not claim in his written-brief that nothing untoward happened that day that time. He has laid stress on certain discrepancies in the descript on given by various witnesses. Those are in respect of details and do not about to or even tend to, saying that nothing untoward happened or that the CO was not the leading force in person on the spot.

Article-I of charge is proved.

ARTICLE-II OF CHARGE:

Here again, the reasoning of para above holds. There is substantial and material evidence on record, adduced during the Inquiry in presence of the CO, that there was illegal confinement, manhandling and foul treatment to Shri S.P. Garg and to a few Junior Engineers along with him and that the same was under the personal ladyship of the CO. There is no reason to doubt the veracity of evidence tendered in the Inquiry in the presence of the CO under keen cross- examination on his behalf, by Shri S.P. Garg and other SWs. Even if their evidence is not accorded primary value, the evidence in the Inquiry

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tendered by DW-5 Shri Jai Kishan is unambiguous in supporting the charge against the CO and is corroborated by the evidence tendered by SWs in presence of the CO, in the Inquiry.

Written- briefs do not have the statute of 'evidence'. Even in his written-brief, The CO does not claim that nothing untoward happened on the day and on the spot mentioned in the Charge-sheet and claims the he was personally leading the workers that day, the that time as he did a matter of his union duties in the past. It is only the evidence adduce in the Inquiry in presence of the CO that can be relied upon to sustain or reject a charge against the CO. There is sufficient evidence on record, ever per DW-5 alone, to sustain the charge and there is absolutely no evidence to the contrary on record.

Article-II of charge is proved."

17. *Inter alia,* the Enquiry Officer also gave general observations and findings to the effect:-

"GENERAL OBSERVATION:

At no stage or point of time in the Inquiry, the CO appeared to take the position that nothing untoward happened or that he did not lead the workers in the conflict against Shr. S.P.Garg, at all. His emphasis all through was that Shr. Garg acted unfair and harsh. That was not supported by any evidence/material on record.

Allegations of personal malafides are to be proved by leading evidence in the Inquiry. The Co led no evidence at all, not even his own as a witness.

FINDINGS:

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On the basis of documentary and oral evidence add- used in the case before me and in view of the reasons given above, I hold as under:

(i) The articles of Charge No.I & II against Shri Satish are proved.
(ii) The Articles of Charge No.III against Shri Satish is not maintainable."

18. The Disciplinary Authority i.e. the Executive Engineer, PWD Division No.VI, PWD Rest House, Nangloi, Delhi vide order No.5(2)/ PWD-VI/NCTD dated 08.03.2000 concluded vide paragraphs 6 & 7 thereof to the effect:-

"…..
……
6. AND WHEREAS after careful consideration of the allegations and charges, defence statement of Sh. Satish Beldar, the record of proceedings in the enquiry and statement of witnesses in the case and also submission of Sh.Satish Beldar under letter dated 28/8/95 and the court verdict pronounced on 4/12/99, the undersigned has decided to accept the findings of the Enquiry officer.

7. NOW THEREFORE, after considering the record of the Inquiry and the facts and circumstances of the case, and also verdict of the Hon'ble Court, the undersigned has come to the conclusion that Sh.Satish Beldar was given adequate opportunity to defend the case and it has been found that he played a leading role in inciting and instigating the worker of Jamuna Bazar, Sub-Division of PWD-24(DA) on 9/5/91 and also he grossly misbehaved with and caused physical and mental pain to Sh.S.P.Garg, Assistant Engineer on 9/5/91 by illegal confinement, man-handing and the undersigned has come to the conclusion that Sh.Satish Beldar has neither acted as a responsible officer nor appeared to be interested in

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disciplined and orderly behavior in the Govt. Service, by his well considered and deliberate act thus, violating the provision of Rule (3) (i)(ii)(iii) of CCS (Conduct) Rules 1964 and under the circumstances referred to above, undersigned is of the view that ends of justice would be met if the penalty of removal from service is imposed on him. Accordingly the above said penalty is hereby imposed on Sh.Satish Beldar."

19. Vide order dated 12.11.2018, it was considered essential by this Court to peruse the testimonies of SW-1, SW-2, SW-3, SW-4, SW-5, SW-6 and DW-1, DW-2, DW-3, DW-4, DW-5 examined during the enquiry proceedings as per the enquiry conducted by Sh.S.K.Sharma, Enquiry Officer as well as also the Award in ID No.562/93 dated 15.01.2001 vide which the termination of three other workmen named Jagan Nath, Rakesh and Charan Singh was declared wrongful. The copy of the said Award dated 15.01.2001 in ID No.562/93 was placed on record on behalf of the petitioner on 30.04.2019. The copies of the testimonies recorded in the enquiry proceedings were submitted along with the Departmental Enquiry proceedings on 16.10.2019 on behalf of the respondent.

