2025 INSC 554

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5497 OF 2025
[ARISING OUT OF SLP(C) NO. 9818/2017]

MAHARANA PRATAP SINGH ...APPELLANT

VERSUS

THE STATE OF BIHAR & ORS. ...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

THE APPEAL

2. This civil appeal is directed against the judgment and order dated 16th November 2016[1] of a Division Bench of the High Court of Judicature at Patna[2] allowing the respondents' intra-court appeal[3] arising from a writ petition[4] presented before the High Court by Maharana Pratap Singh[5]. The judgment and order of the Single Judge dated 16th July, 2013 was set aside and resultantly, the writ petition of the appellant stood

[1] impugned order
[2] High Court
[3] L.P.A. No. 516 of 2015
[4] C.W.J.C. No. 471 of 2004
[5] appellant

dismissed. The Single Judge had quashed the order dismissing the appellant from service and directed that he be reinstated in service with all consequential benefits from the date of the dismissal.

FACTS

3. The appellant was appointed as a Constable in the Dog Squad of the Crime Investigation Department[6] in 1973. He proceeded on earned leave for two days, with the intention of resuming his duties on 8th August, 1988. Incidentally, on 7th August 1988, a First Information Report[7] was registered on the complaint of one Prem Kumar Singh[8] against unknown persons, giving rise to Kotwali P.S. Case No. 882 of 1988 for offences under Sections 392, 387, 420, 342, 419 read with Section 34 of the Indian Penal Code, 1860[9]. The FIR included a request for the formation of a raiding party to apprehend those who had extorted money from the informant by blackmailing him. A raiding party was formed, which proceeded to raid the Rajasthan Hotel in Patna on 8th August, 1988. The accused was expected to arrive there to collect ₹40,000/- (Rupees forty thousand) from the informant. Meanwhile, the appellant was on his way to the office to resume his duties after completing his earned leave when the informant handed over the briefcase to the appellant. Subsequently, the appellant was arrested and was brought to Kotwali Police Station.

[6] CID
[7] FIR
[8] informant
[9] IPC

On the same date, i.e., 08th August, 1988, the appellant was placed under suspension by his superior authority.

4. On 14th June, 1989, disciplinary proceedings[10] were initiated against the appellant by drawing up a memorandum of charges. The memorandum, duly served on the appellant, levelled 4 (four) charges as detailed under:

i. Based on the written complaint of the informant, a case was registered under Sections 392, 387, 420, 342, 419, and 34 of the IPC. In connection with this case, the appellant was arrested while receiving ₹40,000/- (Rupees forty thousand) from the informant, in furtherance of an alleged act of cheating by impersonation and extortion under duress, at gunpoint**.**

ii. On 30th June 1976, a case was registered against the appellant for cheating the Manager of Elphinstone Cinema Hall by falsely representing himself as a Sub-Inspector of the CID. The appellant was found guilty of the offence and subsequently punished.

iii. After availing earned leave, the appellant failed to resume his duty on 08th August, 1988 without any information although subsequently, he was arrested by personnel of Kotwali Police Station on the same day.

iv. The appellant failed to inform the CID Headquarters about his arrest on 8th August, 1988.

5. In response to the memorandum, the appellant submitted a prayer dated 15th March, 1990 requesting that the departmental proceedings

[10] Proceeding No. 9 of 1989

be conducted only after the conclusion of the criminal proceedings. The appellant expressed concern that if the departmental proceedings were held first and should the appellant cross-examine the witnesses during the departmental inquiry, his defence is bound to be disclosed; and this would gravely prejudice him in the criminal proceedings. Notwithstanding the appellant's prayer, an inquiry ensued culminating in the Inquiry Officer submitting his report on 3rd May, 1995[11], finding the appellant guilty of the charges levelled against him.

6. Later, the appellant was served with a second show cause notice by the Superintendent of Police, CID[12] on 23rd June, 1995 calling upon him to show cause why he should not be dismissed from service. Copy of the report of the Inquiry Officer was furnished. The appellant replied to the second show cause notice on 11th March, 1996 seeking to point out the illegalities committed by the Inquiry Officer in course of the inquiry thereby vitiating the same. Nevertheless, the respondent no. 5 accepted the Inquiry Report and, by order dated 14th June, 1996 contained in Memo No. 1833 dated 21st June, 1996, dismissed the appellant from service, with the additional direction that the appellant would not be entitled to any payment for the period of suspension, except for the amounts already disbursed to him.

