IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2396 of 2022

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Vijay Kumar Son of Late Ramnandan Das Resident of Village-Jalgovind Chowk, P.S. Barh, District Patna, 803213.

... ... Petitioner/s

Versus

1. The Hon'ble High Court of Judicature at Patna. through the Registrar General
2. The District and Sessions Judge, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Ms.Surya Nilambari, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

C.A.V. JUDGMENT

Date : 15-10-2026

Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

2. Learned counsel for the petitioner submits that the petitioner has filed the present writ petition for the following relief/s :-

> *"For quashing the order of the Standing Committee as contained in the communication dated 9.12.2021, issued under the signature of the Registrar General, Patna High Court, Patna addressed to the Petitioner (Ex Employee, Class IV, Civil Court, Barh, Patna), in compliance of the order of the Hon'ble High Court, Patna dated 17.11.2021 passed in CW.J.C No. 12693/2019, whereby the decision of the Standing Committee on the memo of appeal dated 12.12.2016 submitted by*

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the petitioner, against the order of dismissal dated 12.5.2014 (passed by the District and Sessions Judge, Patna), was made known to the Petitioner; the decision being that the Standing Committee had rejected such appeal, finding that the decision of the Disciplinary Authority cum District and Sessions Judge, Patna to dismiss the Petitioner from service did not require any interference.

For production of the main order passed by the Standing Committee cum Appellate Authority by which the Petitioner's appeal against dismissal from service was rejected, and upon its production the same be quashed;

To quash the order dated 12.5.2014 passed by the District and Sessions Judge, Patna whereby the Petitioner was dismissed from service for proved misconduct.

It is further prayed that the petitioner may be reinstated in service with consequential benefits and that the petitioner may be paid subsistence allowance for the period between April 2009 till 12.5.2014 (date of dismissal), during which he was not paid any subsistence allowance even though he remained under suspension till his dismissal in 2014, having been suspended in 1993 itself."

3. The brief facts of the case is that the petitioner was appointed as a Peon (Class IV employee) in the Civil Court, Patna, on compassionate grounds and joined on 02.07.1987. He was subsequently transferred to the Civil Court, Barh. On 01.11.1993, while a sum of ₹1,82,729/- was kept in the Nazarat locker for disbursement of salary, a portion of the amount was allegedly removed. On 02.11.1993, the Nazir found

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₹1,33,304.33/- missing, leading to registration of Barh P.S. Case No. 542 of 1993. The petitioner was suspended on 12.11.1993 and a charge-sheet was issued alleging dishonest removal of the aforesaid amount by using duplicate keys, constituting theft, misconduct and dereliction of duty. After enquiry, the charges were held proved and, ultimately, the petitioner was dismissed from service vide order dated 12.05.2014. Meanwhile, his conviction under Sections 380/120-B, 457 and 411 of the Indian Penal Code was affirmed in appeal; however, this Court, vide order dated 29.07.2013 passed in Criminal Revision No. 11 of 2013, set aside the conviction and acquitted him. Despite his acquittal, the petitioner was not permitted to resume duty. Instead, a second show-cause notice was issued, to which he replied pleading his acquittal and false implication. His appeal against the dismissal was subsequently rejected by the Standing Committee of this Court vide resolution dated 26.02.2019. Since the appellate order was not initially communicated to him, he filed CWJC No. 12693 of 2019, which was allowed on 17.11.2021 with a direction to communicate the appellate decision and liberty to challenge the same as well as the order of dismissal. Thereafter, the petitioner sought payment of subsistence allowance for the period from April, 2009 to

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12.05.2014. The Standing Committee, however, reiterated its earlier decision and rejected the appeal vide order dated 09.12.2021. Aggrieved thereby, the petitioner has preferred the present writ petition.

4. Learned counsel for the petitioner submits that the order of punishment cannot be sustained as the petitioner was acquitted in the criminal proceeding arising out of Barh P.S. Case No. 542 of 1993 on 29.07.2013 in Cr. Revision No. 11 of 2013, on the very same set of charges and evidence forming the basis of the departmental proceeding. It is submitted that the material witnesses in both proceedings were substantially the same and the acquittal was not on account of any procedural infirmity, hostile witnesses, or failure to adduce evidence. Rather, upon consideration of the prosecution evidence, the witnesses disowned the alleged seizure and the purported confessional statement was found to have no nexus with any discovery.

