

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 8 of 2021

with

I.A. Nos. 174, 175 and 176 of 2021

1.M/s Coal India Ltd. through its Chairman-cum-Managing Director/Disciplinary Authority, Coal Bhawan, Premises No. 04., Plot no. AF-III, Action Area-3, New Town, Rajarghat, P.O & P.S. – Rajarghat, Kolkata, West Bengal, PIN – 700156.

2.The Chief Managing Director, Central Coalfields Ltd., Darbhanga House, P.O. – G.P.O., P.S. –Kotwali, District – Ranchi, PIN-834001.

3.The Enquiry Authority, Coal India Limited, Darbhanga House, P.O. – G.P.O., P.S. –Kotwali, District – Ranchi, PIN-834001.

4.Head of Department (Pers. EE), CCL, Darbhanga House, P.O. – G.P.O., P.S. –Kotwali, District – Ranchi, PIN -834001.

5.The Chief Vigilance Officer, Central Coalfields Ltd., Darbhanga House, P.O. – G.P.O., P.S. –Kotwali, District – Ranchi, PIN-834001.

6.The Chief Vigilance Commissioner, Central Coalfields Ltd., Coal Bhawan, Premises No. 04., Plot no. AF-III, Action Area-3, New Town, Rajarghat, P.O & P.S. – Rajarghat, Kolkata, West Bengal, PIN – 700156.

.... **Respondents/Appellants**

Versus

1.Dr. Jitendra Kumar Sharma, son of Late Dr. Ram Prasad Sharma, resident of 301, Urmila Apartment, North Office Para, Doranda, P.O.-Argora, P.S. – Doranda, District – Ranchi, PIN-834002.

.... **Writ Petitioner/Respondent**

2. Union of India through its Secretary, Ministry of Coal, having office at Shashtri Bhawan, P.O – Shashtri Bhawan, P.S. – Parliament Street, Town & District – New Delhi (NCT of Delhi).

.... **Respondent/Respondent**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Appellants : Mr. Anoop Kumar Mehta,
 Mr. Manish Kumar,
 Mr. Amit Kumar Sinha, Adv
 For the Writ Petitioner : Mr. Anil Kumar Sinha, Sr. Adv.
 Mr. Raunak Sahay, Advocate
 For the Res-UOI : Mr. Rajiv Sinha, Advocate

Oral Judgment

Order No. 06: Dated 4th October, 2021:

I.A. No. 174 of 2021

This Interlocutory Application has been filed under Section 5 of the Limitation Act for condonation of delay in filing the appeal.

2. Perused the office note.
3. Office has reported that the appeal is not barred by limitation in view of the order dated 23.03.2020 and 06.05.2020 passed by Hon'ble the Supreme Court in Suo Moto Writ Civil No. 03 of 2020 and as such, learned counsel for the appellants does not want to press this Interlocutory Application as the appeal has been preferred within time.

4. In view thereof, the instant Interlocutory Application is permitted to be withdrawn.

L.P.A. No. 08 of 2021

5. This appeal is being heard for final disposal on the consent given by the parties.

6. The instant intra-court, appeal under Clause 10 of the Letters Patent, has been preferred against the order/judgment dated 15.09.2020 passed in W.P.(S) No. 2489 of 2018 whereby and whereunder the impugned punishment of deemed dismissal of the writ petitioner dated 10.11.2017 was quashed. Consequently, the writ petitioner was held entitled for leave encashment with interest. So far payment of gratuity is concerned it was held that it will depend on the outcome of another writ petition being W.P. (S) No. 1063 of 2016 in which petitioner has challenged the order of appellate authority passed under the Payment of Gratuity Act.

7. The brief facts of the *lis* which is required to be enumerated read under as:

The writ petitioner retired from service on attaining the date of superannuation w.e.f. 31.07.2013 while discharging the duty as Deputy Chief Medical Officer under the appellants-authorities. While discharging his duty, an F.I.R. being R.C. 9(A)/2003(R)

was lodged against the petitioner alleging *inter alia* that the petitioner, while posted as Medical Superintendent at Bhurkunda Dispensary of Barka Sayal Area demanded gratification of Rs. 500/- from the complainant, namely, Sri Badri Turi for issuance of fitness certificate in his favour and was caught red handed by the trap team of C.B.I. on 07.04.2003. Pursuant thereto, the petitioner was taken into custody on 07.04.2003 and was placed under deemed suspension vide order dated 18.06.2003. Thereafter, pending initiation of departmental action/framing charge sheet and decision of case instituted by CBI, the petitioner was allowed to resume his duty vide order dated 22.10.2003. The petitioner was served with memorandum dated 27.12.2004 along with article of charge and a notice to show cause directing the petitioner to submit his defence within 10 days. The writ petitioner defended the allegation by denying the charges leveled against him. Thereafter, a departmental proceeding was initiated against him under Rule 29 of the Coal India Executive's Conduct, Discipline and Appeal Rules, 1978 (hereinafter referred as to 'Rules, 1978').

It was case of the petitioner that vide order dated 06.04.2005 enquiry officer was appointed, who commenced the enquiry, in which, the petitioner demanded an opportunity of personal hearing vide representation dated 06.04.2005. In the enquiry proceeding, three enquiry officers were changed and ultimately enquiry report was submitted in the year 2012 after lapse of eight years. However, during pendency of departmental proceeding the petitioner retired on 31.07.2013.

It was further case of the writ petitioner that till the date of retirement, copy of the enquiry report was not provided to the petitioner although enquiry was concluded on 13.12.2011 and as such representation was submitted by the petitioner requesting to provide copy of enquiry report but the same was not provided. The writ petitioner, thereafter, under the Right to Information Act moved up-to the Central Information Commission for providing enquiry report. The disciplinary authority, acting in pursuant to order dated 21.06.2017 of the Central Information Commission, although did not provide the copy of enquiry report to the petitioner but a show cause notice dated 30.06.2017 was issued to the petitioner stating therein that due to

lack of evidence charge could not be established in the departmental proceedings against the petitioner. The petitioner replied to the said show cause on 28.07.2017. Thereafter, the Chairman-cum-Managing Director-cum-Disciplinary Authority passed order dated 10.11.2017 whereby in exercise of power conferred upon the provision of the Rule 27 of the Rules, 1978, imposed the penalty of deemed dismissal upon the petitioner operating w.e.f. 31.07.2013.

