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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; CJI., HIMA KOHLI; J.
NOVEMBER 23, 2022

CIVIL APPEAL NOS. 7939-7940 OF 2022 Arising out of Petitions for Special Leave to Appeal (Civil) No. 3524-25 OF 2022 **UNION OF INDIA AND OTHERS *versus* SUBRATA NATH;** CIVIL APPEAL NOS. 7941-7942 OF 2022 Arising out of PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 11021-22 OF 2022 **SUBRATA NATH** *versus* **UNION OF INDIA AND OTHERS**

Constitution of India, 1950; Article 226 - Disciplinary Proceedings - Courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere - Being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in Union of India vs. P. Gunasekaran ((2015) 2 SCC 610). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor. *(Para 15-22)*

For Appellant(s) Mr. Ranjan Mukherjee, Adv. Mr. Anindo Mukherjee, Adv. Mr. Rameshwar Prasad Goyal, AOR Mr. Arvind Kumar Sharma, AOR; For Respondent(s) Mr. Ranjan Mukherjee, Adv. Mr. Anindo Mukherjee, Adv. Mr. Rameshwar Prasad Goyal, AOR

J U D G M E N T

HIMA KOHLI, J.

1-2 By this order, we propose to decide two appeals preferred by the Union of India and the connected appeals preferred by the private respondent against the common judgment and order dated 9th September, 2021 passed by the Division Bench of the High Court at Calcutta in FMA No.679 of 2019 and FMA No. 680 of 2019.

3. For the sake of convenience, the facts stated in the Civil Appeals shall be referred to. The respondent joined the Central Industrial Security Force[1] as a Constable on 26th February, 1994. On 7th November, 2007, the respondent was

[1] For short 'CISF'

detailed for 'C' shift duty from 21:00 hours on 7th November, 2007 to 05:00 hours on 8th November, 2007 at Alif Nagar Scrap yard situated in the Garden Reach area of the Kolkata Port. On the next day, i.e., on 8th November, 2007, the local police intercepted a Tata-407 truck loaded with approximately 800 kg. (approx.) of copper wires outside the port premises and informed the CISF about the said incident on learning that the copper wires had been removed from the Kolkata Port Trust area. It transpired that the said copper wires had been removed from the scrap yard of Alif Nagar Kolkata Port in the duration when the respondent was on duty. The respondent was placed under suspension and charge sheeted, *vide* Memorandum dated 7th December, 2007. Following are the two articles of charge framed against the respondent:

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST NO. 941400817 CONSTABLE SUBRATA NATH OF CISF UNIT KoPT KOLKATA.

Article of Charge- I

That the said No.941400817 Constable Subrata Nath of CISF Unit KoPT Kolkata ("C" Coy) while perforating "C" Shift duty from 2100 hrs on 07.11.2007 to 0500 hrs on 08.11.2007 at Alif Nagar Scrap Yard with Arms and Ammunition has failed to prevent theft of copper wire weighing about 800 Kgs which were laying with other bundles of copper wire at Alif Nagar Scrap Yard of KoPT under the security coverage of the said No. 941400817 Constable Subrata Nath.

The above act on the part of No. 941400817 Constable Subrata Nath amounts to gross negligence and dereliction of duty being member of a disciplined Force.

Article of Charge-II

That the said No. 941400817 Constable Subrata Nath of CISF Unit KoPT Kolkata during the period of his 13 years sendee in CISF has been involved himself in various delinquencies and thereby awarded 08 (Eight) punishments. Even then he did not mend himself and has developed an incorrigible character."

4. An Inquiry Officer was appointed to conduct the inquiry in respect of the above charges. During the inquiry, eight prosecution witnesses were examined. However, the respondent did not produce any witness in his defence. After examining the evidence and the defence of the respondent, the Inquiry Officer held that both the charges framed against the respondent were duly proved. The Disciplinary Authority issued a Notice to Show Cause to the respondent in relation to the inquiry report, in response whereto, he submitted a representation. *Vide* order dated 27th November, 2008, the Disciplinary Authority, namely, the Commandant rejected the representation of the respondent. It was observed that the statements of the prosecution witnesses corroborated with the scene of the crime and established that theft of copper wires from the Alif Nagar Scrap Yard had taken place when the respondent was on duty at the duty post. Further, the prosecution witnesses had proved that the respondent was found to be alert at the duty post by nine different checking officers, who had checked him in the intervening night on 7th/8th November, 2007, despite which, he did not report the criminal activities in his duty area.

