

Editorial

THE BANE OF BANKING INDUSTRY – VERBAL INSTRUCTIONS

any a time, we come across with situations where an officer is ensnared into the net of disciplinary proceedings or called upon to explain the reasons for omission or commission, alleging transgression, deviation or flouting the extant norms or instructions of the Bank.

A threadbare analysis would definitely reveal on many occasions, the concerned officer would have acted upon the verbal instructions of authorities/controllers. Orders/instructions are words of mouth and not in black and white. Whatever may be the substantiation, it will seldom be taken cognizance of One-line whether you have it in writing?" gets unanswered. It is natural that the issuer of verbal instruction(s) disowns his/her very instructions. Ultimately, the officer who held the order of his/her superior as sacrosanct becomes the scapegoat and ends up paying a heavy price, in case the impact of carrying out such instructions goes against the interest of the bank or results in pecuniary/reputation loss.

This is an age of competition, world of dog-eats-dog. To achieve the business targets, officers are constrained to tread every path and many a time to deviate from the laid down norms. The undersigned has recently received a communication from a member that his superiors are being instructed to disburse loans without carrying out the procedure of inspection/documentation just to achieve the budgetary targets! Similarly, there is tremendous pressure exerted from the controllers for audit compliance

within a very short span of time which is well-nigh impossible. This has resulted in a plethora of false compliances leading to disciplinary proceedings and eventual punishment. Sometimes it makes us wonder while joining the rat race for career advancement by achieving budgetary targets by adopting fair or unfair means are we not compromising with ethics and the interest of our esteemed organisation?

Verbal orders, per se, are not unlawful or illegal as long as they are reasonable and within the ambit of law and the policies/instructions of the Bank. But, they have to be put on paper either before acting or post-facto and confirmation is held on record.

Vigilance Manual of CVC (Ed 2019) lays down that the action of employee attracts vigilance angle, if one 'seems to have complied with unauthorised and unlawful oral instructions of his seniors without bringing them to the notice of the Competent Authority as per extant guidelines".

It may please be observed that SBI Officer's Service Regulations has in-built provision to check the menace. It mandates a superior to put the oral instruction in writing. While we all are very familiar with the use and abuse of OSR – Regulation 50(4), not much importance and attention is given to the second Para of 50(3).

Quote

50. (3) No officer shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgmentt except when he is acting under the direction of his officer superior.

Provided wherever such directions are oral in nature, the same shall be confirmed in writing by his superior officer.

Unquote

It is clear from the above Regulation that the superior officer is bound to confirm the oral instructions in writing. Else, he/she will be breaching the OSR, which is also a subject matter of Reg 50(4). But, this Regulation is very conveniently ignored!!

Reg 50(3) Para 2, is the forethought of our seniors, who had apprehended that a superior may misuse his/her authority to force the subordinate, issue oral orders and therefore the need to protect the subordinates. But, this has been seldom been complied with. It is an oxymoron that superiors do not comply with Regulations, but expect compliance from subordinates!!

Many instructions flow in meetings and discourses and officers try to bank upon such instructions which may result in injudicious decisions. But, at the time when the accountability aspect is examined, nothing will be on record to show that an officer has acted at the behest of his superior. In banking, many decisions are based on mutual trust and faith. However, one has to assess the situation before acting upon such verbal instructions, which are in direct contravention of extant norms and procedures.

Then, the moot point is whether there solution to this problem? Yes, it is within us and well within the ambit of the system. We all will have to create an environment where the instructions or orders are issued in writing. This can happen only when we issue the instructions which are doable as per the bank's norms. Officers should develop the practice of communication with their superiors. The actions should be reported in a diligent manner and be held on record. Communication in black and white as well as screenshots of messages is irreplaceable.

The best practice is to ask ourselves -

"Given a situation, will I do this?"

Is my instruction just, fair and within the bank's norms?

If the answer is yes, then there should not be any hesitation to put such instructions in writing. If the answer is NO, then it is the duty of the subordinate not to comply with such illegal instructions.

MISINFORMATION ON SOCIAL MEDIA

Text of AISBOF Circular No. 15/2022 dated 19/02/2022.

