IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 16th OF OCTOBER, 2023

WRIT PETITION No. 9077 of 2006

BETWEEN:-

VISHNU KUMAR MISHRA S/O SHRI SHOBHNATH MISHRA, AGED ABOUT 28 YEARS, R/O. VILLAGE P. O. MAJHGAWAN, DISTRICT SATNA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PANKAJ DUBEY- ADVOCATE)

AND

1. **UNION OF INDIA, THROUGH THE SECRETARY, MINISTRY OF HOME, NEWDELHI.**
2. **INSPECTOR GENERAL OF POLICE, SPECIAL SECTOR, CENTRAL RESERVE POLICE FORCE, OLD SECDRETARIAT, NEW DELHI.**
3. **DEPUTY INSPECTOR GENERAL OF POLICE, CENTRAL RESERVE POLICE FORCE, NEEMUCH (MADHYA PRADESH)**
4. **COMMANDANT, 1ST BATTALION, CENTRAL RESERVE POLICE FORCE, KHUMULWING (WEST TRIPURA)**

.....RESPONDENTS

(BY SHRI DEVESH BHOJNEY – ADVOCATE)

This petition coming on for orders this day, the court passed the following:

ORDER

1. It is not out of place to mention here that this Court vide order dated 12-09-2023 had passed the following order :-

> "By order dated 31.08.2023 counsel for the petitioner was directed to address this Court on the question of territorial jurisdiction because the disciplinary authority and the appellate authority are stationed within the territorial jurisdiction of different High Courts or Indore Bench of this Court.
> It is submitted by Shri Dubey that this petition is pending since 2006, therefore, the petitioner would suffer irreparable loss in case if the petition is dismissed for want of territorial jurisdiction, therefore, he may be granted sometime to move an application before Hon'ble the Chief Justice on administrative side for permitting the petitioner to prosecute this petition before the Principal Seat or for transfer of the case to Indore Bench.
> Time granted.
> List in the week commencing 16.10.2023."

2. Accordingly, counsel for the petitioner prayed for time to move an application before Hon'ble the Chief Justice on administrative side for permitting the petitioner to prosecute this petition before the Principal Seat or for transfer of the case to Indore Bench. From the note sheet dated 5.10.2023 written on administrative side, it is clear that Hon'ble the Chief Justice has allowed hearing of this petition at Principal Seat, Jabalpur. Accordingly, the case is heard.

3. This petition under Article 226 of the Constitution of India has been filed against order dated 11.02.2005 (Annexure-P/5) passed by Disciplinary Authority and order dated 25.07.2005 (Annexure-P/7) passed by Appellate Authority as well as order dated 26.05.2006

(Annexure-P/9) passed by Revisional Authority, by which, petitioner has been awarded punishment of removal from service and appeal as well as revision have been dismissed.

4. By referring to the charge sheet filed as Annxure-P/2, it is submitted that a departmental charge sheet was issued on one charge i.e. the petitioner had committed an act of neglect of duty / remissness in the discharge of his duty in his capacity as a member of the Force under Section 11 (1) of the CRPF Act, 1949 in that due to his sheer negligence in handling service weapon, during OPS duty on 4.3.2004 at about 13:00 hrs at Kairai, P. S. Jirania, West Tripura, resulted in loss of precious life of No.711020665 HC/ GD Kishan Singh of G/1st Bn. CRPF, which is punishable under Rule 27 of CRPF Rules, 1955.

5. It is submitted that the petitioner filed his reply and ultimately, he was subjected to departmental enquiry. It is also the case of the petitioner that for the similar charges, the petitioner was criminally prosecuted and by judgment dated 19.12.2006 passed by the Chief Judicial Magistrate, West Tripura, Agartala in case no. CR 114 of 2004 (The State of Tripura vs. Sri Bishnu Kumar Misra) he has been acquitted by holding that the accused was not negligent in handling the rifle and the benefit must go in favour of the accused. It is submitted that it is true that the judgment in criminal case was pronounced on 19.12.2006 i.e. subsequent to the orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority but the same will have some bearing on the outcome of the petition and therefore, the judgment passed by the trial Court

on 19.12.2006 may be considered. It is further submitted that even otherwise; during the departmental enquiry the petitioner was not given an opportunity to cross-examine the witnesses which is violative of Rule 27 of CRPF Rules, 1955 as well as of Clause 4 (iii) of the Standing Order No.20/2001. It is further submitted that once the petitioner has been acquitted then he cannot be departmentally prosecuted for the similar charges in the light of Rule 27 (6) (ccc) of CRPF Rules, 1955.

