the respondents to provide regular maintenance grant to the attached primary section of the Institution, under the Act of 1971, in the same manner as the high school and intermediate sections.

29. There shall be no order as to costs.

(2024) 9 ILRA 1530
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2024

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE PRASHANT KUMAR, J.

Special Appeal No. 601 of 2024

Constable No. 118 Awadhes Kumar Pandey ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Balwant Singh

Counsel for the Respondents:
C.S.C.

A. Service Law – Departmental proceedings – Dismissal - U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 14(1) - Whether the dismissal of petitioner from service pursuant to departmental enquiry was justified?

In a departmental enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials, which are legally probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender or independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. (Para 27)

(i) From brief analysis of the facts of the case, the alleged incident does not inspire confidence at all. The alleged incident is said to have happened at the petitioner's residence. In the departmental enquiry five witnesses were examined. Except Ram Nageena Singh, Sub Inspector, no other witnesses had directly or indirectly supported the occurrence as they were not eye-witnesses. The St.ment of Shri Ram Nageena Singh is also different in the departmental enquiry as well as in criminal trial. One thing is clear that he was not the eye witness of the alleged incident. (Para 26)

(ii) The other charge is of absence of two days from duty. **If the absence is due to compelling circumstances under which it is not possible to report or perform duty such absence cannot be held to be willful and employee cannot be held to be guilty of misconduct**. (Para 28)

In the instant case, neither Inquiry Officer nor Appellate Authority found absence of appellant willful. Evidence produced by the appellant to substantiate his claim was ignored by the authorities concerned and on the basis of irrelevant facts and surmises the petitioner was held guilty. (Para 29)

Since the charges on which the punishment was invoked even imposed are taken to be correct, what is now left at this belated stage to be considered and examined is, as to whether the punishment imposed was commensurate with the said charges or not. (Para 30)

B. Jurisdiction – Irrationality and perversity are recognised grounds of judicial review. The High Court normally does not interfere with the quantum of

punishment unless the punishment shocks the conscience of the Court.

Normally, it is the disciplinary authority, which should be best left with the duty of imposing the punishment after considering the facts and circumstances of the case. However, it is well settled that in case, if on the admitted facts, the punishment imposed is grossly disproportionate to the offence, which shocks the conscience of the Court, the Court has the power and jurisdiction to interfere with the punishment imposed. (Para 32)

In the facts and circumstances of the case, the punishment is found to be disproportionate and unjustified. (Para 33)

C. On the facts of the case, what is the effect of acquittal order passed by the trial court in a criminal trial, whereby the petitioner was acquitted?

Once the termination order is set aside, the natural consequence is that the employee should be taken back in service and thereafter proceeded with as per the directions. Once the termination order is set aside, then the employee is deemed to be in service. (Para 38)

The acquittal in criminal proceeding was after full consideration of prosecution witnesses and prosecution miserably failed to prove the charge and the same can easily be arrived at after reading of judgment in entirety. After examining the factual position, which emerges from the criminal proceeding, it is found that the same witnesses were examined in departmental enquiry, who were examined in the criminal trial. The trial court had acquitted the petitioner-appellant after examining all the prosecution witnesses. (Para 36)

The petitioner- appellant was honorably acquitted. The disciplinary proceeding and the orders passed thereon cannot be allowed to stand. The charges were not just the same but identical and the evidence, witnesses and circumstances were all the same. Merely on the basis of two days absence, that so due to ailment, no such major penalty can be inflicted. (Para 37)

D. Words and Phrases – *"honourable acquittal"* - The expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. **When the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted.** (Para 35)

The orders passed by the disciplinary authority, appellate and revisional authority as well as the judgment passed by the learned Single Judge are not sustainable and the same are accordingly set aside. Consequently, the petitioner-appellant is entitled for reinSt.ment. (Para 40)

As the matter is old, at this stage, matter has not been remitted to the authority concerned. Since the petitioner's counsel has not St.d on affidavit as to whether the petitioner-appellant was gainfully working somewhere else or not, petitioner has not been accorded full back wages. The petitioner- appellant is entitled for 25% back wages.

Special appeal allowed. (E-4)

Precedent followed:

1. Ram Lal Vs St. of Raj. & ors., (2024) 1 SCC 175 (Para 13)

2. Deputy Inspector General of Police & anr.Vs S. Samuthiram, AIR 2013 SC 14 (Para 13)

3. St. of Har. & anr.Vs Ved Kaur, (2017) 6 SCC 796 (Para 13)

4. Captain M. Paul Anthony Vs Bharat Gold Mines Ltd. & ors., (1999) 3 SCC 679 (Para 18)

5. G.M. Tank Vs St. of Guj. & ors., 2006 (5) SCC 446 (Para 19)

6. Krushnakant B. Parmar Vs U.O.I. & anr, (2012) 3 SCC 178 (Para 28)

7. Ranjit Thakur Vs U.O.I. & ors., AIR 1987 SC 2386 (Para 31)

8. Suresh Kumar Tiwari Vs D.I.G., P.A.C. & anr., 2001 (4) AWC 2630 (Para 32)

9. Commissioner of Police, New Delhi & anr.Vs Mehar Singh, (2013) 7 SCC 685 (Para 35)

10. Anantdeep Singh Vs The High Court of Punjab & Haryana at Chandigarh & anr., Misc. Application No. 267 of 2024 in Civil Appeal No. 3082 of 2022 dated 06.09.2024 (Para 38)

