IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 1st OF DECEMBER, 2023

WRIT PETITION No. 1124 of 2021

BETWEEN:-

DAULAT SINGH MARKAM S/O LATE SHRI BUDDHU SINGH MARKAM, AGED ABOUT 26 YEARS, OCCUPATION: EX-CONSTABLE NO. 80, COMMANDANT (SENANI) 8TH BATTALIION, SPECIAL ARMED FORCE CHHINDWARA DISTT. CHHINDWARA (MADHYA PRADESH)

.....PETITIONER

(BY SMT. APARNA SINGH - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THRO. ITS PRINCIPAL SECRETARY DEPARTMENT OF HOME VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **SPECIAL DIRECTOR GENERAL OF POLICE SPECIAL ARMED FORCE BHOPAL (MADHYA PRADESH)**
3. **INSPECTOR GENERAL OF POLICE SPECIAL ARMED FORCE JABALPUR RANGE JABALPUR (MADHYA PRADESH)**
4. **THE COMMANDANT 8TH BATTALION SPECIAL ARMED FORCE DISTRICT CHHINDWARA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI DILIP PARIHAR – PANEL LAWYER)

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

ORDER

1. This petition under Article 226 of the Constitution of India has been filed against order dated 16.05.2019 passed by Inspector General of Police, Special Armed Force, Jabalpur Range, Jabalpur and order dated 31.12.2019 passed by Special Director General of Police, Special Armed Force, Police Armed Force, Police Headquarter, Bhopal in File No.DGP/Special Armed Force (10)/2810/2019, by which, order of punishment of removal from service has been upheld and the appeal filed by the petitioner has been dismissed on the ground of limitation.
2. It is the case of the petitioner that the petitioner was appointed on the post of Constable. One prosecutrix (X) made a complaint against the petitioner in Police Station Kotwali, District Chhindwara alleging that on 15.6.2015 at about 13:50 pm the petitioner gave an assurance to the X for solemnization of marriage and on that pretext he developed physical relationship with her and now he has refused to marry. Therefore, she lodged an FIR in Crime No.342/2015. Accordingly, the petitioner was arrested and sent to judicial custody, from where, he was released on bail. The Police after completing the investigation filed the charge sheet for offence under Sections 376 (2) (n) and 506 of IPC. The petitioner was tried for the aforesaid offences and he was acquitted by judgment dated 28.1.2019 passed by 4th Additional Session Judge, Chhindwara in S. T. No.277/2015.
3. It is submitted that on the basis of criminal case which was registered against the petitioner, a departmental inquiry was initiated and

following two charges were framed that (i) The petitioner had remained in jail from 6.8.2015 to 12.8.2015 which is indicative of hostile and indecent behavior and accordingly, the petitioner has violated Rule 3 (1) (iii) of M.P. Civil Services (Conduct) Rule, 1965 and (ii) the petitioner was repatriated / released from deputation by order dated 30.5.2015 but he did not submit his joining in the parent department and went on unauthorized absence from 31.5.2015. Thus, he remained on an unauthorized absence for a period of 105 days i.e. 31.5.2015 till 13.9.2015 which is indicative of gross negligence and thus, violated Rule 3 (1) (ii) of M.P. Civil Services (Conduct) Rule, 1965.

4. It appears that the petitioner did not submit his reply to the charge sheet in spite of multiple opportunities given to him. Accordingly, a departmental inquiry was directed and inquiry officer and presenting officer were appointed. The inquiry officer after completing the inquiry submitted his inquiry report and held that both the charges levelled against the petitioner were found proved. Thereafter, a show cause notice was issued to the petitioner which was received by him on 13.7.2016. In spite of that, he did not submit his reply. A reminder was given to submit his reply but he did not file any reply. Accordingly, the petitioner was awarded punishment of removal from service and the period of unauthorized absence was treated as no work no pay and the period of suspension i.e. 6.8.2015 till 15.10.2016 (date on which the order of punishment was passed) was treated as suspension.

5. Challenging the impugned order of punishment it is submitted by counsel for the petitioner that subsequently by judgment dated

28.1.2019 passed by Fourth Additional Session Judge, Chhindwara in ST No. 277/15, the petitioner has been acquitted of the charges under Sections 376 (2) (n) and 506 of IPC, therefore, it is clear that very basis for holding departmental inquiry has lost its foundation and thus, it is submitted that the order of removal from service be quashed and the petitioner be reinstated in service.