5. Learned counsel submits that the principle laid down by the Hon'ble Supreme Court in ***Ram Lal v. State of Rajasthan, (2024) 1 SCC 175***, particularly paragraphs 28 to 30, squarely applies to the present case. Where the charges, evidence, material witnesses and circumstances in the criminal

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and departmental proceedings are identical, and the criminal court, upon a full evaluation of the evidence, finds that the prosecution has failed to establish the charges, continuation of the departmental punishment would be unjust, unfair and oppressive. It is further submitted that the expressions "benefit of doubt" and "honourable acquittal" are not decisive; the substance and findings of the criminal judgment have to be examined. In the present case, the acquittal was founded upon the prosecution evidence itself, which failed to establish the allegations.

6. Learned counsel further places reliance upon ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. (1999) 3 SCC 679***, particularly paragraphs 34 and 35, and ***G.M. Tank v. State of Gujarat, (2006) 5 SCC 446***, paragraphs 30 and 31, wherein the Hon'ble Supreme Court held that where the criminal case and departmental proceeding are founded upon identical facts and evidence and the delinquent is acquitted after a regular trial, it would be unjust and oppressive to sustain the departmental findings. It is, therefore, submitted that, in view of the petitioner's acquittal on the identical charges and evidence, the impugned order of punishment deserves to be set aside.

7. Learned counsel for the petitioner submits that the

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departmental proceeding and the criminal case arose out of the same charge, evidence and witnesses, and that the petitioner never confessed or admitted the alleged theft in the departmental proceeding. In his show-cause dated 19.11.1994, he specifically denied the allegations and pleaded false implication. The finding of guilt substantially rests upon the alleged confession before the police and the recoveries purportedly made pursuant thereto.

8. It is further submitted that the respondents themselves kept the departmental proceeding in abeyance awaiting the outcome of the criminal case. Having adopted such course for a considerable period, the respondents could not have subsequently treated the acquittal as wholly irrelevant. Moreover, this Court, while passing the order dated 29.07.2013 in Cr. Revision No. 11 of 2013, found material inconsistencies in the alleged confession and recoveries, including the fact that the seizure lists did not record recovery at the instance of the petitioner and that the relevant seizure witnesses did not support the alleged recoveries.

9. Learned counsel submits that the Disciplinary Authority, while relying upon ***Kuldip Singh v. State of Punjab, A.I.R. 1997 SC 79***, failed to undertake the very exercise required by the said judgment, namely, to determine whether the

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alleged confession was voluntary. The authority merely accepted the Enquiry Officer's conclusion regarding its credibility without recording any independent finding on voluntariness.

10. It is further submitted that the Standing Committee, which finally decided the petitioner's appeal, never afforded him an opportunity of hearing. The earlier hearing before the Sub Committee could not cure the defect, particularly when the Sub Committee's order was subsequently withdrawn. The appellate authority was required under Rule 27(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 to consider the procedural compliance, the evidentiary basis of the findings and the proportionality of the penalty, but did so without hearing the petitioner.

11. Learned counsel further submits that the orders of the Disciplinary Authority and the Standing Committee are non-speaking orders. The specific pleas raised by the petitioner —namely, that he was not on duty at the relevant time, that he had been falsely implicated, that he was denied cross-examination, that the second show-cause notice did not disclose the proposed penalty and that subsistence allowance had not been paid—were not considered or dealt with by the authorities. The appellate decision merely records a bare conclusion that

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there was no procedural irregularity or violation of natural justice. Such an approach is contrary to the principles laid down in ***Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570, Charan Singh v. Healing Touch Hospital, (2000) 7 SCC 668 and G. Vallikumari v. Andhra Education Society, (2010) 2 SCC 497***.

12. It is submitted that the Enquiry Officer ignored material evidence and, in certain respects, recorded findings contrary to the evidence noted by him. The seizure witnesses denied recovery of the keys and money in their presence, yet the Enquiry Officer relied upon their evidence to hold the recovery proved. The petitioner had also consistently pleaded that he was not on duty on the relevant night, a plea supported by the deposition of PW-9, but the Enquiry Officer neither called for the duty roster nor recorded any finding on this material issue.