11. Kalp Nath Rai Vs S.S.P. & ors., Special Appeal No. 88 of 2013, dated 19.12.2016 (Para 39)

Present special appeal assails the validity of the impugned judgment and order dated 19.10.2023, passed by the learned Single Judge in Writ-A No. 40893 of 2010.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.
&
Hon'ble Prashant Kumar, J.)

1. Heard Shri Umesh Vats, learned counsel assisted by Shri Balwant Singh, learned counsel for the petitioner-appellant and Shri Ratan Deep Mishra, learned Standing Counsel along with Shri Piyush Shukla, learned Standing Counsel for the State respondents

2. Present special appeal has been preferred assailing the validity of the impugned judgment and order dated 19.10.2023 passed by the learned Single Judge in Writ-A No.40893 of 2010 (Const. No.118 Awadhesh Kumar Pandey v. State of U.P. & Ors.), which, for ready reference, is reproduced in entirety as under:-

"1. Heard Shri Rajesh Nath Tripathi, learned counsel for the petitioner and Shri Girijesh Kumar Tripathi, learned standing counsel for the State respondents.

2. This writ petition has been preferred for seeking quashing of the impugned orders dated 10.5.2009, 10.9.2009 and 10.5.2010 passed by respondent nos. 2,3 and 4 respectively through which the services of the petitioner has been terminated.

3. It is the case of the petitioner that the he was duly selected and appointed as Constable in Civil police and was posted at police station Bakhira District Sant Kabir Nagar. On 12.9.2008, the petitioner was assigned special duty and attached with Circle officer, Mehdawal and when he was relieved from the special duty by the Circle Officer, Mehdawal he fallen ill and came for taking bed rest at his rented accommodation, where some altercation took place between the petitioner and his landlord and at the same time Additional Superintendent of Police (A.S.P) Sant Kabir Nagar was passing and seen the crowed near the house of the petitioner, he stopped there and on wrong information that was given by some person against the petitioner that he was having illicit relationship with a women, the A.S.P, directed to arrest the petitioner and that women also and a case was registered bearing case crime no.2158 of 2008 under Section 294 I.P.C in police station Kotwali Khalilabad, District Sant Kabir Nagar. The petitioner was released on bail on the very next date as there was not a single person of public or nearby locality to support the prosecution version of the F.I.R. Chargesheet dated 18.11.2008 was forwarded and filed in the court on 11.12.1988 and after taking cognizance, Criminal Case No.6478 of 2008 was registered between State of U.P. vs. Awadhesh Pandey under Section 294 IPC before the court of Chief Judicial Magistrate, District Sant Kabir Nagr but as the A.S.P. was annoyed with the petitioner,

he was suspended the petitioner on 23.9.2008 and after considering the reply submitted by the petitioner, he was reinstated in service with effect from 29.11.2008 and continued on duty till his dismissal from service on 10.5.2009. After registration of the first information report, a disciplinary proceedings were also initiated against the petitioner and served with a show cause notice also. Petitioner submitted his written reply on 6.11.2008 and also prayed to produce two witnesses namely Shri Vinod Rai and Arendra Rai in defence of his case but the same was not accepted by the Enquiry Officer and submitted enquiry report dated 19.4.2009. Respondent No.2 had again issued show cause notice on 22.4.2009 granting fifteen days time to file his reply to the enquiry report. Since the petitioner was suffering from hypertension w.e.f. 20.4.2008 to 10.5.2009 hence he could not appear personally before the Superintendent of Police. Petitioner sent his explanation dated 8.5.2009 by Blaze Courier Ltd, which was received in the office of Superintendent of Police on the same dated i.e, 8.5.2009. Respondent no.2 thereafter passed an order of dismissal from service on 10.5.2009 totally ignoring the detailed reply of the petitioner dated 8.5.2009.

4. Against the order of dismissal dated 10.5.2009, petitioner preferred an appeal before Deputy Inspector General of Police, Basti Region (respondent no.3) alongwith his medical certificate showing that he was continuously ill w.e.f. 20.4.2008 to 10.5.2009. Respondent no.3 dismissed the appeal of the petitioner on 10.9.2009, copy of which had been served upon the petitioner on 17.9.2009.