The petitioner had earlier preferred a writ petition being W.P. (S) No. 2400 of 2016 praying therein for direction upon the respondents to show cause as to why the authorities were not finalizing the departmental proceeding of the petitioner on the baseless ground that it was CBI originated case, although in the departmental proceeding the enquiry was complete. The said writ petition was dismissed as withdrawn on the prayer made by learned counsel for the petitioner vide order dated 11.04.2018 as during pendency of the writ petition order dated 10.11.2017 regarding penalty of dismissal from services was inflicted upon the petitioner.

It is further case of the writ petitioner that he was honorably acquitted of the criminal charges in the criminal proceeding in R.C. Case No. 9(A)/2003(R) vide

judgment dated 11.01.2018. Thereafter, the petitioner preferred representations dated 30.01.2018 and 01.03.2018 for recall of the order of dismissal and also for direction upon the respondents for disbursal of the gratuity but it did not evoke any response.

Aggrieved thereof, the petitioner preferred instant writ petition for quashing order of deemed dismissal dated 10.11.2017 issued by the Chairman-cum-Managing Director/Disciplinary Authority and further for direction upon the respondents to release the amount of gratuity and leave encashment with interest.

Earlier the petitioner had filed an application for disbursement of gratuity before the controlling authority under the Payment of Gratuity Act, 1972 which was allowed and thereafter the appeal was preferred by the Management which was allowed by the appellate authority, against which, the writ petitioner had filed writ petition being W.P. (S) No. 1063 of 2016 challenging the order passed by appellate authority under the Payment of Gratuity Act, which is still pending.

The ground which was taken in assailing the impugned order of deemed dismissal and non-disbursal of amount of gratuity is that while passing the order of dismissal, the disciplinary authority has not considered

the fact that copy of enquiry report was not served upon the petitioner. Though the enquiry officer, after appreciating the deposition of the complainant and other witnesses, has come to the conclusive finding that charges leveled against the petitioner, for demanding and accepting gratification of Rs. 500/- and recovery of the said amount from the writ petitioner, has not been proved but without any valid and cogent reason being assigned by the disciplinary authority in differing with finding contained in the enquiry report, impugned punishment has been imposed that too with retrospective effect and after retirement of the petitioner, discarding the finding recorded by enquiry officer and as such the order of dismissal is bad in the eyes of law. Further, the writ petitioner was honorably acquitted in criminal case subsequently.

The respondent-CCL appeared before the writ Court and took a plea that the nature of allegation which pertains to demand of gratification in lieu of issuing fitness certificate in favour of complainant, is grievous one. Further ground has been taken that the contention of the writ petitioner to the effect that copy of the enquiry report was not supplied is not correct rather the copy of the enquiry report was supplied as would be

evident from Annexure 11 which contains copy of the enquiry report. Further the writ petitioner was dismissed from services by passing a speaking order. So far acquittal in criminal case is concerned, submission has been made that acquittal in criminal case does not mean to reinstate the concerned employee in service. The decision of dismissal was taken earlier and acquittal in criminal case was later.

Learned Single Judge, after taking into consideration the rival submissions of the parties, quashed the impugned penalty of deemed dismissal of the writ petitioner dated 10.11.2017 and held that the writ petitioner is entitled for leave encashment with interest. So far payment of gratuity is concerned it has been held that it will depend on the outcome of writ petition being W.P.(S) No. 1063 of 2016 in which petitioner has challenged the order of appellate authority passed under the Payment of Gratuity Act.

8. Mr. Anoop Kumar Mehta, learned counsel for the appellants-CCL management has assailed the order passed by learned Single Judge on the following grounds:

(I).The learned Single Judge has failed to take into consideration that the writ petitioner was not

exonerated in the departmental proceeding, though charges were not found to be proved by the enquiry officer but the disciplinary authority upon going through the enquiry report and materials available on record decided to disagree with the findings recorded by the enquiry officer and accordingly, the note of disagreement along with the copy of the enquiry report was provided to the writ petitioner giving him opportunity to submit his explanation on the disagreement note and the disciplinary authority after going through the explanation submitted by the writ petitioner on the point of disagreement, has imposed the impugned punishment, which cannot be said to suffer from any infirmity.

(II). Learned Single Judge has erred in not considering the majority view of the judgment rendered by Hon'ble Supreme Court in ***Chairman-Cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey [2020 SCC OnLine SC 470]*** more particularly reference made at paragraph 71 wherein it has been held that in view of the provision of Rules 34.2 and 34.3 of the CDA Rules the enquiry can be continued given the

deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be. Therefore, the minority view of the Hon'ble Supreme Court as is available in paragraph 101 of the judgment, upon which, the learned Single Judge has put its reliance does not have any binding precedence over the majority view.

Therefore, the learned Single Judge has erred in holding that no order of dismissal could have been passed in terms of paragraph 101 of the judgment rendered in ***Chairman-Cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey (supra)***.

(iii). Learned Single Judge has further failed to take into consideration that charges in the departmental proceeding and the criminal proceeding were not similar and further, the witnesses examined and documents exhibited were also not the same. Therefore, no benefit can be derived by the writ

petitioner on the ground that he has been acquitted of the criminal charges.

9. Mr. Anil Kumar Sinha, learned senior counsel for the petitioner-respondent, defending the order passed by learned Single Judge, has submitted that the learned Single Judge has mainly considered the fact that there was no recovery of the tainted money from the possession of the writ petitioner. Learned Single Judge has further considered that the sole allegation is against one Smt. Durga Das, the Office Clerk at Bhurkunda Dispensary of Barka Sayal area where the writ petitioner was discharging duty as Medical Superintendent, against whom, the allegation of illegal demand of money has been made by the complainant for supply of medical fitness certificate but the raiding team has recovered the tainted money from the possession of said Smt. Durga Das, who did not depose anything against the writ petitioner that she was acting on the instruction of the writ petitioner, as such the very allegation of illegal demand of money in lieu of fitness certificate has not found to be proved. Therefore, the enquiry officer has come to the conclusive finding of not proving of the charge but the disciplinary authority has differed with the said finding without going into the material available

on record as also without considering the fact that said Smt. Durga Das did not depose anything before the enquiry officer to support the version of charge that whatever money she was collecting meant to forward the same to the writ petitioner.

