IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 19th OF JUNE, 2023

WRIT PETITION No. 12906 of 2023

BETWEEN:-

UTKARSH UPADHYAY S/O SHRI RAJENDRA PRASAD UPADHYAY, AGED ABOUT 34 YEARS, OCCUPATION: CONSTABLE (TRADE) 8TH BATTALION SPECIAL ARMED FORCE (SAF) CHHINDWARA DISTRICT CHHINDWARA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ADITYA VEER SINGH - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY HOME DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **THE DIRECTOR GENERAL OF POLICE POLICE HEADQUARTERS JAHANGIRABAD BHOPAL (MADHYA PRADESH)**

3. **THE ADDITIONAL DIRECTOR GENERAL OF POLICE OFFICE OF INSPECTOR GENERAL OF POLICE SAF RANGE JABALPUR DISTRICT JABALPUR (MADHYA PRADESH)**

4. **THE COMMANDANT 8TH BATTALION SAF CHHINDWARA DISTRICT CHHINDWARA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI LALIT JOGLEKAR – GOVERNMENT ADVOCATE)

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 the order dated 6.5.2019 by which the punishment of stoppage of one increment with cumulative effect was imposed and orders dated 6.9.2022 and 28.3.2023 by which the appeals filed by the petitioner against the said order were dismissed.
2. It is submitted by counsel for the petitioner that a charge-sheet was issued on the ground that the petitioner who was posted as Police Constable was found gambling by the side of the bushes situated in Jyotiba Fule Nagar, Char Imli, Bhopal and a criminal case has also been registered.
3. It is submitted that the petitioner submitted his reply and an enquiry was conducted and enquiry report dated 4.11.2018 was submitted in which the petitioner was found to be guilty. Accordingly, the petitioner was awarded an opportunity to represent a case to the departmental enquiry against the enquiry report as well as proposed punishment and thereafter by order 6.9.2022 the order of punishment has been passed and one increment with cumulative effect has been stopped. It is submitted that in the meanwhile the petitioner was prosecuted for the offence under section 13 of the Public Gambling Act and by judgment dated 13.4.2022 passed in Summary Trial No.4929/2018 the petitioner was acquitted.
4. Challenging the order of punishment and the order passed by the appellate authority it is submitted by counsel for the petitioner that the

enquiry report is based on no evidence. By referring to the enquiry report, Annexure P/8 it is submitted that Yusuf and Keshav were examined as departmental witnesses who have specifically stated that they had not witnessed any incident but they were made to sign the police statement purportedly recorded under section 161 Cr.P.C. It is further submitted that although the departmental witness no.2 Rajesh Tiwari has supported the departmental charges but since he was the Investigating Officer, therefore, he had no option but to support the departmental charges and thus the case is based on no evidence. It is further submitted that the departmental witness no.1 Shri P.S.Dhurwey had conducted a preliminary enquiry. It is submitted that even in the teeth of statements of Yusuf and Keshav before the Enquiry Officer, still the petitioner was held to be guilty and hence has been saddled with the stoppage of one increment with cumulative effect.

5. Per contra, it is submitted by counsel for the State that the scope of judicial review in departmental matters is very narrow. It is not a case where it can be said that the petitioner has been saddled with punishment without there being any evidence on record. It is further submitted that the Investigating Officer is also a competent witness and the petitioner has not alleged any bias or malafides against the Investigating Officer, i.e. Shri Rajesh Tiwari, Sub Inspector, Police Station Habibgunj, District Bhopal.
6. Heard the learned counsel for the parties.
7. Before adverting to the facts of the case this Court would like to consider the scope of judicial review in departmental matters.
8. 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.
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> **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)
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> > "*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]*.)

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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:
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> (*i*) reappreciate the evidence;
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> (*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."

9. The Supreme Court in the case of **State Bank of India and others Vs. Ramesh Dinkar Punde** reported in **(2006) 7 SCC 212** has held a under:

> **"6.** Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:
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> > "Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority." (See *Govt. of A.P.* v. *Mohd. Nasrullah Khan [(2006) 2 SCC 373 : 2006 SCC (L&S) 316]*, SCC p. 379, para 11.)

9. It is impermissible for the High Court to reappreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.

12. From the facts collected and the report submitted by the inquiry officer, which has been accepted by the disciplinary authority and the Appellate Authority, active connivance of the respondent is eloquent enough to connect the respondent with the issue of TDRs and overdrafts in favour of Bidaye.

15. In *Union of India* v. *Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218]* it is held as under: (SCC p. 623, para 15)

> A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials,

> if it was a reasonable inference from proved facts. (SCR p. 219)

16. In *Union of India* v. *Parma Nanda [(1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30]* it is held at SCC p. 189, para 27 as under:

> "*27*. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is

found to be irrelevant or extraneous to the matter."

17. In *Union Bank of India* v. *Vishwa Mohan [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129]* this Court held at SCC p. 315, para 12 as under:

"*12*. After hearing the rival contentions, we are of the firm view that all the four charge-sheets which were enquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him."