An RTI reply purportedly issued by our Bank is doing rounds on social media related to lunch hours in the Bank for officers and award staff. The RTI applicant (identity unknown) has specifically asked for some circular/instructions in this regard. The CPIO under Section 2(f) of the act has to share the information, which would mean anything which exists in any form with a public authority, and the public authority is not entitled to give its opinion.

As such, the reply to the RTI stated that 'no such information is available on record', in respect of officers of the Bank, which a fact in black and white is. But in consonance with the age-old convention and established practices followed over the years, the time for lunch break has been customized for officers and now it has been made more flexible than ever.

02. However, this RTI reply has been purposively misconstrued to generate negativity amongst the officers and other stakeholders that officers are

SUCCESS AWAITS AT THE DOOR WHERE DILIGENCE IS

not entitled to any lunch break. There is no instance incidence in the bank since 1955 that officers have been denied lunchtime or action taken by the bank for going to the canteen/Officers' Mess during banking hours for taking lunch. Apparently, the RTI reply document has been deliberately tampered with malafide intent by the person(s) with vested interest to belittle our esteemed institution and our Federation by sharing on social media platforms. The letter has have been tampered with which appears to be the handiwork of certain person(s) with an ulterior motive.

03. In view of the extent of responsibility and nature of work, let us understand that there are no fixed lunch hours for supervisory cadre in the entire banking industry because of the extant service conditions and also because of the fact that unlike workmen, who enjoy the protection granted under various statutes of the country, officers, on the other hand, do not have regulated working hours.

04. The very fact that officers do not have fixed duty hours implies that we are free to take lunch break anytime, as per our convenience. Thus, the RTI reply should be rightfully inferred as – 'Bank officers can have lunch at any time as per their convenience. Neither has anybody denied us from having lunch during office hours nor anybody can deny us from having lunch anytime during the day. It is a matter of our right to life, protected under Article 21 of the constitution.

"The fundamental right to life enshrined in Article 21 of the Constitution may be interpreted to include the right to live with human dignity, which may include the right to food and other basic necessities", held a bench of Supreme Court on 29th July 2021.

05. Accordingly, the Bank has provided designated Officers' mess/ Lunch Clubs at several Regional and Administrative Offices and at all Head Offices and Corporate Offices. It is pertinent to note that the Bank provides for subsidized food through its welfare funds allocated to employees. All official meetings (extending through the day, like Previews, structured meetings, etc.), training

programmes for officers conducted at training institutes have lunch breaks.

06. It thus appears that the intent of 'misinterpretation' of a specific RTI reply is nothing but an attempt to sully the image of the Bank with a premeditated motive to demean and damage the dignity of bank officers apart from the fact of their mal intention of generating cheap publicity. As responsible officers of the Bank, we should not form any adverse opinion based on such contorted social media communications to demoralize the workforce/ officers.

07. Incidentally, our demand for regulated working hours for bank officers has continuously been flagged and discussed at appropriate forums. This issue was part of our Charter of Demands during the last wage negotiations and is very much alive in our further negotiations with IBA/ Government. Our struggle for achieving regulated working hours for our members will continue until we triumph.

08. In this regard, we would also like to share that as per the fundamental Conventions of the International Labour Organization (popularly known as Geneva Conventions), the supervisory cadre in commercial or trading establishments should be entitled to regulated work hours. India has not yet ratified 2 out of the 8 fundamental conventions of ILO. The ratification of these conventions would involve granting certain rights that are prohibited under the statutory rules, for the supervisory cadre employees. As many South Asian nations have also ratified the fundamental ILO conventions, we are confident that India is a founding member, would soon ratify the remaining fundamental conventions.

09. Till such time it is taken to a logical conclusion, our struggle will continue for regulated working hours for supervisory cadre, which will certainly see the light of the day.

This is a classic example of creating problems for a solution, therefore, we urge upon our Affiliates and members not to assign any cognizance to such letters/messages circulated on social media.■

DEMAND FOR EARLY RESOLUTION OF PENDING AND RESIDUAL ISSUES

Text of AIBOC Circular No. 06/2022 dated 24/02/2022 reproduced the text of UFBU Circular No.2022/02 dated 23.02.2022

OUR DEMAND FOR EARLY RESOLUTION OF PENDING AND RESIDUAL ISSUES

All our Unions are aware that in our UFBU meeting held on the 7th instant, there was a detailed discussion and deliberation about the undue delay on the part of IBA in resolving the pending and residual issues.