The learned Single Judge on the basis of aforesaid aspect of the matter if interfered with the order of deemed dismissal, it cannot be said to suffer from infirmity.

10. We have heard learned counsel for the parties and perused the documents available on record as also the finding recorded by learned Single Judge.

11. This Court, after having gone through the materials available on record, has found that the writ petitioner, while posted as Medical Superintendent at Bhurkunda Dispensary of Barka Sayal Area, was placed under deemed suspension vide order dated 18.06.2003 in exercise of power conferred under sub rule 24.3(i) of Conduct, Discipline & appeal rules, 1978 of Coal India Limited, as would appear from Annexure 1 appended to the memo of appeal.

The aforesaid order of suspension was on the basis of allegation that the petitioner while posted as Medical Superintendent demanded and accepted

gratification of Rs. 500/- from one Badri Turi, Piece Rated Worker of Bhurkunda Colliery. However, taking into consideration the fact about initiation of departmental action/framing of charge and decision of case instituted by CBI, the writ petitioner was allowed to resume his duty with immediate effect vide order dated 22.10.2003, as would appear from Annexure 2 to the memo of appeal. The respondents-authorities issued a memorandum dated 27.12.2004 while communicating the substance of imputation of misconduct or misbehavior in respect of which the enquiry is proposed to be held, whereby and whereunder the charges has been leveled against the writ petitioner that while posted as Medical Superintendent, Bhurkunda Colliery, Barka-Sayal Area during the month of April, 2003 failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of an officer of CIL/CCL and prejudicial to the image of the Company in as much as that he demanded and accepted gratification of Rs. 500/- from one Sri Badri Turi, Piece Rated Worker of Bhurkunda Colliery. Further, while accepting the said amount on 07.04.2003 at about 17.25 hours, the writ petitioner was trapped by CBI officials of Ranchi Branch and taken into judicial custody.

A criminal case was instituted after grant of sanction for prosecution under Section 19(1)(c) of the Prevention of Corruption Act, 1988 and as such for the said act of commission and omission, the writ petitioner has violated the provision of clause 4.1.(i), 4.1(ii) and 4.1.(iii) of the Conduct, Discipline & Appeal Rules, 1978 of Coal India Limited, which amounts to misconduct in terms of clause 5.0.(2), 5.0(5), 5.0.(15) and 5.0.(17) of the said rules by which his services are governed.

The enquiry officer was appointed as also the presenting officer. The enquiry was concluded on 13.12.2011 but no enquiry report was provided to the writ petitioner.

12. The case of the writ petitioner is that for providing enquiry report he made several applications and when appropriate information was not provided to him, he went up-to Central Information Commission, where the Commission vide its order dated 21.06.2017 directed the respondent CIL to furnish an affidavit regarding tracking report of movement of the file containing enquiry report but the said direction was never complied with.

According to the writ petitioner, instead of supplying the copy of enquiry report, a show cause was issued to the writ petitioner asking reply from him and

on finding the reply so furnished to be not satisfactory, order of deemed dismissal was passed vide order dated 10.11.2017 while the writ petitioner was already superannuated from service w.e.f. 31.07.2013.

The competent Court of criminal jurisdiction has also proceeded with the criminal prosecution and after the impugned order of deemed dismissal, judgment was pronounced vide order dated 11.01.2018 by which the writ petitioner was honourably acquitted.

The writ petitioner, after having been acquitted by the Court of Criminal jurisdiction, made representation before the authorities on 30.01.2018 requesting for payment of gratuity along with statutory interest, leave encashment and other legitimate dues and also submitted reminder to the said representation but it did not evoke any response.

The writ petitioner had also preferred an application for payment of gratuity under the provisions of Payment of Gratuity Act before controlling authority who passed order for payment of gratuity vide order dated 13.02.2015 passed in Application No. 36/(10)/2014 against which appeal was preferred before the Deputy Chief Labour Commissioner (Central), Dhanbad-appellate authority who reversed the order

passed by the Controlling Authority vide order dated 31.12.2015. Aggrieved thereof, the writ petitioner preferred writ petition being W.P. (S) No. 1063 of 2016, which is still pending for its adjudication before this Court.

13. The sole issue agitated by the respondents-appellants, pointing out that infirmity in the impugned order to the effect that the learned Single Judge while coming to the conclusion for showing interference in deemed dismissal has not considered the fact that '*not proving of charge in the enquiry*' is different to that of '*exoneration in the department proceeding*' since even in the opinion of the enquiry officer charge has not been proved even then the disciplinary authority has got power to differ with the finding recorded by the enquiry officer by assigning the reason and by providing an opportunity to represent against difference of opinion, the disciplinary authority can well impose the punishment but as would appear from the impugned order, in particular paragraphs 13 and 17, the learned Single Judge has recorded a finding to the effect that in the present case the writ petitioner has been exonerated in disciplinary proceeding and in criminal case he has been acquitted.

But the aforesaid finding according to our considered view is an error on record. Although the enquiry officer has not found the charge proved against the writ petitioner, as would appear from the enquiry report, but he did not and could not have pass order of exoneration as it is upon the disciplinary authority to pass appropriate order on the findings recorded by enquiry officer.

There is no iota of doubt even in a case when enquiry officer has not found the charge proved it is open to the disciplinary authority either to accept the finding or differ with the same but while differing with the aforesaid finding the requirement of law is to assign the reason of difference and provide an opportunity to delinquent officer to file a representation on the opinion of difference on the finding recorded by the enquiry officer as per the procedure discussed by Hon'ble Apex Court in ***Punjab National Bank & Ors v. Kunj Behari Misra, [(1998) 7 SCC 84]***, wherein proposition has been laid down that in a case where the enquiry officer has found the charges not proved against the delinquent-officer, the disciplinary authority while disagreeing with such finding must has to record its reasons for such

difference. The relevant paragraph 19 of the said judgment is quoted hereunder:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

In the instant case, also the disciplinary authority has not accepted the finding recorded by the enquiry officer rather differed with it and provided an opportunity to delinquent officer to represent on the point of difference and thereafter order of punishment has been imposed.