5. Rejecting the plea taken by the respondent that the FIR had recorded the occurrence of the offence at 1530 hours on 8th November, 2007 which indicated that the theft had not taken place during his duty hours, the Disciplinary Authority held thus:

"**12**. After taking into account all the above aspect, I am of the opinion that prosecution witnesses by virtue of corroborative statements supported by documentary and circumstantial

evidences has established, the Articles of charge-I proved against the charged official. On the other hand, the charged official could not come up with any convincing materials in his representation to disprove the Article of charge-I. Even he could not produce any defence witness. The defence documents produced by him during enquiry could not prove anything in his favour. The FIR copy produced by him (Defence Exhibit-6) showing occurrence of offence at about 1530 hours on 08.11.2007 by which he wanted to refute all claims of theft happening during his duty hours was examined

in depth xxx xxx xxx

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The above complain shows that the recovery of the copper wire was made by the complainant at 1515 hours on 08.11.2007 whereas the FIR shows the occurrence of offence at 1530 hours on 08.11.2007 and the offence described as theft of a vehicle TATA-407 loaded with some coils of copper wire and recovery vehicle was laid at Alif Nagar KMC Sweeper Quarters. Thus, it means that the recovery of copper wire was made before the theft occurred, which is improbable and absurd indeed. It was further observed that FIR shows time of information received at 2200 hours on 08.11.2007, occurrence of theft at 1530 hours while complaint shows recovery was made at 1515 hours on same day. All these reveal that the recovery was made well before receiving information by the concerned police official of West Port Police station and even before occurrence of theft…….. Taking all these facts together it is clear that the FIR corroborates the fact of recovery of copper wire loaded in TATA- 407 vehicle and the statement of PW1, PW2 & PW8 corroborates the fact that the seized vehicle was held in police custody in the morning of 08.11.2007. In totality of all the above it is established that the theft of copper wire from Alif Nagar scrap yard has occurred in the night of 07/08.11.2007 during the duty period of the charged official and the said copper wire was later recovered by West Port police and kept at their custody loaded in TATA-407 vehicle well before the visit of PW1, PW2 and PW8 at the west port police station in the morning of 08.11.2007……As regards Article of Charge-II, I find that statement of PW4 and documentary evidences held on record clearly establish that the charged official has developed into incorrigible character who even after awarding 08 punishments for various delinquencies in his 13 years of service in CISF has not reformed himself. From the fact and factual position as assessed, discussed and evaluated above over the prosecution version and defence version, I find that the findings drawn by the enquiry officer are fair, reasoned and judicially justified in all respect. I, therefore, fully agree with the findings of the enquiry officer and hold the charged official guilty of the Article of Charge-I and Article of Charge-II."

6. In view of the above findings and in exercise of the powers conferred under Rule 32 read with Schedule-I and Rule 32 (1) of the Central Industrial Security Force Rules, 2001[2], the Disciplinary Authority imposed a penalty of dismissal from service on the respondent. Aggrieved by the order dated 27th November, 2008 passed by the Disciplinary Authority, the respondent preferred an appeal, which was dismissed on 3rd February, 2009 with the following observations :

"**5**. I have carefully considered the appeal preferred by the appellant, the departmental proceeding files, findings of the enquiry officer and other related documents held on record and I have applied my mind to the case. I find that the Articles of charge leveled against the appellant were held proved on the basis of overwhelming evidence held on record. The enquiry officer had conducted the enquiry in a fair and judicious manner and afforded him all reasonable opportunities to rebut the adverse evidence and to submit sufficient material in support of his defence. He, however, failed to do so. There is also no material irregularity or miscarriage of justice in this case. The Disciplinary Authority has passed the final order after considering all aspects of the case held on records and awarded the penalty of "Dismissal

[2] For short 'CISF Rules, 2001'

from service" to the appellant vide Final Order No. V-15014/Maj-04/KoPT/Disc/SN/08/8271 dated 27.11.08 for his failure to prevent theft of copper wire weighing about 800 kgs which were laying with other bundles of copper wire at Alif Nagar scrap yard of KoPT under the security coverage of the appellant while he was performing 'C' shift duty from 2100 hrs on 7.11.2007 to 0500 hrs on 08.11.2007 at Alif Nagar Scrap yard duty post and nonimproving his conduct as expected from a member of disciplined force, in spite of having been penalized/punished earlier on 08 (Eight) occasions for his incorrigible habits during his short span of 13 years' service is commensurate to the gravity of offence. The appellant has not come up with any cogent and logical reason that warrants consideration. Many other pleas put forth by the appellant in his appeal do not have any merit.