20. Written submissions and oral submissions have been made on behalf of either side.

21. *Inter alia* it has been submitted on behalf of the petitioner that the charge sheet in this case was issued on 28.06.1991, the enquiry report submitted on 30.08.1994, the petitioner was acquitted in the FIR on 04.12.1999 and was taken back on duty on 10.01.2000 and the penalty of removal on the basis of the enquiry report dated 30.08.1994

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was imposed on 08.03.2000. It has thus, been submitted on behalf of the petitioner that once he had been taken back on duty on 10.01.2000, hence there accrued no fresh cause of action against him for passing an order of removal from the service, in as much as, all the other previous causes got merged/ purged once he was permitted to join the duty back after his acquittal in the FIR on 04.12.1999.

22. *Inter alia,* it was submitted on behalf of the petitioner that the order of removal from service passed on 08.03.2000 on the basis of the enquiry report dated 30.08.1994 is harsh, unfair and beyond the principles of natural justice apart from being barred by gross delay and latches. The petitioner has further submitted that the findings of the Enquiry Officer were unjustified and illegal and in ID No.562/93 qua the other three co-workers who had also been acquitted in the FIR, the termination had been held to be illegal vide award dated 15.01.2001.

23. *Inter alia,* the petitioner has submitted that no action had been taken on the enquiry report dated 30.08.1994 till 08.03.2000 and that thus, the penalty imposed on him cannot be sustained in terms of the verdict in ***"Ashwani Kumar vs. Presiding Judge, Labour Court" [2008] 1 HLJ 303.***

24. The petitioner has further submitted that in terms of the verdict of the Hon'ble Division Bench of this Court in "***Director General Works, CPWD Vs. Davinder Singh" 148 (2008) DLT 272 DB***, no discrimination should be made between similarly situated persons who should be given the same benefits and treatment.

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25. On behalf of the respondent, it has been submitted that workman had appealed to the management against the dismissal order dated 08.03.2000 under the Central Civil Services (Conduct) Rules, 1964 and that appeal was rejected vide letter dated 18.09.2000 by the Superintending Engineer, PWD, Circle 2 (NCTD), New Delhi.

26. *Inter alia*, through the written submissions that have been submitted on behalf of the respondent, it has been submitted that the enquiry report was prepared and signed on 30.08.1994, which was also sent to the petitioner vide an office order No.5(2)/PWD-VI/EC/2408 dated 22.10.1994 and his submission on report was received on 28.08.1995 vide a letter dated 28.08.1995 and that there was an official correspondence between the petitioner and MRD and between the Division office to the Circle office/ Chief office as to the authority to fix the penalty on the enquiry report and at the end it was concluded that the Executive Engineer, PWD-VI had the authority to fix the penalty and that is why there was delay in taking a decision of removal of the petitioner from the service.

27. *Inter alia*, the respondent has submitted that the petitioner had been given an adequate opportunity to defend his case in the enquiry proceedings as has been held in the impugned award and the petitioner had been found to have played a leading role in inciting and instigating the workers of Jamna Bazar, Sub Division of PWD-24(DA) on 09.05.1991 and had grossly misbehaved and caused physical and mental pain to Sh.S.P.Garg, Assistant Engineer on 09.05.1991 by illegal confinement and manhandling and that thus, the Executive

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Engineer had come to the conclusion that the petitioner had neither acted as a responsible officer nor interested in being disciplined and orderly behavior in the government service by his well considered and deliberate act and had thus, violated the provision of Rule 3(i)(ii)(iii) of the Central Civil Services (Conduct) Rules, 1964.

28. *Inter alia*, the respondent has submitted that the charges against the petitioner were graver than those against the other three persons who had been tried along with the petitioner, in as much as, the petitioner was their leader who had instigated the workers of Jamuna Bazar Sub Division of the PWD Division-24 on 09.05.1991 and had taken other workers with him and grossly misbehaved with and caused physical and mental pain to Sh.S.P.Garg, Assistant Engineer and Junior Engineers there on 09.05.1991. It has also been submitted on behalf of the respondent that the petitioner cannot claim negative equality/parity as entitlement or as right with the other co-accused in the FIR i.e. the FIR No.191/91, PS Kashmere Gate under Sections 342/34 of the Indian Penal Code, 1860.