5. Being aggrieved with the order of the appellate authority, petitioner preferred writ dated 10.9.2009 before this Court being Civil Misc. Writ Petition No.69680 of 2009. The writ petition too was dismissed on 22.12.009 on the ground of alternative remedy of filing revision under Rule 23 of Rules of 1901. Thereafter petitioner preferred revision before the revisional authority. Revision of the petitioner was also dismissed on the ground of delay in filing the revision.

6. Learned counsel for the petitioner submitted that the petitioner did not commit any misconduct as alleged by the disciplinary authority and the said misconduct was not supported by any evidence and the enquiry officer without appreciating the evidence and without enquiring the said misconduct by any independent witnesses, passed the order of dismissal from service. Learned counsel for the petitioner further submitted that if the said incident is true, the same was not committed by the petitioner during duty period and the said alleged incident committed by him at his private residence which is not a misconduct in performing his duties. The petitioner has also been acquitted in case crime no.2158 of 2008 under Section 294 I.P.C on the basis of which the services of the petitioner were terminated. The departmental appeal preferred by the petitioner was dismissed without providing any information of date and hearing and as such the orders impugned are illegal and the same may be set aside.

7. In support of his submissions, learned counsel for the petitioner relied upon the judgments of Coordinate Bench of this Court passed in Basistha Muni Mishra vs. Union of India [2023 (6) ADJ 704] and Indra Kumar (Ex-Constable) vs. Union of India [2023 (5) ADJ 57 (LB)]. In addition to the aforesaid judgments, learned counsel for the petitioner had also relied upon the judgment of Kedar Nath Yadav vs. State of Uttar Pradesh, Laws (All) 2005 (5) 286 as

well as M.Paul Anthony Capt vs. Bharat Gold Mines Ltd, 1999 Law Suit (SC) 379.

8. Per contra, learned standing counsel opposed the prayer as made in the petition and submitted that the petitioner was awarded punishment of dismissal from service on the basis of departmental proceedings carried out against him for committing negligence and carelessness in performing duty as he did not record his returning in police station Bakhira on 21.9.2008 and because of his unauthorised absence alongwith his government rifle and 20 units of bullets, he was arrested red handed alongwith a women and said F.I.R was lodged against him. He further submitted that during the course of enquiry, neither the petitioner produced any evidence in his defence nor examined any witnesses in his favour after having being given so many opportunities of hearing.

9. Learned standing counsel placed reliance upon the judgment passed in Imtiyaz Ahmad Malla vs. State of Jammu & Kashmir and others [SLP (C) No. 678 of 2021] and submitted that a terminated employee cannot be reinstated in service only because of his acquittal in criminal proceedings.

10. After having the rival submissions as extended by learned counsel for both the parties and perusal of the records as well as the judgments relied upon, the Court finds that the services of the petitioner were terminated on the basis of departmental proceedings, not at the behest of criminal proceedings in which the petitioner was ultimately acquitted. The departmental proceedings were conducted on the ground that the petitioner had not complied with the order of his senior and without informing the department, he was absent from duty with his government rifle and 20 units of bullets and the said proceedings were culminated into termination from service of the petitioner as he was found guilty under the provisions of Police Officers of Subordinate Ranks (Punishment & Appeal) Rules, 1991 and as such, the criminal proceedings initiated against the petitioner under Section 294 IPC is not identical with the departmental proceedings.

11. In the case of Imtiyaz Ahmad Malla (Supra), the Hon'ble Supreme Court held that if a persons is acquitted or discharged, it cannot obviously be inferred that he was falsely involved, or he had no criminal antecedents and it does not entitle an employee to the reinstatement in service.

12. In another case, namely, The State of Rajasthan and others vs. Phool Singh (Civil Appeal No.5930 of 2022, dated 2.9.2022), the Apex Court has taken a different view with the order passed in Capt. M. Paul Anthony (Supra) and held that a terminated employee cannot be reinstated in service because of his acquittal in criminal proceedings.

13. The departmental proceeding were conducted against the petitioner in accordance with procedure and law and the charges leveled against him, were found proved thereafter, the petitioner had been terminated from service and as such the orders impugned are perfectly just and legal.

14. In view of the aforesaid facts and circumstances, the present petition lacks merit and is accordingly dismissed."

FACTS

3. The petitioner-appellant was a Constable in Civil Police, U.P. and at the relevant point of time he was posted at the Police Station Bakhira, Distt. Sant Kabir Nagar. The petitioner was assigned the special duty and was attached with the

Circle Officer, Mehdawal. As the Circle Officer, Mehdawal was assigned Special VVIP duty at Kanpur Nagar, he had relieved the petitioner and directed him to join back his duties at the Police Station Bakhira. It is claimed that while returning from the duty of Circle Officer on 21.09.2008, the petitioner had suddenly sufferred from high fever, acute headache and severe body pain and as such he could not report on duty on 21.09.2008. He was compelled to take rest at his rented accommodation at Village Vidhiyani, P.S. Kotwali, Khalilabad.