7. Meanwhile, the appellant along with the co-accused was tried and convicted by the trial court on 26th April, 1994. The appellant was found

[11] Inquiry Report
[12] respondent no. 5

guilty of offences under Sections 384 and 411 of the IPC and was sentenced to undergo simple imprisonment for a period of one year. However, he was acquitted of the charges under Sections 392 and 419 of the IPC.

8. The judgment of conviction and order on sentence having been carried in an appeal[13] by the appellant, the Additional Sessions Judge-XI, Patna[14], on 16th February, 1996, set aside the judgment and order under challenge. The appellant was acquitted of the charges, with the appellate court holding that the prosecution had failed to prove its case.

9. The appellant, aggrieved by the dismissal order dated 21st June, 1996 passed by the respondent no. 5, filed an appeal before the Deputy Inspector General of Police[15]. However, by an order dated 14th July, 1997, the respondent no. 4 dismissed the appeal and upheld the dismissal order passed by the respondent no. 5 dated 21st June, 1996, based on the report and the findings of the Inquiry Officer**.**

10. Subsequently, the appellant filed a revision before the Director General-cum-Inspector General of Police, C.I.D.[16] on 24th September, 1997, seeking to challenge the appellate order. However, as the revision remained undecided, the appellant filed a writ petition[17] before the High Court. The said writ petition was disposed of on 13th May, 2002 with a direction to the respondent no. 2 to decide the appellant's revision within

[13] Criminal Appeal No. 108 of 1994
[14] sessions judge
[15] respondent no. 4
[16] respondent no. 2
[17] C.W.J.C. No. 5946 of 2002

two months from the date of the order. In compliance with the said direction, the respondent no. 5 on 06th August, 2003 dismissed the revision, with the result that the dismissal order stood reaffirmed.

PROCEEDINGS BEFORE THE SINGLE JUDGE

11. Thoroughly dissatisfied with the outcome of the revision, the appellant laid a challenge to the revisional order (in which the appellate order and the original order of dismissal had merged) in the writ petition out of which this civil appeal arises. The appellant *inter alia* raised the following objections: (i) the Officer-in-Charge[18] was neither examined in the appellant's presence nor permitted to be cross-examined, rendering the disciplinary proceedings vitiated; (ii) both the departmental and criminal proceedings having stemmed from the same facts based on the informant's written complaint and identical charges being involved, after the appellant's exoneration in the criminal proceedings, rendered the disciplinary proceedings untenable and should have been dropped; (iii) the order of dismissal violated principles of natural justice; (iv) the respondent no. 4 upheld the order of dismissal without affording the appellant an opportunity to be heard; and (v) the respondent no.2 having a duty to set right the wrong, failed to discharge such duty. Issuance of a writ of certiorari was sought by the appellant to quash the impugned orders. Additionally, the appellant sought the issuance of a writ of mandamus directing the respondents to grant him all consequential benefits as if he had never been dismissed from service.

[18] PW-1

12. The Single Judge observed, upon an examination of the allegations made by the informant — who had also submitted a written statement against the appellant in the department — that the narrative presented by the informant lacked credibility due to several apparent inconsistencies. Notably, the question that seemed to trouble the Single Judge was why a person would enter a hotel room solely for the purpose of having tea, and why an acquaintance would escort both the informant and Devnath Pathak[19] to the hotel room while leaving a young girl in the attached toilet. The Single Judge opined that the Inquiry Officer's reliance on the testimony of PW-1, who was not allowed to be cross-examined, raised concerns of undue influence. PW-1 had a matrimonial connection with the family of Virendra Singh, who allegedly had a strained relationship with the appellant's family, suggesting a personal motive to act against the appellant. However, the Inquiry Officer failed to examine or address the appellant’s contention regarding this potential conflict of interest. The Single Judge further observed that the respondents' claim, asserting the absence of a written request from the appellant to the Inquiry Officer for permission to cross-examine PW-1, was neither legally valid nor proper. The appellant was not required to submit such a request; rather, it was the duty of the Inquiry Officer to ensure that the appellant was given the opportunity to cross-examine the witness. As a result, testimony of PW-1 could not be relied upon in the absence of such an opportunity being provided to the appellant.

[19] PW-2

13. The decision in ***Sawai Singh v. State of Rajasthan***[20] was relied on by the Single Judge to hold that the charges were vague, indefinite and lacking in material particulars.

