From the Desk of Editor

NAVIGATING THE COMPLEXITIES OF DOMESTIC INQUIRIES THE CRUCIAL ROLE OF DEFENCE REPRESENTATIVES

In the complex realm of domestic inquiries within the organizational structures of the banking industry, defending a colleague isn't merely a task; it's a journey through a maze of legalities, protocols, and ethical considerations. At the heart of this journey lies the pivotal role of defence representatives, individuals tasked with supporting, guiding and advocating for the accused throughout the quasi-judicial process. Let's delve into the multifaceted landscape of defence representation.

Understanding the Principles of Natural Justice

Central to the concept of a fair and just inquiry is adherence to the principles of natural justice. These principles dictate that individuals facing allegations are entitled to a fair hearing, unbiased judgment, and the opportunity to defend themselves. In the context of domestic inquiries, this translates to the right of the accused officer or employee to seek assistance from another officer/employee for their defence, as outlined in relevant regulations.

The Selection and Role of Defence Representatives

The choice of a defence representative is a critical decision for the accused individual officers. While there may be constraints on the number of cases a representative can handle, the selection process itself is not restricted. It's imperative that the chosen representative possesses not only a deep understanding of relevant laws and regulations but also a commitment to upholding the rights and interests of the officers proceeded against.

The Officers' Association: A Supportive Ally

Amidst the complexities of inquiries, the Officers' Association serves as both a protective shield and a supportive ally for its members. It is incumbent upon the Association to offer assistance whenever sought. The only requirement is that member should have complied with his part of the obligation to pay subscription and abide association's directions on various activities. However, it's equally important for Association representatives to refrain from passing judgment on members and instead focus on facilitating truth-seeking within the organization's framework.

The Role of Training and Research Wings

Establishments like the National Academy of Trade Union Research and Education (NATURE) play a crucial role in shaping the capabilities of defence representatives. Established as a wing of AISBOF, NATURE is committed to cadre development and disciplinary understanding. Through tailored programs and training initiatives, it equips representatives with the knowledge and skills necessary to navigate the complexities of domestic inquiries effectively.

Crafting a Robust Defence Strategy

Effective defence representation requires a comprehensive understanding of banking businesses, regulations, and procedural nuances. Defence representatives must meticulously examine charges, strike balance between factual and technical defences, and adeptly utilize evidence to construct robust arguments. This entails careful preparation before and during inquiry proceedings, including the examination of documents, preparation of witnesses, and strategic planning for cross-examination.

Upholding Principles of Natural Justice

Throughout the inquiry process, defence representatives play a crucial role in upholding the principles of natural justice. They ensure that the burden of proof lies with the management, challenge accusations through evidence and cross-examination, and advocate for the rights of the accused. This commitment to fairness and due process is essential for maintaining the integrity of the disciplinary process.

In conclusion, defence representatives serve as guardians of fairness in domestic inquiries, guiding the accused through the process with expertise, diligence, and unwavering commitment to justice. Their role is not only to defend their colleagues but also to uphold the principles of natural justice and ensure a fair and impartial resolution of allegations. ■

[2024 (180) FLR 229]
(SUPREME COURT)
HRISHIKESH ROY and PANKAJ MITHAL,JJ.
Civil Appeal No.6353 of 2012
August 23, 2023
Between
NATIONAL STOCK EXCHANGE OF INDIA LTD.
and
ASSISTANT PROVIDENT FUND COMMISSIONER
and another

Employees' Provident Funds and Miscellaneous Provisions Act 1952-Sections 7-I 8-F and 11 (2)-Denial of P.F liability-Authority concerned attached the deposited money of respondent No.2 lying in the hands of appellant-Learned Single Judge stamped the act of authority regarding attachment-Division Bench dismissed the appeal on the ground of alternative remedy under section 7-I of Act-It was further observed that writ petition was also not maintainable-Hence instant appeal-Held existence of alternative remedy would not completely exclude writ jurisdiction –division Bench should have adjudicated the writ appeal on merit when the case was pending for such a long time and writ Court had entertained the writ petition on merit-High Court should have considered the objection of appellant-Matter remanded to division Bench of High Court-Appeal allowed. [Paras 13 to 15]

JUDGMENT

HRISHIKESH ROY and PANKAJ MITHAL, JJ.- Heard Mr. J.P. Cama, the learned Senior Counsel appearing for the appellant. Also heard Mr. Abhishek Vikas, the learned counsel for the respondents.

2. The challenge here is to the final judgment and order dated 27.11.2008 of the Division Bench of the High Court of Judicature at Madras in the Writ Appeal No. 609 of 2006 whereby the High Court dismissed the writ appeal with the observation that the writ petition itself is not maintainable under Article 226 of the Constitution since as against the order impugned in the writ petition, there is an appellate remedy provided under Section 7-I of the Employees

Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as, 'PF Act').

3. The Writ Petition No. 24857/2001 was filed by the present appellant challenging the records of the Assistant Provident Fund Commissioner, Regional Office, Chennai in the order dated 28.08.2001 passed in E2/TN/39526/E.O/Circle 1/2001 along with order bearing proceedings No. E 1/TN/36764/ENF/Regl/2001, dated 05.01.2001 issued under Section 8-F and also to restrain the PF Authority from dealing with their security deposit lying with the appellant given at the instance of the 2nd respondent, who was a trading member under the stock exchange. On 05.01.2001 the authority passed an order attaching the deposited money of the 2nd respondent lying in the hands of the appellant. The appellant gave a statement on oath under Section 8-F(3)(vi) denying any liability but the authority proceeded to hold that the Bye-laws, Rules and Regulations of the appellant – National Stock Exchange, will have to give way to Section 8-F and Section 11 (2) of the PF Act. Under Section 8-F, the 1st respondent is empowered to recover the arrears of contribution payable by the employer from any person other than the defaulter. In other words, if the authorities are of the view that if some person is holding the money of the defaulter, after following the due process prescribed under the Section, the authority can proceed to directly recover the money from the concerned person and also equally restrain the third party from paying the said money to the defaulter. The amount lying in the hands of the appellant is the amount deposited by the 2nd respondent who admittedly is a defaulter in payment of PF contribution. However, the contention of the appellant was that as per their Bye-laws, this amount has to be paid as per their priorities and only balance, if any, if left, might be capable of being attached under Section 8-F of the PF Act.

4. The learned Single Judge, while considering the writ petition, adverting to the provisions of Section 11(2) of the PF Act observed that if any amount is due from an employer, the amount so due shall be deemed to the first charge and shall be paid in priority to all the other debts as Section 11(2) gives overriding effect of priority notwithstanding anything contained in any other law in force. Accordingly, after analyzing the provisions of Section 8-F(3) and

Section 11(2) of the Act, the learned Judge opined that the Bye-laws of the appellant-National Stock Exchange will have to make way for the 1st respondent for enforcing their statutory rights. It was also noted that the PF Act is a welfare legislation, enacted for the benefit of the employees engaged in the factories and establishments. With such observations, the proceedings drawn up by the authorities against the appellant were found to be in order.

5. The judgment (dated 27.03.2006) of the learned Single Judge was challenged before the Division Bench in the Writ Appeal No. 609 of 2006. However, as earlier noted, the learned Division Bench without addressing the contentions raised in the writ appeal, opined that since an appellate remedy is provided under Section 7-I of the PF Act, the appellant should be relegated to the statutory remedy. It was further observed that the writ petition should not have been entertained by the learned Single Judge.

6. Before us, the learned senior counsel for the appellant, Mr. J.P. Cama would advert to Section 7-I of the PF Act which provides for appeals to the Tribunal to point out that while an aggrieved party can file an appeal for his grievances mentioned in the said Section, the grievances raised by the appellant in the writ petition emanating from action under Section 8-F and Section 11(2) are outside the purview of the appellate provisions and, therefore, the Division Bench erred in saying that the appellant has an alternate remedy for their grievances raised in the writ petition, under the appellate provisions of Section 7-I of the PF Act.

7. The appellant would also contend that since the Writ Petition No. 24857/2001 was pending adjudication before the learned Single Judge for about five years and thereafter a decision on merit was rendered by the Writ Court on 27.03.2006, the Appellate Court after keeping the Writ Appeal No. 609/2006 pending for another four years, should have considered the merit of the challenge in the writ appeal and should not have dismissed the writ appeal with the observation that appellant has alternate statutory remedy under Section 7-I of the PF Act. It was specifically argued before the Division Bench that the remedy under Section 7-I is not available for the grievances raised in the writ petition but this legal contention was not appropriately

appreciated by the Court.

8. The learned counsel for the respondent, Mr. Abhishek Vikas on the other hand submits that the dues under the PF Act will have priority over all other debts like mortgage, pledge, etc. The counsel relies on the ratio in Maharashtra State Cooperative Bank Limited v. Assistant Provident Fund Commissioner and others in support of his contention.

9. The respondents' counsel would therefore argue that even if the matter is to be relegated to the Division Bench, they are bound to hold against the appellant in view of the declaration of law in Maharashtra State Co-operative Bank Limited (supra).

10. The writ petition filed by the appellant remained pending before the two benches in the High Court for several years and therefore we feel that the Division Bench should have considered the writ appeal on merit instead of saying that the appellant has an alternate remedy under Section 7-I of the Act. The writ petition itself was pending before the learned Single Judge for about five years and was then adjudicated on merit holding against the appellant. When the writ appeal thereafter was filed by the aggrieved writ petitioner and the same was pending for long with an interim order operating, the Division Bench should have considered the merit of the appellant challenge in the writ appeal.

11. Our above expression finds support from L.K. Verma v. HMT Limited and another where this Court held as follows:

> "21. In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy. (See Kanak v. U.P. Avas Evam Vikas Parishad) We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the respondent."

12. This Court in Radha Krishnan Industries v. State of Himachal Pradesh summarized the following principles on the maintainability of a writ petition before the High Court:

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad,] Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas

Barot], and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, among other decisions."

13. Applying the above principles, we find that an effective alternate remedy was not available to the aggrieved party in the present case. Moreover, the existence of an alternate remedy does not completely exclude writ jurisdiction. The High Court should have considered whether, for proceedings drawn up under Section 8-F and Section 11(2) of the PF Act, the remedy of appeal under Section 7-I was available to the aggrieved party. This is because although several other sections are mentioned in Section 7-I, there is no reference to Section 8-F and Section 11(2). Therefore, the appellate forum provided in Section 7-I of the PF Act would not be capable of addressing the grievances that relate to Section 8-F and Section 11(2) of the PF Act. Thus, the only remedy that was available was to invoke writ jurisdiction under Article 226 of the Constitution of India.