6. As such, I do not find any mitigating circumstances to interfere with the order of penalty dated 27.11.2008 passed by the Disciplinary Authority, i.e., Commandant CISF Unit KoPT Kolkata. Hence, the appeal dated 05.12.2008 preferred by the appellant is rejected being devoid of merit."

7. This was followed by a Revision Petition submitted by the respondent in the Office of the Inspector General, CISF/NES, which was dismissed *vide* order dated 19th May, 2009, holding *inter alia* that the charges levelled against him had been proved beyond doubt; that he had been afforded all the reasonable opportunities to defend himself; that there were no procedural irregularities in conducting the disciplinary inquiry by the Inquiry Officer or on the part of Disciplinary Authority in dealing with the case of the respondent and that principles of natural justice had been complied with.

8. Dissatisfied by the order passed by the Revisional Authority upholding the orders of the Disciplinary Authority and the Appellate Authority, the respondent filed a writ petition in the High Court of Calcutta, registered as WP No.14102 (W) of 2009. The said petition was disposed of by the learned Single Judge, *vide* order dated 25th June, 2018 and the punishment of dismissal imposed on the respondent was converted to that of compulsory retirement primarily on the ground that the authorities had failed to preserve the relevant records pertaining to the case and one of the vital documents of the inquiry, namely, the Beat Book, which recorded the time when the respondent had taken charge from his reliever and the items available on the spot and the time when he handed over charge to his successor, required examination. Observing that the authorities ought to have maintained the relevant records of inquiry in view of pendency of the writ petition, the learned Single Judge set aside the punishment of dismissal from service imposed on the respondent and compulsorily retired him from service w.e.f. 27th November, 2008 alongwith all consequential benefits.

9. The aforesaid order was challenged by the appellants – Union of India in two sets of appeals (FMA No.679 of 2019 and FMA 680 of 2019), that were disposed of by the Division Bench, vide the impugned judgment dated 9th September, 2021 whereby, the decision of the learned Single Judge of substituting the punishment of dismissal imposed on the respondent with one of compulsory retirement, was quashed and set aside. Instead, it was directed that the respondent would be entitled to be reinstated in service along with full back wages from the date of his dismissal. The Disciplinary Authority was further directed to issue a fresh order of punishment in respect of the respondent that should commensurate to his negligence and dereliction of duty, other than a punishment of dismissal, removal from service or compulsory retirement.

10. Questioning the aforesaid judgment, the present appeals have been filed by the appellants – Union of India. The respondent has also preferred Petitions for Special Leave to appeal being aggrieved by the directions issued by the High Court calling upon the Disciplinary Authority to issue a fresh order of punishment qua him upon reinstatement on a plea that there was no occasion for the Division Bench to have interfered with the order passed by the learned Single Judge whereby the punishment of removal from service had been set aside and the respondent was directed to be compulsorily retired from service.

11. Appearing for the appellants – Union of India, Ms. Aakanksha Kaul, learned counsel has argued that the impugned judgment is unsustainable for the reason that the High Court has acted as an Appellate Authority by directing reinstatement of the respondent, which runs contrary to the law laid down by the Supreme Court in **B.C. Chaturvedi v. Union of India and Others** [3]; that the High Court while exercising the powers vested in it under judicial review, ought not to have stepped into the shoes of the Appellate Authority and reappreciated the evidence to arrive at independent findings on the evidence adduced; that no grievance was raised by the respondent that the rules of natural justice had been violated or the inquiry had not been conducted in a proper manner or that the findings arrived at by the Disciplinary Authority were based on no evidence. Learned counsel asserted that in the instant case, the inquiry was conducted by a competent officer, rules of natural justice were duly complied with and the findings arrived at by the Inquiry Officer were based on sufficient evidence. Stating that having regard to the fact that the charges against the respondent had been proved in a properly conducted departmental inquiry after giving a reasonable opportunity to the respondent to defend himself, there was no good reason for the learned Single Judge to have converted the punishment of dismissal from service imposed by the Disciplinary Authority and upheld by the Appellate Authority, to compulsory retirement and for the Division Bench to have further interfered by reassessing the evidence and directing reinstatement of the respondent in service with full back wages and only thereafter, pass a fresh order of punishment.

12. Citing the decision in **State of Orissa and Others v. Bidyabhushan Mohapatra** [4], it was contended that keeping in mind the gravity of the established misconduct, the Disciplinary Authority has the power to impose a punishment on the delinquent officer and such a punishment is not open for review by the High Court under Article 226 of the Constitution of India. It was also sought to be urged on behalf of the appellants that the past conduct of the respondent can be taken into consideration while awarding penalty, subject to the condition that the same is made a part of a separate charge, as was done in the instant case. In support of the said submission, learned counsel cited **Central Industrial Security Force and Others v. Abrar Ali** [5].