4. It is claimed that on 23.09.2008 some of his friends and closed relatives had come to his house to inquire about his well being. Meanwhile, some altercation has erupted between his friends and the son of his landlord and the crowd had also gathered. At that point of time, Smt. Kaushilya Devi, the domestic maid had also reached there. However, the Addl. Superintendent of Police, Sant Kabir Nagar, was also passing nearby on his official jeep, upon hearing the noise stopped there. It is alleged that some miscreants had falsely informed the Addl. Superintendent of Police that the petitioner had illicit relationship with his maid and some of them had also seen them in an obscene situation as the door of the house was open. Thereupon, the Addl. Superintendent of Police, being annoyed, immediately sent wireless message to local police Chowki and directed arrest of the petitioner. Thereafter, the police had reached there and arrested the petitioner and Smt. Kaushilya Devi and a First Information Report being Case Crime No.2158 of 2008 was registered under Section 294 IPC at P.S. Kotwali, Khalilabad. The petitioner was suspended on the same day on 23.09.2008 and the departmental enquiry was initiated, wherein he had filed his written statement and after considering his reply, the petitioner was reinstated on 29.11.2008. Though in the criminal proceeding he has been honorably acquitted but in the departmental enquiry he was found guilty, consequently he was dismissed from the services on 10.05.2009. The appeal and revision were also rejected giving rise to the writ petition in question, which was dismissed by the order impugned, hence this appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER-APPELLANT

5. Shri Umesh Vats, learned counsel for the petitioner-appellant has vehemently submitted that learned Single Judge has erred in law in dismissing the writ petition without considering the facts of the instant matter. There is an error apparent on the face of record and dismissal of the writ petition is based on surmises and conjectures. The petitioner did not commit any of the misconduct alleged by the disciplinary authority and even the alleged misconduct was not supported by any evidence either documentary or oral in the departmental enquiry. In most arbitrary manner, the enquiry officer, while submitting enquiry report, had proposed punishment of dismissal from service. In the disciplinary proceedings, two charges were levelled against the petitioner. The first charge related to absence from duty for two days without information and the second charge related to criminal case registered against the petitioner under Section 294 IPC. Only on the basis of said charges the petitioner was terminated from service on the ground of misconduct. Though in criminal proceeding after adducing the evidence and examination of all the prosecution

witnesses, the trial court had acquitted the petitioner honorably. Even the said charge does not fall under the category of misconduct, whereby major punishment could be inflicted upon the petitioner.

6. Shri Vats further submitted that mere acquittal in criminal proceeding although does not confer any indefeasible right to an employee to claim benefit including reinstatement. However, where charges in departmental enquiry and criminal matter are identical; evidence, witnesses and circumstances are also the same; where the court in exercise of judicial review finds that the acquittal in criminal proceeding was after full consideration of prosecution witnesses and prosecution miserably failed to prove the charges, the Court can interfere with the order passed by the disciplinary authority, where the finding of disciplinary authority are found to be unjust, unfair and oppressive.

7. He next submitted that in the instant matter even in the departmental enquiry six witnesses were examined. All the witnesses of Police Department admitted that they were not the witnesses of alleged incident except witness no.4 i.e. Sub-Inspector Ram Nageena Singh, who was Chowki Incharge. In his statement, he had stated that he had received information from one informer that the petitioner was indulged in some obscene activity with one lady in his house. Crowd of passerby gathered there and there were indignation amongst them. For ready reference, the version of Ram Nageena Singh in the departmental enquiry, is reproduced as under:-

"उप निरीक्षक श्री राम नगीना सिंह प्रभारी चौकी कानूनगो पुरा थाना कोतवाली नगर जनपद बहराइच ने सशपथ बयान किया कि मै दिनांक 13-03-2008 से 02-11-2008 तक थाना कोतवाली खलीलाबाद में नियुक्त रहा उक्त दौरान दिनांक 10-06-2008 से बतौर प्रभारी चौकी गोला बाजार नियुक्त रहा उसी दौरान दिनांक 23-09-2008 को मै अभि० एच० जी० रामदरश यादव को साथ लेकर वगरज विवेचना चौकी क्षेत्र में मौजूद रहा कि उसी दौरान जरिये मुखविर सूचना मिली कि मुहल्ला विधियानी में अपने क्वार्टर में का० अवधेश पाण्डेय जो बखिरा थाने में तैनात है एक महिला के साथ अश्लील हरकत कर रहे, है तथा सार्वजनिक रास्ते से आने जाने वालो की काफी भीड़ लगी है तथा लोगो में काफी क्षोभ है इस सूचना पर विश्वास करके हमराही एच० जी० को साथ लेकर मौके पर पहुँचा तथा अश्लील हरकत व भीड़भाड़ को देखकर उक्त आरक्षी व उस महिला को पकड़ा गया जिसने पूछतांछ पर उक्त महिला से अपना नाम कौशिल्या पत्नी सिद्धनाथ निवासी प्रजापतिपुर थाना घनघटा जनपद संत कबीर नगर बताया । उक्त महिला को महिला का० अमरावती दूबे के साथ लेकर गिरफतारी की गयी थी तथा उक्त दोनो व्यक्तियो का० अवधेश पाण्डेय व कौशिल्या देवी के विरूद्ध आ० स० 2158 / 2008 धारा 294 आई० पी० सी० थाना खलीलाबाद पर पंजीकृत कराया गया था ।"