14. The Division Bench should have adjudicated the writ appeal on merit when the case was pending for such a long time and the Writ Court had adjudicated on the merit of the matter. It is also doubtful whether Section 7-I can be an alternate remedy for the grievances raised by the appellant before the High Court. As the Division Bench had omitted to render their decision on the merit of the appellant's contention on the erroneous understanding of an appellate remedy being available under Section 7-I, we consider it appropriate to remit the matter to High Court for consideration of the writ appeal by the Division Bench. The Division Bench should now adjudicate the writ appeal No. 609 of 2006 on merit and give their decision. As the appellant is litigating since long, we request that once the writ appeal is assigned to the Division Bench, the Court should make an endeavour for expeditious disposal of the writ appeal. It is ordered accordingly. With this the impugned judgment is set aside and the appeal stands allowed to the extent indicated.

15. Before parting, we may also record that since the appellant has the benefit of an interim order passed by this Court on 06.07.2009, the same will continue to operate until the disposal of the writ appeal by the Division Bench of the High Court.■

Appeal Allowed.

[2023 (179) FLR 587]

(BOMBAY HIGH COURT-AURANGABAD BENCH)

SANDEEP V. MARNE, J.

W.P.No.6269 of 2022

December 5, 2022

Between

AJITKUMAR

and

CENTRAL BANK OF INDIA and another

Dismissal-Allegation of playing fraud in claiming medical reimbursement-Enquiry conducted and order of dismissal passed-Labour Court awarded reinstatement with full backwages and continuity of service-High Court set aside the award and remitted the matter to Labour Court-Labour Court declared the enquiry as proper-Labour Court refused to grant any relief to the petitioner-Hence instant petition-Held petitioner arranged medical bills from an Operational medical shop casting a doubt on actual consumption of medicine-Petitioner fully participated in the enquiry proceeding and was given full opportunity to defend himself-He was allowed to cross-examine the bank witnesses-Misconduct of the petitioner was serious one as he caused financial loss of ₹ 6,12,870/- to his bank-He further attempted to defraud the Bank by submitting another bill of ₹3,24,729/- Punishment was proportionate to the charges-No payment of gratuity and pension was ordered as the same was subject-matter of dispute before the Labour-Court-No error in the award of Labour Court-Petition dismissed.[Paras 12 to 19]

JUDGMENT

SANDEEP V. MARNE, J.- Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Petitioner challenges Award-I dated 29.10.2020 and Award-II dated 06.10.2021 passed by the Labour Court Aurangabad in Reference IDA No. 12 of 2016 and seeks the relief of reinstatement with full backwages and continuity of service. He

further seeks relief of refund of forfeited amount towards pending bills. An alternate prayer is made for payment of compensation in place of reinstatement and full backwages considering advance age and disease of the petitioner.

3. Brief facts of the case are that, the petitioner joined respondent No. 1-bank on the post of peon with effect from 03rd October, 1984 initially as a daily wager and he was made permanent with effect from 01.01.1994. He was promoted as a cash peon with effect from 30.01.1995. He claims that he was diagnosed with Hepatitis-B during the course of testing in a private laboratory on 18th October, 2008.

4. On 04th February, 2014, petitioner was served with memorandum of charge sheet for initiation of disciplinary proceedings on following charges:

1. Mr. A. M. Kasliwal has claimed reimbursement of domiciliary treatment for Hepatitis-B since Dec.2008. Initially he claimed ₹ 13,698/- per month. The amount of his bill was continuously increasing. In October 2012 his bill was reached to ₹ 29,233/-. He further submitted his claim of ₹ 43,781/- as bill for May 2013. It shows that he tried to get more amounts by submitting bills of higher amount.

2. Since no certain period to cure his decease was mentioned in the medical certificate, he was referred to Medical Board (Govt. Medical College Hospital) Aurangabad. The Board has issued their report in which it is opined that only one tablet of Entacare 0.5 mg is sufficient for his decease as against his bill for three tablets per day that too up to June 2013. It clearly indicates that Mr. Kasliwal has claimed bill of treatment which was not at all required by him.

3. Mr. Kasliwal used to purchase Entacare 0.5 mg tablets from a medical shop named as M/s Nayan Medical & General Stores located at Shop No. 2, Shopping Centre N-11, Navjeevan Colony, HUDCO, Aurangabad. It is the costly tablet as compared to other medicines. On inquiry it is learnt that the shop is closed in December 2010. As no shop is in existence the bills submitted by Mr. Kasliwal are fake and

thereby he has defrauded the Bank by submitting fake bills and got reimbursement of bills to the extent of ? 6,12,870/-up to November 2012.

4. He further submitted bills for the period from December 2012 to August 2013 amount of which is ₹ 3,24,729.50. The bills are based on the bills of M/s Nayan Medical & General Stores. The sop is not in existence. As such he has further made attempt to defraud the Bank by ₹ 3,24,729.50.

5. Petitioner denied charges by submitting reply dated 05.09.2014. During the course of enquiry, petitioner submitted application on 04.06.2014 for summoning the owner of M/s Nayan Medical and General Stores as witness, however, that witness had already expired on 16.02.2013, on account of which he could not be examined. The Enquiry Officer submitted report dated 13.10.2014 holding that the charges were proved. By order dated 13.10.2014, petitioner came to be dismissed from service. He approached the Appellate Authority on 21.10.2014, but was not reinstated.

6. Petitioner approached the Central Labour Commissioner, Pune and after failure of conciliation, the reference was made by the Central Government under the Industrial Disputes Act for adjudication of dispute in respect of dismissal of the petitioner.

7. The Labour Court passed Award – I dated 19.09.2018 holding that the enquiry held against the petitioner was fair and proper and that the findings of the Enquiry Officer are not perverse. Petitioner challenged Award – I dated 19.09.2018 before this Court by filing Writ Petition No. 433 of 2019, which came to be disposed of by judgment and order dated 07.02.2020 holding that the Labour Court erred in not following mandate of amended Section 11-A and the law laid down by the Supreme Court in M/s Firestone Tyre and Rubber Co. of India P. Ltd. v. The Management and others. This Court therefore set aside Award – I and remitted matter to the Labour Court for fresh decision as regards correctness of the findings of the Enquiry Officer.

8. The Labour Court accordingly reconsidered the issue of correctness of findings recorded by the Enquiry Officer and delivered Award – I vide judgment and order dated 29.10.2020

holding that the enquiry was proper and that the findings of the Enquiry Officer are not perverse.

9. The Labour Court thereafter proceeded to decide issue Nos. 3 and 4 relating to proportionality of punishment and entitlement of the petitioner to relief of reinstatement by Award – II vide judgment and order dated 06.10.2021. The Labour Court answered those issues in negative and refused to grant any relief in favour of the petitioner. Petitioner has assailed Award – I dated 29.10.2020 and Award – II dated 06.10.2021 in the present petition.

10. Appearing for the petitioner Mr. Khonde, learned counsel would submit that the enquiry was conducted in gross violation of principles of natural justice. This submission is made referring to denial of an opportunity to the petitioner to engage an advocate to defend himself and denial of opportunity to examine the owner of Nayan Medical and General Stores. Mr. Khonde would further submit that the respondent-bank produced additional documents directly before the Labour Court thereby denying fair opportunity to the petitioner. Mr. Khonde would further submit that the findings recorded in the enquiry are perverse as the defence of the petitioner that the medicines were delivered to him by home delivery by the owner of Nayan Medical and General Stores has not been appreciated. He would further submit that on account of death of the owner of medical store, the petitioner could not prove the factum of such home delivery and, therefore, inability to examine the owner of the medical store cannot entail punishment of dismissal from service. Mr. Khonde would further submit that the penalty is disproportionate to the misconduct proved. He would further submit that gratuity amount of the petitioner has illegally been withheld without following the provisions of the Payment of Gratuity Act. He would further submit that even though petitioner is dismissed from service, he is entitled to pension, which has not been paid.

11. Per contra, Mr. Vidwans, learned counsel appearing for the respondent-bank would oppose the petition and support the orders passed by the Labour Court in Award – I and Award – II. He would submit that the enquiry was conducted after duly following principles of natural justice. He would submit that

misconduct committed by the petitioner is of serious nature involving misappropriation and financial irregularities warranting the punishment of dismissal from service. He would further submit that additional documents produced before the Labour Court by way of application dated 29.08.2018 were merely records of domestic enquiry, which were already supplied to the petitioner and that therefore no prejudice was caused to him. He prays for dismissal of the petition.

12. After having heard learned counsel for parties, it is seen that the petitioner was facing serious charges of falsely claiming medical reimbursement running into huge amounts. Even though opinion of the Medical Board that the petitioner required only one tablet per day that too upto June 2013 is contradictory to the opinion of some of the private doctors that he required three tablets for indefinite period of time, the latter aspect of the charge of submission of medical bills from a shop which was in operational makes the former part of the charge quite serious. Therefore, even if the opinion of the Medical Board is to be momentarily ignored and that of private doctors is to be accepted, the conduct of procuring bills from an in-operational medical shop by the petitioner casts a doubt of actual consumption of the tablets by the petitioner.

13. In the domestic enquiry the charges are held to be proved. In Award – I, the Labour Court has decided the issue of fairness of enquiry. The submission of Mr. Khonde that the petitioner was not provided assistance of advocate to defend himself is stated only to be rejected as it is not his case that either the Presenting Officer or Enquiry Officer was an advocate. It is trite that if the Presenting Officer or Enquiry Officer are not law graduates, delinquent-employee cannot be provided assistance of an advocate during domestic enquiry. The petitioner has fully participated in the enquiry proceedings and has been given full opportunity of defending himself. In Award – I, the Labour Court has recorded findings with regard to manner in which enquiry is conducted in para Nos. 10 and 11, which read as under:

> "10. On 25.2.2014, the first date of enquiry, the second party was present before the enquiry officer. The enquiry officer asked the preliminary questions to the Second party. The

enquiry officer asked the second party whether he wants to appoint defense representative. The Second party answered that ''he wants to appoint the defense representative''. The Second Party further requested that he was not a member of any union, therefore, he may be permitted to appoint other person as his defense representative. The said request is also granted by the enquiry officer. The Second Party was allowed to inspect the entire documents which were produced in the enquiry proceeding. The management examined one witness Narhari Vasude Adgaonkar in presence of Second party on next date of enquiry i.e. 11-03-2014. On oral request of Second party, the short time was granted to appoint defense representative. On 16.04.2014, the request of the Second party short time was granted for appointing defense representative by the enquiry officer. On 21.05.2014, the Second party decided to defend himself in enquiry proceeding and elected not to appoint any defense representative. He was allowed to inspect all the documents. He was allowed to produce the documents in his defense and same is marked as Exhibits and kept in record by the enquiry officer. His request for adjournment for cross examining management witness is also granted by the enquiry officer. The Second party has taken cross examination of the management witness in detail. On 04.06.2014, the Second party was permitted to produce entire documents in his defense and after that he has completed his cross examination. The Second party has examined himself in the enquiry proceeding. He was cross examined by the management. On 25.06.2014, opportunity was given to the Second party to examine the witness in his defense. But the Second party failed to bring any witness and he himself given the statement. After that he filed the written statement of his defense and closed his evidence. Thereafter, the enquiry officer recorded his findings.