13. The only submission made by Mr. Ranjan Mukherjee, learned counsel for the respondent is that the learned Single Judge having directed reinstatement of the respondent with full back wages, the Division Bench was not justified in passing an order directing that a fresh order be passed by the Disciplinary Authority commensurate to the negligence and dereliction of duty on the part of the respondent. Instead, the appeals preferred by the appellants – Union of India ought to have been

[3] (1995) 6 SCC 749
[4] AIR 1963 SC 779
[5] (2017) 4 SCC 507

dismissed outright in which event, the punishment of compulsory retirement imposed by the learned Single Judge would have been restored and attained finality thereby entitling the respondent to claim his retiral benefits.

14. The point that arises for our consideration is whether in the given facts of the case, the learned Single Judge and the Division Bench ought to have interfered with the punishment imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority as also by the Revisional Authority.

15. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are *malafides* attributable to the Disciplinary Authority, then the courts can certainly interfere.

16. In the above context, following are the observations made by a three-Judge Bench of this Court in **B.C. Chaturvedi** (supra) :

"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 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 coextensive 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*[6] 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.

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider

[6] (1964) 4 SCR 718

the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

[Emphasis laid]

17. In **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya** [7], a two Judge Bench of this Court held as below :

"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*[8], *Union of India* v. *G. Ganayutham*[9], *Bank of India* v. *Degala Suryanarayana*[10] and *High Court of Judicature at Bombay* v. *Shashikant S. Patil*[11]).

[Emphasis laid]

18. In **Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu** [12], a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that :

"**21**. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."

19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in **Union of India and Others v. P. Gunasekaran** [13] held thus :

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings,

[7] (2011) 4 SCC 584
[8] (1995) 6 SCC 749
[9] (1997) 7 SCC 463
[10] (1999) 5 SCC 762
[11] (2000) 1 SCC 416
[12] (2008) 5 SCC 569
[13] (2015) 2 SCC 610

reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;
(b) the enquiry is held according to the procedure prescribed in that behalf;
(c) there is violation of the principles of natural justice in conducting the proceedings;
(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

20. In **Union of India and Others v. Ex. Constable Ram Karan** [14], a two Judge Bench of this Court made the following pertinent observations :

"**23**. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."

21. A Constitution Bench of this Court in **State of Orissa and Others** (supra) held that if the order of dismissal is based on findings that establish the *prima facie* guilt of

[14] (2022) 1 SCC 373

great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order becomes unassailable and the High Court ought to forebear from interfering. The above view has been expressed in **Union of India v. Sardar Bahadur** [15].

22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in **P. Gunasekaran** (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.

23. Applying the law laid down above to the instant case, we are of the view that the High Court ought not to have interfered with the findings of fact recorded by the Disciplinary Authority. Charge-1 levelled against the respondent pertained to negligence and dereliction of duty attributed to him for having failed to prevent theft of 800 kgs of copper wires lying at Alif Nagar scrap yard under his security cover while performing duty in the late hours of 7th November, 2007 upto the early hours of 8th November, 2007. Records reveal that the Disciplinary Authority has minutely examined the entire evidence brought on record including the deposition of eight prosecution witnesses each of whom have corroborated the charges levelled against the respondent, duly supported by documentary and circumstantial evidence for arriving at the conclusion that the Articles of Charge-I stood proved against the respondent. Pertinently, the respondent did not produce any defence witness and the documents produced by him did not prove anything in his favour.

24. The contention of the respondent that the FIR registered against him mentioned the time of the occurrence as 15:30 hours on 8th November, 2007, when he was not on duty, was also analyzed in depth by the Disciplinary Authority, who referred to the fact that the FIR was lodged *suo moto* by the West Port Police Station on the basis of a complaint submitted by the Office-Incharge of the Police Station who had recovered the copper wires loaded in a commercial vehicle which was brought to the police station and kept at the police station compound. The complaint recorded that recovery of copper wires was made by the complainant at 15:15 hours on 8th November, 2007

[15] (1972) 4 SCC 618

whereas, the FIR showed the time of the information received as 22:00 hours on 8th November, 2007, and the time of the occurrence of the theft as 15:30 hours. Noting the discrepancies in the FIR which were in contradiction with the depositions of PW1, PW2 and PW8 who had stated that the information of the theft was received long before 22:00 hours on 8th November, 2007, the Disciplinary Authority discarded the version of the respondent as unacceptable and went on to hold that the evidence fairly established that the theft of the copper wires had occurred in the intervening night of 7th/8th November, 2007, during the duty hours of the respondent. Accordingly, the Disciplinary Authority concluded that Charge-I was proved against the respondent.