14. In that view of the matter the contention of the learned counsel for the CCL-management that finding of the learned Single Judge to the effect that ‘exoneration of the writ petitioner in the departmental proceeding’ is

an error on record, in our view requires to be struck down by taking into consideration the fact that actually the charge has not been proved against the writ petitioner by the enquiry officer in enquiry, however, differing with the same, the disciplinary authority had imposed the punishment of deemed dismissal, which was impugned in the writ petition.

15. Further error has been pointed out by learned counsel for the respondents-appellants regarding the finding that there is no provision of deemed dismissal after superannuation of one or the other employees working under Coal India Limited/Central Coalfields Limited. He has submitted that the learned Single Judge has placed reliance on paragraph 101 of the judgment rendered in ***Chairman-Cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey (supra)*** but while doing so the learned Single Judge has failed to appreciate that the finding recorded at paragraph 101 of the said judgment is a minority view while majority view has been referred as under paragraph 71 wherein the provision pertaining to deemed dismissal of one or the other employee working under CIL/CCL after superannuation has been held to be valid.

16. This Court, therefore, is of the considered view reliance placed on the minority view by the learned Single Judge cannot be said to be justified rather the majority view is having the binding precedence. As per the majority view the provision under the Rules, 1978 which permits the authority to continue with the disciplinary proceeding and finally dismiss an employee even after retirement and since has been held to be valid, the order of dismissal, which was imposed upon the writ petitioner, cannot be held to be illegal. As such the finding recorded by learned Single Judge to that is held to be unjustified finding.

17. This Court is now proceeding to examine the legality and propriety of the impugned order for other findings in order to scrutinize *as to whether merely on the ground of finding recorded by learned Single Judge which has been held to be unjustified by this Court can the final outcome of the writ petition be reversed?*

18. This Court, in order to consider that aspect of the matter, has gone through the issue on merit even knowing the settled position of law that the writ Court cannot act as an appellate Court by re-apprising the evidence. However, there can be interference if the case

is of no evidence as has been found by the enquiry officer.

19. Admittedly, the writ petitioner, while posted as Medical Superintendent at Bhurkunda Colliery, CCL upon allegation of complainant, Badri Turi, Piece Rated Worker of Bhurkunda Colliery, CCL of demanding and accepting bribe of Rs. 500 for issuance of fitness certificate, was trapped by the CBI Officials and taken into judicial custody. Pursuant thereto a criminal case was instituted and thereafter a departmental proceeding was also initiated against him on same and similar charge. However, before the final judgment was pronounced by the competent Court of criminal jurisdiction, the department proceeding was already concluded by imposing punishment of deemed dismissal from service. Therefore, this Court is not going into finding recorded by the competent Court of criminal jurisdiction first since the judgment of acquittal of writ petitioner in the criminal proceeding is subsequent to order of dismissal passed by the disciplinary authority.

However, this Court can well consider the finding recorded by enquiry officer vis-à-vis reason upon which the order of deemed dismissal has been passed in order

to consider the point as to whether any miscarriage of justice has been done or not.

20. However, before appreciating the rival submissions of the parties, we deem it fit and proper to refer certain judicial pronouncement of the Hon'ble Supreme Court on the scope of judicial review in exercise of power conferred under Article 226 of the Constitution of India.

Reference in this regard be made to the judgment rendered in ***Union of India & Ors Vs. P. Gunasekaran [AIR 2015 SC 545]*** wherein at paragraph 13, the following guidelines has been laid down for showing interference in the decision taken by the disciplinary authority and not to interfere with the decision, which reads as hereunder:

“13.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, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 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 Article 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.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate 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.”

(emphasis supplied)

Thus, it is evident from the judicial pronouncement of the Hon'ble Apex Court, as referred hereinabove, that the High Court can interfere under

Article 226 of the Constitution of India under the power of judicial review in any of the eventuality as propounded in the judgment referred herein above, under paragraph 13(g) and (i); wherein it has been held that *the disciplinary authority had erroneously failed to admit the admissible and material evidence* and 13(i), the finding of fact is based on no evidence.

21. On the above proposition of law, this Court proceeded to examine the scope of interference.

22. From perusal of the enquiry report, it appears that the finding of the enquiry report is based on the testimony of Sri Badri Turi-the complainant, Smt. Durga Das- the then peon and Mr. Manoj Aind- an independent witness from the side of CBI.

For ready reference, relevant portion of their testimony, as given in the enquiry report, is reproduced hereunder:

Statement of Badri Turi, the complainant:

“Sri Badri Turi. PRW, Bhurkunda Colliery and MW-1 was produced as management witness on 30.7.07 in his deposition Sri Badri Turi stated that he was working at Bhurkunda colliery since the year 1995. According to him he had proceeded on sick leave with effect from 6.2.03. He had been on sick leave for about 40 days. He also mentioned that he had fallen sick and Dr J.K. Sharma had granted him sick certificate. He stated that he had gone to Dr. J.K. Sharma for obtaining sick leave. He told Dr. Sharma to give

fitness certificate. Thereafter he and Dr. J.K. Sharma came to hospital. There was lady peon over there who told him that " PAISA DIJIYE" thereafter he (Badri Turi) told her that he was going to bring money. Thereafter at that particular spot there were two young boys whom he did not know. These two persons were not known to him and whom he had seen for the first time. According to Sri.Badri Turi they brought him to CBI office at Booty Road, Ranchi Sri Badri Turi stated that when he came to CBI office the said two boys who had brought him to CBI office gave him money and that money was chemically treated by CBI and given to him. He kept the money in his pocket with his own hand. Thereafter he went alongwith CBI officers in their car to Bhurkunda at about 5pm. This happened on 24.7.04. He does not remember the date and the year. Thereafter he handed over the money to the lady peon whom he can recognize Thereafter CBI caught hold of Dr.J.K. Sharma and they brought him to Ranchi. He also came along with them when he reached Ranchi the time was about 12 midnight. He took the certificate from Dr.J.K.Sharma on 24.4.04.