14. The Single Judge further noted that the charges in the criminal proceedings against the appellant and the evidence presented by the prosecution to substantiate the same were largely identical to those in the departmental proceedings. Placing reliance on the decision in ***G.M. Tank v. State of Gujarat & Anr.***[21]*,* the Single Judge concluded that charge no. 1 could not have been held to be proved by the disciplinary authority since the respondents 5, 4, and 2 failed to provide reasoning distinct from that of the relevant sessions judge who had acquitted the appellant of the charges. The Single Judge further observed that it was not open to the respondents to reopen charge no. 2 in subsequent departmental proceedings, as the matter had already been concluded in 1976 and the appellant visited with punishment. Regarding charges 3 and 4, the Single Judge found them self-explanatory, noting that the appellant's arrest on 8th August, 1988 and subsequent detention in the police lock-up prevented him from resuming his duties and notifying the CID, Headquarters, about his arrest.

15. In light of the aforementioned findings and conclusions, the Single Judge found the charges against the appellant to be frivolous and unfounded, with the Inquiry Officer failing to adhere to due process. Consequently,

[20] AIR 1986 SC 995
[21] AIR 2006 SC 2129

by judgment and order dated 16th July 2013, the Single Judge quashed the dismissal order dated 21st June 1996 (upheld by the respondents 4 and 2 on 14th July 1997 and 6th August 2003, respectively), and directed the respondents to grant the appellant all consequential benefits from the date of dismissal.

PROCEEDINGS BEFORE THE DIVISION BENCH

16. The respondents, aggrieved by the judgment and order of the Single Judge, appealed to the Division Bench of the High Court.

17. The Division Bench, relying on a series of precedents and quoting therefrom extensively, observed that exercise of jurisdiction by the Single Judge evinced exercise of appellate jurisdiction over the decision of the departmental authorities, whereas judicial review of departmental orders should focus solely on the decision-making process and not on the merits or demerits of the findings. The Division Bench, relying on ***Union of India v. P. Gunasekaran***[22], held that the Single Judge's re-appreciation of evidence, which led to the conclusion of the appellant's innocence, was unsustainable due to the lack of a justifiable basis for such an approach. It also emphasized that the strict rules of evidence do not apply to departmental proceedings, as declared in ***T.N.C.S. Corporation Ltd. v. K. Meerabai***[23]. The Division Bench further distinguished the decision in ***Sawai Singh*** (supra) relied on by the Single Judge, based on differing factual circumstances. It concluded that

[22] (2015) 2 SCC 610
[23] (2006) 2 SCC 255

the charges against the appellant were specific, and the procedural requirements during the inquiry had been properly followed, with sufficient opportunities provided to the appellant.

18. The Division Bench also referred to several decisions of this Court regarding legal principles, including the admissibility of hearsay evidence in departmental proceedings, rules of natural justice, the right to cross-examine, opportunities to lead evidence, and the scope of natural justice in disciplinary proceedings. Also, upon reviewing the proceedings file maintained by the department[24], the Division Bench found the respondents' claims to be substantiated. It was concluded that there was no procedural error or breach of natural justice during the inquiry. Consequently, the Single Judge's interference with the order of dismissal was not warranted.

19. Resting on such conclusions, the Division Bench set aside the judgment and order of the Single Judge and dismissed the writ petition.

CONTENTIONS

20. Learned senior counsel for the appellant, while assailing the impugned judgment, submitted that the following points merit consideration by this Court:

A. *First*, in light of the decision in ***G. M. Tank*** (supra), the Division Bench erred in failing to recognize that both the criminal and disciplinary proceedings were based on the same allegations, the same facts, the same evidence and the same witnesses. The

[24] departmental file

appellant was acquitted by the sessions judge on merits, and as such he could not have been found guilty in the disciplinary proceedings.

B. *Secondly*, the appellant was acquitted by the sessions judge based on a merits-based evaluation and not on technical grounds. This is further substantiated by the informant's failure to identify the appellant in the criminal proceedings, who had not been made a witness in the inquiry. Additionally, PW-2 denied the appellant's involvement in both the inquiry and the criminal case, refusing to identify him.

C. *Thirdly*, the findings in the Inquiry Report holding the appellant guilty and which were upheld by the respondents 5, 4, and 2, lack credibility. Consequently, these findings are not only perverse but also influenced by extraneous factors and *mala fide* intentions.