6. It is further submitted that neither the Disciplinary Authority nor the Appellate Authority as well as Revisional Authority applied their mind to the facts of the case and therefore, the orders of punishment passed against the petitioner are in direct contravention of law laid down by the Supreme Court in the case of **Allahabad Bank and another vs. Krishna Narayan Tewari reported in (2017) 2 SCC 308**.

7. *Per contra*, counsel for the respondents has supported the finding recorded by the authorities and submitted that the scope of judicial intervention in the departmental enquiry is very limited.

8. Heard learned counsel for the parties.

9. Arguments in the case started at 10:20 AM and before initiation of the arguments, it was specifically asked from the counsel for the respondents as to whether he is ready to argue the matter or not. It was not pointed out by the counsel for Union of India that record of the departmental inquiry is not available but gave his consent for arguments. However, at about 11:10 AM while answering to the submissions made by counsel for the petitioner, it was submitted

by counsel for the respondents that record of the departmental enquiry is not available.

10. It is always expected from the counsel for the parties that if they are not ready to argue the matter for one reason or other then the reasons must be disclosed at the beginning of the arguments and not in the middle of the argument. The arguments were heard only on account of the consent given by counsel for the parties, therefore, it is clarified that this case is being decided in absence of record of the departmental enquiry.

Whether acquittal of the petitioner in a criminal case has some effect on the departmental proceeding or not?

11. As already pointed out, the petitioner was acquitted in criminal case vide judgment dated 19.12.2006 whereas the order of punishment was passed by the Disciplinary Authority on 11.02.2005, order of the Appellate Authority was passed on 25.07.2005 and the Revisional Authority passed the order on 26.05.2006. Therefore, the order of the acquittal was not available during the pendency of the departmental enquiry and even up to the stage of revision. Thus, the authorities had no opportunity to consider the effect of acquittal of the petitioner in the criminal case. Under these circumstances, it has become necessary for this Court to consider the effect of acquittal of the petitioner in the criminal case.

12. By referring to Rule 27 (6) (ccc) of the CRPF Rule, 1955, it is submitted that when a member of the Force has been tried and acquitted by a criminal court then he shall not be punished

departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case whether actually led or not, except with the prior sanction of the Inspector General. However, it was fairly conceded by counsel for the petitioner that as per clause 15 of the Standing Order No.20/2001 issued on 24th May, 2001, there is no bar on conducting a DE simultaneously or during the pendency of criminal trial.

13. Rule 27 (6) (ccc) of CRPF, Rules, 1955, reads as under :-

> *"When a member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not, except with the prior sanction of the Inspector General."*

14. Clause 15 of Standing Order No.20/2001 reads as under :-

> *"There is no bar of conducting a DE simultaneously or during the pendency of criminal trial. Normally, the charges should be distinct from the charges, which are the subject of the criminal trial, but there is no bar as such in conducting DE on similar charges, which are subject matter of the criminal trial. A DE may be held even if the accused has been acquitted in a criminal case giving him the benefit of doubt. Even in cases of hon'ble acquittal, the departmental proceedings can be drawn, as a standard of proof required is different and distinct than what is required in a criminal trial."*

15. Thus, it is to be seen that whether the charges leveled against the petitioner in the criminal case were identical to the charges which were leveled against the petitioner in the departmental enquiry or not ?.

16. It is suffice to mention here that the petitioner was prosecuted for an offence under Section 304-A of IPC. Thus, the primary charge against the petitioner was causing death of the deceased by rash and negligent act.

17. In a criminal case, guilt of a person is required to be proved by the prosecution beyond any reasonable doubt. Whereas, departmental enquiry is decided on the basis of preponderance of probabilities.