11 From the record it shows that the second party was present on each and every date of enquiry. The management witness was examined in the presence of second party. The second party was allowed to cross- examine the witness. All the documents were provided to the Second party workman. The second party signed on each and every papers of enquiry

proceedings. The second party was allowed to appoint defense representative. But second party himself decided to defend himself in the enquiry proceeding. Therefore, from record it shows that enquiry was conducted by adopting the principles of natural justice. Hence, I answer issue No. 1 in negative.

14. Coming to the issue of production of record of enquiry by the respondent-bank before the Labour Court vide application dated 29.08.2018, I find that what was produced is mere proceedings of the enquiry which were already supplied to the petitioner. Therefore, no prejudice can be said to have been caused to him on account of production of such record before the Labour Court.

15. On the aspect of adequacy of evidence to support the charges, I find that the bank examined Mr. Narhari Vasudev Adgaonkar as its witness who was cross examined by the petitioner. The Labour Court has recorded following findings on the issue of perversity in Award – I.

13 It is not disputed that the second party was referred to the Medical Board by the second party. The second party appeared before the Medical Board. The second party was medically examined by the Medical Board. After his medical examination, the Board has issued the certificate. According to the said medical certificate, the second party is suffering from Hepatitis-B and he required one Tablet Entacavir .5 mg BD till 2010 and thereafter he is not required to consume the said Tablets. The said certificate is issued by the Medical Board after medical examination of the second party/ workman which prescribes that the second party was not longer required said Tablets. This certificate has stronger evidential value comparing to other medical certificates. The second party has not produced the prescription of the doctors from whom he was taking the treatment. The second party only submitted that the medical certificates. From the record, it is not disputed that Nayan Medical & General Stores Hudco, Aurangabad has surrendered his Drug License in the year 2010. If the said medical store is closed in the year 2010 how he supplied the medicine to the second party is not explained by the second party in the entire proceeding.

Once, the Drug License is surrendered and medical shop is closed how the Manager of Medical Shop Keeper used to make Home Delivery of the medicine to the second party. The medical bills do not discloses that it was home delivery. Once, the drug license is surrender by the above named medical Store, then he has right to give medicines by home delivery by issuing the bills, this aspect is not explained by the second party in entire proceeding. Merely saying that the second party received the medicines from the above medical store by home delivery not appears to be probable in absence of such explanation. This aspect is not explained by the second party in entire proceeding. The conclusive evidence about the surrender of Drug License is produced by the First Party by producing the letter of Food and Drugs Department. Therefore, considering the oral and documentary evidence, it creates doubt about the Medical Bills produced by the second party of Nayan Medical & General Stores Hudco, Aurangabad for purchase of tablets. The said documentary and oral evidence is considered by the enquiry officer in the entire enquiry proceeding. Therefore, I am satisfied that the enquiry officer has appreciated the entire evidence produced in the departmental enquiry. The enquiry officer relied on oral and documentary evidence and come to the conclusion. Therefore, the findings of the enquiry officer are based on evidence produced in the departmental enquiry. Therefore, I answer issue No. 02 in negative and pass the following order:

16. It cannot be stated that the above findings recorded by the Labour Court suffer from any of perversity in any manner. Petitioner does not dispute that the license of the concerned medical shop was surrendered in the year 2010 itself, but he went on producing bills of that shop upto August 2013. The defence of the home delivery of medicines being made by the concerned shop is unbelievable and cannot be accepted in the light of absence of any evidence to that effect being produced by the petitioner.

17. Coming to the issue of proportionality of penalty, the misconduct alleged against the petitioner was of serious nature. He has caused financial loss to the respondent-bank by claiming and receiving reimbursement of ₹ 6,12,870/- which was not due

to him. He had submitted further bills amounting to ₹ 3,24,729/- in further attempt to defraud the bank. The punishment of dismissal from service imposed on petitioner for such proved misconduct, in my view is proportionate and does not shock my conscious.

18. So far as issue of non payment of gratuity and pension is concerned, the same was not subject- matter of dispute before the Labour Court and the petitioner shall have liberty to adopt such remedies in that regard as may be available to him in law.

19. In the result, I find that the Labour Court has not committed any error in passing Award – I and Award – II. The petition is devoid of merits. Same is dismissed without any orders as to costs. Rule is discharged.■

Petition Dismissed.

2024-I-LLJ-209(All)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Hon'ble Mr. Justice Saumitra Dayal Singh

Hon'ble Mr. Justice Anish Kumar Gupta

Writ. A.No. 30954 of 2017

8th December, 2023

Jai Mangal Ram ....Petitioner

Versus

State of U.P. and Others ... Respondents

Dismissal-Principles of Natural Justice-Petitioner dismissed from service for misbehavior with Senior Officer-Petition and review preferred by Petitioner against dismissal order were dismissed, hence this petition –Whether, order of dismissal vitiated as passed in violation of natural justice-Held, mere external examination not sufficient proof to hold person guilty of consuming alcohol –Petitioner not guilty of charge of consuming alcohol during duty-Abuse of superior Officer by

Petitioner not been conclusively proved during departmental inquiry-Obligatory on part of Disciplinary Authority to give show cause notice before punishment proposed by Enquiry Officer-Show cause notice issued in violation of principles of natural justice because of predetermined mind also for want of material-Enquiry and disciplinary proceedings held in violation of principles of natural justice-Order of dismissal, quashed-Show cause notice held illegal-Punishment order, null and void-Impugned orders, set aside –Petitioner directed to be reinstated-Petition allowed.

ORDER

ANISH KUMAR GUPTA, J.

Heard Sri Shivam Pandey learned counsel holding brief of Sri Rahul Chaudhary learned counsel for the petitioner and Sri Piyush Srivastava learned Standing Counsel for the State.

2. The present petition has been filed challenging the impugned orders dated 07.05.2012, 25.09.2012, 29.05.2012 and also challenging the order dated 11.01.2016 passed by the U.P. State Public Service Tribunal in Claim Petition No. 1245 of 2013 and also order dated 29.05.2017 whereby the review petition filed by the petitioner has been rejected.

3. The brief facts of the instant case are that the petitioner herein was working as a constable in the Police Line, Varanasi. The allegation against the petitioner is that he misbehaved with his senior officer, Mr. Devi Dayal, being in an intoxicated condition, for which the complaint was made against him and he was placed under suspension and the following charge was framed against him.

"PLEASE REFER ORIGINAL ORDER COPY FROM THE COURT"

4. In reply to the said charges, the petitioner herein submitted his explanation dated 11.01.2011 and categorically submitted that on the date of alleged incident, he has not consumed the alcohol, as alleged, nor he has misbehaved with his senior. The petitioner has specifically submitted that he was sick for sometime, for which he used to consume the Ayurvedic medicines (Drakshasav) and on the

date of alleged incident as well, he had consumed the baidhyanath (Drakshasav), which includes alcohol and a report was got prepared with mala fide intention against the petitioner herein. It is further submitted by the petitioner that before preparing the report with regard to his intoxication condition neither the urine test nor the blood test were conducted to arrive at the specific finding as to whether the petitioner had consumed the liquor and the medical report was prepared only by the external examination. After the explanation was submitted, the enquiry was conducted by the Circle Officer, Kotwali, Varanasi and vide enquiry report dated 27.05.2011, the Enquiry Officer found the allegations against the petitioner as true and proved and proposed for punishment of dismissal of the petitioner from service in the following terms:

"PLEASE REFER ORIGINAL ORDER COPY FROM THE COURT"

5. Subsequent to the enquiry report, the Deputy Inspector General of Police, Varanasi, issued a show cause notice dated 10.06.2011, against the petitioner in the following terms:

"PLEASE REFER ORIGINAL ORDER COPY FROM THE COURT"

6. In response to the show cause notice dated 10.06.2011, the petitioner herein submitted a detailed reply to the said show cause notice wherein it was specifically pleaded by the petitioner that the said show cause notice was issued to the petitioner herein with a predetermined mind, wherein the DIG has agreed with the proposed punishment of dismissal. Therefore, the said show cause notice was a merely formality. Thereafter, the Senior Superintendent of Police, vide order dated 07.5.2012, passed the order of dismissal of the petitioner from service. Against the said order dated 07.05.2012, the petitioner herein preferred an appeal before the Deputy Inspector General of Police on 02.07.2012, wherein in the memo of appeal, the petitioner herein has categorically stated the said show cause notice has been issued with a predetermined mind, wherein it was stated that the recommendations have been made for the termination of service of the petitioner with which he is in agreement. Vide order dated 25.09.2012. The said appeal of the petitioner herein was dismissed by the Deputy Inspector General of Police, Varanasi. Against the order of dismissal of the said appeal, the petitioner herein filed a review petition, which was also

dismissed vide order dated 29.05.2013. Aggrieved by the aforesaid order of dismissal from service and the dismissal of the appeal and the review application, the petitioner herein preferred the direction Petition No. 1245 of 2013, before the State Administrative Services Tribunal, Lucknow, which was dismissed vide order dated 11.01.2016. Against the order dated 11.01.2016, the petitioner herein filed review petition no. 15 of 2016, which was also dismissed vide order dated 29.05.2017. Hence the present petition.

7. Learned counsel for the petitioner submits that in the instant case the petitioner herein has been charged and found guilty on the basis of a complaint made by the one Mr. Devi Dayal, Inspector posted in the Police Line to the effect that the petitioner has misbehaved with him in an intoxicated condition. In the instant case, to prove the fact that the petitioner herein was in an intoxicated condition, a medical report was obtained from the Medical Officer only on the external examination of the petitioner herein. However, neither the blood test nor the urine test was conducted before giving such report by the concerned Medical Officer and the Medical Officer has also not been examined by the Department during the entire proceedings against the petitioner herein. Therefore, the said medical report cannot be relied upon to establish the fact that the petitioner was in an intoxicated condition. To substantiate his arguments on the aforesaid point, the learned counsel for the petitioner has relied upon the judgement of the apex court in Delhi Judicial Service Association v. state of Gujarat LNIND 1991 SC 446 : Supreme Court's Cr. L.J. 1991, Page No. 3086. In the entire proceedings against the petitioner the enquiry officer as well as the superior officer acted in a predetermined mind against the petitioner herein.

8. Learned counsel for the petitioner has further submitted that during the investigation against the petitioner herein, none of the witnesses have supported the incident except the complainant, Mr. Devi Dayal. Rather from the statements of the witnesses during the enquiry, it is apparent that the incident has not at all taken place at Police Line as has been alleged during the investigation. He has referred to the statements of Sri Panchram Kanaujiya, Pramod Kumar, Dadhichandra etc. Therefore, the entire proceedings were conducted in predetermined mind and the enquiry report is not sustainable in law. Learned counsel for the petitioner has further

submitted that while issuing notice for showing cause as to why the penalty of dismissal from service may not be imposed against the petitioner herein, the Deputy Inspector General of Police has stated that ***"PLEASE REFER ORIGINAL ORDER COPY FROM THE COURT".***

The aforesaid averments in the show cause notice clearly demonstrates the predetermined mind of the DIG, Police, Varanasi. Therefore, the entire proceedings against the petitioner was vitiated and was conducted in a predetermined mind. Therefore, the same is illegal and is liable to be quashed.