8. Learned counsel for the petitioner submitted that the aforesaid statement is unreliable as he was not the witness of the said incident. He had also appeared in the criminal case as prosecution witness, wherein in cross-examination he had made a statement that when he reached there, the petitioner was sitting in the north side of his room and the lady was sitting in south. For ready reference, the statement of PW-4 in the criminal trial is also reproduced as under:-

"अभियोजन पक्ष से परीक्षित साक्षी पी०डब्लू०-4 राम नगीना सिंह,जिनके द्वारा अभियुक्तगण को मौके से गिरफ्तार करना कहा गया है, ने अपने प्रतिपरीक्षा वयान में यह कथन किया है कि-"अवधेश पांडेय अपने कमरे में किस चीज पर बैठे थे, याद नहीं है। वह मकान/कमरे में बैठे थे. याद नहीं है। यह मकान / कमरे में दरवाजे के सामने उत्तर साईड में बैठे 'थे, महिला दरवाजे के सामने दक्षिण तरफ बैठी थी. दरवाजे पर ये लोग थे जो अन्दर दरवाजे से सटे थे, वहीं से गिरफ्तार कर लिया। "जबकि साक्षी द्वारा अपने मौखिक मुख्य परीक्षा बयान में यह कथन किया गया है कि इन दोनों को अश्लील हरकत देखकर खुले दरवाजे से होकर दोनों को टोका

गया। इस प्रकार साक्षी पी० डब्लू0-4 राम नगीना सिंह के मौखिक मुख्य परीक्षा वयान एवं प्रति परीक्षा बयान में विरोधाभास होना प्रतीत होता है। जहाँ एक ओर साक्षी पी०डब्लू०-4 राम नगीना सिंह द्वारा अपने मौखिक मुख्य परीक्षा में कथन किया गया है कि अभियुक्तगण कमरे में अश्लील हरकत कर रहे थे, जिससे काफी भीड़ इकटठा हो गयी थी तथा आने जाने वाले लोगों में क्षोभ व्याप्त हो गया था, वहीं साक्षी पी०डब्लू0-4 राम नगीना सिंह ने अपने प्रति परीक्षा बयान में यह कथन किया है कि अवधेश पाण्डेय कमरे में उत्तर तथा महिला दक्षिण तरफ बैठी थी। इन लोगों के मुँह से कुछ कहते हुए नहीं सुना था। साक्षी पी०डब्लू०-4 राम नगीना सिंह द्वारा अपने मौखिक बयान में ऐसा कोई कथन नहीं किया गया है जिससे इस तथ्य की पुष्टि होती हो कि अभियुक्तगण द्वारा कमरे के अन्दर ऐसी हरकत की जा रही थी जो कि अश्लीलता की परिधि में आती है।"

9. In this backdrop, he vehemently submitted that bare perusal of the statement of Ram Negeena Singh in departmental proceeding as well as in criminal proceeding shows two different versions, therefore, the same is unreliable. The enquiry officer has heavily relied upon the statement made by Ram Nageena Singh in the departmental proceeding and merely on the basis of said statement not only submitted enquiry report but also recommended for dismissal of petitioner-appellant from service. He submitted that during criminal trial each and every evidence and prosecution witnesses were examined and the Chief Judicial Magistrate, Sant Kabir Nagar acquitted the petitioner honorably on 18.04.2017.

10. Learned counsel for the petitioner, in support of his submissions, has also placed reliance upon Regulation 492 of U.P. Police Regulations1, which deals with judicial trial of police officer. The said Regulation provides that whenever a police officer has been judicially tried, the Superintendent must await the decision of the judicial appeal, if any, before deciding whether further departmental action is necessary. He submits that the simple language of provision shows that where a Police Officer has been tried judicially and only the judgment is awaited, in such circumstances and in interregnum period, the competent authority should not decide to take further departmental proceedings but should await the decision.