18. In *Chairman and MD, United Commercial Bank* v. *P.C. Kakkar [(2003) 4 SCC 364 : 2003 SCC (L&S) 468]* this Court held at SCC pp. 376-77, para 14 as under:

"*14*. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to

> protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager* v. *Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194]* it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

19. In *Regional Manager, U.P. SRTC* v. *Hoti Lal [(2003) 3 SCC 605 : 2003 SCC (L&S) 363]* it was pointed out as under: (SCC p. 614, para 10)

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person

> deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."
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> **20.** In *Cholan Roadways Ltd.* v. *G. Thirugnanasambandam [(2005) 3 SCC 241 : 2005 SCC (L&S) 395]* this Court at SCC p. 247, para 15 held:
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> "*15*. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry."

10. Thus it is clear that apart from the other limited scope this court can interfere only when the findings are based on no evidence.
11. The only ground of attack is that the case is based on no evidence. Therefore, the submission made by counsel for the petitioner shall be considered accordingly.
12. The Department had examined P.S.Dhurwey, Assistant Commandant, who had conducted the preliminary enquiry. Rajesh Tiwari was examined as departmental witness who had raided and arrested the petitioner from the spot or in the nutshell it can be said that he was an Investigating Officer. The Department had also examined Yusuf and Keshav the so called independent witnesses who have stated that although they had not witnessed any incident but they were compelled by the Investigating Officer to sign the pre written statements under section 161 Cr.P.C.
13. Now, the only question for consideration is that even if the statements of Keshav and Yusuf are ignored whether there was any evidence

available on record or not. Rajesh Tiwari, Investigating Officer who had personally raided the spot and had arrested the petitioner is the best competent person to depose. Merely because he was Police Officer or he was an Investigating Officer, is not sufficient to discard his evidence specifically when no malafides have been alleged against him and even he has not been impleaded as a party in his personal capacity. Even the Investigating Officer of Crime No.337/2018 registered at Police Station Habibgunj, District Bhopal, has not been impleaded as a party. It is well established principle of law that this Court while considering the challenge to the departmental action cannot evaluate the findings and cannot substitute its own findings. In the nutshell, this Court cannot act as an appellate authority. The degree of proof in criminal cases is much higher than the degree of proof in departmental maters. The departmental matters are decided on preponderance of probabilities, therefore, mere acquittal of petitioner in criminal case will not have any bearing on the departmental enquiry which was pending against him.

14. The Supreme Court in the case of **BHEL v. 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 [Karnataka SRTC v. M.G. Vittal Rao, (2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171] .)

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.

33. In the case on hand, the appellant employer had conducted the departmental enquiry in accordance with law independently of the criminal case wherein the enquiry officer, on the basis of the appreciation of evidence brought on record in the enquiry proceedings, came to a conclusion that a charge of theft against the delinquent employees was proved. This finding was based on preponderance of

probabilities and could be recorded by the enquiry officer notwithstanding the order of criminal court acquitting the respondents.

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

> "11.4 ….As per 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, Industrial Court has erred in giving much stress on the acquittal of the respondent by the criminal Court".

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

> 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)
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> "*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* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] 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:

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

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave

nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

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

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

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

12. Though the High Court had not indicated as to how the decision of this Court in *Anthony case* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] 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* [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] which reads asfollows: (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."
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> (underlined - 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 everyjudgment must be read as applicable to the particular facts proved or assumed to be proved, since thegenerality 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.

17. Similar law has been laid down by the Supreme Court in the cases of **South Bengal State Transport Corpn. v. Sapan Kumar Mitra and others** reported in **(2006) 2 SCC 584, Divisional Controller, Gujarat SRTC v. Kadarbhai J. Suthar** reported in **(2007) 10 SCC 561**, **N. Selvaraj v. Kumbakonam City Union Bank Ltd. and another** reported in **(2006) 9 SCC 172**, **West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesh Singh** reported in **(2008) 3 SCC 729**, **Ajit Kumar Nag v. Indian Oil Corpn. Ltd. and others** reported in **(2005) 7 SCC 764** and **Shashi Bhushan Prasad v. Inspector General Central**

Industrial Security Force and others reported in **(2019) 7 SCC 797**. Thus, the acquittal of the petitioner in a criminal case involving similar allegations would not result in dropping of the departmental inquiry or making an order of punishment vulnerable.

18. It is submitted by counsel for the petitioner that the appeal was also decided in a cursory and casual manner. The grounds raised by the petitioner were not considered by the appellate authority.

19. Counsel for the petitioner is right in submitting that whenever any appeal is filed then the appellate authority is bound to consider all the grounds raised by the delinquent officer. However, in the present case, this Court has already considered the submissions made by counsel for the petitioner in detail. Therefore, merely because separate reasons were not assigned by the appellate authority while deciding the appeal would not nullify or made the order of the appellate authority vulnerable.

20. Since counsel for the petitioner has failed to prima facie establish that the case is based on no evidence, no case is made out warranting interference.

21. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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