9. Learned counsel for the petitioner further submitted that while passing the punishment order the Senior Superintendent of Police has taken into consideration the conduct of previous entries made in the character roll of the petitioner herein, for which no notice has been issued to the petitioner herein. Had the notice with regard to the previous conduct of the petitioner or the entries in the character roll of the petitioner would have been indicated in the show cause notice, the petitioner could have replied the same appropriately. However, while passing the dismissal order, the previous entries in the Character Roll of the petitioner have been considered but no opportunity has been afforded to the petitioner to counter the same. Learned counsel for the petitioner further submits that the punishment of dismissal is disproportionate to the misconduct alleged to have been committed by the petitioner herein.

10. Learned counsel for the State submitted that the police forces are the disciplined force. Therefore, any misbehaviour by the police personnel against their superior officer is not permitted. The petitioner has been found in an intoxicated condition and was misbehaving with his superior officers due to intoxication and the charges were proved against him in a detailed enquiry conducted by the Enquiry Officer, giving full opportunity of hearing to the petitioner herein. So far as the non-examination of Medical Officer is concerned, the learned counsel for the State submitted that the petitioner was apparently in intoxicated condition, which is supported by the witnesses and the medical report as well. In the disciplinary proceedings, the doctors are not required to be examined as the same was not a criminal trial where the allegations are required to be proved beyond reasonable doubt. In the

disciplinary proceedings, the probability and preponderance of the allegations are sufficient to prove the charges against the delinquent officer.

11. Learned counsel for the State submitted that alongwith show cause notice the enquiry report was given to the petitioner herein while calling for his response on the enquiry report wherein there is reference to the previous conduct of the petitioner herein. Therefore, merely because the previous conduct has not been mentioned in the show cause notice the same cannot be faulted because of the fact that the previous conduct of the petitioner was already mentioned in the enquiry report, which was in due notice of the petitioner herein.

12. Looking at the previous conduct coupled with the conduct of the petitioner in the instant case, the punishment of dismissal from service has been awarded in the instant case, which cannot be said to be disproportionate punishment. Therefore, the learned counsel for the State has prayed for dismissal of the instant petition.

13. We have considered the rival submissions made by the learned counsels for the parties and have carefully perused the record of the case.

14. We proceed to consider the first submission made by the learned counsel for the petitioner with regard to the intoxication of the petitioner herein at the time of incident, without the urine test or the blood test, for which the finding has been recorded against the petitioner, only because of the smell of the alcohol found by the doctor, which is not sufficient to prove the intoxication of the petitioner herein.

15. In Bachubhai Hassanalli Karyani v. State of Maharashtra (1971) 3 SCC 930, the Apex Court, on the facts that the doctor had admitted that a person could smell of alcohol without being under the influence of drinking and without the urine test or the blood test, held that it cannot be concluded that the appellant was intoxicated at the time of incident.

16. In Munna Lal v. Union of India, 2010-I-LLJ-II : LNIND 2009 SC 1862 : (2010) 15 SCC 399, where the person was suspected of being in a drunken condition due to the smell of alcohol, he was taken for

the medical check-up and the doctor on duty examined and there was suspicion of mild smell of alcohol on the medical examination. On such facts, it was held by the Apex Court that in the absence of any positive evidence, the charges levelled against the applicant of consuming the alcohol was not proved satisfactorily.

17. In Writ A No. 2230 of 2014 (Shiv Raj Singh v. State of U.P.,and 6 Others) a Division Bench of this Court vide judgement dated 28.3.2018 has held that without the blood and urine sample of the person, it cannot be concluded that he has consumed alcohol and in the absence of such report of blood or urine sample, merely on the basis of the external examination of a person, such medical report cannot be relied upon and no major punishment could be awarded.

18. In the instant case the petitioner herein was taken to the medical officer who has only externally examined the petitioner and having found the smell of alcohol concluded that the petitioner herein had consumed the alcohol. Therefore, mere external examination is not sufficient proof to hold a person guilty of consuming alcohol and it cannot be concluded that he was in intoxicated condition. Therefore, the charge against the petitioner with regard to the consumption of alcohol during the duty hours, is in the considered opinion of this Court, has not been proved by the department, therefore, it cannot be held that the petitioner was guilty of the charge of consuming the alcohol during the duty hours.

19. So far as the other charge with regard to misbehaviour by the petitioner with his superior officer is concerned, the witness Yogendra Nath in his cross-examination during the inquiry has admitted that he has not heard the petitioner using abusive language or misbehaviour by the petitioner herein. The other witness, Sri Pancham Lal Kanujia, in his cross-examination has admitted that the petitioner was shouting and hurling abuses below the Banyan tree, adjoining the office of R.I.-II. However, on further cross-examination, he has admitted the fact that on 01.01.2011 when counting was going on the nephew of the petitioner, namely, Anil Kumar Anchal, who was a constable, was abused by the Counting Clerk, namely Akhilesh Kumar, when Anil Kumar Anchal said that he don't know with regard to the Dak duty then Counting Clerk asked him to go to the Banglow of DIG and to bring the Dak.

On this, he showed indiscipline. Thereafter, the petitioner came there and argued in favour of his nephew, namely Anil Kumar Anchal. In further cross-examination, Sri Pancham Kumar Ram, Kanaujia has admitted that he has not not made any entry with regard to any abuses hurled by the petitioner herein. Another constable-witness, namely Promod Kumar has admitted in cross-examination that there was no resistance on the part of the petitioner while he was asked to sit on the vehicle for medical test, he did not resist the same and he has also shown his ignorance as to what has happened inside the Hospital during his medical examination. Another witness- constable, Dadhichand has admitted in the cross-examination that no abuses were hurled by the petitioner in front of him. Shri Devi Dayal, the Inspector, in his cross-examination has admitted that he was alone in the evening and was sitting in his office and has not heard any abuses hurled by the petitioner rather, he has said that there was adjoining store and the G.D. Office, therefore some persons might have heard but none of such witness has been produced who has admitted that any abuses were hurled by the petitioner herein to Devi Dayal, Inspector, in presence of anyone inside the office. Therefore, from the aforesaid evidence, it is apparent that the fact of abusing to the superior officer has not been conclusively proved during the departmental inquiry conducted against the petitioner herein. Therefore, from the aforesaid inquiry report it is apparent that neither the charge of consuming alcohol nor the misbehaviour is proved during the departmental inquiry and he has been held guilty only on the statement of the Inspector, Mr. Devi Dayal. The petitioner has explained the fact that since he was taking the Ayurvedic medicines, therefore, there is possibility of smell of alcohol. However, he had not consumed the alcohol and from the story as emerged from the cross-examination of the witnesses, it has emerged that there was some dispute between the Counting Clerk, namely Akhilesh Kumar and the nephew of the petitioner-constable, Anil Kumar, with regard to assigning some duty, for which the petitioner herein has intervened and this may be a reason of false dismissal of the petitioner from service, without there being any proof of misbehaviour or abusive language used by the petitioner. It has been further argued that after the inquiry report, the DIG has issued a show cause notice with predetermined mind that there is a recommendation for dismissal of his service to which the DIG has already been agreed. Therefore, the show cause notice was mere a formality. After the conclusion of the inquiry

report, it was obligatory on the part of the Disciplinary Authority to give a show cause notice before making up his mind with regard to the punishment proposed by the Enquiry Officer. In Himachal Pradesh State Electricity Board Ltd. v. Mahesh Dahiya : (2016) 8 MLJ 695 : LNIND 2016 SC 554 : (2017) 1 SCC 768 : AIR 2016 SC 5341 : the abuse has held as under :

"23. The basis of coming to the conclusion by both the learned Single Judge and the Division Bench that disciplinary authority has violated the principle of natural justice is based on the fact that although the enquiry report was sent to the writ petitioner by the letter dated 2-4-2008, the disciplinary authority-cum-whole-time members have already come to the opinion on 25-2-2008 that the writ petitioner be punished with major penalty. The Division Bench of the High Court has placed reliance on Union of India v. R.P. Singh [Union of India v. R.P. Singh, (2014) 7 SCC 340 : (2014) 2 SCC (L&S) 494] .

24. In the above case the issue was as to whether non-supply of the copy of advice of UPSC to the delinquent officer at pre-decision stage violates the principle of natural justice. This Court placed reliance on the Constitution Bench judgment in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] and laid down the following in para 21 : (R.P. Singh case [Union of India v. R.P. Singh, (2014) 7 SCC 340 : (2014) 2 SCC (L&S) 494] , SCC p. 349)

"21. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor [Union of India v. S.K. Kapoor, (2011) 4 SCC 589 : (2011) 1 SCC (L&S) 725] . There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said article mandatory. As we find, in T.V. Patel case [Union of India v. T.V. Patel, (2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] , the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An enquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/

stance. That is precisely what has been laid down in B. Karunakar case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] . We may reproduce the relevant passage with profit : (B. Karunakar case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , SCC p. 756, para 29)

'29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.'"

There can be no dispute to the above proposition.

25. The Constitution Bench in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] after elaborately considering the principle of natural justice in the context of the disciplinary inquiry laid down the following in paras 29, 30(iv) and (v) : (SCC pp. 756-58)

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30.... (iv) In the view that we have taken viz. that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of

principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case [Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 : 1991 SCC (L&S) 612] should apply to employees in all establishments whether Government or non-government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

26. Present is not a case of not serving the enquiry report before awarding the punishment rather the complaint has been made that before sending the enquiry report to the delinquent officer, the disciplinary authority has already made up its mind to accept the findings of the enquiry report and decided to award punishment of dismissal. Both the learned Single Judge and the Division Bench on the aforesaid premise came to the conclusion that the principle of natural justice has been violated by the disciplinary authority. The Division Bench itself was conscious of the issue, as to whether, inquiry is to be quashed from the stage where the inquiry officer/disciplinary authority has committed fault i.e. from the stage of Rule 15 of the CCS (CCA) Rules as non-supply of the report. Following observations have been made in the impugned judgment [H.P. SEB v. Mahesh Dahiya, 2015 SCC OnLine HP 818] by the Division Bench in para 21 : (Mahesh Dahiya case [H.P. SEB v. Mahesh Dahiya, 2015 SCC OnLine HP 818] , SCC OnLine HP)

"21. Having said so, the core question is — whether the inquiry is to be quashed from the stage where the inquiry officer/ disciplinary authority has committed fault i.e. from the stage of Rule 15 of the CCS (CCA) Rules i.e. non-supply of enquiry report, findings and other material relied upon by the inquiry officer/ disciplinary authority to the writ petitioner-respondent herein to explain the circumstances, which were made basis for making foundation of enquiry report or is it a case for closure of the inquiry in view of the fact that there is not even a single iota of evidence, prima facie, not to speak of proving by preponderance of probabilities, that the writ petitioner has absented himself wilfully and he has disobeyed the directions?"

31. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by the letter dated 2-4-2008 the disciplinary authority-cum-whole-time members have already formed an opinion on 25-2-2008 to punish the writ petitioner with major penalty which is a clear violation of the principles of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the enquiry report which finds a charge proved against the

delinquent. The opinion formed by the disciplinary authority-cum-whole-time members on 25-2-2008 was formed without there being benefit of comments of the writ petitioner on the enquiry report. The writ petitioner in his representation to the enquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of disciplinary authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the enquiry report to the delinquent and before obtaining his comments on the enquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained.

32. In view of the above discussion, we are of the view that present is the case where the High Court while quashing the punishment order as well as appellate order ought to have permitted the disciplinary authority to have proceeded with the inquiry from the stage in which fault was noticed i.e. the stage under Rule 15 of the Rules. We are conscious that sufficient time has elapsed during the pendency of the writ petition before the learned Single Judge, the Division Bench and before this Court, however, in view of the interim order passed by this Court dated 31-8-2015 [H.P. SEB v. Mahesh Dahiya, SLP (C) CC No. 15656 of 2015, order dated 31-8-2015 (SC), wherein it was directed:

"Delay condoned. Issue notice. In the meanwhile, there shall be stay of operation of the impugned order dated 9-4-2015 passed by the High Court of Himachal Pradesh in LPA No. 340 of 2012 (H.P. SEB v. Mahesh Dahiya, 2015 SCC OnLine HP 818). Mr Aditya Singh, learned counsel accepts notice and seeks some time to file reply. List the matter immediately after the pleadings are complete."] no further steps have been taken regarding implementation of the order of the High Court. The ends of justice would be served in disposing of this appeal by fixing a time-frame for completing the proceeding from the stage of Rule 15."

20. In the aforesaid judgement, it has been categorically held that while issuing the show cause notice, the Disciplinary Authority has already made up his mind to accept the finding of inquiry report and award of the punishment for dismissal. Therefore, the very purpose of giving such show cause notice is frustrated and such show cause notice is vitiated and is in clear violation of principles of natural justice. We are of the view that before making opinion with regard to the punishment, which is proposed to be imposed on a delinquent officer, the delinquent has to be given opportunity to submit his representation/reply to inquiry the report.

21. In the instant case, while issuing show cause notice, the DIG, Varanasi, has not only informed about the recommendation for dismissal but had also given his conclusion to such recommendation that he is in agreement with such recommendation for dismissal of the delinquent. Therefore, the instant show cause notice dated 10.06.2011, issued by DIG, Varanasi, is violative of the principles of natural justice. With such determination and following the such determination by the DIG, Police, the Sr. Superintendent of Police, Varanasi, vide order dated 07.05.2012, has passed the order for dismissal of service of the petitioner, having taking into consideration the previous conduct of the petitioner herein, for which no show cause notice was ever issued to the petitioner. Therefore, the order dated 07.05.2012 also suffers from the extraneous considerations made by the Sr. Superintendent of Police, with regard to the previous conduct for which no opportunity was given to the petitioner herein to show cause. The submission made by the learned counsel for the State that since the previous conduct was already referred in the inquiry report, therefore, in the show cause notice, it was not required to be mentioned, is not a convincing argument on behalf of the State. A delinquent must be given sufficient opportunity to answer all the material, on which the severe punishment of dismissal is being proposed by the department. Therefore, the show cause notice issued by DIG, was in violation of the principles of natural justice not only because of his predetermined mind expressed in the show cause notice but also for want of the material to be considered against the petitioner for such dismissal, which has been taken into consideration while passing the dismissal order.

22. The further argument, which has been advanced on behalf of the petitioner is that the punishment of dismissal is disproportionate

to the charge of consumption of alcohol and misbehaviour. It has been held in catena of cases that punishment must be proportionate to the misconduct established against a delinquent employee. In the considered opinion of this Court, the punishment imposed on the petitioner herein on the basis of the allegations which are not proved, as has been analysed above, is disproportionate to the charges levelled against the petitioner herein. Ordinarily, where the enquiry and the disciplinary proceedings has been held in violation of principles of natural justice, the inquiry or the disciplinary proceedings would be vitiated and the order of dismissal passed on such vitiated disciplinary proceedings would be quashed by issuance of writ of Certiorari. It is well settled that in such a situation, normally, it would be open to the Disciplinary Authority to hold inquiry afresh.

23. In the judgement and order dated 28.09.2010 in Civil Appeal No...../2010 (arising out of SLP (C) No. 19318/2007) Mohd. Yunus Khan v. State of U.P. and Others, the Apex Court has under:

> 33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

24. In State of Mysore v. K. Manche Gowda LNIND 1963 SC 196: (1964) 4 SCR 540, on the facts that the Government servant was misled by the show cause notice issued by the Government but for the previous record, the punishment of dismissal could not have been passed, it was held by the Apex Court as under:

> "In the present case the second show cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him, on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave., But, a comparison of Paragraphs 3 and 4 of the order of dismissal shows that but for the previous record of the, Government servant, the

Government might not have imposed the penalty of dismissal on him and might have accepted the recommendations of, the Enquiry officer and, the public Service Commission. This order, therefore indicates that the show cause notice did not give the only reason which influenced the Government to dismiss the respondent from service." (P. 549)

25. In Bhagat Ram v. State of H.P., 1983-II-LLJ-1 LNIND 1983 SC 35 : (1983) 2 SCC 442, AIR 1983 SC 454, the similar question was answered by the Apex Court in following terms:

13. That conclusion poses another question as to what relief we should give in this appeal. Ordinarily where the disciplinary enquiry is shown to have been held in violation of principle of natural justice, the enquiry would be vitiated and the order based on such enquiry would be quashed by issuance of a writ of certiorari. It is well settled that in such a situation, it would be open to the Disciplinary Authority to hold the enquiry afresh. That would be the normal consequence.

14. We invited Mr Talukdar, learned counsel for the respondent State to address us on the question whether the game of holding the fresh enquiry is worth the battle. Moreso looking to the fact that there is a very minor infraction of duty leading to a trivial charge of negligence in performance of duty which has caused no loss to the Government, we are of the opinion that it would not be fair to this low-paid Class IV government servant to face the hazards of a fresh enquiry.

15. The question is once we quash the order, is it open to us to give any direction which would not permit a fresh enquiry to be held? After all what is the purpose of holding a fresh enquiry? Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh enquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fairplay demand

that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela v. A.K. Roy [(1969) 3 SCC 513 : AIR 1970 SC 1401 : (1970) 3 SCR 343 : (1970) 1 LLJ 228] where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50 percent of the arrears from the date of termination till the date of reinstatement.

26. In view of the above, we are of the considered opinion that the show cause notice which was issued by the DIG has mentioned that severe punishment of termination is proposed against the petitioner on the basis of the previous conduct of the petitioner herein and the said notice was sent with a predetermined mind, which clearly shows bias against the petitioner herein. The aforesaid predetermined notice of termination sent by the DIG and the subsequent termination by the S.S.P. was influenced on the basis of the opinion already expressed by the DIG in the show cause notice. Therefore the said show cause notice in the considered opinion of the court is illegal notice and on the basis of previous conduct, severe punishment of termination cannot be awarded. We are of the considered opinion that no charge of misbehaviour with seniors/ colleagues due to intoxication was proved against the petitioner during enquiry as no urine or blood test of the petitioner herein was conducted. Since the punishment order had been passed in violation of the statutory rules and the principles of natural justice, it is rendered null and void.

27. For all the reasons, as afore stated the instant writ petition is

allowed. and the impugned orders dated 7.5.2012, 25.9.2012, 29.5.2012, 11.1.2016 and 29.5.2017 are hereby set aside. The petitioner herein shall be reinstated in service with continuity in service alongwith 50% back wages for the period he was out of service. The respondents are directed to reinstate the petitioner in service forthwith and shall make payment of his back wages, as above, within two months from the date of receipt of a certified copy of this order.■

28. No cost.

Petition allowed.

[2024 (180) FLR 233]
(SUPREME COURT)
J.K.MAHESHWARI and K.V.VISWANATHAN,JJ.
Civil Appeal No. 7935 of 2023
December 4, 2023
Between
RAM LAL
and
STATE OF RAJASTHAN and others

Departmental Proceedings-Criminal proceeding-Termination from service-Appeal against-Ram Lal (the appellant) was a Constable with the Rajasthan Armed Constabulary, 9th Battalion Jodhpur-Identical allegation in both the proceedings (criminal and departmental) was that the appellant altered his date of birth from 21.4.1974 to 21.4.1972 in his 8th standard mark-sheet –It was alleged that this was done to project himself as having attained majority at the time of the recruitment-Enquiry Officer in the departmental proceeding found the charges proved and the Disciplinary Authority dismissed the appellant from service-Appellate Authority also dismissed the appeal-Trial court convicted the appellant for the offence under section 420-However Appellate Judge allowed the criminal appeal and acquitted the appellant-No alteration was found in the appellant's 8th class mark-sheet-In the operative part of the enquiry report under the head

conclusions there is no reference to the 8th class mark-sheet-Explanation given by the appellant was accepted that overwriting in the application form was only due to correction of an inadvertent error-Very same witnesses who were examined in the departmental enquiry were examined in the criminal trial-Held in the teeth of the findings of the Appellate Judge the disciplinary proceedings and the orders passed thereon cannot be allowed to stand-Charges were not just similar but identical and the evidence witnesses and circumstances were all the same Orders of termination by Disciplinary Authority and the Appellate Authority are quashed as allowing them to stand will be unjust, unfair and oppressive-Appeal is allowed. [Paras 3,4,6,18,20-23, 27 and 32]

JUDGMENT

K.V. VISWANATHAN, J.- Leave granted.

2. Ram Lal (the appellant) was a Constable with the Rajasthan Armed Constabulary, 9th Battalion, Jodhpur. He was appointed on 15.12.1991. A First Information Report (F.I.R.) was registered on 02.09.2022 against him under Sections 420, 467, 468 and 471 of the IPC. Soon thereafter, on 02.04.2003, a charge-sheet in a departmental enquiry was also issued.

3. The identical allegation in both the proceedings was that the Appellant altered his date of birth from 21.04.1974 to 21.04.1972 in his 8th standard mark-sheet. It was alleged that this was done to project himself as having attained majority at the time of the recruitment. The appellant denied the charges.

4. Asked about the overwriting in the application, the appellant stated that it was possible that in the application form he might have written initially as 21.04.1974 and thereafter corrected it to 21.04.1972. He however maintained that his date of birth was 21.04.1972.