18. The Supreme Court in the case of **State of Rajasthan and others Vs. Heem Singh** reported in **(2021) 12 SCC 569** has held as under:-

> **"38.** In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In *Southern Railway Officers Assn.* v. *Union of India* (2009) 9 SCC 24, this Court held : (SCC p. 40, para 37)
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> > "*37.* Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High

> Court did not say that the said fact had not been taken into consideration. The revisional authority did so. *It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge*."
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> (emphasis supplied)

39. In *State* v. *S. Samuthiram*, (2013) 1 SCC 598, a two-Judge Bench of this Court held that unless the accused has an "honourable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an "honourable acquittal". Noticing this, the Court observed : (SCC pp. 609-10, paras 24-26)

> "***Honourable acquittal***
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> *24*. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI* v. *Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. *In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions*

"honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In *R.P. Kapur* v. *Union of India* AIR 1964 SC 787 it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam* v. *Raghava Rajgopalachari*, 1972 SLR 44 (SC) this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope* v. *Emperor*, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168 which is as follows : (*Raghava case*, SLR p. 47, para 8)

> '*8*. … The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We

> said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted".' (*Robert Stuart case*, ILR pp. 188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused

> is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. *It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc.* In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."
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> (emphasis supplied)

19. The Supreme Court in the case of **Management of Bharat Heavy Electricals Limited Vs. M. Mani** reported in **(2018) 1 SCC 285** has held as under:-

> "**20.** Similarly, in our considered view, the Labour Court failed to see that the criminal

proceedings and departmental proceedings are two separate proceedings in law. One is initiated by the State against the delinquent employees in criminal court and other i.e. departmental enquiry which is initiated by the employer under the Labour/Service Laws/Rules, against the delinquent employees.

21. The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic enquiry, which the employer had every right to conduct independently of the criminal case.

22. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal court is of no avail. It is held that even if a person stood acquitted by the criminal court, domestic enquiry can still be held—the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See *Karnataka SRTC* v. *M.G. Vittal Rao*, *(2012) 1 SCC 442).)*

23. In the light of this settled legal position, the Labour Court was not right in holding that the departmental enquiry should have been stayed by the appellant awaiting the decision of the criminal court and that it is rendered illegal consequent upon passing of the acquittal order by the criminal court. This finding of the Labour Court is, therefore, also not legally sustainable."

20. The Supreme Court in the case of **Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay** reported in **(2022) 2 SCC 696** has held as under:-

> "**11.** At the outset, it is required to be noted that in the departmental proceedings the misconduct alleged against the respondent driver of driving the vehicle rashly and negligently due to which the accident occurred in which four persons died has been proved. Thereafter, the disciplinary authority passed an order of dismissal, dismissing the respondent workman from service. The Labour Court did not interfere with the order of dismissal by giving cogent reasons and after reappreciating the entire evidence on record including the order of acquittal passed by the criminal court. However, the Industrial Court though did not interfere with the findings recorded by the disciplinary authority on the misconduct proved, interfered with the order of dismissal solely on the ground that punishment of dismissal is disproportionate to the misconduct proved and the same can be said to be unfair labour practice as per clause 1(*g*) of Schedule IV of the MRTU & PULP Act, 1971. The same is not interfered with by the High Court.
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> **11.1.** Therefore, the short question which is posed for the consideration of this Court is whether in the facts and circumstances of the case the punishment of dismissal can be said to be an unfair labour practice on the ground that the same was disproportionate to the misconduct proved and therefore the Industrial Court was justified in interfering with the order of dismissal and ordering reinstatement with continuity of service.

11.2. Having gone through the findings recorded by the enquiry officer in the departmental enquiry and the judgment and order passed by the Labour Court as well as the Industrial Court and even the judgment and order of acquittal passed by the criminal court, it emerges that when the respondent was driving the vehicle it met with an accident with the jeep coming from the opposite side and in the said accident four persons died. From the material on record it emerges that the impact of the accident with the jeep coming from the opposite side was such that the jeep was pushed back 25 feet. From the aforesaid facts it can be said that the respondent workman was driving the vehicle in such a great speed and rashly due to which the accident had occurred in which four persons died. Even while acquitting the respondent accused driver who was facing the trial under Sections 279 and 304(*a*)IPC the criminal court observed that the prosecution failed to prove that the incident occurred due to rash and negligent driving of the respondent accused herein only and none else. Therefore, at best even if it is assumed that even driver of the jeep was also negligent, it can be said to be a case of contributory negligence. That does not mean that the respondent workman was not at all negligent. Hence, it does not absolve him of the misconduct.