According to Sri. Badri Turi before the intervention of CBI officials he had collected his fit certificate. *He joined his duties after 3-4 days. Exact date he does not remember. He was allowed on duty and he started working*

At this stage Sri A Hari Secretary, DIP). CCL and P.O. declared Sri.Badri Turi hostile witness and desired to take up his cross examination LA. permitted him to cross examine Sri. Badri Turi.

In cross examination *vide Que. 1 Sri.Badri Turi was asked, "Do you remember that you had given written application to SP, CBI, Ranchi?" In response to that Sri.Badri Turi stated that " I do not remember. It is a very old matter." Vide Que 2 Sri Badri Turi was asked "Please see application dt.7.4.03 (ME-1) and indicate whether the said application is*

signed by you." In response to that he stated that" application dt.7.4.03 contains my signature".

*In Que 4 Sri. Turi was asked "**What is written in the application do you now?**"*

In response to that Sri. Turi stated that " I do not know".

Sri.Badri Turi was further asked did you sign the application without understanding the content of the application?"

In response to that Sri. Turi stated that "I signed it without understanding it as per their instructions.

In Que. 5 Sri Badri Turi, MW-1 was asked by Sri A.Hari, PO "Did they read the contents of the petition and explained the contents of the application before obtaining your signature?" In response to that Sri. Turi mentioned that They did not explain the contents. They asked me to sign. I signed it without any pressure."

Statement of Smt. Durga Das, who also has deposited nothing against the writ petitioner as would be evident for her deposition:

EIC OF SMT. DURGA DAS, RETD. LDC, BHURKUNDA COLLIERY /MW-3 BY SRI.A.HARI, P.O. Smt. Durga Das LDC in her statement stated that I do not remember the date but in the year 2003 one day in between 4-5 pm when I was sitting in my chamber and I was preparing prescription for patients, one man in drunken state who was not known to me came to me and put some money on my table which were in the form of currency notes and rushed back from my room. I went behind him taking the money in my hand and asked him that what for you have left the money on my table. As he was heading towards Dr. J.K. Sharma's chamber I was running behind him mentioning "KAISA PAISA HAI BABU" but meanwhile persons unknown to me appeared there and caught hold of me. Thereafter what

happened exactly I do not remember because I was very much upset. These persons took me to Rest House there I came to know that they are from CBI. She further mentioned that "I do not remember the incident thereafter I was terribly upset". I am not in a position to say what happened. I have nothing more to say. P.O. further asked Smt. Das "Whether he has given you in hand or kept on the table?" Smt. Durga Das mentioned that on the table She was further asked by Sri A.Hari, PO when he kept the money on the table what you did?" In response to that she replied I took the money and ran behind him and asked "KAISA PAISA HAI BABU". The said person did not say anything and went towards Dr.Saheb's chamber She was further asked by PO "Did CBI officials asked you anything?" In response to that Smt. Durga Das mentioned that "KYA PUCHA KYA NAHI HAME YAAD NAHI HAI".

She was further asked by Sri. A. Hari "Money which you were holding what happened to the money?" In response to that Smt.Das mentioned that CBI WALA LE LIYA". Whether your hands were washed by CR! and whether on washing your hands became red?" In response to that Smt. Das explained that MERA HAATH WASH KIYA LEKIN MERA HAATH LAAL NAHI HUA".

She was further asked "Did CBI caught hold of that man who had kept the money on her table". In response to that she told "I do not know whether the said man was caught hold by CBI or not. There were so many persons. She was further asked Did any man meaninglessly keep the money on her table?" In answer to this question, Smt. Durga Das stated that man was in drunken state and I do not know why he kept the money on my table. She was further asked "What type of CHITTHA you prepare which include fitness certificate?" In response to that Smt. Das mentioned that prepare CHITTHA of OPD She was asked "Whether the CBI took from the Rest House?" In response to that she stated that they left me She was further asked "Are you

speaking the truth?" In response to that Smt. Das stated that I am speaking the truth.

SMT.DURGA DAS, MW-3 WAS CROSS EXAMINED BY DR.J.K.SHARMA

Vide Que 1 Smt. Durga Das, MW-3 was asked when person in question who put the money on your table, at that particular time any other person was present or not?" in response to that Smt. Das stated that "Clerk Mehrunisa Rahi who use to sit in that room was also present.

Vide Que 2 she was asked by Dr Sharma whether the lady peon was present there at the office gate?' In response to that Smt. Durga Das stated "Pawan Devi. Lady General Majdoor was present at that gate",

Vide Que 3 Dr.J.K.Sharma asked Smt. Durga Das " Whether my hand was washed first or your hand was washed first by CBI?' In response to the aforesaid question Smt. Das stated that first they got washed the hands of Dr Sharma and thereafter my hand was washed

Vide Que 4 Smt. Durga Das was asked by Dr.J.K. Sharma When you reached rest house whether you and persons accompanied you there at the Rest house or otherwise. In response to that Smt Durga Das mentioned that "There were so many persons forming crowd"

Vide Que 5 she was asked Whether you signed any paper produced before you by CBI?" In response to that Smt. Durga Das mentioned that I do not remember".

Vide Que 6 Smt. Durga Das was asked "I put it to you that they got some paper claimed to be your statement signed by you. Whether you signed if after going through it or otherwise?" In response to that Smt. Durga Das stated that she signed the statement "BINA SAMJHE".