D. *Fourthly*, PW-1 harboured a personal vendetta against the appellant, a fact brought to the attention of the respondents. However, this issue was neither examined nor considered by them, although the same did deserve thorough examination and proper consideration being fact finding authorities.

E. *Fifthly*, regarding charge no. 2, the appellant had already faced disciplinary proceedings and been penalized; hence, proceeding against him again for the same misconduct was barred on the ground of double jeopardy. Furthermore, a review of the Inquiry Report reveals a complete lack of evidence substantiating the said charge.

F. *Sixthly*, charges 3 and 4 are derived from charge no. 1 and are driven by extraneous motives. Following his arrest on 8th August 1988, the appellant's repeated requests to the Officer-in-Charge to inform the CID authorities were deliberately ignored. The Inquiry Report itself acknowledges the lack of evidence for charge no. 4. Moreover, the appellant could only have been suspended on 8th August 1988 if the authorities had not been informed of his arrest.

G. *Seventhly,* the procedure followed in the inquiry was neither fair nor proper, as an interested witness (PW-1) was examined in the appellant's absence, despite this being brought to the attention of the Inquiry Officer and the respondents. Moreover, the appellant was denied the opportunity to cross-examine the said witness.

H. *Eighthly*, the charges framed against the appellant were utterly vague and lacking in material particulars; hence, reliance was correctly placed by the Single Judge on the decision in ***Sawai Singh*** (supra).

I. *Finally,* the Inquiry Officer and the respondents erred in law by recording findings against the appellant without any admissible evidence, leading to a manifest miscarriage of justice. Therefore, the dismissal from service and denial of consequential benefits are clearly erroneous and perverse.

21. *Per contra*, Mr. Khan, learned counsel appearing for the respondents, contented that the impugned judgment of the Division Bench suffers

from no error or infirmity either of law or on facts, far less manifest error or infirmity, and hence does not call for any interference. He sought upholding of the impugned judgment asserting that there were no procedural irregularities or violations of natural justice in the process of inquiry.

22. The arguments of the appellant were sought to be strongly rebutted by advancing the further following points:

A. *First*, PW-1 was examined in the appellant's presence, and despite being given the opportunity to cross-examine the witness, the appellant knowingly chose not to do so. The Inquiry Officer's inference that PW-2, who refused to identify the appellant during cross-examination, was likely to have been influenced by the appellant because of the lapse of time since he was examined-in-chief and cross-examined, and such inference being accurate did not call for any interference.

B. *Secondly*, the charges in the disciplinary proceedings are distinct from those in the criminal case. Charges 1 and 2 were sufficiently substantiated, while charges 3 and 4 were not contested by the appellant. Additionally, charge no. 2 does not constitute double jeopardy, as it pertains to the appellant's prior conduct rather than a separate offence.

C. *Thirdly*, the standards for establishing evidence of guilt in disciplinary proceedings differ from those applied in criminal proceedings and

that decisions are legion declaring the law that mere acquittal in criminal proceedings does not result in automatic reversal of the departmental decision of taking disciplinary action for proved misconduct.

D. *Fourthly,* the Division Bench was absolutely right in observing that the Single Judge had exceeded its writ jurisdiction as if it were sitting in appeal on the administrative decisions of the respondents.

E. *Fifthly,* the appellant being the member of a disciplined force was found to have conducted himself in a manner unbecoming of a police officer and, therefore, the Division Bench was right in interfering with the injudicious exercise of discretion by the Single Judge.

23. Mr. Khan, therefore, urged that the impugned order of the Division Bench deserves affirmation and dismissal of the appeal ought to be ordered.

ANALYSIS AND REASONS

24. We have heard learned senior counsel/counsel for the parties at length and examined the materials on record.

25. The issues for determination that emerge for decision are:

(i) Whether due process was followed in dismissing the appellant from service and whether his dismissal from service is justified, on facts and in the circumstances, that have unfolded before us?

(ii) Whether, in light of the facts, evidence, witnesses, and circumstances of the case, the charges in the criminal proceedings are substantially identical to those in the

departmental proceedings, such that an acquittal in the criminal case would render the findings in the disciplinary proceedings vulnerable?

(iii) Whether the impugned judgment, which allowed the appeal of the respondents and dismissed the writ petition of the appellant, deserves to be upheld?

(iv) Whether the appellant is entitled to any relief, should the aforesaid questions be answered in his favour?