11.3. Much stress has been given by the Industrial Court on the acquittal of the respondent by the criminal court. However, as such the Labour Court had in extenso considered the order of acquittal passed by the criminal court and did not agree with the submissions made on behalf of the respondent workman that as he was acquitted by the

criminal court he cannot be held guilty in the disciplinary proceedings.

11.4. Even from the judgment and order passed by the criminal court it appears that the criminal court acquitted the respondent based on the hostility of the witnesses; the evidence led by the interested witnesses; lacuna in examination of the investigating officer; panch for the spot panchnama of the incident, etc. Therefore, the criminal court held that the prosecution has failed to prove the case against the respondent beyond reasonable doubt. On the contrary in the departmental proceedings the misconduct of driving the vehicle rashly and negligently which caused accident and due to which four persons died has been established and proved. As per the cardinal principle of law an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standards of proof in both the cases are different and the proceedings operate in different fields and with different objectives. Therefore, the Industrial Court has erred in giving much stress on the acquittal of the respondent by the criminal court. Even otherwise it is required to be noted that the Industrial Court has not interfered with the findings recorded by the disciplinary authority holding charge and misconduct proved in the departmental enquiry, and has interfered with the punishment of dismissal solely on the ground that same is shockingly disproportionate and therefore can be said to be an unfair labour practice as per clause 1(*g*) of Schedule IV of the MRTU & PULP Act, 1971.

11.5. Now so far as the order passed by the Industrial Court ordering reinstatement with continuity of service by invoking clause 1(*g*) of Schedule IV of the MRTU & PULP Act, 1971

> is concerned, as per clause 1(*g*) only in a case where it is found that dismissal of an employee is for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

21. The Supreme Court in the case of **Uttaranchal Road Transport Corpn. and others Vs. Mansaram Nainwal** reported in **(2006) 6 SCC 366** has held as under:-

> "**7.** Challenging the order of the Labour Court, the respondent filed a writ petition which, as noted above, was allowed by the impugned judgment. The foundation of the High Court's judgment was to the effect that in the criminal trial the respondent was acquitted and placing reliance on a decision of this Court in *Capt. M. Paul Anthony* v. *Bharat Gold Mines Ltd.* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] the order of termination was set aside.
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> **8.** In support of the appeal, learned counsel for the appellant submitted that the ratio in *Anthony case* has no application to the facts of the present case. It has not even been indicated as to how the factual position is similar. In any event, acquittal in a criminal case does not lead to an automatic reinstatement and also does not render the departmental proceedings invalid. It was, therefore, submitted that the High Court was clearly wrong in its conclusion.
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> **9.** On the other hand, learned counsel for the respondent submitted that the departmental authorities in the enquiry conducted against the respondent had clearly found that he was not

responsible for the accident and there was no misconduct involved.

10. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in *Union of India* v. *Bihari Lal Sidhana [(1997) 4 SCC 385 : 1997 SCC (L&S) 1076]*. It was held in para 5 as follows : (SCC pp. 387-88)

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

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

11. The ratio of *Anthony case* can be culled out from para 22 of the judgment which reads as follows : (SCC p. 691)

> "*22*. The conclusions which are deducible from various decisions of this Court referred to above are:
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> (*i*) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
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> (*ii*) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the

charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

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

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

(*v*) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found

> not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

12. Though the High Court had not indicated as to how the decision of this Court in *Anthony case* laid down as a matter of law that whenever there is acquittal in a criminal trial reinstatement is automatic, in all probabilities basis was para 36 of *Anthony case* which reads as follows : (SCC p. 695)

> "*36*. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. *In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts*. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his

> reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs 15,000." (underlined [Ed. : Herein italicised.] for emphasis)

13. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates : (*i*) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa* v. *Sudhansu*

Sekhar Misra [(1968) 2 SCR 154 : AIR 1968 SC 647] and Union of India v. Dhanwanti Devi [(1996) 6 SCC 44].) A case is a precedent and binding for what it explicitly decides and no more. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn* v. *Leathem [1901 AC 495 : (1900-03) All ER Rep 1 : 85 LT 289 (HL)]*, Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

14. Unfortunately, the High Court has not discussed the factual scenario as to how *Anthony case* had any application. As noted above, the position in law relating to acquittal in a criminal case and question of reinstatement has been dealt with in *Sidhana case*. As the High Court had not dealt with the factual scenario and as to how *Anthony case* helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for long, it would be in the interest of the parties if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order."