Statement of Sri Manoj Aind, an independent witness:

"EIC OF SRI.MANOJ AIND, ASST. MANAGER, CENTRAL BANK OF INDIA, CIRCULAR ROAD BRANCH, RANCHI BY

SRI.A.HARI, SECRETARY TO CMD AND PRESENTING OFFICER

Sri. Manoj Aind stated that on 7.4.03 while he was working in Regional Office of Central Bank of India, Lalpur, Ranchi at about 11.30 am he was informed by his Senior Regional Manager that they have received a call somebody is to be trapped. At about 1 pm he alongwith Sri.Ashwini Roy another staff of the bank came to CBI office. According to Sri.Aind there they were informed by CBI staff that they have to go somewhere (place was not disclosed). There they also told that there was some complaint about the payment of money. Then they put some chemical in 5 x 100 rupees GC notes asked Sri Rathore to touch the same and then they washed the hands of Sri Rathore which after washing became red/pink Then again they put chemical on the note and put the same in the pocket of Sri.Badri Turi. According to Sri.Aind then they proceeded in two cars. When the car reached Ramgarh then they were informed that they were going to Bhurkunda and on reaching Bhurkunda they were told that they will go to dispensary to arrest someone. Then he and the complainant went to the dispensary near doctor's chamber as per instructions of CBI. **According to Sri Aind he remained outside the door and complainant were inside.** There were purdah in the office of doctor. The purdah was somewhat removed from where something could be seen. There were already two persons inside in the doctor's chamber. The complainant wished him NAMASTE by showing his hand and **there was some talk between the complainant and the doctor which he could not hear.** Dr.Sharma after preparing the certificate handed over the same to the lady. The lady after coming out of the room of the doctor went to the hall where her office is located. The complainant followed her according to Sri. Aind he also went with the complainant but stood just near the door of the hall. According to Sri Aind the lady noted something in the register and put amp on the certificate and handed over the same to the complainant. The complainant Sri. Badri Turi

took out money from the pocket and handed over the same to the lady. According to Sri. Aind he showed signal to the CBI team then all of them entered into the dispensary and also entered into the chamber of the doctor. CBI caught hold of the doctor and alleged that he had taken the money. Dr.J.K.Sharma told him that he has not taken the money then CBI team asked Sri. Turi as to where he had given the money. Then Sri. Turi went out of the chamber of the doctor and came to the hall and brought lady inside the doctor's chamber. The lady also told that she has not taken the money but when she was threatened then she told that she has taken. First the hand of the doctor was washed there was no change in the water The lady washed her hand which was changed to pink/red. According to Sri. Aind they all were taken i.e. he himself, complainant, Doctor, Lady and other staff to the Guest House. Since there was a mob of persons and the crowd was increasing then after completing the formalities they went out of the Guest House, They were in the Guest house for about one hour. They returned to Ranchi in the night at 10.30pm. He returned to his home.

In the EIC questions were asked by Sri.A. Hari, PO Sri Manoj Aind was asked again in EIC" When the lady took out the GC notes then whether CBI asked her for whom you had taken the money as you were present in the scene. In response to that Sri. Aind mentioned that he did not ask any such question prepared for going to the Guest House". In further question Sri Aind was asked whether the certificate can be issued by the lady who is a clerk. In response to that Sri. Aind mentioned that "No".

He was further asked when the lady brought before CBI whether any question about the money for whom she had taken, was asked. In response to the aforesaid Question that " no such question was asked".

Sri Manoj Aind asked by Sri A.Hari whether Dr. J.K. Sharma and the lady whose hands were pink on washing were brought together as you were also in the car to Ranchi. In

response to that Sri. Manoj Aind mentioned that we came to in two cars. In the car in which I was coming in that doctor or lady were not there. However in the second car doctor was present and about the lady I do not whether she came in the car or not. Sri. Manoj Aind was further asked lady who was with the CBI team in the Guest House what happened to her?" In response to that Sri. Manoj Aind that "I heard she was under bail by CBI. He was further asked kindly indicate whether Sri. B. Turi, complainant also came in the vehicle i.e. other vehicle to Ranchi. In response to that Sri Manoj Aind mentioned that so far CBI told that Dr.J.K.Sharma will come. About Sri. Turi nothing was said He was asked "How you could say that the paper which was given to the lady by the doctor was certificate only. Have you ever seen as you told that you also went with the complainant Sri.Badri Turi. In response to that Sri. Manoj Aind stated that "The way I noticed which was certificate from its appearance. "DOCTOR SAHAB SIGN KIYA USKE BAAD REGISTER MEIN ENTRY HUI, STAMP LAGA. ISSE PATA CHALA KE CERTIFICATE HAI"

Sri. Manoj Aind was asked by Sri A.Hari, PO" you had indicated that when Sri. Turi went inside the doctor's chamber then 2 persons were already in the chamber. What happened to them? In response to that Sri. Manoj Aind stated that when Sri. Turi came out of doctor's chamber to the hall where the certificate was being stamped, then those persons left."

23. It is evident from the enquiry report submitted by the enquiry officer that the management has produced Sri Badri Turi, the complainant, as a witness who was working in Bhurkhunda Colliery proceeded on sick leave w.e.f. 06.02.2003. He has mentioned that he had fallen sick and Dr. J.K. Sharma (writ petitioner) had granted

him sick certificate. He stated that he had gone to Dr. J.K. Sharma for obtaining sick leave and told him to give fitness certificate. He further deposed that in the hospital, there was lady peon who told him that "*Paisa Diyiye*", thereafter the complainant told her that he is going to bring money. He further deposed that at that place there were two boys whom he did not know and have seen for the first time. They brought him (Sri Turi) to CBI Office at Booty More, Ranchi where, they gave him money which was chemically treated by CBI. He kept that in pocket with his own hand. Thereafter, he went along with CBI officials in their car to Bhurkunda Colliery at about 5.00 pm where he handed over the money to the lady peon whom he can recognize. Thereafter, CBI caught hold of Dr. J.K. Sharma and brought him to Ranchi. He further deposed that he took the certificate from Dr. J.K. Sharma on 24.04.2004 before the intervention of C.B.I. and joined duty after 3-4 days.

The question is that when the complainant had already taken the aforesaid medical fitness certificate from the doctor, the writ petitioner, then what was the occasion to again go before the doctor for handing over the money?