11. He has also placed reliance on Regulation 493 of the Regulations, which provides that it will not be permissible for the Superintendent of Police in the course of a departmental proceeding against a Police Officer, who has been tried judicially to re-examine the truth of any facts in issue at his judicial trial, and the finding of the Court on these facts must be taken as final. If the accused has been judicially acquitted or discharged, and the period for filing an appeal has elapsed and/ or no appeal has been filed, the Superintendent of Police must at once reinstate him, if he has been suspended, but the findings of the Court not be inconsistent with the view that the accused has been guilty of negligence in, or unfitness for the discharge of his duty within the meaning of Section 7 of the Police Act, the Superintendent of Police may refer the matter to the Deputy Inspector-General of Police and ask for permission to try the accused departmentally for such negligence or unfitness.

12. He assertively submitted that in the instant matter initially the petitioner was placed under suspension on 23.09.2008 and after considering his reply/ response he was reinstated in service by the competent authority w.e.f. 29.11.2008 and he continued on duty till his dismissal w.e.f. 10.05.2009. In this backdrop, he submitted that the suspension was earlier revoked and he was reinstated in service as the

misconduct was not such grave, which could inflict major punishment. He submitted that the instant matter, it is not a case, wherein the trial court has acquitted the petitioner giving the benefit of doubt but contrarily it had honorably acquitted the petitioner. In such situation, the only misconduct, which remains is the two days absence from duty. He vehemently submitted that in the facts and circumstances of the case the punishment imposed was shockingly disproportionate to the charges proved.

13. Lastly he has placed reliance on Rule 14 (1) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 19912, which deals with the procedure for conducting departmental proceedings against the police officers. He submitted that the enquiry officer may for sufficient reasons to be recorded in writing refuse to call a witness. The proceeding shall contain sufficient record of evidence and statement of findings and grounds thereof. The enquiry officer may recommend punishment but it should be separate from these proceeding. In the instant matter, initially in an arbitrary manner while submitting report, the Enquiry Officer had recommended for dismissal, which is unsustainable. It is submitted that in an arbitrary manner the appeal and revision had also been rejected. In support of his submissions, he has placed reliance upon the judgments passed by Hon'ble Apex Court in **Ram Lal v. State of Rajasthan & Ors.3, Deputy Inspector General of Police & Anr. v. S. Samuthiram4, State of Haryana & Anr. v. Ved Kaur5.**

ARGUMENT OF LEARNED STANDING COUNSEL ON BEHALF OF RESPONDDENTS

14. Per contra, Shri Ratan Deep Mishra, learned Standing Counsel has vehemently opposed the special appeal. He submitted that the petitioner belongs to a disciplined force and the impugned punishment order for dismissal has been passed strictly in accordance with law after following the due procedure and giving opportunity of being heard and as such learned Single Judge has rightly proceeded to decline to interfere in the matter and dismissed the writ petition.

15. He further submitted that the punishment inflicted upon the petitioner is commensurate to the charges found proved by the Disciplinary Authority. Hence no interference is required in the order of punishment as upheld by learned Single Judge.

ANALYSIS

16. Heard rival submissions, perused the record and respectfully considered the judgments cited at Bar.

17. In the instant matter, heavy reliance has been placed upon the honorable acquittal of the petitioner-appellant by the trial court. There is no bar of holding disciplinary proceeding during the pendency of trial though basis may be one and the same. The enquiry officer can come to the different conclusion that what arrived at by the criminal court and it is immaterial whether charges were identical or witnesses were same. The power exercised by criminal court and the enquiry officer under the relevant law and the service law are distinct and separate. But there must be subjective satisfaction of the disciplinary authority to record reasons in writing that it is not reasonably practicable to hold enquiry, which mean that there

must be some material for satisfaction of the Disciplinary Authority not to hold enquiry. The subjective satisfaction of the authorities is to be based on certain objective facts so as to justify dispensation of the enquiry.

18. The Constitution Bench of the Supreme Court in **Captain M. Paul Anthony v. Bharat Gold Mines Ltd. & Ors.6** had held that one of the grounds where departmental proceeding could be kept in abeyance is:

"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."

19. In G**.M. Tank v. State of Gujarat & Ors.7**, the Supreme Court held that where departmental proceedings and criminal case are based on identical and similar set of facts and the charges in a departmental case against the applicant and the charges before the Criminal Court are one and the same in which case, the departmental proceedings would be stayed till the disposal of the criminal case.

20. We are conscious that in the departmental proceedings power under Article 226/227 of the Constitution is very limited and in the 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 Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The Court has to see whether the enquiry is held by the competent authority and its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such a conclusion and also to see whether the disciplinary authority had erroneously failed to admit admissible and material evidence. The Court can also see whether the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding and whether the finding of fact is based on any or no evidence.

21. In the instant matter the most glaring fact is that the petitioner-appellant was staying at his own residence. It is alleged that he indulged in some obscene act with the lady and as the door was open the passerby had seen the such incident. The police officials had reached later on. Merely on the basis of statement of Ram Nageena Singh, Sub Inspector, major punishment was inflicted upon the petitioner-appellant, whereas Ram Nageena Singh has given entirely different version before the criminal court. Even in the criminal proceeding the trial court had examined all the five prosecution witnesses and honorably acquitted the petitioner.