29. It has also been submitted on behalf of the respondent that the acquittal by the criminal Court does not debar the management from punishing the workman on the basis of enquiry proceedings and that the acquittal in a criminal case does not entitle a person to automatic reinstatement because disciplinary action can be taken after acquittal as well.

30. Reliance was placed on behalf of the respondent on the verdicts of the Hon'ble Supreme Court in ***"Ajit Kumar Nag V. G.M.Indian Oil***

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Corporation Ltd." AIR 2005 SUPREME COURT 4217 with specific reference to paragraph 11 of the said verdict, which reads to the effect:-

> ***"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. 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***

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appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.,, *and*

in ***"NOIDA ENTERPRENEURES ASSN. V. NOIDA & ORS." JT 2007 (2) SC 620*** with specific reference to observations in paragraphs 12, 16 & 17, which read to the effect:-

> ***"12. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. 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. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry 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 criminal case 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 enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory***

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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 department enquiry would seriously prejudice the delinquent in his defence 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.

…

…

16. In Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. (1999 (3) SCC 679), this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In paragraph 22 conclusions which are deducible from various decisions were summarised. They are as follows:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

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(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

17. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and re-instatement in service has been dealt with by this Court in Union of India and Anr. v. Bihari Lal Sidhana (1997 (4) SCC 385). It was held in paragraph 5 as follows:

> *"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be re- instated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the*

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> *conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Re-instatement would be a charter for him to indulge with impunity in misappropriation of public money."*

and on the verdict in ***"UNION OF INDIA V. BIHARI LAL SIDHANA" (1997) 4 SUPREME COURT CASES 385*** with specific reference to observations in paragraph 5 of the said verdict, which reads to the effect:-

> ***"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision***

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whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

ANALYSIS

31. On a consideration of the submissions that have been made on behalf of the petitioner and the respondent and on a perusal of the enquiry proceedings that have been conducted in the instant case inclusive of the testimonies recorded during the enquiry, which was concluded vide enquiry proceedings dated 30.08.1994 by Sh.S.K.Sharma, Enquiry Officer against the petitioner despite the acquittal of the petitioner and three other co-workers in FIR No.191/91, PS Kashmere Gate under Sections 342/34 of the Indian Penal Code, 1860 in relation to the very same incident of the date 09.05.1991, it is essential to observe that as has been rightly contended on behalf of the respondent, the acquittal in criminal proceedings in which the guilt of a person has to be held to have been proved beyond a reasonable doubt, does not preclude the disciplinary proceedings in which the charges of misconduct have to be established on a preponderance of probabilities to continue and to consequentially

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result into a penalty inclusive of a penalty of termination of service in the event of an employee having been held to have violated the service rules.

32. The verdict of the Hon'ble Supreme Court in ***"The State of Karnataka & Anr. Vs. Umesh"*** in Civil Appeal Nos.1763-1764 of 2022 dated 22.03.2022 reiterates this status of law as has already been enunciated in ***"State of Haryana Vs. Rattan Singh" (1977) 2 SCC 491, "State of Rajasthan V. B.K.Meena" (1966) 6 SCC 417; "Krishnakali Tea Estate V. Akhil Bharatiya Chah Mazdoor Sangh" (2004) 8 SCC 200; "Ajit Kumar Nag V. Indian Oil Corporation Ltd." (2005) 7 SCC 764;*** and ***"CISF V. Abrar Ali" (2017) 4 SCC 507***.

33. The observations in ***"State of Haryana Vs. Rattan Singh"*** (supra) in paragraph 4 of the said verdict are categorical which reads to the effect:-

> *"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,*

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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. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

(emphasis supplied)

34. The observations of the Hon'ble Supreme Court in ***"The State of Karnataka & Anr. Vs. Umesh"*** (supra) in paragraph 13 thereof are to the effect:-

> ***"13. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is***

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entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction."

35. Furthermore, as held in ***"The State of Karnataka & Anr. Vs. Umesh"*** in Civil Appeal Nos.1763-1764 of 2022 dated 22.03.2022, in exercise of judicial review, the Court does not act as an Appellate Forum qua the findings of the disciplinary authority and the Court does not reappreciate the evidence on the basis of which the findings of misconduct have been arrived at in the course of a disciplinary enquiry, and that the Court is required in the exercise of judicial review to restrict its review to determine whether:

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed;

(iv) whether the findings of the disciplinary authority suffer from perversity and;

(v) whether the penalty is disproportionate to the proven misconduct.