13. Learned counsel submits that the petitioner was denied the opportunity to cross-examine the witnesses examined against him, including the police witnesses and the Investigating Officer. Since the finding of guilt rested substantially upon their evidence and the alleged confession, denial of cross-examination caused serious prejudice and violated the petitioner's reasonable opportunity of defence.

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14. It is further submitted that the Enquiry Officer relied upon material collected during the police investigation without its proper proof in the departmental proceeding. In view of the principles laid down in *Roop Singh Negi*, the Enquiry Officer was required to base his findings upon evidence brought on record in the departmental proceeding and could not treat the police investigation material, by itself, as evidence.

15. Learned counsel also submits that the Enquiry Officer travelled beyond the charge by holding the petitioner guilty on the basis of an original key, whereas the charge alleged removal of money by means of duplicate keys. The Enquiry Officer further conducted an independent inspection of the Nazarat Office and tested the locks and keys himself, thereby supplementing the departmental evidence. Such conduct, it is submitted, was inconsistent with his role as an impartial adjudicator and vitiated the enquiry.

16. It is further submitted that the second show-cause notice dated 11.12.2013 did not disclose the penalty proposed to be imposed. Consequently, the petitioner was denied an effective opportunity to make a representation against the quantum of punishment, although ultimately the extreme penalty of dismissal was imposed upon him.

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17. Lastly, learned counsel submits that the petitioner remained under suspension from 12.11.1993 till his dismissal on 12.05.2014, but was paid subsistence allowance only up to April 2009. Despite his representation dated 27.11.2021, the subsistence allowance for the period from April 2009 to 12.05.2014 remains unpaid. It is submitted, relying upon *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* and Anr., (1999) 3 SCC 679 and *State of Bihar v. Arbind*, (2013) 16 SCC 615, that subsistence allowance is a right and not a bounty, and the petitioner is entitled to payment thereof with interest.

18. Learned counsel, therefore, submits that in view of the aforesaid procedural and substantive infirmities, the impugned orders are unsustainable and the writ petition deserves to be allowed with the reliefs prayed for.

19. On the contrary, learned counsel for the respondents submits that the departmental proceeding was initiated against the petitioner, who was posted as Night Guard, Civil Court, Barh, on the charge that during the night of 01.11.1993/02.11.1993 he had committed theft of Rs.1,33,304.33 kept in the cash box of the locker room of the Nazarth by opening the same with duplicate keys, thereby committing misconduct and dereliction of duty. In connection

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with the same occurrence, Barh P.S. Case No. 542 of 1993 was registered under Sections 380/120B, 457 and 411 of the Indian Penal Code, and the petitioner was arrested on 03.11.1993 and placed under suspension.

20. It is further submitted that the petitioner, in his written statement of defence dated 19.11.1994, denied the charge, including the alleged confession before the police and the seizure. The departmental enquiry was thereafter conducted, in which the petitioner was represented by an advocate, and the Enquiry Officer, by report dated 15.07.1995, found the charge proved on the basis of oral and documentary evidence. Although the petitioner sought stay of the departmental proceeding on account of the pending criminal case, the matter was subsequently kept pending awaiting the outcome of the criminal trial.

21. It is further submitted that the petitioner was initially convicted by the trial court on 05.08.2002, and his appeal was dismissed on 04.10.2012. However, in Criminal Revision No. 11 of 2013, this Court, by judgment dated 29.07.2013, set aside the judgments of conviction and directed his release. Thereafter, the petitioner sought reinstatement, but upon reconsideration of the departmental proceeding, he was

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again issued a second show-cause notice and, despite his plea that the criminal acquittal should result in dropping of the departmental proceeding, the disciplinary authority found the charge proved and imposed the punishment of dismissal from service vide order dated 12.05.2014.