22. However, the facts of the present case are slightly distinguishable in the light of the Rule 27 (6) (ccc) of CRPF Rules, 1955 which provides that if a delinquent officer has been tried for a similar charge then he should not be punished departmentally. Therefore, it is necessary to look into the judgment passed by the trial Court in the criminal case.

23. In paragraph 21 of the judgment apart from mentioning certain facts, the following observations have been made by the trial Court :-

> *"It is true that a jawan is always a trained person and he should deal with the arms carefully and being the trained person he should keep the arms in a safe position but accident is always accident. In absence of a specific evidence regarding discharge of ammunition from firearms this court cannot come to a conclusion that the accused was negligent while handling with the rifle and the benefit must goes in favour of the accused."*

Therefore, the trial Court itself has held that since the petitioner is a trained person and he was required to deal with arms carefully and he should have kept the arm in a safe position but looking to the strict proof of guilt it was held that in absence of any proof that the ammunition was discharged from the arms in possession of the petitioner, it was difficult for the trial Court to hold the petitioner's guilt of causing death of the Constable Kishan Singh by his negligence. Therefore, one thing is clear that in a criminal case death of the deceased was primary allegation and negligent act was the secondary allegation. It is being observed for the reason

that if the prosecution was of the view that because of deliberate act on the part of the petitioner, Kishan Singh had lost his life; then the petitioner would have been prosecuted for under Section 304 Part I or II or under Section 302 of IPC. Therefore, negligent act of the petitioner was secondary circumstances but the primary charge was that Kishan Singh has lost his life. The primary charge levelled against the petitioner in the departmental enquiry was negligent act and death of Kishan Singh was the consequence. In view of the specific observations made by the trial Court that "it was expected from the petitioner to keep the weapon in a safe position" it is clear that the petitioner was not completely exonerated from his negligent act but he was acquitted on the ground that the prosecution has failed to prove that the ammunition was fired from the firearm carried by the petitioner. Facing with such a situation, counsel for the petitioner referred to the charge sheet served on the petitioner to point out that the department had also relied upon the report dated 22.3.2004 submitted by Commandant, 1st Battalion vide office communication no.D.XI.2/2004-EC.-II-1st. The petitioner has also filed a copy of the said report as Annexure-P/1.

24. The facts of the present case are that during the patrolling, the patrolling party was taking rest. The deceased Kishan Singh as well as the petitioner were also the members of patrolling party and they were sitting opposite to each other. The allegations are that the bullet which got fired from the rifle of the petitioner hit on left side of chest of the deceased. This fact is also mentioned in

the report dated 22.3.2004 submitted by Commandant, 1st Battalion, Central Reserve Police Force, Jirania (West Tripura) filed as Annexure-P/1. Unfortunately, there is no observation with regard to direction of bullet which hit on left chest of the deceased Kishan Singh. For ascertaining the nature of bullet injury, tattooing, blackening, charring as well as direction of entry wound is the important aspect which were completely ignored by the Commandant, 1st Battalion. The case of the department is that the petitioner as well as deceased Kishan Singh were sitting opposite to each other and were taking rest and while the petitioner was asked to get water and when he was following the said order, the shot got accidentally fired. Therefore, the position of the weapon becomes very necessary to ascertain whether the act of the petitioner was negligent or it was deliberate. Under these circumstances, direction of injury assumes important. If the injury sustained by the deceased Kishan Singh was parallel to the ground then it is clear that the petitioner was holding the weapon with its barrel towards the chest of the deceased. If the direction of the injury was from downward to upward then it can be presumed that gunshot must have been fired while petitioner was getting up in order to collect water. If direction was upward to downward then it is clear that gunshot was fired by the petitioner while he was standing and the deceased was sitting. This important aspect has been conveniently ignored by the Commandant, Ist Battalion. Furthermore, there was no observation with regard to tattooing, blackening and charring around the injury. Furthermore, the

Commandant, Ist Battalion in its report dated 22.3.2004 had not given specific finding about the culpability / innocence of petitioner but observed that since criminal case is pending against the petitioner, therefore, it would be appropriate to wait for the order of the trial Court. Under these circumstances, this Court is of the considered view that the opinion given by the Commandant, 1st Battalion does not fulfill all the basic requirements to ascertain the nature of the gunshot injury sustained by the deceased Kishan Singh.