Many Banks have referred to various issues relating to the implementation of the 11th Bipartite Settlement/8th Officers' Joint Note for clarification. Even though IBA agreed to issue a clarificatory circular in the form of an FAQ, the same is yet to be issued. Consequently, benefit of improvement in stagnation increments has not been properly extended to the eligible employees and officers.

Clarifications are also pending regarding fixation of salary for Ex-servicemen employees. Guidelines on revised fitment formula for promotees from sub-staff to clerical cadre, clerical to officer cadre and officer to higher officer cadres (from November 2017) are also yet to be issued to the Banks.

Similarly, the issues identified as residual issues like 5 Day Banking, etc have not been discussed further by the IBA by holding discussion with the Unions for

amicable solution.

While improvement in Family Pension has been approved and implemented by the Banks, other important issues like updation of pension, improvements in pension scheme, etc. are also pending and further discussions have not been held by the IBA in the last seven months. This has resulted in a lot of resentment amongst the retired employees and officers.

The meeting felt that IBA is not responsive and apparently not serious to address these issues and hence it was decided to launch agitational programmes on these sensitive issues.

Since IBA is not holding any discussions and taking measures to resolve these issues, as decided in our meeting, the following programmes are being given now.

03-3-2022: Demonstration before all Branches during lunch time/after office hours

10-3-2022: Demonstration before all Branches during lunch time/after office hours

15-3-2022: Centralised demonstrations in all towns and cities

Further programmes will be announced if IBA does not move in the matter.■

INTERNATIONAL WOMEN'S DAY – 8th MARCH 2022 #BreakTheBias

Text of AIBOC Circular No. 09/2022 dated 08/03/2022.

Greetings on the auspicious occasion of International Women's Day – 2022.

Each year on March 8, International Women's Day is observed in order to celebrate the social, economic, cultural, and political achievements of women. The women's day has been celebrated for well over a century, with the first one in 1911.

The day commemorates women, who despite various challenges posed by society have proven their mettle in every sphere across the world. The day marks a call to a gender equal world - free of bias, stereotypes and discrimination and one that is diverse, equitable, and inclusive while differences are valued and celebrated.

The fight for equality has been a long one. It is a battle not yet won. Article 21 of the Indian Constitution which deals with right to life has been

WORK IS WORSHIP, DO YOUR DUTY

expanded to include the right to Life with Dignity. This provision has been invoked to safeguard the rights of women such as right to divorce, to live a life free from violence and above all, free of fear, coercion and discrimination.

The campaign theme for International Women's Day 2022 is #BreakTheBias. Whether deliberate or unconscious, bias makes it difficult for women to move ahead. Knowing that bias exists is not enough. The United Nation's theme for this year's observance is "Gender equality today for a sustainable tomorrow" in recognition and celebration of the women and girls leading the charge on climate change adaptation and response and to honour their leadership and contribution towards a sustainable future. The vital link between gender, social equity and climate change, and recognise that without gender equality today, a sustainable future, an equal future remains out of reach.

You are aware that International Women's Day first emerged from the activities of labour movements at the turn of the twentieth century across North America and Europe. "The first National Woman's Day was observed in the United States on February 28, 1909, which the Socialist Party of America dedicated in honour of the 1908 garment workers' strike in New York, where women protested against harsh working conditions. In 1917, women in Russia chose to protest and strike under the slogan "Bread and Peace" on the last Sunday in February (which fell on 8 March on the Gregorian calendar). Their movement ultimately led to the enactment of women's suffrage in Russia."

According to World Bank estimates, India has one of the lowest female labour force participation rates in the world. Less than a third of women – defined in the report as 15 or older – are working or actively looking for a job. Also, 41% of women aged 15-49 have never been to school compared to 18% of men (Dasra). The 'field' already begins on an unequal terrain for girls and women, who spend much of their life catching up, to reach the elusive level playing field. The challenges faced by women leads to a serious lack of representation of women, especially at the senior leadership level positions. There are many complex factors that come in the path of a woman's work life, denying her opportunities as well as posing

challenges that deny her the right to have an equitable journey. Many factors, both personal and professional, are at play here.