22. In the instant matter, there were identical allegations in both the proceedings. Five witnesses were examined in the departmental proceeding and similarly they were also examined in the criminal trial. The enquiry officer in the departmental proceeding found charges proved against the petitioner and the disciplinary authority vide order dated 10.05.2009 had dismissed the petitioner from service. The appellate and revisional authority had also dismissed the appeal and revision. Though, on the other hand, after examining all the prosecution witnesses,

the trial court had acquitted the petitioner for the offence under Section 294 IPC.

23. Learned Single Judge vide order dated 19.10.2023 dismissed the writ petition by holding that standard of proof in criminal proceeding and departmental proceeding is different. Learned Single judge found no infirmity in the order of disciplinary authority.

QUESTIONS FOR CONSIDERATION

24. In the instant matter, following two questions arise for consideration:-

(a) Whether the dismissal of petitioner from service pursuant to departmental enquiry was justified

(b) On the facts of the case, what is the effect of acquittal order passed by the trial court in a criminal trial, whereby the petitioner was acquitted.

25. We now proceed to examine both the questions independently.

Question No.1

26. From brief analysis of the facts of the case, we find that the alleged incident does not inspire confidence at all. The alleged incident is said to have happened at the petitioner's residence. In the departmental enquiry five witnesses were examined. Except Ram Nageena Singh, Sub Inspector, no other witnesses had directly or indirectly supported the occurrence as they were not eye-witnesses. The statement of Shri Ram Nageena Singh is also different in the departmental enquiry as well as in criminal trial. One thing is clear that he was not the eye witness of the alleged incident.

27. The other charge is of absence of two days from duty. In a departmental enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials, which are legally probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender or independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good.

28. Hon'ble Apex Court in **Krushnakant B. Parmar v. Union of India & Anr.8** has held that if the absence is due to compelling circumstances under which it is not possible to report or perform duty such absence cannot be held to be willful and employee cannot be held to be guilty of misconduct. Paragraphs 17, 18 and 19 of the said judgment, for ready reference, are reproduced as under:-

"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of

devotion to duty or behaviour unbecoming of a Government servant.

18. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

19. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty."

29. In the instant case, neither Inquiry Officer nor Appellate Authority found absence of appellant willful. Evidence produced by the appellant to substantiate his claim was ignored by the authorities concerned and on the basis of irrelevant facts and surmises the petitioner was held guilty.

30. It is trite law that the High Court normally does not interfere with the quantum of punishment unless the punishment shocks the conscience of the Court. As already noticed above, since the charges on which the punishment was invoked even imposed are taken to be correct, what is now left at this belated stage to be considered and examined is, as to whether the punishment imposed was commensurate with the said charges or not.

31. Hon'ble Apex Court in the case of **Ranjit Thakur v. Union of India and Ors., AIR 1987 SC 2386,** has held that *"the question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Marital, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."*

32. In the light of the law laid down by the Apex Court as well as this Court in **Suresh Kumar Tiwari v. D.I.G., P.A.C. and another9**, in our view the broad principle, which emerges is that normally, it is the disciplinary authority, which should be best left with the duty of imposing the punishment after considering the facts and circumstances of the case. However, it is well settled that in case, if on the admitted facts, the punishment imposed is grossly disproportionate to the offence, which shocks the conscience of the Court, the Court has the power and jurisdiction to interfere with the punishment imposed.

33. In the facts and circumstances of the case we find that the punishment is disproportionate and unjustified. Accordingly, question no.1 is answered.

Question No.2

34. Before delving upon the second question, it is expedient to note that much emphasis has been laid by the appellant's counsel upon the acquittal of the petitioner being honorable. The term 'honorable

acquittal' has not been defined anywhere in the Code of Criminal Procedure (now Bhartiya Nyay Sanhita).

35. The Hon'ble Apex Court in the case of **Commissioner of Police, New Delhi & Anr. v. Mehar Singh10**, has observed in para 25 as under:-

"25. The expression 'honourable acquittal' was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal[12], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted."

(Emphasis supplied)

36. After examining the factual position, which emerges from the criminal proceeding, we find that the same witnesses were examined in departmental enquiry, who were examined in the criminal trial. The trial court had acquitted the petitioner-appellant after examining all the prosecution witnesses. The conclusion is that the acquittal in criminal proceeding was after full consideration of prosecution witnesses and prosecution miserably failed to prove the charge and the same can easily be arrived at after reading of judgment in entirety.

37. We have also carefully perused the judgment of trial court, which is on record, and it can be safely said that the petitioner-appellant was honorably acquitted. We find that the disciplinary proceeding and the orders passed thereon cannot be allowed to stand. The charges were not just the same but identical and the evidence, witnesses and circumstances were all the same. Merely on the basis of two days absence, that so due to ailment, no such major penalty can be inflicted. Accordingly, question no.2 is answered.