22. Learned counsel submits that the petitioner's earlier writ petition challenging the dismissal was disposed of with liberty to avail the statutory appellate remedy. His appeal was thereafter considered at the level of the Hon'ble Patna High Court. Though a Sub-Committee of two Hon'ble Judges, by order dated 06.02.2019, had allowed the appeal on the question of quantum of punishment and remanded the matter, the Hon'ble Standing Committee, upon reconsideration in the light of the minutes dated 20.02.2019, resolved on 26.02.2019 to reject the appeal. The reasons included that, under Rule 20 of the Bihar Civil Court Staff (Class III & IV) Rules, 2009, the power to decide an appeal against a major penalty vested in the Hon'ble Standing Committee and had not been delegated; further, hearing by one authority followed by decision by another raised an issue of natural justice, and there was no provision for a personal hearing at the appellate stage. The said decision was subsequently communicated to the petitioner pursuant to the

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order dated 17.11.2021 passed in C.W.J.C. No. 12693 of 2019.

23. On the principal issue of acquittal, learned counsel submits that acquittal in a criminal case, by itself, does not entitle a delinquent employee to automatic exoneration from departmental proceedings. The exception can arise only where the criminal and departmental proceedings are found on identical charges, evidence, witnesses and circumstances, and the criminal court has acquitted the delinquent on merits. In the present case, according to the respondents, the petitioner has failed to establish such identity. In particular, the Investigating Officer, K.D. Kumar, was examined as Departmental Witness No. 11 but was not examined in the criminal trial. The criminal revision was allowed, *inter alia,* on account of the non-examination of the Investigating Officer and the consequent failure to explain discrepancies relating to recovery. In the departmental proceeding, however, the said witness and other police witnesses supported the alleged confession and recovery. The respondents therefore submit that the standards applicable to a criminal trial and a departmental proceeding are different, the former requiring proof beyond reasonable doubt and the latter proceeding on the preponderance of probabilities.

24. It is further submitted that the petitioner's

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reliance upon the order dated 06.02.2019 of the Sub-Committee is misplaced, as the Hon'ble Standing Committee subsequently considered the matter and independently decided the appeal in accordance with Rule 20 of the 2009 Rules. The earlier hearing and decision of the Sub-Committee, therefore, could not govern or bind the final decision of the competent appellate authority.

25. Learned counsel further submits that the contention regarding non-issuance of a second show-cause notice proposing the punishment is untenable. After the Forty-Second Constitutional Amendment, there is no requirement of giving a separate opportunity to the delinquent employee on the proposed quantum of punishment. The notice dated 11.12.2013 enclosed the enquiry report and afforded the petitioner an opportunity to submit his defence, which opportunity was duly availed by him.

26. Learned counsel further submits that with regard to the allegation of denial of opportunity to cross-examine witnesses, it is submitted that the petitioner has neither identified any particular departmental witness whom he was prevented from cross-examining nor demonstrated any prejudice caused to him. On the contrary, he was represented by an advocate during the enquiry and was afforded adequate

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opportunity to defend himself, including filing his reply to the charge-sheet and the second show-cause notice. The disciplinary and appellate authorities also found no procedural violation in the departmental proceeding.

27. It is further submitted that as regards the petitioner's challenge to the appreciation of evidence, learned counsel submits that the jurisdiction of this Court under Article 226 is confined to examining the decision-making process and does not extend to acting as an appellate authority for re-appreciating the evidence or examining its adequacy, sufficiency or reliability. In the present case, the finding of guilt was based upon oral and documentary evidence, including evidence regarding recovery of the stolen money and duplicate keys pursuant to information allegedly furnished by the petitioner. Accordingly, no interference with the findings of the Enquiry Officer and disciplinary authority is warranted in exercise of judicial review.

28. It is further submitted that the punishment of dismissal cannot be said to be disproportionate. Once the charge of theft of government money by the petitioner, while functioning as Night Guard and by using duplicate keys, has been found proved in the departmental proceeding, the

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punishment imposed cannot be said to shock the conscience of the Court so as to warrant interference in exercise of judicial review.

29. With regard to non-payment of subsistence allowance, learned counsel for the contesting respondent submits that the petitioner's claim for the period from April, 2009 to 12.05.2014 was considered by the District and Sessions Judge, Patna. Vide order dated 08.04.2022, subsistence allowance was allowed for the period from 01.07.2009 to 16.11.2009, during which the petitioner had marked his attendance, while payment for the subsequent period was declined as he had failed to mark his attendance as required under Rule 10 of the Bihar CCA Rules, 2005. The said order has not been challenged by the petitioner. It is therefore submitted that he cannot subsequently raise a grievance regarding non-payment for the period during which he failed to comply with the statutory requirement. In any event, mere non-payment of subsistence allowance does not, by itself, vitiate a departmental proceeding unless actual prejudice is established. Here, the departmental enquiry had already concluded with submission of the enquiry report on 15.07.1995, and the petitioner has failed to demonstrate any prejudice in his defence on account of non-

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payment of subsistence allowance for the later period.