During cross-examination, Sri Turi stated that the contents of the complaint to CBI dated 07.04.2003 is not known to him however he confirmed his signature on the complaint. He further deposed that he put signature on plain paper and what has been written thereon has never been explained to him. He further deposed that he handed over the money to lady peon but did not say that the money was ever handed over to Dr. J.K. Sharma (writ petitioner).

This Court has also considered the statement of Smt. Durga Das, who happens to be the retired LDC, Bhurkunda Colliery in the appellants-CCL. She deposed that one man in drunken state who was not known to her came and put some money on table which were in the form of currency notes and rushed back from the room. She went behind him taking the money in her hand and asked him that for what you have left the money on her table. As he was heading towards Dr. J.K. Sharma's chamber she ran behind him mentioning "*Kaisa Paisa Hai Babu*" but meanwhile some persons unknown to her appeared there and caught hold of her. Thereafter what happened exactly she do not remember because she was very much upset. These persons took her to Rest House where she came to know that they are

from CBI. She further mentioned that “I do not remember the incident thereafter I was terribly upset”. While answering a question - put forth by the Presenting Officer – “Money which you were holding what happened to the money”, she stated that “*CBI wale le liye*”.

Thus, it is evident from the statement of Smt. Durga Das, who happens to be LDC in the office where the writ petitioner was posted as Medical Superintendent that the money was put by the complainant in her table.

The enquiry officer has also recorded the finding of one Sri Manoj Aind, Assistant Manager, Central Bank of India, Circular Road, Ranchi, stated to be an independent witness of the raiding team, who has deposed that he remained outside the door and Sri Turi, the complainant went inside. There was curtain in the office of doctor. The curtain was somehow removed from where something could be seen. There were already two persons inside the doctor’s chamber. The complainant wished him *Namaste* by showing his hand and there was some talk between the complainant and the doctor which he could not hear. Dr. Sharma after preparing the certificate handed over the same to the lady. The lady after coming out of the room of the doctor went to the

hall where her office was located. The complainant followed her according to Sri Aind he also went with the complainant but stood just near the door of the hall. The complainant, Sri Badri Turi, took out money from the pocket and handed over the same to the lady. According to Sri Aind he showed signal to the CBI team then all of them entered into the dispensary and also entered the chamber of the doctor. Sri Manoj Aind, the independent witness has nowhere stated that the writ petitioner has ever demanded and accepted the bribe money.

24. The enquiry officer on the basis of statement of aforesaid witnesses has come to a finding that there is no evidence of demand of gratification of Rs. 500/- and recovery of the said money from the then Medical Superintendent, Bhurkunda Colliery since Sri Badri Turi-the complainant, Sri Manoj Aind-an independent witness and Smt. Durga Das have not supported the allegation of demand of bribe money or its acceptance and recovery of the said money from the possession of Dr. Sharma, the writ petitioner, in their deposition in course of departmental proceeding.

25. However, the disciplinary authority, the Chairman-cum-Managing Director, CIL after dispassionately going through the finding recorded by

the Enquiry Authority with relevant documents/record opined that the enquiry officer had not made proper evaluation and objective assessment of the oral and documentary evidence of management adduced during the enquiry proceedings.

26. Thus, in disagreement with the findings of the Enquiry Authority, Disciplinary Authority recorded his own findings and reasons for disagreement, which is reproduced as under:

(a). Sri Badri Turi visited the residence of Dr. Sharma on the previous day of the incident i.e. 06.04.2003 for issuance of Fitness Certificate as he was sick w.e.f 4.02.2003. Sri Turi confirmed his signature on the complaint dated 07.04.2003. Sri Turi signed the pre-trap Memorandum which was read over and explained, in Hindi and signed it after being satisfied about correctness of its contents. Thus, the contention of Sri Turi of the incident happened on 24.04.2004 and he took the Fitness Certificate from Dr. JK Sharma on 24.04.2004 before the intervention of CBI is not acceptable. It is also not correct that Sri Turi took Fitness Certificate from Dr. J K Sharma but the Fit Certificate signed by Dr. Sharma was collected from Smt Durga Das after handing over the bribe money to her.

b). Dr Sharma signed the Fit Certificate in his Chamber and handed over the same to Smt Durga Das who in turn gave the Fit Certificate to Sri Turi in her office after receipt of bribe money. Money changing hands of Sri Turi and Sit Durga Das was clearly seen by Sri Manoj Aind/Independent Willness. The contention of Smt Durga Das was also wrong because she told that she has not taken the money initially but she accepted it later on. Further, the contention of Smt Durga Das is not correct

because the solution turned became pink while washing her fingers and the same was substantiated by Sri Manoj Aind/Independent Witness. Denial of this fact by Smt Durga Das is not acceptable.

c).*Sri Manoj Aind/Independent Witness clearly stated that Sri Turi entered the chamber of Dr Sharma and there were some talks between the complainant and the Doctor. Dr Sharna after preparing the Fit Certificate handed it over to Smt Durga Das who had come out of the room of the doctor and went to the hall where her office was located. Smt Durga Das made entry in the register after stamping on the Fit certificate. She handed over the Fit Certificate to Sri Turi after receipt of bribe money. These facts were ignored by the IA while concluding his findings of the Enquiry Report.*

d)*It is a fact that Sri Turi had visited the residence of Dr. Sharma on 06.04.2003 for Fitness Certificate. Dr. Sharma told him to come to his office in the next day as he did not accede to the demand made by Dr Sharma in his residence on the day. On 07.04.2003, Sri Turi went to the chamber of Dr Sharma and negotiated with bribe money to be paid. This has been confirmed by the Independent Witness. Dr Sharma prepared the Fit Certificate and handed it over to Smt Durga Das after the negotiation. The bribe money was in possession of Smt. Durga Das who was working under Dr Sharma. If the bribe money was not for Fitness Certificate, then it should have been objected by her and reported to Dr. Sharma but she did not do it. She kept quite till intervention of CBI. So, the contention of no demand, acceptance and recovery of money from the possession of Dr Sharma is not acceptable.”*

27. We, on careful appreciation of the testimony of the witnesses based upon which findings have been given by enquiry officer, vis-à-vis, reason for differing with the

finding of the enquiry report by the disciplinary authority, are of the considered view, that the reason of difference given by the disciplinary authority is contrary to the deposition of the witnesses, as discussed above.