Our Confederation is committed to the spirit of 'Gender- Sensitivity' in our workplace and has identified important issues that are fundamental to women who are trying to progress in the workplace across the country.

We encourage more and more women to actively participate in the trade union activities for a better tomorrow. With significant spurt in the number of women in the Banking Industry with every passing year, we are elated to witness the emergence of women leaders in various affiliates though the number is too few compared to the number of women officers in the industry. However, all our affiliates are consciously involving and inducting more and more women in various tiers and we are confident that our women comrades will come forward in greater numbers and hold the mantle and lead from the front.

We are sensitive and alive to the challenges our women face in their work places. In this backdrop, we have been endeavouring relentlessly to ensure fair, balanced and much required service conditions with a friendly and familial working atmosphere.

Our organisation has always been proactive in this evolving situation and taken many initiatives for betterment of the plights of our female colleagues. In this day, we pledge again to have a broader outlook while dealing with gender issues, remain vigilant in spotting our biases and create an environment where voices from our female colleagues can be heard clearly and remedial actions for their discomfort can be incorporated both at a personal and institutional level.

We urge upon all our Affiliates/State Units to organise symposiums, conventions throughout the year involving our lady members as we need to remind ourselves that the spirit of Women's Day is not merely confined to one particular day. On the contrary, we have to strive throughout the year to create awareness for ensuring equal rights and equal opportunity for them, in the society.

SBI MTUAL'S MULTICAP NFO GARNERS 8,200 CR

SBI Mutual Fund has managed to mop-up about 8,200 crore through its new fund offer of Multicap Fund, marking the highest ever fund raising in the category. The investment would have been higher if not for the recent market distruption. Usually, HNIs invest in the last 2-3 days of an NFO, however, the student crash post the Russian-Ukraine war hit the investor sentiment hard, said an analyst. The average ticket size was 2.5 lakh during the NFO and the fund house added 1.16 lakh new PAN. This is SBI

MF's second-highest mop-up in an NFO. Last August, it had raised a record 14,551 crores through its Balanced Advantage Fund.

DP Singh, Chief Business Officer, SBI MF, told Business Line that it will start deploying funds as soon as possible to take advantage of the recent market fall and build a strong portfolio.

Sources: Business Line Dated 04.03.2022

COVER HIKE NOT WITHSTANDING ONLY 51% OF BANK DEPOSITS ARE INSURED But it's still higher than the international benchmark

Even after increasing the deposit insurance to ₹ 5 lakh (from ₹ 1 lakh), only about 51 per cent deposits are fully protected, though this is still high in comparison to the international benchmark, observed the Economic Survey of 2021-22.

The survey, which was tabled in both Houses of the Parliament on Monday, said that the total insured deposits were ₹ 76.2 trillion at the end of March 2021. This was 50.9 per cent of the total assessable deposits of ₹ 149.7 trillion. This was also higher than the international benchmark of 20-30 percent.

When deposit insurance was only $\ref{1}$ lakh around 30 percent of deposits were covered.

In Budget 2020-21 Finance Minister Nirmala Sitharaman announced an increase in cover to ₹ 5 lakh. With the increase in cover, the number of fully protected accounts was 2.47 billion at the end of March 2021, constituting 98.1 per cent of the total number of accounts at 2.52 billion. This was against the international benchmark of 80 per cent, the survey noted.

Among bank groups, the percentage of insured deposits is higher for regional rural banks at 84 per cent, followed by 70 per cent for co-operative banks, 59 per cent for State Bank of India, 55 per cent for public sector banks (PSBs), 40 per cent for private sector banks and 9 per cent for foreign banks.

"Up to March 31, 2021, a cumulative amount of ₹ 5,763 crore has been paid towards claims since the inception of deposit insurance (₹ 296 crores in respect of 27 commercial banks; ₹ 5,467 crores in

respect of 365 co-operative banks)," the Survey said.