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36. In the instant case, as has been rightly held vide the impugned award, the rules of natural justice have been complied with. Furthermore, on a perusal of the enquiry record and the consistent testimonies of the witnesses that have been recorded i.e. SW-1, SW-2, SW-3, SW-4, SW-5, SW-6 qua the material particulars and DW-1, DW-2, DW-3, DW-4, DW-5, it is apparent that the testimony of Mr.S.P.Garg, Assistant Engineer who had been confined under the leadership of the petitioner by other co-associate workers and had been confined in a room from about 9.30 AM till 4.30 PM till he was able to get out of the room in which he was bolted without a jug of water and without a chair which had also been removed from the room with an attempt having been made by the petitioner and his associate to even blacken the face of Mr.S.P.Garg, it is apparent that the findings of misconduct arrived at by the Enquiry Officer and upheld by the Disciplinary Authority are clearly based on evidence that had been led in the enquiry proceedings. The statutory rules governing the conduct of the disciplinary enquiry have clearly been observed and in view of the findings of the enquiry office vide the report dated 30.08.1994 as approved by the Disciplinary Authority and on a perusal of the testimonies of the witnesses produced during the enquiry by the Department, there is nothing to indicate that the findings of the Disciplinary Authority, whereby, a penalty of termination of services of the petitioner has been imposed, is in any manner perverse or in any manner disproportionate to the proven misconduct of illegal confinement of Mr.S.P.Garg, the Assistant Engineer by the petitioner, the leader of the workers in the unrest in confining Mr.S.P. Garg in a

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room in which he was bolted from outside and abused and physically manhandled, from which the water jug and chair were removed with an attempt having been made even to blacken his face.

37. Though, undoubtedly, vide the award dated 15.01.2001 in ID No.562/93, the dismissal of the services of Rakesh, Charan Singh and Jagan Nath has been held to the illegal and unjustified, it is essential to observe that there were no enquiry proceedings initiated by the Department against the said persons namely. Rakesh, Charan Singh and Jagan Nath despite there being some allegations of misconduct against them and thus, it had been held vide the award dated 15.01.2001 in ID No.562/93 that the management had not been able to prove the charges in this case and furthermore, the management had even been proceeded ex-parte in the proceedings in ID No.562/93.

38. In the instant case against the petitioner, the enquiry proceedings were initiated and concluded on 30.08.1994 and the disciplinary proceedings were also held and the petitioner was terminated from service in terms of the disciplinary proceedings vide order dated 08.03.2000 and there is no parity between the case of the petitioner and the other persons namely Rakesh, Charan Singh and Jagan Nath in ID No.562/93 which the management i.e. the respondent herein had not even chosen to contest. In the instant case of the petitioner where apart from the full fledged enquiry that had taken place, the depositions of the witnesses at the spot inclusive of the person who had been illegally confined Mr.S.P. Garg *inter alia* by the petitioner along with other workers as being the leader of the said

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workers had been recorded, is at much variance from the case of the other three persons who had been reinstated into service in terms of the award dated 15.01.2001 in ID No.562/93.

CONCLUSION

39. In view of the findings herein to the effect that the rules of natural justice have been fully followed in the enquiry proceedings that had been conducted against the petitioner and concluded vide the enquiry report dated 30.08.1994 and on a perusal of the depositions of the witnesses recorded in the enquiry proceedings, copies of which have been placed on the record by the petitioner, and the factum that mere acquittal in the criminal proceedings does not prevent the management to proceed with the departmental proceedings against an employee, coupled with the factum that the power of judicial review of the findings of misconduct arrived at in the course of the disciplinary enquiry does not extend to reappreciating the entire evidence that had been recorded therein, and is restricted to determine whether:

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed;

(iv) whether the findings of the disciplinary authority suffer from perversity and;

(v) whether the penalty is disproportionate to the proven misconduct,

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and it is held that in the instant case, there is no ground to set aside the findings of misconduct and the penalty imposed of termination of service on the petitioner as imposed by the Disciplinary Authority. In these circumstances, it is held that there is no infirmity in the impugned award dated 20.10.2010 of the learned Presiding Officer, Labour Court-XIX, Karkardooma Courts, Delhi in LIR No.213 of 2006/ LIR No.221 of 2010/ Unique Case I.D.No.02402C0042922002 titled as "Sh. Satish Sachiv Baba Vs. C.P.W.D. (M.R.D.).

40. The petition is thus, dismissed.

ANU MALHOTRA, J.

APRIL 01, 2022
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