5. Five witnesses were examined in the departmental proceeding. These very five witnesses were also examined in the criminal trial, apart from eight other witnesses who were also examined at the criminal trial. The Enquiry Officer in the departmental proceeding found the charges proved and the Disciplinary Authority, by an order

of 31.03.2004, dismissed the appellant from service. The Appellate Authority also dismissed the appeal. Attempts to have the order reviewed and the penalty reconsidered were also in vain.

6. At the criminal trial, the trial Court convicted the appellant for the offence under Section 420 of the IPC and sentenced him to undergo three years' imprisonment alongwith a fine of ? 5,000/-. However, the Additional District and Sessions Judge, Jodhpur ['Appellate Judge'], vide judgment dated 24.08.2007, allowed the criminal appeal and acquitted the appellant.

7. The appellant, thereafter, represented for his reinstatement. Subsequently, he filed a writ petition in August, 2008 for quashing the dismissal order dated 31.03.2004, the order of the Appellate Authority, and the orders refusing to review and reconsider the above-said orders.

8. The learned Single Judge, by his judgment dated 13.08.2008, dismissed the writ petition by holding that the standard of proof in a criminal proceeding and departmental proceeding is different. The learned Single Judge found no infirmity in the order of the Disciplinary Authority. The writ appeal filed by the appellant has also been dismissed by reiterating the findings of the learned Single Judge and by further elucidating as to how the parameters for a judicial review against an order in a departmental proceeding are limited and circumscribed. Being aggrieved, the appellant is in appeal before us.

Questions for consideration:

9. The following two questions arise for consideration:

a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified?

b) On the facts of the case, what is the effect of the acquittal, ordered by the Appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry?

10. We have heard Mr. Adarsh Priyadarshi, learned counsel for the appellant and Mr. Vishal Meghwal, learned counsel for the State. Learned counsels have reiterated their contentions before the Courts below.

LEGAL POSITION:

11. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the Disciplinary Authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. [See State Bank of India v. A.G.D. Reddy]. As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the Disciplinary Authority have ignored material evidence and if it so finds, courts are not powerless to interfere. [See United Bank of India v. Biswanath Bhattacharjee].

12. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See Deputy Inspector General of Police and Another v. S. Samuthiram).

13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank v. State of Gujarat & Others, State Bank of Hyderabad v. P. Kata Rao, and S. Samuthiram (supra)]

DISCUSSION:

VALIDITY OF THE DISCIPLINARY PROCEEDING - QUESTION NO. 1:

14. A brief analysis of the facts of the case is essential. The origin of this dispute, which does not inspire confidence at all, is as follows. The appellant's cousin Shravan Lal (PW-4 in the departmental enquiry and PW-6 in the criminal case), deposed as under before the enquiry officer:

"Stated on enquiry that about 13 months ago, I was operating engine at Well. On that day at about 3.00 p.m., Ramlal after drinking liquor, came at well and switched off the engine. Thereafter, Ramlal abused me and scuffled with me and said that today I will operate the engine and you cannot do anything to me. I have received job by fooling the Government. When I enquired him that how you did that, then, Ramlal told me that I have received job by altering my date of birth as 21.04.1972 in my mark-sheet, whereas, my date of birth was 21.04.1974.

Thereafter I went to school and enquired about this fact, whereupon I came to know that his date of birth was 21.04.1974. Due to this reason, I produced an application before the Superintendent of Police, Ajmer and made one report to the Commandant, 9th Battalion, RAC, Tonk and I also made one report to the Hon'ble Chief Minister and one report to DIG, RAC, Rajasthan, Jaipur…"

An F.I.R. was registered on 02.09.2002. A charge-sheet in the departmental proceeding was issued on 02.04.2003. It will be relevant to extract the two charges in the disciplinary proceedings:

"Charge No.1:-

In the year 1991, an application for appointment on the post of constable was made by you, alongwith which, Mark-sheet of 8th pass issued by Government Secondary School, Tiloniya (Ajmer), bearing Roll No. 323 and Admission No. 2314, in which, your date of birth was mentioned as 21.04.1974, but you by altering it to 21.04.1972, fraudulently got recruited on the post of Constable.

Charge No.2:-

As a result of altering your date of birth from 21.04.1974 to 21.04.1972 in the Mark-sheet issued by the Government Secondary School, Tiloniya (Ajmer), Crime No. 183/02 under Section 420, 467, 468, 471 IPC was registered against you in P.S. Mandor, District -Jodhpur."

15. Five witnesses were examined in the departmental enquiry, namely, PW-1 Jagdish Chand, Principal in Government Secondary School,

Village Tiloniya, PW-2 Bhawani Singh (constable who was tasked to bring the school records), PW-3 Karan Sharma, who was Circle Officer and had recorded the statement of Shravan Lal; PW-4 Shravan Lal and PW-5 Raj Singh who conducted the investigation of the criminal case.

16. The evidence of PW-5/Raj Singh, as set out in the enquiry report taken as it is, is significant since he clearly disproved the charge. He stated the following in the cross-examination before the enquiry officer:

"Raj Singh you conducted investigation of Crime No. 102 and sent the copy to Commandant, 9th Battalion, RAC, Tonk, what documents you sent alongwith the same - The documents which were sent by me were copy of FIR, copy of charge-sheet which was submitted in the Court and statements of witnesses recorded during the investigation and documents; whose photocopies were also given to the accused. Whether you had sent the copies of statements recorded in the aforesaid case to the Commandant - I did not send the copies to Commandant Sahab. Which officer had submitted the charge-sheet, order of result in the Court - the then SHO of P.S.

Mandor, District - Jodhpur City namely Sh. Ram Pratap submitted result of investigation, order and charge-sheet against the accused, in the Court."

During the investigation, you had recorded statements of Dharmendra Kumar Jatav and Jairam Gurjar, did you record more statements and whether you would identify the copies of those statements - Yes, I recorded the statement of witnesses as it is. And I am producing herewith the statements of both the aforesaid witnesses. Whether those have been written by yourself - Yes, those statements have been written by me, which are Exh. D-1 and Exh. D-2. In Exh. D-1, I recorded statement of Teacher namely Rakishan Dev Murari on A to B part and I filled the mark-sheet of Ramlal, wherein, date of birth of Ramlal is mentioned as 21.04.1972 in C to D part, which has been written as per the dictation of Checking Teacher Ramkishan Dev Murari. Date of birth of 21.07.1972 mentioned on E to F part, was not mentioned in deliberate manner,

in fact, same has been written due to the human error, whether you are agree with this statement - This statement is correct, whereas, at the time of filling up form for recruitment in Police RAC, Ramlal could enclose T.C. of 9th Pass, and he was studying in 10th class."

Thereafter, referring to the Exh. D-2 [Statement of Jairam Gurjar], he deposed as under:-

> "Similarly, in Exh. D-2, on A to B part, you have shown me the photocopy of 8th class mark-sheet of Ramlal S/o Sh. Tejuram Chaudhary, R/o Tiloniya, on which, signatures of it's issuer i.e. Teacher namely Sh. Dharmendra Kumar, Ramkishan Dev Murari and Headmaster Sh. Vishnu Miyani are mentioned. I am acquainted with their signatures."

17. Most importantly dealing with the 8th class mark-sheet of the appellant, which formed the basis for his application seeking appointment as Constable, PW-5/Raj Singh stated as under:-

"The 8th class mark-sheet of Ramlal enclosed in the documents, which is Exh. P-3, (sic) in which, whether any alteration has been found in the date of birth anywhere, and whether date of birth has been mentioned as 21.04.1972 therein - Yes, no alteration has been made in the mark-sheet of 8th class and date of birth is 21.04.1972."

18. It is very clear from the above that no alteration was found in the Appellant's 8th class mark-sheet (which forms part of the enclosed documents sent to the Commandant) and the date of birth mentioned on it was 21.04.1972. Reference to 'P-3' in the above extract appears to be a mistake. The charge-sheet and documents enclosed were Ex. P-12/1 to P- 12/12. The defence also exhibited the original 8th class mark-sheet separately as Exh. D-3, as is clear from the chart of Exhibits set out in the enquiry report.

19. The Enquiry Officer, after setting out the depositions of the witnesses, set out the chart of the "P" series Exhibits and the Exhibits of the delinquent, namely the "D" series, and without any further discussion or marshalling of the evidence recorded the following with regard to charge-1:

> "On perusal of statement of witnesses namely PW-1 PW- 2, PW-3, PW-4, PW-5 and Exh. P-1 to P-12, it is clear that correct date of birth of delinquent constable was 21.04.1974. When, delinquent constable submitted application for recruitment on the post of Constable, at that time, he did not complete the age of 18 years, therefore, due to the apprehension of rejection of his application due to the less age, delinquent constable has altered his date of birth as 21.04.1972 from 21.04.1974, therefore, Charge No.1 stands proved.
>
> Delinquent Constable has also passed 10th class, whose mark-sheet is Exh. P-4, in which, his date of birth is mentioned as 21.04.1974."
>
> In so far as charge-2 was concerned, it was merely noticed that challan had been filed in the criminal case as on 28.02.2004, the date of enquiry report, and that the trial had not concluded.

20. In the operative part of the enquiry report under the head, 'conclusions', there is no reference to the 8th class mark-sheet, (which was part of the enclosed documents sent by Constable Raj Singh with the charge-sheet) or to Exh.D-3 [the original 8th class mark-sheet] exhibited by the defence. There is also no reference to the statement of Raj Singh PW-5 in the enquiry, who had acknowledged that there was no alteration in the mark-sheet of the 8th class. What is referred to in the chart of exhibits are letter of Jagdish Chand (Ex.P1); the duplicate mark-sheet of 8th class issued by Jagdish Chand (Ex.P2); the statement of Shravan Lal (Ex-P3); 10th class mark-sheet of Secondary Education Board Rajasthan, Ajmer, (Ex.P4); preliminary enquiry dated 16.10.2002 by Circle Officer, Kishangarh (Ex.P5); FIR No. 183/2000, (Ex.P6); application submitted by Ram Lal for recruitment to the post of constable (Ex.P-7); letter of appointment dated 08.11.1991 (ExP-8); verification letter filed by Ramlal (Ex.P9); appointment order dated 16.12.1991, (Ex-P-10); letter of Government School Tiloniya, Ex.P-11; and charge-sheet dated 24.04.2003, Ex.P-12.

21. It is very clear that relevant and material evidence being, the deposition of PW-5/Raj Singh; the mark-sheet of 8th class of the

appellant [enclosed to the charge-sheet] and the original mark-sheet independently marked as Ex. D3 by the defence have been completely left out in the discussion and consideration. Inference has been drawn about the proof of the charges by ignoring crucial, relevant and material evidence which had come on record. The evidence of PW-5 Raj Singh and the mark-sheet enclosed in the documents annexed to the charge-sheet and the original mark-sheet marked as Ex. D-3, were materials having a direct bearing on the charge. The Disciplinary Authority has merely reiterated the reasoning in the enquiry report. Equally so are the findings of the appellate authority. It is well settled that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material the court in judicial review can interfere. It is only to satisfy ourselves to this extent, that we have scrutinized the material to see as to what was reflected in the record. We are satisfied that the disciplinary proceedings are vitiated and deserves to be quashed.