30. In view of the aforesaid submissions, learned counsel for the respondents-State submits that the petitioner has failed to establish any procedural illegality, violation of principles of natural justice, prejudice, or ground warranting interference with the departmental findings, the order of dismissal, or the decision of the appellate authority.

In support of his argument, learned counsel for the respondent relied upon the judgement/s below : -

1. (2009) 9 SCC 24 Southern Railway Officers Association & ors. Versus Union of India and others - Para 37

2. (***1999) 3 SCC 679-Capt. M. Paul Anthony Versus Bharat Gold Mines Ltd. & Anr..*** Para 34 and 35.

3. ***(2006) 5 SCC 446-G.M. Tank Versus State of Gujarat & ors.*** - Para 30.

4. ***(2015) 2 SCC 610-Union of India & ors. Versus P. Gunasekaran*** Para 12, 13, 20 and 21.

31. After hearing the respective parties and upon perusal of the materials available on record, this Court, with a view to adjudicate the issue involved in the present writ petition, considers it appropriate to refer to and reproduce the relevant judgments and statutory provisions relied upon by the learned

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counsel appearing for the respective parties.

32. Firstly, learned counsel for the petitioner has relied upon the judgment in the case of ***Ram Lal Vs. State of Rajasthan (supra)***. The relevant paragraphs 28 to 30 thereof are reproduced hereinbelow:

> ‘‘***28.*** *Expressions like "benefit of doubt" and "honourably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.*
>
> ***29.*** *We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" — in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" (see Vijayee Singh v. State of U.P. [Vijayee Singh v. State of U.P., (1990) 3 SCC 190 : 1990 SCC (Cri) 378]).*
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> ***30.*** *We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the*

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> *disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] .*

32.1 learned counsel for the petitioner has further relied upon the judgment in the case of ***State of Bihar V. Arbind reported in (2013) 16 SCC 615***. The relevant paragraphs 10, 11 and 14 thereof are reproduced hereinbelow

> *"**10.** At this juncture, it is appropriate to recapitulate the principles laid down by this Court pertaining to payment of subsistence allowance and the effect of such non-payment. It is settled in law that an order of suspension never puts an end to the service of an employee. He is only not entitled to the salary but is eligible to get the subsistence allowance. It has been held in Khem Chand v. Union of India [AIR 1963 SC 687] that the effect of an order of suspension is that though the employee continues to be a member of the service, he is not permitted to work and is paid only subsistence allowance which is less than his salary. The said principle has been reiterated in State of M.P. v. State of Maharashtra [(1977) 2 SCC 288 : 1977 SCC (L&S) 232] .*
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> ***11.** It is apt to note that the subsistence allowance is governed by the service rules. It is given to a suspended employee for his sustenance. It is in a way making a provision for maintenance and survival. In O.P. Gupta v. Union of India [(1987) 4 SCC 328 : 1987 SCC (L&S) 400 : (1987) 5 ATC 14] it has been stated*

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that the very expression "subsistence allowance" has an undeniable penal significance. It basically means—a means of supporting life, especially a minimum livelihood. Thereafter, the learned Judges proceeded to observe thus: (SCC p. 341, para 15)

> *"15. ... It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration."*

14. *In Jagdamba Prasad Shukla v. State of U.P. [(2000) 7 SCC 90 : 2000 SCC (L&S) 825] it has been ruled that the payment of subsistence allowance, in accordance with the rules, to an employee under suspension is not a bounty. It is a right and if a suspended employee is unable to appear for want of funds on account of non-payment of subsistence allowance, it is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to defend himself in the departmental enquiry and that vitiates the departmental enquiry and the consequent order of removal from service. It is seemly to state here that in the said case the employee had intimated the authorities about the financial crunch.*

32.2 Learned counsel has further relied upon the judgement rendered in the case of ***Capt. M Paul Anthony (supra)*** whose relevant paragraph 34 and 35 are reproduced as under :-