6. Per contra, Counsel for the State has supported the removal of petitioner from service. It is submitted by counsel for the State that it is clear from the judgment passed by Fourth Additional Session Judge, Chhindwara that an agreement of marriage was also executed by the petitioner which is clearly indicative of fact that he had given a bona fide belief to the prosecutrix that she is a legally wedded wife and on the basis of the same, he continued to have physical relations and, therefore, in the light of Section 375 (fourthly) of IPC, it is clear that the petitioner is a guilty of committing rape. It is further submitted that the Trial Court ignored the definition of Section 375 (fourthly) of IPC and did not take note of the fact that if a major woman is given bona fide belief that she is legally wedded wife of the accused then her consent will not be a free consent and such an act of the accused would be of rape.
7. Heard the counsel for the parties.
8. This Court vide order dated 31.10.2023 passed in the case **of Lakhan Ahirwar vs. State of M.P. and others in W.P.No.2708/2023** has considered the aforesaid situation and has held that from plain reading of Section 375 (fourthly) of IPC it is clear that a man is said to have committed rape even with the consent of the prosecutrix, when he

knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is believed herself to be lawfully married. In the case **of Lakhan Ahirwar (supra),** this Court has held as under **:-**

> **“11.** Although Trial Court has considered the effect of Section 90 of IPC but unfortunately, has ignored the definition of "rape" as defined under Section 375 of IPC. It was the case of prosecutrix that a marriage agreement was prepared by petitioner. Defence of petitioner has also been mentioned by Trial Court in paragraph 5 of judgment of acquittal.
>
> 12. From the facts narrated in paragraph 5 of the judgment, it is clear that even petitioner had taken a specific defence that he had married the prosecutrix in front of a Notary and thus, even it was the case of petitioner that a marriage agreement was executed.
>
> 13. Now the only question for consideration is as to whether allegation of marriage agreement and similar defence taken by petitioner will amount to offence of rape as defined under Section 375 of IPC or not?
>
> 14. Section 375 of IPC reads as under:-
>
> "**375. Rape.—**A man is said to commit “rape” if he-
> (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
> (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

First.— Against her will.

Secondly.—Without her consent.

Thirdly.— With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.— With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.— With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent."

15. From plain reading of Section 375 of IPC *fourthly*, it is clear that a man is said to have committed rape even with the consent of prosecutrix, when he knows that he is not her husband and that her consent is given because

she believes that he is another man to whom she is or believes herself to be lawfully married.

16. Undisputedly, marriage by executing a marriage agreement is not a valid form of marriage. In Hindu law, marriage is not a contract and it has to be performed by observing *Saptpadi* or by any other recognized mode of marriage either under the Anand Marriage Act, Special Marriage Act, Arya Marriage Validation Act etc.

17. This Court in the case of **Bundel Singh Lodhi Vs. State of M.P.** decided on 30/04/2021 in **M.Cr.C. No.15168/2021 (Gwalior Bench)** and **Mukesh S/o. Mr. Lakshman @ Lakshminarayan Vs. The state of M.P.** decided on 31/12/2020 in **M.Cr.C. No.44184/2020 (Indore Bench)** has held that it is not the duty of Notary to execute a marriage agreement and even directions were given to Law Department to take action against such Notaries who were involved in executing marriage agreements.

18. This Court in the case of **Bundel Singh Lodhi (supra),** has held as under:-

"In Hindu Law, marriage is not a contract. The marriages cannot be performed by execution of a marriage affidavit. Either, the marriage is to be performed by performing Saptpadi, or in accordance with custom. Marriage can also be performed as per the provisions of Special Marriage Act or as per the provisions of other Statutes like Anand Marriage Act, 1909 etc. However, the Counsel for the applicant, could not point out any provision, under which, a marriage can be performed by execution of an Affidavit. Similarly, he could not point out any provision of law, by which a

marriage can be dissolved by execution of an Affidavit.

Notaries have never been appointed as Marriage Officers. They cannot notarize an affidavit of marriage or divorce. Further more, Divorce can be granted only by a decree of a Court of competent jurisdiction or as per custom.

Now a days, it is being observed that Marriage affidavits are being executed on large scale, thereby giving a bonafide impression to the bride that now She is legally wedded wife as her Court Marriage has taken place, thereby facilitating the boy to commit rape on the innocent girl. Section 375 *Fourthly* of I.P.C. reads as under :

375. Rape

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

A Notary has not been appointed as a Marriage Officer. Section 8 of Notaries Act, reads as under:

8. Functions of notaries.—(1) A notary may do all or any of the following acts by virtue of his office, namely:—

(*a*) verify, authenticate, certify or attest the execution of any instrument;

(b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;

(c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under

the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;

(d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;

(e) administer oath to, or take affidavit from, any person;

(f) prepare bottomry and respondentia bonds, charterparties and other mercantile documents;

(g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;

(h) translate, and verify the translation of, any documents from one language into another;

(*h-a*) acts as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;

(*h-b*) act as an arbitrator, mediator or conciliator, if so required;]

(*i*) any other act which may be prescribed.