After the Deposit Insurance and Credit Guarantee Corporation Act was amended last year, which laid down a 90-day timeline for payment to depositors, over ₹ 1,500 crores has been paid to over 120,000 depositors against their claims as of early January.

Commenting on bad loans in the banking sector, the Survey said standard restructured advances have increased as gross non-performing assets fell to 6.9 percent as of end- September 2021, from 7.5 percent a year ago, Overall, the stressed advances ratio of commercial banks increased from 7.9 percent end-September 2020 to 8.5 percent at end-September 2021.

"Overall, the banking system appears to have weathered the pandemic shock well even if there is some lagged impact still in the pipeline," the Survey said.

The Survey highlighted the overall improvement in the capital position of commercial banks, saying PSBs capital adequacy ratio improved due to both government capital infusion and capital-raising from the market.

"Based on the capital position as of September 30, 2021, all PSBs and Private Sector banks maintained the capital conservation buffer well over 2.5 percent," the report said.

Commenting on loan growth, the Survey observed it picked up sharply in December to reach a year-on-year growth of 9.2 ppercentas on December 31.

BE TRUTHFUL, BE FEARLESS

2021. Bank credit growth has been sluggish for the past two years.

Growth in non-food credit was mainly driven by personal loans and loans to the agriculture sector.

The report also observed that credit to industry is showing signs of progress, while deceleration in the services sector continued.■

Sources: Business Standard Dated 01.02.2022

2020 (164) FLR 654] (SUPREME COURT)

N.V.RAMANA, M.M. SHANTANAGOUDAR and AJAY RASTOGI, JJ.

C.A. No. 7130 of 2009

August 1, 2019

Between

SHASHI BHUSAN PRASAD

And

INSPECTOR GENERAL, CENTRAL INDUSTRIAL SECURITY FORCE and others

Central Industrial Security Force Rules, 1969-Rule 34-Dismissal-From service-Gross-misconduct-Appellant while working as constable in CISF, arrested for providing revolver to 'S'-He was dismissed after enquiry-Acquitted in criminal case-Seeking benefit of acquittal on plea of having nexus with disciplinary inquiry not valid-Acquittal in judicial proceeding does not ipso facto absolve delinquent from liability under disciplinary proceeding-Charge in criminal case and departmental enquiry were different having no nexus and based on different set of facts-Appellant has no case that there was any violation of Rules or procedure or opportunity-Courts under Article 226 and 227 of Constitution not to interfere in disciplinary proceedings.

[Para 18]

JUDGMENT

AJAY RASTOGI,-J. This appeal is directed against the final judgment and order dated 17th July, 2008 passed by the High Court of Orissa dismissing the writ petition filed by the appellant.

The brief seminal facts which may be relevant for consideration of the present appeal are that while serving as Constable in Central Industrial Security Force (in short "CISF") Unit, Rourkela Steel Plant, Rourkela, a criminal case was instituted against the appellant in Plantsite P.S. Case No. 378 of under Section 25(1) of the Arms Act and he was arrested on 30th November, 1992 on the allegation that he had provided a country made revolver to Subash Chandra Agarwalla, who murdered his aunt with it, giving rise to Sessions Trial No. 188/41 of 1993. At the same time, for a gross misconduct being committed by him in discharge of his duties, disciplinary proceedings were initiated against him by serving a Memorandum along with the chargesheet dated 9th February, under Rule 34 of CISF Rules, 1969.

- 2. After holding disciplinary inquiry in terms of the procedure prescribed under the scheme of Rules, 1969, the Inquiry Officer after due compliance of the principles of natural justice, recorded a finding of guilt and the charge against the delinguent appellant stood proved as it reveals from the Report of Inquiry (Annexure P-4 of the paper book) dated 27 th April, 1994. After copy of the inquiry report was made available to the appellant and after affording him an opportunity of hearing, the Disciplinary Authority concurred with the finding recorded by the Inquiry Officer and while upholding the guilt inflicted him with a penalty of dismissal from service vide Order dated 21 st May, 1994. It may be relevant to note that the Sessions Trial No. 188/41 of 1993 was also proceeded against him and it reveals from the record that since the material prosecution witnesses stood hostile, he was acquitted by the competent Court of jurisdiction vide judgment dated 12th September, 1995.
- 3. Being dissatisfied with the order of dismissal passed by the Disciplinary Authority, the appellant preferred departmental appeal primarily on the ground that since he has been acquitted in the