"**34.** There is yet another reason for

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discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

32.3 Learned counsel further relied upon the judgement rendered in the case of ***G. M. Tank (supra)*** whose relevant paragraph 30 and 31 reproduced as under :-

"***30.*** *The judgments relied on by*

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the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. *In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved*

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> *between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.*

32.4 Learned counsel has further relied upon the judgment rendered in the case of ***Kuldip Singh (supra)*** whose relevant paragraph 11 reproduced as under :-

> "**11.** In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the Designated Court. We must say that the facts of this case did present us with a difficult choice. The fact, however,

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remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause (2) of Article 311. Nothing has been brought to our notice to persuade us not to accept the said finding of the High Court. Even a copy of the counter filed by the respondents in the High Court is not placed before us. Once proviso (*b*) is held to have been validly invoked, the government servant concerned is left with no legitimate ground to impugn the action except perhaps to say that the facts said to have been found against him do not warrant the punishment actually awarded. So far as the present case is concerned, if one believes that the confession made by the appellant was voluntary and true, the punishment awarded cannot be said to be excessive. The appellant along with some others caused the death of the Superintendent of Police and a few other police officials. It must be remembered that we are dealing with a situation obtaining in Punjab during the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of mala fides levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also satisfied with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into

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> the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the disciplinary authority and the appellate authority."

32.5 Learned counsel has further relied upon the judgement rendered in the case of ***Roop Singh Negi (supra)*** whose relevant paragraph 23 is reproduced as under :-

> "**14.** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.
>
> **23.** Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials

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> brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

32.6 Further the judgement rendered in the case of **Charan Singh *(supra)*** whose relevant paragraph 10 reproduced as under :-

> "**11.** The Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial. The authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it should arrive at a conclusion based on reason. The necessity to provide reasons, howsoever, brief in support of its conclusion by such a forum, is too obvious to be reiterated and needs no emphasising. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimises, the chances of arbitrariness and the higher forum can test the correctness of those reasons. Unfortunately we have not been able to find from the impugned order any reasons in support of the conclusion that the claim of the appellant is "unrealistic" or "exaggerated" or "excessive".

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> Loss of salary is not the sole factor which was required to be taken into consideration.

32.7 Learned counsel has further relied upon the judgement rendered in the case of ***G. Vallikumari (supra)*** whose relevant paragraph 19 reproduced as under :-

> "***19.*** *In his order, the Chairman of the Managing Committee did refer to the allegations levelled against the appellant and representation submitted by her in the light of the findings recorded by the enquiry officer, but without even adverting to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognised facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.*

33. This Court also feels it necessary to quote the relevant judgement relied upon by learned counsel for the respondent in the case of ***Southern Railway Officers Association and Ors. (supra)*** whose relevant paragraph 37 is reproduced as under :-

> "**37.** Acquittal in a criminal case by itself cannot be a ground for interfering with an

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order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.''

33.1 Learned counsel for the State has further relied upon the judgement in the case of ***Union of India and Ors. Vs. P. Gunasekaran (supra)*** whose relevant paragraph 12, 13, 20 and 21 are reproduced as under :-

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

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

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

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

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

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

(f) the conclusion, on the very face of

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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. *Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability,*

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genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values.

21. *The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed at quite length by this Court in several decisions including B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Om Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , Coimbatore District Central Coop. Bank v. Employees Assn. [(2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68] , Coal India Ltd. v. Mukul Kumar Choudhuri [(2009) 15 SCC 620 : (2010) 2 SCC (L&S) 499] and the recent one in Chennai Metropolitan Water Supply [Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] ."*

34. This Court also feels it necessary to quote Rule 20 of the Bihar Staff and Selection Rule, 2009 as under :-

"20. Appeal.

(1)*Any employee aggrieved by imposition of any minor/major punishment upon him by the disciplinary authority may prefer an appeal to the High Court within a period of 30 days from the date of receipt of copy of the said order and/or from the date of communication of the said order upon the concerned employee.*

(2)*Such memorandum of appeal shall be forwarded by the District Judge concerned to the Registrar of the High Court*

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together with his comments thereon, if any, within two weeks from the date of receipt of such memorandum of appeal.

