2024:BHC-AS:10527-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9062 OF 2011

1 Union of India
Through the Secretary of Ministry of
Finance, Department of Revenue,
North Block, New Delhi – 110 001

2 The Commissioner of Central Excise,
Mumbai – 1, New Central Excise
Building, M.K.Road, Churchgate,
Mumbai – 400 020

3 The Chief Commissioner of Central
Excise and Customs, ICE House,
Sasoon Road, Pune – 411 001 ….. Petitioners

Versus

S. M. Padwal,
Prem Park, Building No.E-6/14,
Mansulkar Colony, Pimpri,
Pune - 411018 ….. Respondents

WITH
WRIT PETITION NO.11229 OF 2013

Yashwant Balu Lotale
Age – 63 years,
Retd. Superintendent of Central Excise,
Residing at 102, Shivkamal Heights,
Plot No.51, Sector-20, Kamothe, ….. Petitioner
New Mumbai – 410 206

Versus

1 Union of India
Through the Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi.

2 The Commissioner of Central Excise,
Mumbai – 1, New Central Excise
Building, M.K.Road, Churchgate,
Mumbai – 400 020 ….. Respondents

Writ Petition No.9062 of 2011

Smt. Neeta U. Masurkar with Mr. D. A. Dube for the Petitioners – Union of India
Ms. Neeta Karnik i/b. Sangharsh V. Waghmare for the Respondents

Writ Petition No.11229 of 2013

Mr. Vishal P. Shirke a/w. Ms. Harshada Waingankar for the Petitioner
Mrs. Shehnaz V. Bharucha and Mr. D. A. Dube for the Respondent – Union of India

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

RESERVED ON : 26th FEBRUARY 2024
PRONOUNCED ON : 4th MARCH 2024

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Smt. Neeta U. Masurkar, learned counsel representing the Petitioners – Union of India, Ms. Neeta Karnik learned Counsel representing the Respondent in Writ Petition No.9062 of 2011, Mr. Vishal P. Shirke learned Counsel

representing the Petitioner and Mrs. Shehnaz Bharucha learned Counsel representing the Respondent - Union of India in Writ Petition No.11229 of 2013.

2. Since the subject matter of these two Writ Petitions and the issues which arise for our consideration are intertwined, these petitions are being decided by the following common judgment and order:

CHALLENGE AND FACTS OF THE CASE:

(A) Facts as pleaded in Writ Petition No.11229 Of 2013:

3. Petitioner – Yashwant Balu Lotale has questioned the validity of the judgment dated 13th June 2013 passed by the Bombay Bench of Central Administrative Tribunal (hereinafter referred to as the **Tribunal**) in Original Application No.465 of 2010 whereby the Tribunal has declined to interfere with the order of penalty dated 31st January 2008 and has accordingly dismissed the Original Application. By the order of penalty dated 31st January 2008, the Petitioner was inflicted with the penalty of compulsory retirement from Government service in terms of Rule 11(vii) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as the **CCS (CCA)**

Rules 1965). Said order further provides that the Petitioner shall be entitled to only 65% of the full compensation of pension and gratuity under Rule 40 of the Central Civil Services (Pension) Rules.

4. The Commissioner, Central Excise, Mumbai – III issued a Memorandum on 25th May 1998 against the Petitioner, who at the relevant point of time, was working as Superintendent of Central Excise, which was accompanied by Articles of Charge and statement of imputation of misconduct in support of Articles of Charge. The charge sheet against the Petitioner contained two charges. The first charge against the Petitioner was that while working as Superintendent though the Petitioner was alerted by the Commissioner of Customs (Preventive) about possible landing of contraband, however, he failed to take appropriate measures to prevent the landing in his jurisdiction by effectively mobilizing and controlling his team of officers. As per the Article of Charge No.1, the Petitioner was charged with laxity shown by him which contributed to landing of smuggled explosives, arms and ammunitions which were used in conducting bomb blast in Mumbai during the year 1993, as a result of which loss to innocent human lives as also several buildings was caused. In

view of these imputations, the Petitioner was, thus, charged for having contravened the provisions of Rule 3(1), (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules 1964.

5. As per Article of Charge No.2, the Petitioner was charged with having received illegal gratification for turning a blind eye towards landing of contraband consisting of explosives, arms and ammunitions and by such acts of omission and commission, the Petitioner was further charged for failure to maintain integrity and acted in a manner unbecoming of a Government servant, contravening the provisions of Rule 3(1), (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules 1964.