(2) No act specified in sub-section(1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

From the plain reading of Section 8 of Notaries Act, it is clear that execution of Marriage Affidavit and Divorce Affidavit is not the function of a Notary. Thus, it is clear that without any authority of law, marriage affidavits and divorce affidavits are being executed by Notaries, thereby, assisting the unscrupulous boys for committing rape as defined under Section 375 of I.P.C.

According to the State Counsel, Shri M.K. Choudhary, Notary, Bhopal had executed the affidavit of marriage and divorce.

Accordingly, Principal Secretary, Law and Legislative Department, State of M.P./competent authority is directed to initiate proceedings under Section 10 of Notaries Act against Shri M.K. Choudhary. The investigating officer is directed to supply a copy of the affidavits dated 8-5-2018 and 15-6-2018 along with the copy of the register of Shri M.K. Choudhary, Notary, Bhopal to the Principal Secretary, Law and Legislative Department/Competent Authority within a period of 15 days from today.

The Principal Secretary, Law and Legislative Department/Competent Authority is directed to pass a final order within a period of 4 months from today, and inform the Principal Registrar of this Court within a period of 5 months from today.

Needless to mention here that before passing the final order, the Principal Secretary, Law and Legislative Department/Competent Authority, shall follow the procedure as prescribed under Notaries Act/Notaries Rules."

19. A Co-ordinate Bench of this Court in the case of **Mukesh S/o Mr. Lakshman @ Lakshminarayan (supra),** has held as under:-

"Not only the accused persons who have conspired in performing the forged marriage of the complainant, but the Notary who executed the marriage agreement is also equally responsible in this case. The job of the Notary is defined under the Notary Act. He is not supposed to perform the marriage by executing documents. Had he properly guided and refused to execute the marriage agreement to the

complainant, then the present offence would not have been committed. This Court is repeatedly receiving the cases of forged marriage performed by the Notary, therefore, the Law Department of the State is required to look into these matters as to how the Notaries and Oath Commissioners are involving themselves in executing the document in respect of the marriage, divorce, etc, which are not permissible under the law. Neither the Notary is authorised to perform the marriage nor competent to execute the divorce deed. Therefore, strict guidelines are required to be issued to the Notaries and oath commissioners for not executing such type of deed, failing which their licence would be terminated. Let a copy of this order be sent to the Principal Secretary, Law Department of State of M.P. For taking action in the matter.

20. Thus, it is clear that by executing a marriage agreement, petitioner had given a false belief to the prosecutrix that she is lawfully married to petitioner whereas petitioner was knowing that he is not her husband.

21. Unfortunately, while deciding the offence punishable under Section 376 of IPC, Trial Court has not considered the definition of "rape" as defined under Section 375 of IPC and has not considered the pros & cons of executing a marriage agreement to falsely give an impression in the mind of prosecutrix that she is a lawfully married woman. Although, Trial Court has also acquitted the petitioner for offence under Section 201 of IPC but Trial Court itself has reproduced the defence taken by petitioner in paragraph 5 of her judgment and it has been specifically mentioned that petitioner had performed marriage with prosecutrix in

> front of a Notary.
>
> 22. Once the execution of marriage agreement was admitted by petitioner and if prosecutrix was alleging that original document is with petitioner, then more elaborate discussion was required for acquitting petitioner from offence under Section 201 of IPC.
>
> 23. Thus, this Court is of the considered opinion that the Trial Court i.e. Second Additional Sessions Judge Damoh has passed the judgment in Sessions Trial No.16/2020 on 20/04/2023 in a most casual and cursory manner. Whenever a Trial Court is dealing with heinous offence, then it is always expected that Trial Court must go through the definition of offence for which it was conducting trial. However, it appears that Trial Court even did not care to go through the definition of "rape" as defined under Section 375 of IPC.
>
> 24. Accordingly, Office is directed to place this file before Hon'ble The Chief Justice for his perusal and further action, if any."

9. Thus, it is clear that under Hindu Law the marriage is not a contract and marriage cannot be performed by executing the agreement of marriage. The fact that the petitioner executed an agreement of marriage clearly indicates that he had given a wrong impression in the mind of the prosecutrix that now the petitioner is her husband. Unfortunately, the aforesaid important aspect of the matter was not noticed by the Trial Court. Whenever the Court is trying the offence then it is expected that the Court will also take care of the definition of the said offence. This Court has gone through the judgment passed by

the Trial Court in ST No.277/15 and it is found that the Trial Court has not considered the definition of Section 375 of IPC and effect of Section 375 (fourthly) of IPC. As already directed by this Court in the case of Lakhan Ahirwar **(supra),** the office is directed to place the matter before the Hon'ble Chief Justice for information and action, if necessary.