28. There is no dispute about the fact that the disciplinary authority can well differ with the finding recorded by enquiry officer but certainly the difference of opinion must be based upon valid reason and solid material, as has been held by Hon'ble Apex Court in ***Punjab National Bank & Ors Vs. Kunj Behari Misra (Supra)***. The disciplinary authority cannot change the version of the witnesses who have made statement in course of enquiry.

The finding of the disciplinary authority in the instant case is totally baseless not considering the testimony of the complainant and the witnesses.

The complainant version before the enquiry officer is that he took the fitness certificate on 24.04.2003 while he had gone to the office of the Medical Superintendent, the writ petitioner, i.e. prior to intervention of trap team of CBI. But that statement has been disbelieved by the disciplinary authority which is not permissible while differing with the finding of enquiry officer.

Likewise, the statement of Smt. Durga Das which was made before the enquiry officer has also been disbelieved. Disciplinary authority can well disbelieve the same but on the basis of materials if available on record certainly and not in contradiction to the statement made by the witnesses. Whatever statement made by Smt. Durga Das before the CBI has been taken into consideration by the disciplinary authority, which according to our considered view ought not to have been done when that witness was being examined in the departmental proceeding. Further, said Smt. Durga Das had accepted the money which was recovered by CBI from her possession and she has also not stated that such money has been accepted by her to hand over it to the writ petitioner, which has not been taken into consideration by the disciplinary authority while imposing the impugned punishment.

It is also required to refer herein that gross irregularity or illegality has been committed by the disciplinary authority in not initiating any departmental proceeding against said Durga Das as specific case as per the memo of charge is that money was recovered from her possession, which was allegedly received by her

to be handed over to the present writ petitioner-respondent.

Therefore, the question would be that when there is specific allegation against said Smt. Durga Das, then a proceeding ought to have been initiated against her in order to substantiate the charge against the writ petitioner to prove as to whether any money was demanded by the writ petitioner through said Smt. Durga Das, however, the said Durga Das has specifically stated before the Enquiry Officer that there is no such demand by the writ petitioner and even she has not demanded money rather the money has been kept on the table where she usually used to sit to discharge her official duty. This said aspect of the matter has been well considered by the enquiry authority but the final authority/disciplinary authority has not considered the same.

The disciplinary authority has also not considered the statement of the independent witness, namely, Manoj Aind who happens to be the witness of the CBI, who has stated that no money was taken by the writ petitioner rather the money was given by the complainant to Smt. Durga Das.

29. This Court has already referred hereinabove the judgment of Hon'ble Apex Court in ***Union of India & Ors Vs. P. Gunasekaran (supra)*** and other case laws, in the matter of finding recorded by disciplinary authority and one of the guidelines pertains to the interference with the finding of the disciplinary authority if it amounts to miscarriage of justice and, therefore, considering the said aspect of the matter which is available on record, this Court is of the view that even though in the departmental proceeding the punishment can be imposed on the preponderance of probability but for proving the charge on preponderance of probability also some evidence is required to be there to connect the charge leveled against the delinquent-employee, as has been held by Hon'ble Apex Court in *M.V. Bijlani Vs. Union of India* [(2006) 5 SCC 88], wherein at paragraph it has been held as under:

“25. 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.”

The same ratio has been followed by Hon’ble Apex Court in ***Nirmala J. Jhala Vs. State of Gujrat & Another [(2013) 4 SCC 301***, wherein at paragraph 17, it has been held as under:

“17. In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The Court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in *Prahlad Saran Gupta [(1997) 3 SCC 585 : AIR 1997 SC 1338]* does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee.”

30. Therefore, according to our considered view the disciplinary authority has not acted fairly and in accordance with law in differing with the finding recorded by the enquiry officer, whose finding is based on the testimony recorded before him and which led the enquiry officer to come to a finding of no evidence of demanding and accepting money from the complainant.

31. Although, the finding recorded in the criminal case is generally not to be relied upon by the disciplinary authority but it is noted that the judgment of acquittal in the criminal case has been passed subsequent to imposition of order of dismissal.

32. From the materials available on record, the trial Court has come to conclusive finding that “....*the witnesses have deposed that accused person had neither demanded or accepted money in their presence nor directed to pay the same to a lady sitting at the office.* Thereafter, trial court came to the conclusion that “..*prosecution has not been able to establish the charges leveled against the accused person, Jitendra Kumar Sharma*”.

However, we are not basing our decision on the judgment of acquittal.

33. This Court, in entirety of facts and circumstances, discussed herein above, is of the view that even though the enquiry officer, who has not found the charge of illegal demand of money proved since money has not been recovered from the possession of the writ petitioner-respondent and further the complainant-Sri Badri Turi, Smt. Durga Das and independent witness-Manoj Aind have given their testimony which has got no

nexus to prove the charge, the disciplinary authority completely giving a go by to the said testimony, imposed punishment of dismissal from service after retirement from service, cannot be said to be justified decision even accepting that in the disciplinary proceeding, the punishment is to be imposed on the basis of preponderance of probability but even for proving the charge of preponderance of probability, there must be some nexus with charge depending upon the evidence which is to be produced in course of enquiry. But as would appear from the testimony of the witnesses, upon which the finding of the enquiry officer is based on the charge of demanding illegal money, the writ petitioner has not found to be proved. Since charge itself has not been proved by enquiry officer and as discussed hereinabove the difference of opinion of the disciplinary authority is not based upon materials available on record, the dismissal order is not at all justified. The finding of fact by the disciplinary authority is on 'no evidence'.

34. Accordingly, this Court is of the view that the order passed by the learned Single Judge so far it relates to interference shown in the order of dismissal, requires no interference.

35. Accordingly, the appeal fails and is dismissed. However, the order impugned stands modified as discussed above.

36. Consequent upon dismissal of the appeal, Interlocutory Applications being I.A. No. 175 of 2021 and 176 of 2021 stand disposed of.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Alankar/ -
A.F.R.