OUR LIFE IS WHAT OUR THOUGHTS MAKE IT

criminal case which is based on the same set of facts and evidence, the order of dismissal passed by the Disciplinary Authority is not legally sustainable. The appeal was rejected by the Appellate Authority vide order dated 24th April, 1996 which was further assailed before the Revisional Authority that also met with the fate of its dismissal. That came to be challenged in a Writ Petition before the High Court under Articles 226 and 227 of the Constitution of India. The High Court of Orissa, on appraisal of the material on record and taking note of the submission alleged by the appellant of his acquittal in the criminal trial vide judgment dated 12th September, 1995 still had faced the order of dismissal by the Disciplinary Authority being not sustainable but the High Court after examining in totality the facts and circumstances of the case, dismissed the writ petition vide judgment dated 17th July, 2008 which is a subject -matter of appeal before us.

- 4. The main thrust of submission of learned Counsel for the appellant is that since both the criminal/ departmental proceedings were based on same set of facts and evidence, and after he has been acquitted by the Court of competent jurisdiction vide judgment dated 12th September, 1995, the Disciplinary/Appellate Authority was under an obligation to give precedence of the judicial proceedings and in the given circumstances, inflicting penalty of dismissal from service based on the report of inquiry was not legally sustainable and further submitted that the error has not only been committed by the departmental authorities but also by the High Court in not appreciating the submission made by the appellant in its right earnest and in the given circumstances, the judgment impugned dated 17th July, 2008 deserves to be interfered by this Court.
- 5. In support of his submission, learned Counsel for the appellant has placed reliance on the judgment of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Others. and G.M. Tank v. State of Gujarat and others.
- 6. Per contra, learned Counsel for the respondents, on the other hand, while supporting the finding recorded by the High Court under the impugned judgment dated 17 th July, 2008 further submits that the charge in a departmental inquiry and in

the criminal case stood against the appellant were totally different, in the criminal case he was charged for committing an offence under **Section 25(1)(a)** of the Arms Act, while in the departmental inquiry, the charge was of a delinquency which he committed in discharge of his duties in handing over an unlicensed fire arm with ammunitions(a country made revolver) concealed in a brief case at the residence of Constable S.P. Patel on 19th November, 1992 which has facilitated Subash Chandra Agarwalla (accused) in a criminal case against in committing an offence under Section 302/392 IPC and under Section 27 of the Arms Act.

- 7. According to the learned Counsel, both the allegations are based on different sets of facts and evidence having no co-relationship and once the appellant has been held guilty in a disciplinary inquiry has been rightly punished with the penalty of dismissal from service, having no nexus with the judgment of acquittal passed by the Court of competent jurisdiction.
- 8. Learned Counsel further submits that what being urged by the appellant has been examined by the High Court and this being the settled principles of law that in a disciplinary inquiry one has to proceed on the "preponderance of probability" whereas in the criminal case, the charge is to be "proved beyond reasonable doubt" being based on two sets of fundamental principles which has been examined by the High Court in extenso needs no interference by this Court.
- 9. We have heard learned Counsel for the parties and with their assistance perused the material available on record.
- 10. At the outset, it may be apposite to take note of the Article of charge which was imputed against him in the departmental proceedings:

"No: 884481265 Constable Sashi Bhushan Prasad is charged with gross misconduct and serious breach of discipline unbecoming of a member of the armed force in that he handed over an unlicensed fire arm with ammunitions (a country made revolver) concealed in a brief case at the residence of No. 88441220 Constable S.P. Patel on 19.11.92 in the evening by suppressing the fact that the same was used in a case of murder in the same day."