26. At the outset, it is pertinent to note that considering the nature of arguments advanced which required ascertaining facts by looking into the records of inquiry, which are not on record, we had required the respondent-State of Bihar *vide* order dated 17th December, 2024 to submit scanned copy of the complete departmental file by 10th January, 2025.

27. Under Section 114(g) of the Indian Evidence Act, 1872, if a party fails to produce evidence that is within its control, it is presumed that the withheld evidence would be unfavourable to it. Though reference to any authority is not required, we may profitably refer to the decision in ***State (Inspector of Police) v. Surya Sankaram Karri***[25] in this behalf.

28. We regretfully record that neither has the departmental file been submitted for our perusal nor has the respondent-State of Bihar prayed for any extension of time. The consequence of non-compliance of such order is fatal, as would appear from our discussion hereafter.

[25] (2006) 7 SCC 172

29. The issues arising for decision are now taken up for consideration.

ISSUE NO. 1

30. The specific statutory rule in terms whereof the chargesheet against the appellant was drawn up or the inquiry conducted, cannot be ascertained as copy of the chargesheet in its entirety is not part of the paper book. This is precisely the reason why we called for the departmental file concerning the disciplinary proceedings which, unfortunately, has not been provided to us. Nonetheless, and given the circumstance that the appellant was dismissed from service on 21st June, 1996, it is reasonable to infer that the relevant rules in this case would likely be the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935[26] and/or the Civil Services (Classification, Control and Appeal) Rules, 1930[27]. These were adopted through Notification No. III/63-8051-A dated 3rd July, 1963, and were subsequently repealed by the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

31. Our abovesaid inference is bolstered by Rule 824A (e) of the Bihar Police Manual, 1978, which stipulates that for experts and other ranks officials — i.e., barring members of the Indian Police Services, Deputy Superintendents and their equivalent ranks, ministerial officers and members of the Bihar Sashastra Police—the Rules of 1935 would be applicable if the official is non-gazetted and the Rules of 1930 would be applicable if gazetted. It is noteworthy that the post of Constable in the

[26] Rules of 1935.
[27] Rules of 1930.

CID is a non-gazetted post and, hence, the Rules of 1935 provided the source of power to initiate disciplinary proceedings against the appellant by drawing a chargesheet.

32. Note 1 attached to Rule 2 of the Rules of 1935 underlines that the procedure stipulated in Rule 55 of the Rules of 1930 must be followed prior to the issuance of a dismissal order against the charged official. Rule 55 of the Rules of 1930 stipulates that the grounds for the proposed disciplinary action must be clearly articulated in the form of specific charges, accompanied by a detailed statement outlining the allegations supporting each charge.

33. On perusal of whatever is available on record, it is found that allegations had been levelled against the appellant under 4 (four) distinct charges. A specific objection having been taken on behalf of the appellant that the charges were vague, indefinite, not specific and lacking in material particulars, we felt it all the more necessary to have a look at the nature and wording of the chargesheet from the departmental file. However, in view of withholding of the departmental file, the presumption that can legitimately and validly be drawn and which we do hereby draw is that the respondents did not deliberately produce the departmental file lest the illegality in proceeding against the appellant from the inception is exposed.

34. Based on the foregoing discussion, the version of the appellant that the charges drawn up against him were vague, indefinite, unspecific and lacked essential particulars has to be accepted. The decision of this Court

in ***Sawai Singh*** (supra), thus, does apply on all fours in this case. This, in turn, reinforces the finding that the chargesheet contravened Rule 55 of the Rules of 1930, as made applicable by Note 1 of Rule 2 of the Rules of 1935.

35. If there is a flaw from the inception of the disciplinary proceedings, i.e., the charge-sheet is not issued conforming to the relevant rules and the charged officer finds it difficult to meet the charges because it is vague, indefinite, not specific and lacking in material particulars, the charge-sheet itself becomes susceptible to vulnerability. We are reminded of the decision of this Court in ***Surath Chandra Chakrabarty v. State of West Bengal***[28] where this Court ruled that:

> **6.** Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. … The entire proceedings show a complete disregard of Fundamental Rule 55 insofar as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the Trial Judge was fully justified in decreeing the suit.
>
> (emphasis supplied)

[28] (1970) 3 SCC 548

36. Moving further, the appellant had raised an allegation that PW-1 was not allowed to be cross-examined. Rule 55 of the Rules of 1930 provides that the witnesses may be cross-examined by the charged individual. Had the departmental file been placed on record, it would have facilitated a more thorough analysis of this sub-issue. Nevertheless, based on the available material, the question remains whether it can be determined if the appellant was provided with a sufficient opportunity to cross-examine PW-1, or if the appellant chose not to exercise that opportunity.