22. In this scenario, we are inclined to accept the explanation given by the appellant that overwriting in the application form was only due to correction of an inadvertent error. As long as the original 8th standard mark-sheet reflected his date of birth as 21.04.1972 and there is no correction or manipulation in that document, the appellant cannot be penalised.

EFFECT OF ACQUITTAL IN THE CRIMINAL PROCEEDING - QUESTION NO. 2:

23. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his mark-sheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable. Though the Trial Court convicted the appellant under Section 420 of

IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

> ".....Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974. Exh. P-3 is original Mark-sheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or

Mark-sheets. Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed."
[Emphasis supplied]

24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 - original mark-sheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate mark-sheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that

the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S. Samuthiram (Supra).]

25. Expressions like ***"benefit of doubt"*** and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original mark-sheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "***not proved"*** - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither ***"proved"*** nor "***disproved"*** *[*See Vijayee Singh and Others v. State of U.P.].

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).

28. Apart from the above, one other aspect is to be noted. The Enquiry Officer's report makes a reference to the appellant passing 10th standard, and to a 10th standard mark-sheet exhibited as Exh. P-4 referring to the date of birth as 24.07.1974. Jagdish Chandra-PW1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10th standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10th class certificate of Ram Lal produced before the Enquiry Officer, is of some other Ram Lal.

29. This issue need not detain us any further because it is not the case of department that the appellant sought employment based on 10th standard mark-sheet. It is their positive case that the appellant sought employment on the basis of his 8th standard mark-sheet. Shravan Lal-PW-4 in the departmental enquiry had also furnished the 10th standard mark-sheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8th standard mark-sheet, and he admitted that there was no alteration in the 8th standard mark-sheet.

30. In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.

31. Accordingly, we set aside the judgment of the D.B. Special Appeal (Writ) No.484/2011 dated 05.09.2018. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits. As far as backwages are concerned, we are inclined to award the appellant 50% of the backwages. The directions be complied with within a period of four weeks from today.

32. The appeal is allowed in the above terms. No order as to costs.■

Appeal Allowed.

[2024 (180) FLR 240]

(SUPREME COURT)

BELA M. TRIVEDI and DIPANKAR DATTA, JJ.

Civil Appeal Nos. 6668 and 6669 of 2023

October 11, 2023

Between

UNION OF INDIA

and

UZAIR IMRAN and others

Selection-On the post of Postal Assistants and Sorting Assistants-Selection cancelled on the ground that respondents had pursued their intermediate education in "vocational stream"- Respondents challenged the order which was allowed by the Central Administrative Tribunal-Learned Single Judge and also the Division Bench affirmed the order of CAT-Hence instant appeal by Union of India-Held certificate of respondent showed that he had passed the intermediate with "vocational stream" as well as through "regular stream"-Respondent followed whole selection process without any hindrance-He was out of job after one week of joining-No reason even briefly given by state –However firstly they considered the candidature of the respondent on the ground of "vocational stream" and then rejected selection without considering the effect of remark `Regular at the foot of certificate –Appellant ought to have clarified whether the qualification of the respondent was under "vocational" stream or regular stream"-Respondent had suffered a lot for last two decades due to carelessness of appellant in not producing the relevant amendment rules and notification before Tribunal – Respondent would be allowed to join with no back wages-As his service remained less then 10 years he would be treated as if he had been notionally appointed on the date the last of the selected candidate was appointed only for the purpose of pensionary benefits-Appeal disposed of. [Paras 16 to 21]

JUDGMENT

DIPANKAR DATTA, J.- Leave granted.

2. The challenge in this appeal by the Union of India ("appellant", hereafter) is to the judgment and order dated 4th April, 2017 passed by the High Court of Judicature at Allahabad, Lucknow Bench ("High Court", hereafter) dismissing a Writ Petition of the appellant as well as the judgment and order dated 10th December, 2021 of the High Court dismissing its Review Application. By the judgment and order dated 4th April, 2017, the High Court affirmed the judgment and order dated 6th May, 1999 passed by the Central Administrative Tribunal ("Tribunal", hereafter) allowing an Original Application under section 19 read with section 14 of the Administrative Tribunals Act, 1985 as well as a subsequent order dated 30th May, 2000 dismissing a Review Application.

3. At the outset, it is relevant to underline that the present appeal is confined to consideration of the relief granted by the Tribunal, since upheld by the High Court, to Ankur Gupta ("the third respondent", hereafter), the sole contesting party, as the other respondents are not interested in the service any longer, according to the information presented to us from the Bar.

4. The factual matrix of the appeal, culled out from the records, is as follows:

a. The President of India vide a Notification dated 27th December, 1990, framed the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990 ("1990 Rules", hereafter). The Schedule to the 1990 Rules outlined the educational qualifications required for the post of Postal Assistants and Sorting Assistants for direct recruits as "10+2 standard or 12th class pass of recognised University/ Board of School Education/Board of Secondary Education". The 1990 Rules stood amended by the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment (Amendment) Rules 1991 ("Amendment Rules", hereafter) vide a Notification dated 31st January, 1992. As a result of the amendment in the Schedule to the 1990 Rules, candidates who had pursued their intermediate education in ***"vocational stream"*** were excluded from being

considered for the post of Postal Assistants and Sorting Assistants.

b. This being the position of the recruitment rules, the Superintendent of Post Office, Kheri vide a letter dated 17th April, 1995 requisitioned from the District Employment Officer, Lakhimpur Kheri a list of eligible candidates for the purpose of recruitment of 10 (ten) Postal Assistants in Lakhimpur Kheri postal division for the year 1995. According to the requisition, the candidates were required to have qualified in the intermediate examination from the Uttar Pradesh Intermediate Education Council, Allahabad or equivalent. Apart from such requisition, applications were also invited through an advertisement dated 12th June, 1995.

c. All the respondents herein, among other candidates, took the written, typing, aptitude and computer tests and attended the interview which were conducted as a part of the selection process. A merit list was notified vide a Notification dated 22nd November, 1995 on the basis of marks obtained by the participating candidates. The names of the respondents figured quite high in the merit list, following which all of them were attached to the Kheri Post Office for 15 days pre-induction training starting from 15th March, 1996. The same was to be followed by a long-term training. However, the Chief Post Master General sent a letter dated 22nd March, 1996 to various Postmasters General. Referring to letters dated 31st January, 1991 and 5th January, 19965 (sic) regarding recognition of educational qualification of 10+2/Intermediate from the vocational stream for direct recruitment, it was conveyed that certificates issued by the Board of High School and Intermediate Education should be admitted unless "these are marked as vocational stream or vocational". This resulted in holding back of the respondents, who were not sent for long-term training. This triggered the instant litigation.

d. Dissatisfied with the aforesaid letter dated 22nd March, 1996, the respondents approached the Tribunal contesting the legality thereof. Since they had already succeeded in clearing the prescribed examinations, consequent to which their names figured in the merit list, it was prayed that the appellant be

directed to send the respondents for the long-term training and consequently, be appointed as Postal Assistants in Lakhimpur Kheri. The Tribunal, vide order dated 6th May, 1999, decided in favour of the respondents. The relevant part of the order is extracted hereunder:

"4. [...] The column of educational qualification provides that a candidate who passed the Intermediate Examination of Board of Secondary Education or equivalent. Copy, as published in the Newspaper, on 12.6.95 Annexure A-1 to the O.A. shows that the educational qualification required was Intermediate (10+2) Examination passed. Thus neither, in the communication (Annexure R-1) sent to the Employment Exchange Lakhimpur Kheri or in the advertisement given in the Newspaper (Annexure A-1 to the O.A.) there was mention that the candidates who cleared the Intermediate (10+2) examination with 'vocational subject' would not be eligible. In view thereof, all the 4 applicants fulfilled educational qualification as published in the newspaper. advertisement and as mentioned in the communication sent to the Employment Exchange for sponsoring the names.
***

6. In view of the discussions made above, the respondents are directed to send the applicants for further required training and on completion thereof, and other formalities, to appoint the applicants as Postal Assistants. The seniority of the applicants would not be affected by reason of their subsequent appointment and they would get their seniority as may be admissible in the rules, as if they were sent for training along with their juniors."

e. Aggrieved thereby, the appellant preferred a Review Application before the Tribunal which dismissed it vide order dated 30th May, 2000 with an observation that the grounds for review under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 ("CPC", hereafter) are very limited, and the appellant has failed to raise any substantial ground for review.

f. Questioning the aforesaid judgment and order of the Tribunal, the appellant approached the High Court praying that the same be set-aside.

g. The High Court, vide the impugned judgement dated 4th April, 2017, upheld the orders of the Tribunal reasoning that no amendment in the 1990 Rules had been effected and that the letter dated 22nd March, 1996 was only an executive order/ clarificatory instruction which could not have amended the 1990 Rules; hence, denial of appointment to the third respondent (alongside other respondents impleaded therein) based solely on such letter was unwarranted. Finding no manifest error in the impugned judgment and order of the Tribunal, the High Court dismissed the Writ Petition.

h. After dismissal of the Writ Petition, the appellant preferred a Review Application before the High Court. vide order dated 10th December, 2021, the High Court dismissed the review application observing that a court exercising review jurisdiction under section 114 of the CPC read with Order XLVII Rule 1 thereof has a very narrow and limited scope to interfere and that the judgment and order under review did not suffer from any mistake or error apparent on the face of the record warranting interference.

5. Ms. Bhati, learned Additional Solicitor General appearing on behalf of the appellant, while taking exception to the impugned judgments and orders raised the following contentions:

a. The Amendment Rules were already on record as Annexure 7 to the Writ Petition filed before the High Court. As the Amendment Rules had not been taken note of by the High Court during arguments, the judgment and order dated 4th April, 2017 suffered from an error apparent on the face of the record which necessitated the Review Application. In this light, she submitted that the Review Application urged a substantial ground within the framework of Order XLVII of the CPC which, unfortunately, the High Court failed to consider. Dismissal of the Review Application, in the circumstances, was manifestly erroneous.

b. As the Amendment Rules had come into force prior to the commencement of the present selection process in 1995, it was imperative that the educational qualifications for appointment on the posts of Postal Assistants conformed to the amended

Schedule, i.e., 10+2 standard or 12th class pass from a recognized University or Board, excluding vocational streams; consequently, selection of any candidate possessing vocational qualification would stand incompatible with the amended Schedule and any appointment in breach of the 1990 Rules, as amended, would be void ab initio.

c. The third respondent fell short of the prescribed eligibility qualifications for being directly recruited, as specified in the relevant recruitment rules and as a sequel thereto, his selection was by mistake which the appellant had/has a right to rectify. Since the third respondent was sought to be disqualified not based on any executive order but based on a true and proper interpretation of recruitment rules framed under Article 309 of the Constitution, the High Court committed grave error in not interfering with the direction of the Tribunal to appoint the applicants before it.