LET US BUILD A STRONG AND SELF RELIANT INDIA

- 11. Disciplinary inquiry was held against him under Rule 34 of CISF Rules, 1969 for the gross misconduct and serious breach committed by him in discharge of his official duties in handing over unlicensed fire arm with ammunitions (a country made revolver) concealed in a brief case at the residence of Constable S.P. Patel on 19th November, 1992 and in support of the charge, the statement of PW-5 Smt. Laxmi Patel W/o Constable S.P. Patel was recorded. In the course of disciplinary inquiry, she had categorically stated that the appellant Constable came to her house in the evening and handed over small brief case to her for keeping it in the house. When she asked the appellant at the time of handing over of the brief case as to what it contained, the appellant replied that it contained clothes. When her husband came back from duty, she told him of the brief case handed over to her by the appellant for keeping it in the house. Her husband PW-4 Constable S.P. Patel also narrated the fact which was reported by his wife PW-5 Laxmi Patel when he returned back on 19th November, 1992.
- 12. There was further allegation against him that he had suppressed the fact that the country made revolver was used in the murder case the same day. After an independent inquiry was conducted by the Inquiry Officer the charge stood proved against him and it was confirmed by the Disciplinary Authority, after affording him an opportunity of hearing, and being a serious misconduct on the part of the appellant, which he had committed in discharge of duties, penalty of dismissal was inflicted upon him, after due compliance of the principles of natural justice in terms of the Scheme of CISF Rules 1969 and that came to be confirmed on rejection of his appeal/revision by the Appellate/Revisional Authority and also by the High Court on dismissal of the writ petition vide judgment dated 17 th July, 2008.
- 13. At the same time, in the criminal case which was instituted against him, the charge against the appellant was "Accused Sashi Bhusan Prasad stands charged U/s 25(1)(a) of the Arms Act."
- 14. So far as the charge in the departmental inquiry and the charge in the criminal case is concerned, indubitably it was different having been inquired on an independent set of facts and evidence in a departmental/judicial proceedings. That apart, the

- fact which reveal from the judgment of acquittal passed by the Court of competent jurisdiction dated 12 th September, 1995 that Shankar Prasad Patel and his wife Laxmi Patel had appeared in a criminal case as PW-4 and PW-5 and both were declared hostile. Apart from that, the other material witnesses were also declared hostile and that was the reason for which the Court came to the conclusion that the prosecution failed to prove the charge against him while acquitting him *vide* judgment dated 12th September, 1995.
- 15. The facts noticed by us which have been inquired in a disciplinary inquiry and in the judicial proceedings indisputedly are based on different allegations and the set of evidence not based on the same facts and circumstances and in the given situation, the very submission made by the appellant of taking the benefit of acquittal in a judicial proceedings instituted against him on the plea of having nexus with the disciplinary inquiry loses its foundation.
- 16. The scope of departmental enquiry and judicial proceedings and the effect of acquittal by a Criminal Court has been examined by a three-Judge Bench of this Court in Depot Manager A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and others. The relevant para is as under:
 - "... The purpose of departmental enquiry and of prosecution are 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 (sic 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 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 rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental 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. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings." (Emphasis supplied)

17. The exposition has been further affirmed by a three-Judge Bench of this Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Limited, Haldia and Others,* this Court held as under:

"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 delinguency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a Criminal Court, the impugned order dismissing him from service deserves to be quashed and set aside." (Emphasis supplied)

18. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is

to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of 'preponderance of probability'. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court.

19. The judgment in M. Paul Anthony case (supra) on which the learned Counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under:

"The conclusions which are deducible from various decisions of this Court referred to above are:

- (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.
- (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."
- 20. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and evidence having no nexus/co-relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the Inquiry Officer had held him guilty, he was punished with the penalty of dismissal from service.
- 21. The judgment in G.M. Tank case (supra) on which the learned Counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the charge in the criminal case and departmental enquiry were different having

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no nexus/co-relationship based on different sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service.

- 22. It is not the case of the appellant that any error committed in the procedure prescribed under the Scheme of Rules 1969 has been violated or opportunity to hearing has not been afforded or the principles of natural justice has been violated, in absence thereof, it is otherwise not open for the Courts to interfere in the disciplinary proceedings under its limited scope of review under Articles 226 and 227 of the Constitution of India.
- 23. Consequently, in our considered view, the appeal is without substance and is accordingly dismissed. No costs.

Pending application(s), if any, stand disposed of.

Appeal Dismissed.

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