25. Unfortunately, CJM, West Tripura Agartala has also ignored the said aspect while acquitting the petitioner from criminal charge vide judgment dated 19.12.2006 in CR No.114 of 2004. Even the postmortem report has not been reproduced or considered.

26. Since the judgment pronounced in a criminal case is not the subject matter of this writ petition, therefore, this court is not required to touch that aspect but one thing is clear that since the petitioner has relied upon the report submitted by Commandant dated 22.3.2004, therefore, this Court has gone through the said report and it is found that it is lacking on certain important aspect.

27. Be that whatever it may be.

28. So far as the charge leveled against the petitioner in the disciplinary enquiry is concerned, the prominent charge is mishandling of the weapon which is rifle. As already pointed out the charge against the petitioner in criminal case was death of Kishan Singh on account of negligence. The charges framed in the departmental enquiry and the charge framed in the criminal trial

are not identical, although, they are overlapping each other to some extent. Furthermore, in the light of the observation made by CJM, West Tripura Agartala in its judgment that "it was expected from the petitioner to keep the weapon in a safe position", it is clear that the petitioner was given the benefit of doubt and did not obtain clear acquittal. Therefore, Rule 27 (6) (ccc) of CRPF Rules, 1955 will not come to rescue of the petitioner. Accordingly, the submission with regard to Rule 27 (6) (ccc) of CRPF Rules, 1955 is hereby rejected as misconceived.

Whether the petitioner was denied an opportunity of cross-examining the witnesses.

29. The petitioner has filed IA No.13221/2023, an application for taking documents on record. It is suffice to mention here that no reasons have been mentioned in the application as to why the documents are necessary for adjudication of this petition. But during the course of arguments, counsel for the petitioner tried to justify the relevance of these documents. Therefore, the verbal submissions made by counsel for the petitioner are considered in the light of the pleadings raised by the petitioner in the writ petition as well as the grounds raised by the petitioner in his memo of appeal.

30. By referring to the deposition sheets it is submitted that the inquiry officer has mentioned that an opportunity to cross examine the witnesses was given to the petitioner but the petitioner refused to cross examine the witnesses. By referring to Clause 4 (iii) of the Standing Order No.20/2001, it is submitted that whenever a

delinquent officer refuses to cross examine the witness, then his signatures should be obtained to that effect. The deposition sheets do not contain the signature of the petitioner. Therefore, endorsement made by the enquiry officer in the deposition sheet that in spite of the opportunity given to the petitioner, he did not cross examine the witnesses is wrong and is a false and fraudulent entry and even otherwise, in the light of clause 4 (iii) of the Standing Order No.20/2001 the same cannot be relied upon. *At this stage it was necessary for this Court to find out as to whether the petitioner had signed the order sheet of that particular day or not and whether this fact is mentioned in the order sheet or not?*. However, neither the order sheet has been filed by the petitioner nor the respondents are in possession of record of the departmental inquiry. Under these circumstances, pleadings of the petitioner as well as grounds raised by him in the memo of appeal assume importance. The petitioner has filed copy of memo of appeal filed before the appellate authority as Annexure-P/6. By referring to the said memo of appeal it is submitted that in Clause 5.8 of the memo of appeal, the petitioner had specifically raised an objection that no opportunity was given to the petitioner to cross examine the witnesses.