6. Resting on the aforesaid submissions, Ms. Bhati prayed that the orders under challenge be set aside and the original application before the Tribunal dismissed.

7. Mr. Yadav, learned counsel appearing on behalf of the third respondent while supporting the impugned judgments and orders, advanced the following submissions:

a. Concurrent findings returned by the Tribunal and the High Court should not be interfered with as the letter dated 22nd March, 1996, through which the words "excluding vocational streams", were made the basis of depriving the third respondent of an appointment is nothing but an executive order.

b. Rule 1(2) of the Amendment Rules itself provided that the amendment would be enforced after publication of the same in the official gazette and there is no gazette publication in respect of said rules till date.

c. The name of the third respondent was sponsored by the District Employment Officer in view of the requisition made by the appellant. Through the letter dated 17th April, 1995, the

appellant had explicitly stated that the educational requirement for Postal Assistant will be intermediate education from a recognised board. It was neither mentioned in the advertisement nor in the aforesaid letter that candidates with "vocational streams" would be excluded. As such, the third respondent had fulfilled the requisite criteria; and denying him an appointment is against the settled law that rules of the game cannot be changed during the recruitment process.

d. Even otherwise, the certificate of the third respondent issued by the Board of High School and Intermediate Education, Uttar Pradesh ("said Board", hereafter) on 24th July, 1991 clearly manifests that he was a student of the 'Regular' stream and could not have been disqualified on the ground that he had pursued education at the 10+2 level in the vocational stream.

8. Asserting that the impugned judgments and orders are free from legal infirmities and stressing on the concurrent findings recorded therein, Mr. Yadav submitted that the appeal is devoid of any merit and, consequently, warrants outright dismissal.

9. We have heard counsel for the parties and perused the materials on record.

10. The submission of Mr. Yadav that the Amendment Rules were not published in the official gazette is without any substance. It appears that the Amendment Rules were duly published in the Gazette of India dated 15th February, 1992, a copy whereof has been produced by Ms. Bhati. She is, therefore, right in her contention that the Amendment Rules became operational on and from 15th February, 1992, much before the process for recruitment had commenced.

11. It is true that neither in the letter dated 17th April, 1995 requisitioning names of eligible candidates from the Employment Exchange nor in the advertisement dated 12th June, 1995 inviting applications from eligible candidates was it mentioned that the candidates clearing the requisite examination conducted by a recognized University or Board through vocational stream would stand excluded. However, nothing much turns on it. Law is well-settled that if qualifications mentioned in an advertisement inviting

applications are at variance with statutorily prescribed qualifications, it is the latter that would prevail. Profitable reference in this connection may be made to the decisions of this Court in Malik Mazhar Sultan v. U.P. Public Service Commission and Ashish Kumar v. State of Uttar Pradesh.

12. It is observed that the Tribunal or the High Court did not have the occasion to advert to the certificate issued in favour of the third respondent and proceeded to decide the Original Application, the Writ Petition and the Review Applications without any reference to the Amendment Rules because of inept handling of the case by the appellant. We are in agreement with Ms. Bhati that at least the High Court, having regard to the disclosure of the Amendment Rules in the Writ Petition as well as the ground urged in the Review Application, was clearly wrong in not rectifying the error which was apparent on the face of the record.

13. However, the aforesaid observations of ours do not advance the cause of the appellant in view of the contention advanced on behalf of the third respondent referring to the certificate which was issued to him by the said Board. Such certificate enumerates the subjects which he read during his intermediate education. Out of a total of four subjects, two of them (Hindi and English) are described as vocational subjects. Importantly, the certificate which is partly in vernacular also bears at its foot the remark 'Regular' in English. It has been contended on behalf of the third respondent that 'Regular' in the certificate signifies regular stream and not vocational stream.

14. Normally, it is not the function of the court to determine equivalence of two qualifications and/or to scrutinise a particular certificate and say, on the basis of its appreciation thereof, that the holder thereof satisfies the eligibility criteria and, thus, is qualified for appointment. It is entirely the prerogative of the employer, after applications are received from interested candidates or names of registered candidates are sponsored by the Employment Exchanges for public employment, to decide whether any such candidate intending to participate in the selection process is eligible in terms of the statutorily prescribed rules for appointment and also as to whether he ought to be allowed to enter the zone of consideration, i.e., to participate in the selection process. It is only when evidence of a sterling quality is produced before the court which, without much

argument or deep scrutiny, tilts the balance in favour of one party that the court could decide either way based on acceptance of such evidence.

15. Notwithstanding this settled legal position, the stage when ineligibility is cited for not offering employment also assumes importance. It is indeed indisputable that none has any legal right to claim public employment. In terms of Article 16 of the Constitution, a candidate has only a right to be considered therefor. Once a candidate is declared ineligible to participate in the selection process at the threshold and if he still wishes to participate in the process perceiving that his candidature has been arbitrarily rejected, it is for him to work out his remedy in accordance with law. However, if the candidature is not rejected at the threshold and the candidate is allowed to participate in the selection process and ultimately his name figures in the merit list - though such candidate has no indefeasible right to claim appointment he does have a limited right of being accorded fair and nondiscriminatory treatment. Given the stages of the process that the candidate has successfully crossed, he may not have a vested right of appointment but a reasonable expectation of being appointed having regard to his position in the merit list could arise. The employer, if it is a State within the meaning of Article 12 of the Constitution, would have no authority to act in an arbitrary manner and throw the candidate out from the range of appointment, as distinguished from the zone of consideration, without rhyme or reason. The employer-State being bound by Article 14 of the Constitution, the law places an obligation, nay duty, on such an employer to provide some justification by way of reason. If plausible justification is provided, the courts would be loath to question the justification but the justification must be such that it is rational and justifiable, and not whimsical or capricious, warranting non-interference.

16. In the facts of the present case, the stage of declaration of ineligibility seems to us to turn the tide in favour of the third respondent. If the appellant had declared the third respondent as ineligible based on the appellant's appreciation of the educational qualification of the third respondent at the threshold, the situation would have entirely been different. However, it was not at the threshold that the third respondent was considered ineligible. As the factual narrative would reveal, the appellant had considered

the third respondent eligible, allowed him to take part in the various tests in connection with the selection process, interviewed him, placed his name quite high in the merit list, and thereafter sent him for 15 days' pre-induction training starting from 15th March, 1996. It was after a week that the letter dated 22nd March, 1996 was issued which resulted in ouster of the third respondent from the range of appointment.

17. There is little doubt that the decision to treat the third respondent as ineligible was based on the certificate; however, there is no gainsaying that the certificate produced by the third respondent in support of his claim that he had qualified in the relevant examination and, thus, was eligible to be considered for appointment, did leave room for two views. It is settled law that unfettered discretion, unaccountable approach and arbitrariness in State action are antithesis to Article 14; and, particularly when two views could possibly emerge looking at the certificate of educational qualification placed by the third respondent, with both views not being wholly unworthy of acceptance, fairness in administrative procedure demanded that the appellant ought to have given reason, howsoever brief, as to why it preferred to consider the third respondent to have succeeded in the relevant examination through "vocational stream", thereby attracting ineligibility, without considering the effect of the remark 'Regular' at the foot of the certificate. The contents of the letter dated 22nd March, 1996, which sounded the death knell for the third respondent, is clearly suggestive of a general direction given to the addressee Postmasters General; they were not called upon to scrutinise each certificate on its merits. As such, there was no individual rejection but a general rejection without applying one's mind to the contents of the certificate. It was, thus, highly improper for the appellant to reject the candidature of the third respondent outright in the absence of a proper appreciation of the certificate.

18. Even if it is assumed that the certificate was duly looked into, we are inclined to the view on facts (given the contents of the certificate produced by the third respondent and in the absence of conclusive information as to the nature of education imparted to the third respondent at the intermediate level) that the appellant ought to have, in the least, requested for a clarification from the said Board as to whether the third respondent could be treated to

have cleared the intermediate examination of 1991 in ***"vocational stream"*** or in the category of 'Regular' and, thus, was (in)eligible to compete for appointment in terms of the 1990 Rules, as amended. It was not within the province of the appellant to scrutinise the certificate of the third respondent with an approach of "one eye open, one eyed closed" and declare that his intermediate education was in a "vocational stream", overlooking or ignoring that the self-same certificate bore the remark 'Regular'. The determination of the appellant, in the present case, undoubtedly hinged on its scarce knowledge of the nature of the third respondent's education, evincing that his exclusion was not on the basis of a valid and proper reason and was, decidedly, arbitrary.

19. The principle that if two views are reasonably possible on a given set of facts and that the courts would stay away from interference and not substitute its view for the view taken by the employer, may not apply in a case of the present nature where the conflicting views could be resolved by a mere reference to the certificate issuing authority to clarify what the certificate connoted. After all, the future of a prospective appointee called for an approach consistent with the preambular promise of securing justice and equality of opportunity, which the appellant failed to secure.

20. The third respondent, in our view, has been discriminated against and arbitrarily deprived of the fruit of selection. At this distance of time, it would not be worthwhile to order a remand particularly when the appellant is responsible for the lis being prolonged in excess of two decades. There has been utter carelessness on its part in not producing the Amendment Rules and the gazette notification before the Tribunal. The third respondent, therefore, cannot suffer for such carelessness and has to be given what is due to him. At the same time, we cannot overlook that by passage of time, the third respondent has crossed the maximum age for entry into public employment. He is 50 years old now and the age of superannuation is reported to be 60 years. In such a situation, we propose to dispose of this appeal by making appropriate directions in exercise of our power to do complete justice between the parties under Article 142 of the Constitution.

21. Accordingly, it is directed that:

(i) The third respondent shall be offered appointment, initially on probation, by the appellant on a post of Postal Assistant (for which he was selected) within a month from date;

(ii) If no post is vacant, a supernumerary post shall be created;

(iii) Subject to satisfactory completion of the period of probation, the third respondent shall be confirmed in service;

(iv) Should service rendered during probation be considered not satisfactory, the appellant will be entitled to proceed in accordance with law;

(v) Having not actually worked, the third respondent shall neither be entitled to arrears of salary nor shall he be entitled to claim seniority from the date of appointment of other candidates who participated in the recruitment process of 1995;

(vi) Since the third respondent, if confirmed after successful period of probationary service, would have less than 10 years' service to his credit and consequently would fall short of qualifying service for pension and other retiral benefits, the appellant shall treat him to have been notionally appointed on the date the last of the selected candidates was appointed pursuant to the process of 1995 only for the purpose of release of such benefits in accordance with law; and

(vii) In such case, his retiral benefits shall be computed based on the last pay drawn by him while in service.

(viii) These directions will not be applicable to any respondent, other than the third respondent.

22. With the above directions, the appeal stands disposed of together with pending applications, if any. Parties shall, however, bear their own costs.■

Appeal Disposed Of.

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