25. As for Charge-II, the Disciplinary Authority noted the statement of SI/Min. A.K. Dua (PW-4) who was working as incharge of the Document Section of the Unit and had been summoned to prove copies of the service documents related to the respondent and on going through the said documentary evidence, noted that the respondent had been awarded eight punishments over a period of thirteen years of service for various delinquencies but he had not reformed himself. In view of his continuous misconduct in the past coupled with the serious offence of theft of 800 kgs. copper wires, subject matter of Charge-I, the Disciplinary Authority opined that the respondent was unfit to be retained in a disciplined force and therefore, directed his dismissal from service.

26. We have noted above that the findings of the Disciplinary Authority had met with the approval of the Appellate Authority and the Revisional Authority. However, the learned Single Judge overturned the order of dismissal from service and converted the same to compulsory retirement on the sole ground of non-availability of the original record, more specifically, the Beat Book, while giving a go-by to the extract of the Beat Book that was produced before the Inquiry Officer and the fact that the respondent had admitted the said document. The learned Single Judge also ignored the fact that the Beat Book was not the only piece of document produced before the Inquiry Officer. There were depositions of other witnesses produced by the department to prove the charges levelled against the respondent and the said witnesses had corroborated the version of the Department. At no stage, did the learned Single Judge observe that the departmental inquiry was vitiated on account of violation of the rules of natural justice or that the inquiry had been conducted in gross violation of the statutory rules.

27. The Division Bench went a step further and proceeded to reappreciate the evidence and observed that it was not persuaded to conclude that such a major theft of 800 kgs comprising of 42 bundles of copper wires could have happened "*in the blink of an eyelid*" despite holding that the view of the learned Single Judge regarding nonproduction of the original Beat Book was unsustainable. The Court held that the allegation of connivance in the theft levelled against the respondent was presumptive and there wasn't enough evidence to conclude that theft of such a magnitude could have happened during the duty period of the respondent alone, yet charge-I pertaining to negligence and dereliction of duty on the part of the respondent was sustained. At the same time, the order passed by the learned Single Judge directing substitution of the punishment of dismissal with that of compulsory retirement was set aside and the respondent was directed to be reinstated in service with full back wages, while giving liberty to the Disciplinary Authority to issue a fresh order of punishment commensurate to the negligence and dereliction of duties on his part, except for punishment of dismissal or removal from service or compulsory retirement.

28. We are unable to commend the approach of the learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappreciate the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority.

29. We find ourselves in complete agreement with the findings returned by and conclusion arrived at by the Disciplinary Authority, duly confirmed by the Appellate Authority and upheld by the Revisional Authority in respect of both the Articles of Charge levelled against the respondent and the punishment imposed on him. The respondent being a member of the disciplined force, was expected to have discharged his duty diligently. His gross negligence and dereliction of duty has resulted in theft of 800 kgs. copper wires from the spot where he was performing his duty. Further, the records reveal that the respondent did not mend his ways during thirteen years of service rendered by him and was awarded eight punishments for various delinquencies out of which, three punishments included stoppage of increment on two occasions for one year without cumulative effect twice and stoppage of increment for two years without cumulative effect on one occasion. In such circumstances, the desirability of continuing the respondent in the Armed Forces is certainly questionable and the Disciplinary Authority could not be expected to wear blinkers in respect of his past conduct while imposing the penalty of dismissal from service on him.

30. Therefore, it is deemed appropriate to quash and set aside the impugned judgment and order dated 9th September, 2021 passed by the Division Bench of the High Court of Calcutta in FMA No.679 of 2019 and FMA No. 680 of 2019 and the order dated 25th June, 2018 passed by the learned Single Judge in WP No.14102 (W) of 2009, while restoring the findings and the conclusion arrived at by the Disciplinary Authority, as elaborated in the order dated 27th November, 2008, duly upheld by the Appellate Authority, *vide* order dated 3rd February, 2009 and endorsed by the Revisional Authority, *vide* order dated 19th May, 2009. In our view, the penalty of dismissal from service imposed on the respondent is commensurate with the gross negligence and dereliction of duty on his part.

31. As a result, both the appeals preferred by the Union of India (arising out of Petitions for Special Leave to Appeal (C) Nos. 3524-25/2022) are allowed and appeals @ Petitions for Special Leave to Appeal (Civil) Nos. 11021-22/2022 filed by the private respondent are dismissed, while leaving the parties to bear their own expenses.