10. So far as the punishment order is concerned, this Court in the case of Lakhan Ahirwar **(supra)** has held as under :-

> "25. Now coming back to the question involved in the present case, it is the contention of counsel for petitioner that since he has been acquitted in a criminal case, therefore departmental enquiry on the similar charges is not permissible.
>
> 26. Charges which have been leveled against petitioner are with regard to his misconduct for his behaviour/ mis-behaviour with prosecutrix and have already been reproduced in previous paragraphs.
>
> 27. Under these circumstances, this Court is of the considered opinion that there is a substantial difference between charges leveled against petitioner in the Trial Court and in the departmental enquiry.
>
> 28. Furthermore, petitioner had also admitted before the Trial Court that he was in live-in relationship with prosecutrix and had also executed a marriage agreement.
>
> 29. Further, degree of proof in a criminal case is much different from that of degree of proof in a departmental enquiry. Departmental enquiries are decided on preponderance of probabilities, whereas in a

criminal case charges are to be proved beyond reasonable doubt.

30. Be that whatever it may be.

31. 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)

"*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*."

(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***
>
> *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."
>
> (emphasis supplied)"

11. Furthermore, it is clear that the petitioner was removed from service after full-fledged departmental inquiry was conducted. The petitioner has not pointed out any procedural lapses in the departmental inquiry. Even otherwise, this Court has already come to the conclusion that acquittal of the petitioner for offence under Section 376 (2) (n) of IPC was not in accordance with law. The petitioner who was in police establishment was expected to act in accordance with law. On the contrary he not only given a false promise of marriage to the prosecutrix but in order to convince her, he also executed an agreement of marriage which is not permissible under the law.
12. Furthermore, the removal of service was on the charges of unauthorised absence. The police force is a disciplined force in uniform. Unauthorised absence amounts to desertion of service. The

Supreme Court in the case of **Union of India and others vs. Datta Linga Toshatwad reported in (2005) 13 SCC 709** has held as under :-

> "**8.** The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16-6-1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged."

13. The Supreme Court in the case of **Central Industrial Security Force and others vs. ABRAR ALI, reported in (2017) 4 SCC 507** has held as under **:-**

> "**13.** Contrary to findings of the disciplinary authority, the High Court accepted the version of the respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the disciplinary authority that the unit had better medical facilities which could have been availed by the respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to reappreciation of evidence. It is settled law that reappreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.
>
> **This extract is taken from *Central Industrial Security Force v. Abrar Ali*, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310 : 2016 SCC OnLine SC 1471 at page 512**
>
> **14.** In *State Bank of Bikaner & Jaipur* v. *Nemi Chand Nalwaya* [*State Bank of Bikaner & Jaipur* v. *Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , this Court held as follows : (SCC p. 587, para 7)
>
> "*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* [*B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , *Union of India* v. *G. Ganayutham* [*Union of India* v. *G. Ganayutham*, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , *Bank of India* v. *Degala Suryanarayana* [*Bank of India* v. *Degala Suryanarayana*, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and *High Court of Judicature at Bombay* v. *Shashikant S. Patil* [*High Court of Judicature at Bombay* v. *Shashikant S. Patil*, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)"

This extract is taken from *Central Industrial Security Force v. Abrar Ali*, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310 : 2016 SCC OnLine SC 1471 at page 513

15. In *Union of India* v. *P. Gunasekaran* [*Union of India* v. *P. Gunasekaran*, (2015) 2 SCC 610 : (2015) 1

SCC (L&S) 554] , this Court held as follows : (SCC pp. 616-17, paras 12-13)

"*12*. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(*a*) the enquiry is held by a competent authority;

(*b*) the enquiry is held according to the procedure prescribed in that behalf;

(*c*) there is violation of the principles of natural justice in conducting the proceedings;

(*d*) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(*e*) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(*f*) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(*g*) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(*h*) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(*i*) the finding of fact is based on no evidence.

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."

This extract is taken from *Central Industrial Security Force v. Abrar Ali*, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310 : 2016 SCC OnLine SC 1471 at page 514.

16. We are in agreement with the findings and conclusion of the disciplinary authority as confirmed by the appellate authority and revisional authority on Charge 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the respondent deserves to be punished suitably."

"(Underline Supplied)"

14. Under these circumstances, this Court is of the considered opinion that punishment of removal from service imposed by the Disciplinary Authority by order dated 16.5.2019 does not require any interference. Accordingly, the order dated 16.5.2019 passed by the Disciplinary Authority and order dated 31.12.2019 passed by the Appellate Authority are hereby affirmed.
15. The petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

JP