ANALYSIS BY THE COURT

38. In a recent judgment, Hon'ble Apex Court in **Anantdeep Singh v. The High Court of Punjab and Haryana at Chandigarh & Anr.11** has held that once the termination order is set aside, the natural consequence is that the employee should be taken back in service and thereafter proceeded with as per the

directions. Once the termination order is set aside, then the employee is deemed to be in service. For ready reference, para 21 of the said judgment is reproduced as under:-

".....21. Once the termination order is set aside and judgment of the High Court dismissing the writ petition challenging the said termination order has also been set aside, the natural consequence is that the employee should be taken back in service and thereafter proceeded with as per the directions. Once the termination order is set aside then the employee is deemed to be in service. We find no justification in the inaction of the High Court and also the State in not taking back the appellant into service after the order dated 20.04.2022. No decision was taken either by the High Court or by the State of taking back the appellant into service and no decision was made regarding the back wages from the date the termination order had been passed till the date of reinstatement which should be the date of the judgment of this Court. In any case, the appellant was entitled to salary from the date of judgment dated 20.04.2022 till fresh termination order was passed on 02.04.2024. The appellant would thus be entitled to full salary for the above period to be calculated with all benefits admissible treating the appellant to be in continuous service....."

39. The Division Bench of this Court in **Kalp Nath Rai v. S.S.P. & Ors.12** has observed as under:-

"….14. The question relating to jurisdiction of the Court in judicial review in a departmental proceeding fell for consideration before Hon'ble the Supreme Court in M.B.Bijlani v. Union of India and Ors. reported in (2006) 5 SCC 88 wherein it is held:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

15. In Krushnakant B Parmar Vs. Union of India and another [Civil Appeal No. 2106 of 2012 (arising out of SLP (C) No. 15381 of 2007, decided on 15.2.2012] in a similar circumstances, the Supreme Court in paragraphs Nos. 15 to 22 held as follows:-

"15. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant.

16. The question whether `unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful.

18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

20. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

21. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in M.B. Bijlani vs. Union of India and others reported in (2006) 5 SCC 88 wherein this Court held:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty."

16. A Division Bench of this Court in the case of Suresh Kumar Tiwari v. D.I.G., P.A.C. and Anr., 2001 (4) AWC 2630, 2002 Lab IC 259, has, while reiterating the view of the Supreme Court, held that the High Court normally does not interfere with the quantum of punishment

unless the punishment shocks the conscience of the Court.

17. As already noticed above, since the charges on which the punishment has been imposed are to be taken as correct, what is now left to be considered and examined is as to whether the punishment imposed was commensurate with the said charges or not."

(Emphasis supplied)

CONCLUSION AND DIRECTION

40. Considering the facts and circumstances, we are of the considered opinion that the orders passed by the disciplinary authority, appellate and revisional authority as well as the judgment passed by the learned Single Judge are not sustainable and the same are accordingly set aside. Consequently, the petitioner-appellant is entitled for reinstatement.

41. As the matter is old, at this stage, we are not inclined to remit the matter to the authority concerned. Since the petitioner's counsel has not stated on affidavit as to whether the petitioner-appellant was gainfully working somewhere else or not, we are not inclined to accord full back wages. In view of this, we find that the petitioner-appellant is entitled for 25% back wages.

42. We accordingly direct that the petitioner-appellant shall be reinstated in service and shall be paid 25% back wages alongwith all other consequential benefits forthwith.

43. With the aforesaid observations, the special appeal stands **allowed.**

(2024) 9 ILRA 1545
APPELLATE JURISDICTION

CIVIL SIDE
DATED: ALLAHABAD 02.09.2024

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE PRASHANT KUMAR, J.

Special Appeal No. 46 of 2024

Dr. Jitendra Singh Kushwaha ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Awadh Behari Singh, Gaurav Pundir

Counsel for the Respondents:
C.S.C., Kunal Shah, Sanjay Kumar Om

A. Service/Education Law – Essential qualification - The Uttar Pradesh St. Medical Colleges Teachers' Service Rules, 1990 - Minimum Qualification for Teachers in Medical Institution Regulations, 1998.

Since the term 'equivalent qualification' was not used in the advertisement, whether the St. Government could have calculated the experience of an Additional Professor as equivalent to that of a Professor and whether this amounted to changing the terms of the advertisement?

(i) The Regulations, 1998 consider the posts of Additional Professor and Professor in a Medical College to be equivalent. Therefore, any experience gained as an Additional Professor should be counted towards the required experience for the post of Professor. Notably, it is only after the St. Government determined the equivalency in favour of the Petitioner that the Appellant is attempting to change its position. This shift is not permissible, particularly when no objections were raised before the Hon'ble Single Judge when the direction for determination of equivalence was issued, and especially since the Regulations, 1998 themselves recognize the equivalency