37. The respondents' counsel contended before this Court that the appellant deliberately chose not to cross-examine PW-1 and it is not their contention that opportunity of cross-examination could not have been given, particularly in light of the fact that PW-2 was made available for cross-examination by the appellant. However, the Single Judge’s observations reveal that the respondents claimed there was no record of any request or indication from the appellant expressing an intent to cross-examine the said witness. This demonstrates that the respondents have altered their position on the issue of cross-examination of PW-1, as reflected in their submissions both before the Single Judge and this Court.

38. Furthermore, on perusal of the materials before this Court, preponderance of probability favours the appellant for a finding to be returned that he was denied his right to cross-examine PW-1. The respondents' assertion that the appellant deliberately refrained from

cross-examining PW-1, given his request to cross-examine PW-2, is untenable for three reasons: first, the respondents have changed their position on this issue; second, no reasonable person would voluntarily forgo a right of cross-examination, particularly when PW-1 was one of only two witnesses who testified from a list of seven, and there were allegations of a personal vendetta against him; and third, the respondents have never claimed that cross-examination was not part of the prescribed inquiry procedure or that it was optional, or that the appellant abandoned the enquiry or failed to appear on the relevant date.

39. Next, the Inquiry Officer expressed disbelief at the version of PW-2 in course of cross-examination when he unequivocally denied the appellant's involvement in the alleged offences and failed to recall whether the seizure list relating to ₹ 40,000/- (Rupees forty thousand) had been prepared in his presence. The Inquiry Officer suggested that PW-2 might have been unduly influenced or persuaded by the appellant, noting that the cross-examination occurred after a substantial delay of nine (9) months from the date of PW-2's testimony in-chief, which had previously affirmed hinted at the involvement of the appellant.

40. Before delving further into this sub-issue, it is once again essential to fall back on withholding of the departmental file pertaining to the disciplinary proceedings, thereby preventing an ascertainment of the cause of the delay in production by the prosecution of PW-2 for cross-examination by the appellant. In any event, can the appellant be held

liable for such a prolonged gap? Likely not, as it is the responsibility of the prosecution to produce the witness. Moreover, in the absence of the departmental file, we cannot conclusively attribute the delay to the appellant either. Consequently, the lapse, without anything more before us, has to be attributed to the prosecution.

41. Nonetheless, we are of the view that dismissing PW-2's cross-examination as incredible, solely due to the delay in its conduct, would not be a reasonable conclusion. PW-2 had also denied the appellant's involvement in the criminal proceedings and, during his cross-examination in the inquiry, he explained that he had previously disclosed the appellant's name based on hearsay from individuals within the department.

42. We do not consider that the Inquiry Officer was justified in the approach he adopted while conducting the inquiry. Findings had to be returned by him neither on his *ipse dixit* nor surmises and conjectures but on the basis of legal evidence. A Constitution Bench of this Court, speaking through Hon'ble P.B. Gajendragadkar, J., in ***Union of India v. H.C. Goel***[29] pointed out that in carrying out the purpose of rooting out corruption, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. Although technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, nevertheless, the principle that in punishing the guilty scrupulous care should be taken to see that the innocent is not punished,

[29] AIR 1964 SC 364

applies as much to regular criminal trials as to disciplinary enquiries held under statutory rules. This has, thus, been the well-settled position of law for decades and bearing such law in mind, we have no hesitation to hold that the reason for which the Inquiry Officer doubted the version of PW-2 in his cross-examination was not available to be assigned without first returning a finding attributing the fault for the delay to the appellant.

43. At this juncture, it is imperative to further underline that the chargesheet against the appellant was issued based on the written complaint of the informant. Law is again clear to the effect that mere production of a document does not constitute proof. If chargesheet is issued on the basis of a written complaint, the author/complainant has to be produced. The decision of this Court in ***Bareilly Electricity Supply Co. Ltd. vs. Workmen & Ors.***[30] is an authority for this proposition. Notably, in the instant case, the informant/complainant had not been examined. This, we hold is one other glaring error in the decision-making process.

44. Upon reviewing the materials at our disposal and considering the aforementioned anomalies in the issuance of the chargesheet and the procedural lapses, none of which can be attributed to the appellant, and in light of the absence of the departmental file pertaining to the disciplinary proceedings, we are compelled to conclude beyond any cavil of doubt that due process was not followed in dismissing the appellant from service, rendering the dismissal unjustified.