31. Considered the submissions made by counsel for the petitioner.

32. Clause 5.8 of memo of appeal reads as under :-

> ^M**5-8** जांच अधिकारी ने जो भी दस्तावेज जांच में शामिल किया उनके रचयिता लेखक अधिकारी का परीक्षण जांच में नहीं किया और ना ही में मुझे उनके Originator/Author को Cross

Exmination (प्रतिपरीक्षण) करने का मौका मिला क्योंकि कोई भी दस्तावेज जांच में प्रदर्श के रूप में शामिल नहीं किया जा सकता जब तक उसके रचियता/लेखक/प्राधिकारी का जांच में परीक्षण ना कर लिया जाए तथा अभियुक्त को प्रतिपरीक्षण का अवसर ना दे दिया जाये। जांच अधिकारी ने खुद ही पत्र शामिल कर पक्षपात का परिचय दिया है तथा जाचं दुषित हुई है। जांच के आधार पर पारित आदेश भी दुषित है तथा अपास्त करने योग्य है।''

33. From complete reading of Clause 5.8 of the memo of appeal it is clear that the primary objection of the petitioner was with regard to non-examination of author of a document which was taken note of by the disciplinary authority and in that respect it was objected by the petitioner that non-examination of author of the document had resulted in non-grant of opportunity to cross-examine the author of the said document. The petitioner did not raise any objection that the witnesses who were examined by the department were not permitted to be cross-examined by the petitioner. Thus, it is clear that the petitioner did not raise any objection with regard to non-grant of opportunity to cross-examine the witnesses.

34. Furthermore, the petitioner has alleged mala fide against enquiry officer by alleging that although no opportunity was given to the petitioner to cross-examine the departmental witnesses but still it was wrongly mentioned that the petitioner had refused to cross-examine the witnesses. It is suffice to mention here that in absence of any ground in the writ petition as well as any ground in the memo of appeal with regard to non-grant of opportunity to cross examine the departmental witnesses coupled with the fact that

inquiry officer has not been impleaded as a party as respondent in his official capacity, the allegation of mala fide cannot be considered.

35. The petitioner did not raise any objection in the memo of appeal as well as he did not raise any objection in the writ petition with regard to non-extension of opportunity to cross examine the witnesses in the departmental enquiry and has not raised any objection that the inquiry officer had wrongly mentioned in the deposition sheet that the petitioner had refused to cross-examine the witnesses and had not also raised any objection that signature of the petitioner was not obtained in the order sheet. Therefore, this Court is of the considered opinion that non-production of inquiry report will not prove to be fatal because the petitioner has failed to make out the prima face case warranting perusal of original record of the departmental inquiry.

Whether order of punishment is in accordance with law or not ? and conclusion.

36. It is submitted by counsel for the petitioner that empty cartridge was not recovered from the spot. There is no report by armorer to show that the bullet was fired from the weapon carried by the petitioner. It is not out of place to point out that this Court while considering the petition arising out of the disciplinary inquiry cannot re-assess the evidence led by the parties in the departmental enquiry. This Court can interfere in the findings of fact only when they are based on no evidence. The department had examined the department witnesses who have specifically stated that bullet was fired from the weapon

carried by the petitioner. Even otherwise, whenever ammunition is issued to a sepoy, then entry is made in the record. It is not the case of the petitioner that he had returned all the live cartridges which were issued to him nor has produced any document to show that he had returned all the live ammunition and weapon after the accident/ incident. Furthermore, the witnesses have specifically stated that bullet was fired from the weapon which was being carried by the petitioner. As already pointed out, strict degree of proof is not required in the departmental enquiry. If the finding is based on preponderance of probabilities then this Court in exercise of power under Article 226 of the Constitution of India cannot substitute its own findings. Since this Court could not find that the findings recorded by the enquiry officer are based on no evidence, therefore, the findings recorded on merits cannot be interfered with.

Non-application of mind.

37. So far as non-application of mind of the disciplinary authority as well as revisional authority and appellate authority is concerned, the petitioner has referred to the order passed by the appellate authority. The appellate authority has specifically mentioned that the petitioner has not denied his signature on various records of the departmental enquiry. Furthermore, he had not raised any objection with regard to non-extension of opportunity of hearing.

38. The Supreme Court in the case of **Allahabad Bank and others vs. Krishna Narayan Tewari (2017) 2 SCC 308** has held that "writ courts must be slow in interfering with findings of fact recorded by departmental authority on basis of evidence. However, if findings

are unsupported by evidence or are such as no reasonable person would arrive at, then writ court is justified to examine matter. If enquiry itself is vitiated for violation of principles of natural justice then writ court can interfere with disciplinary enquiry or resultant orders. Further, where authority (i) has not applied its mind; or (ii) has not assigned reasons for its conclusions then writ courts can interfere with orders of punishment."