(3)The Standing Committee of the High Court shall, dispose of such appeal as expeditiously as possible and preferably within a period of three months from the date of receipt of the memorandum of appeal, if the same has been preferred against an order imposing a major penalty and by the Judge Administrative Department No. 1 in case of minor penalty.

(4)All procedures for holding Departmental proceeding, imposition of penalty, disposal of appeal etc, shall be governed by such statutory Rules as are applicable for the employees concerned."

34.1 Further Rule 10 of the CCA Rules 2005 states as under :-

*"10. **Subsistence allowance during suspension** (1) A Government Servant under suspension or deemed to have been placed under suspension shall be entitled to receive a subsistence allowance an amount equal to the half average pay and in addition, dearness allowance admissible on such half pay :*

Provided that where the period of suspension has exceeded twelve months, the authority, who has made such order of suspension, shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of first twelve months as follows:-

(i) the amount of subsistence allowance may be increased by such a suitable amount, which shall not be exceeding fifty per cent of the subsistence allowance admissible during the period of the first twelve months, if in the opinion of the said authority, the period of suspension has been prolonged for which, for reasons to be recorded in writing, the Government Servant is not responsible.

(ii) the amount of subsistence allowance may be reduced by such a suitable amount which shall not be exceeding fifty per cent of

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the subsistence allowance admissible during the period of first twelve months, if, in the opinion of the said authority, the period of suspension has been prolonged, for which, for reasons to be recorded in the writing, the Government Servant is responsible.

(iii) the rate of dearness allowance will be based on the rates increased or, the reduced amount, as the case may be, of subsistence allowance admissible under sub-clause (i) or sub-clause (ii) of this Rule:

Provided further that the Government Servant shall be entitled to receive subsistence allowance only for such period when he is actually present at the headquarters during the suspension period. He shall be required to mark his attendance in the attendance register meant for such Government Servant:

Provided further that since the headquarters cannot be fixed for the period of custody, therefore marking of such attendance shall not be required for the period of custody.

(2) No Government Servant shall be entitled to receive payment under sub-rule (1) unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

(3) Where suspension is under sub-rule (2) of Rule 9, in that case also the subsistence allowance shall be admissible in accordance with sub-rule (1) above. As a result of deemed suspension due to detention in custody the payment of subsistence allowance may be made to the dependent nominated by the Government Servant on the basis of his authority. Such subsistence allowance shall be paid by the same establishment where the Government Servant was posted at the time of detention.

4) The disciplinary authority shall be the competent authority to grant subsistence allowance and to increase or decrease the same.''

35. Upon consideration of the entire material on record, including the pleadings, the documents, and the

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judgments discussed hereinabove, this Court has reached the conclusion that it is an admitted position that the petitioner was dismissed from service pursuant to a departmental proceeding.

36. It is, however, also an admitted position that the petitioner was convicted by the trial court and that his appeal against the judgment of conviction was dismissed. Subsequently, in criminal revision, the judgment of conviction passed by the trial court was set aside, and the petitioner was directed to be released.

37. It is a well-settled principle of law that the standard of proof in a criminal proceeding is proof beyond a reasonable doubt, whereas, in a departmental proceeding, the standard of proof is the preponderance of probabilities.

38. In the present case, this Court finds that the punishment imposed upon the petitioner in the departmental proceeding was based on the evidence of the witnesses examined before the inquiry officer. Upon perusal of the materials on record, including the evidence considered by the inquiry officer, this Court finds that the disciplinary authority imposed the punishment on the basis of the findings recorded in the departmental inquiry.

39. This Court has also considered the various

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judgments discussed hereinabove and has reached the conclusion that the law laid down therein categorically establishes that acquittal in a criminal case, by itself, cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. It is a well-settled principle of law that an order of dismissal from service may be passed against a delinquent employee even if he has been acquitted of the criminal charges, provided that the findings recorded in the departmental proceeding are otherwise sustainable in law.

40. In view of the foregoing discussion and the principles of law laid down in the judgments referred to hereinabove, this Court finds no ground warranting interference with the impugned order of dismissal from service.

41. Accordingly, the writ petition stands dismissed.

(Dr. Anshuman, J)

Ashwini/-

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