[30] (1971) 2 SCC 617

45. While we agree with the Division Bench that the Single Judge, to a large extent, exercised appellate jurisdiction, on its part, the Division Bench failed to take into account the aforementioned vices that infected the decision-making process. One could call it an inadvertent slip or oversight; but, whatever be it, in our opinion, such slip or oversight resulted in a failure of justice.

ISSUE NO. 2

46. The aforesaid discussion on the first issue seals the fate of the respondents. However, since arguments were advanced in respect of this issue too, we propose to briefly answer the same.

47. While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in ***G. M. Tank*** (supra), since reinforced by a decision of recent origin in ***Ram Lal v. State of Rajasthan***[31]*.*

48. To assess the degree of similarity between the charges, evidence, witnesses, and circumstances in the disciplinary and criminal proceedings, it is indeed crucial to review the materials placed before

[31] (2024) 1 SCC 175

the Court where such an issue arises. However, we regret, absence of the departmental file has disabled us from looking into the same.

49. Notwithstanding the above, a plain reading of the materials available on record only reveals that charge no.1 in the disciplinary closely resembled the allegations in the criminal proceedings. In fact, the disciplinary proceedings were initiated based on the written complaint of the informant.

50. The judgment acquitting the appellant reveals that the prosecution "miserably failed to prove its case beyond reasonable doubt" as both the informant and PW-2 refused to identify the appellant in court. This discussion confirms that the appellant's acquittal was based not on mere technicalities. In ***Ram Lal*** (supra), this Court held that terms like "benefit of doubt" or "honourably acquitted" should not be treated as formalities. The Court's duty is to focus on the substance of the judgment, rather than the terminology used.

51. That apart, it is noteworthy that in course of the inquiry PW-2 had also declined to identify the appellant during cross-examination, and the informant was not called as a witness in the disciplinary proceedings. This sort of creates a parallel between the circumstances in both the criminal and disciplinary proceedings.

52. Besides, the appellant's case is strengthened by the principle of adverse inference. It can be reasonably inferred that the respondents deliberately withheld the scanned copy of the departmental file, which was essential for us to assess whether the charges, witnesses, evidence,

and circumstances in both the criminal and departmental proceedings were substantially similar or identical, likely due to concerns over the potential adverse consequences.

53. In light of the preceding discussion and the adverse presumption that is available to be drawn, we hold that the finding of the appellant being guilty of charge no.1 cannot be sustained following his acquittal in the criminal proceedings, which seem to have involved substantially similar or identical charges, evidence, witnesses, and circumstances.

ISSUE NO. 3

54. The Division Bench and the Single Judge differed in their views on the appellant's dismissal following disciplinary proceedings. Whereas the Single Judge found the inquiry report flawed due to unlawful procedures and untenable findings, the Division Bench, upon reviewing the "original file of the departmental proceedings," concluded that there was no procedural irregularity or breach of natural justice; and, therefore, held that the Single Judge's interference with the inquiry officer's findings—particularly by evaluating the merits of those findings in its writ jurisdiction—was unwarranted.

55. Law is trite that while exercising its powers under Articles 226 and 227 of the Constitution, the High Court does not exercise powers that are available to an appellate court. It is the decision-making process that falls for scrutiny. Be that as it may, the High Courts can rectify errors of law or procedural irregularities, if any, that lead to a manifest miscarriage of justice or breach of the principles of natural justice. Law

is also well-established that the standards for establishing a guilt in disciplinary proceedings differ from those applicable to criminal proceedings. However, it is equally true that departmental authorities are obligated to provide a fair opportunity to the parties involved, and what constitutes a fair opportunity must be determined based on the facts and circumstances of each case, as has been laid down **in *State of Mysore v. Shivabasappa Shivappa Makarpur***[32].

56. It is well-established that any action resulting in penal or adverse consequences must be consistent with the principles of natural justice. To sustain a complaint of natural justice violation, based on lack of opportunity for cross-examination, the party alleging the violation must show that prejudice was caused, as affirmed by this Court in ***L.K. Tripathi v. State Bank of India***[33].