39. This Court has already discussed the merits of the case and has come to a conclusion that there is sufficient material available on record to prove guilt of the petitioner in the departmental inquiry and even the appellate authority has passed the reasoned order dealing with all the grounds raised by the petitioner in his memo of appeal. Accordingly, the submissions made by counsel for the petitioner that the authorities had not applied their mind to the facts of the case is misconceived and is accordingly, rejected.

40. So far as the scope of interference by this Court in the departmental inquiry is concerned, the law is very clear. The Supreme Court in the case of **State of Karnataka and another Vs. N. Gangraj reported in (2020) 3 SCC 423** has held as under :-

> **"8.** We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.
>
> **9.** In *State of A.P.* v. *S. Sree Rama Rao*, *AIR 1963 SC 1723*, a three-Judge Bench of this Court

has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under : (AIR pp. 1726-27, para 7)

> "*7.* … The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

10. In *B.C. Chaturvedi* v. *Union of India*, *(1995) 6 SCC 749 : 1996 SCC (L&S) 80],* again a three-Judge Bench of this Court has held that power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the

authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under : (SCC pp. 759-60, paras 12-13)

> "*12*. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the

evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India* v. *H.C. Goel*, *(1964) 4 SCR 718 : AIR 1964 SC 364*, this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

11. In *High Court of Bombay* v. *Shashikant S. Patil*, *(2000) 1 SCC 416 : 2000 SCC (L&S) 144*,

this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under : (SCC p. 423, para 16)

> "*16*. The Division Bench [*Shashikant S. Patil* v. *High Court of Bombay*, *1998 SCC OnLine Bom 97 : (2000) 1 LLN 160]* of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal

> position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

12. In *State Bank of Bikaner & Jaipur* v. *Nemi Chand Nalwaya*, *(2011) 4 SCC 584:(2011) 1 SCC (L&S) 721,* this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:(SCC pp. 587-88, paras 7 & 10)

> "*7.* It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is

to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C. Chaturvedi* v. *Union of India*, *(1995) 6 SCC 749 : 1996 SCC (L&S) 80*, *Union of India* v. *G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806* and *Bank of India* v. *Degala Suryanarayana*, *(1999) 5 SCC 762 : 1999 SCC (L&S) 1036*, *High Court of Bombay* v. *Shashikant S. Patil*, *(2000) 1 SCC 416 : 2000 SCC (L&S) 144]*.)

* * *

10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point

> of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

13. In another judgment reported as *Union of India* v. *P. Gunasekaran*, *(2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554*, this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

> "*13*. Under Articles 226/227 of the Constitution of India, the High Court shall not:
>
> (*i*) reappreciate the evidence;
>
> (*ii*) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
>
> (*iii*) go into the adequacy of the evidence;
>
> (*iv*) go into the reliability of the evidence;
>
> (*v*) interfere, if there be some legal evidence on which findings can be based.
>
> (*vi*) correct the error of fact however grave it may appear to be;
>
> (*vii*) go into the proportionality of punishment unless it shocks its conscience."

14. On the other hand the learned counsel for the respondent relies upon the judgment reported as *Allahabad Bank* v. *Krishna Narayan Tewari*, *(2017) 2 SCC 308 : (2017) 1 SCC (L&S) 335*, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the writ court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The inquiry officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said judgment has not noticed the larger Bench judgments in *State of A.P.* v. *S. Sree Rama Rao*, *AIR 1963 SC 1723* and *B.C. Chaturvedi* v. *Union of India*, *(1995) 6 SCC 749 : 1996 SCC (L&S) 80* as mentioned above. Therefore, the orders passed by the Tribunal and

> the High Court suffer from patent illegality and thus cannot be sustained in law.”

41. Hence, it is clear that the respondents did not commit any mistake by passing an order of punishment as well as rejecting the appeal and revision.

42. Accordingly, no case is made out warranting interference. The petition is **dismissed.**

(G.S. AHLUWALIA)
JUDGE

JP