57. Upon perusal of the decisions of this Court in the preceding paragraphs, it is evident that the denial of the right to cross-examine PW-1 caused prejudice to the appellant, who should have been afforded the opportunity for cross-examination for three reasons: first, had PW-1 been cross-examined, particularly regarding the appellant's claim of personal animosity, it is plausible that such examination could have influenced the Inquiry Officer's findings, potentially leading to a different conclusion; second, the Inquiry Officer placed significant reliance on PW1's testimony to substantiate proof of the charges against the

[32] AIR 1963 SC 375
[33] AIR 1984 SC 273

appellant which could have been demolished had a chance of cross-examination been extended; and third, PW-2, the only other witness, refused to identify the appellant during cross-examination.

58. Further, we observe that the Inquiry Officer and the respondents 5, 4, and 2 have compromised their ability to reach a fair conclusion by considering factors extraneous to the evidence and merits of the case, *viz.,* the fact that charge 2 was made part of the charge-sheet although the appellant had been punished therefor previously.

59. Also, the Inquiry Officer and the respondents 5, 4, and 2 have disregarded that the informant, whose complaint initiated the disciplinary proceedings, was not made a witness. The testimonies of PW-1 and PW-2 reflect a failed attempt to establish the contents of the informant's written complaint, as the former was not cross-examined, and the latter failed to identify the appellant during cross-examination. Additionally, the potential bias of PW-1 as an interested witness, was not given proper consideration or weight.

60. Regarding charge no. 2, while a previous finding in respect of a guilt can form part of a subsequent charge-sheet to award enhanced punishment, the law requires the disciplinary authority to give sufficient notice to the charged employee of such intention to take the same into consideration for deciding the question of punishment. Useful reference could be made to the decisions in ***State of Mysore v. K. Manche Gowda***[34] and

[34] AIR 1964 SC 506

Nicholas Piramal India Limited v. Harisingh[35]. The argument of the appellant to the contrary is overruled. Since, however, the disciplinary proceedings have been found to be suffering from incurable defects, assessment of the appellant's conduct for deciding on the punishment does not really survive.

61. Concerning charge no. 3, the charge explicitly states that the appellant was arrested on 8th August, 1988. Consequently, it is implausible that the appellant could have resumed his duties on the same date, after his earned leave had expired, especially since the respondents have not raised any objection regarding the date of the appellant's arrest.

62. Finally, what remains is charge no. 4. Having been arrested, the appellant could not have reasonably been expected to inform the fact of his arrest till such time he was granted bail. The appellant claimed that he requested PW-1 to notify the CID authorities of his arrest, but PW-1 failed to do so due to personal animosity. This appears to be probable, in the absence of any contra-material on record.

63. Accordingly, this Court concludes based on the materials available on record that the disciplinary proceedings had not been conducted against the appellant in tune with principles of fairness as well as natural justice which severely prejudiced his defence. The impugned order, thus, is unsustainable.

[35] (2015) 8 SCC 272

Issue No.4

64. Now, we need to consider the relief that ought to be granted to the appellant.

65. The impugned order of the Division Bench of the High Court dated 16th November, 2016 is set aside together with the orders dated 21st June, 1996, 14th July, 1997, and 6th August, 2003, issued by the respondents 5, 4, and 2, respectively.

66. The order passed by the Single Judge dated 16th July, 2013 is partly upheld. The direction for release of full back wages is, however, set aside.

67. Before granting further relief, it is pertinent to note that the date of the alleged incident giving rise to the charge-sheet is 7th August, 1988, and the appellant was dismissed from service on 21st June, 1996. Based on the records available, the appellant was 53 years old when he approached the Single Judge in 2004. Therefore, he would be approximately 74 years old in 2025 and around 45 years old in 1996, evincing that he had nearly 14/15 (fourteen/fifteen) years of service remaining at the time of his dismissal. The relief of reinstatement in service cannot be granted now. We are left to consider the quantum of monetary relief that would meet the ends of justice.

68. Having bestowed serious consideration, we are of the clear opinion that ends of justice would be sufficiently served if we direct payment of a lumpsum compensation of ₹ 30 lakh (Rupees thirty lakh) to the appellant

inclusive of all service and retiral benefits by the respondents within 3 (three) months from date. Ordered accordingly.

CONCLUSION

69. The appeal, accordingly, stands disposed of.

70. The appellant shall be entitled to costs assessed at ₹ 5 lakh (Rupees five lakh), to be paid by the respondents within the aforesaid period.

.....J.
[DIPANKAR DATTA]

.....J.
[PRASHANT KUMAR MISHRA]

NEW DELHI;
April 23, 2025.