6. The Petitioner submitted his reply to the Charge Memorandum on 14th July 1998 denying all the charges and further requesting to conduct an open departmental inquiry. Accordingly, the inquiry was conducted and the Inquiry Officer submitted his report dated 4th December 2006 to the Disciplinary Authority with the finding that both the charges levelled against the Petitioner were found to be proved. The Petitioner submitted his comments / statement to the inquiry report and thereafter the Disciplinary Authority viz. Commissioner of Central Excise,

Mumbai passed the order of punishment dated 31st January 2008 agreeing with the report of the Inquiry officer and finding the charges against the Petitioner to be proved. As observed earlier, the Petitioner, by means of punishment order dated 31st January 2008, was inflicted with the punishment of compulsory retirement from Government service and it was also ordered by the Appointing Authority that he shall be entitled to only 65% of full compensation of pension and gratuity.

7. The Petitioner preferred a statutory appeal under Rule 24 of the CCS (CCA) Rules 1965 against the order of punishment before the Appellate Authority which however, rejected the appeal by means of order dated 22nd April 2010. Taking exception to the order of punishment and the order passed in the statutory appeal preferred by the Petitioners against the order of punishment, the Petitioners instituted the proceedings of Original Application No.465 of 2010 which too has been dismissed by means of impugned judgment and order dated 13th June 2013 passed by the Tribunal.

8. Feeling aggrieved by the judgment dated 13th June 2013 the Petitioner has now invoked our jurisdiction under Article 226

of the Constitution of India, by instituting the proceedings of Writ Petition No.11229 of 2013.

(B) Facts as pleaded in Writ Petition No.9062 of 2011:

9. This petition instituted by the Union of India assails the validity of the judgment and order dated 25th November 2010 passed by the Tribunal allowing the Original Application No.153 of 2007 by means of which the order of punishment of dismissal from service dated 18th November 2004 passed by the Disciplinary Authority against the employee – S. M. Padwal and the order dated 14th September 2006 passed by the appellate authority, have been set aside with all consequential benefits to the employee concerned.

10. S. M. Padwal (sole Respondent in this Writ Petition, who shall hereinafter be referred to as the Petitioner for clarity), while working on the post of Superintendent, Central Excise, was placed under suspension on 14th June 1993 on account of a criminal case against him which was under investigation. In connection with the investigation of the said criminal case, a raid was also conducted by the Central Bureau of Investigation (**CBI**) at the Petitioner's residence on 2nd April 1993. However, it

appears that since nothing incriminating against him was found, criminal prosecution pursuant to the investigation of the said criminal case was not lodged against the Petitioner; neither was the Petitioner placed under detention either by the local police or by the CBI. Suspension of the Petitioner was thereafter revoked on 27th July 1996 whereupon he was reinstated in service, however, a Memorandum of Charges dated 28th June 1996 was issued to the Petitioner containing two Articles of Charge. As per the first Article of Charge, the allegation against the Petitioner was that while posted at Alibag Division of M & P Wing, he was involved in conspiracy which resulted in landing of arms and explosives at village Dighi in Shrivardhan Taluqa on 3rd December 1992 and 9th January 1993 and further that the Petitioner, along with other officers was paid Rs.4,25,000/- by way of illegal gratification by a smuggler who was owner of the contraband goods. The allegation further, as per Article 1 of the charge, was that the Petitioner was again involved in conspiracy of landing of weapons, explosives and grenades twice at village Shekhadi, Taluqa Mhasla between the period 2nd February 1993 and 9th February 1993 and that there was a nexus between the smugglers and Customs Officers and also that the smuggler who

was owner of the contraband goods, paid illegal gratification of Rs.3,00,000/- to the Officials viz. the Superintendent Shri Sayyed and Inspector Shri Padwal i.e. the Petitioner.

11. As per Article II of the Charges, the Petitioner received a sum of Rs.25,000/- by way of illegal gratification for permitting landing of smuggled goods and that he further received an amount of Rs.25,000/- for landing of smuggled goods belonging to the said smuggler. The Article of Charge further stated that such acts on the part of the Petitioner showed that he did not maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant contravening the provisions of Rule 3(1), (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules 1964.

12. The Petitioner, however, denied the charges vide his letter dated 12th July 1996 and accordingly, an inquiry was conducted into the allegations levelled against the Petitioner by the Inquiry officer who submitted the inquiry report on 14th May 2004. The Petitioner submitted his written representation challenging the findings recorded by the Inquiry officer in the inquiry report dated 14th May 2004. The Disciplinary Authority, thereafter

passed the order of punishment on 18th November 2004 whereby the Petitioner was dismissed from service. The Petitioner subjected the order of punishment of dismissal from service to challenge before the appellate authority in a statutory appeal which too was dismissed by means of order dated 14th September 2006 passed by the appellate authority. Taking exception to these two orders viz. the order of punishment and the order passed in appeal, the Petitioner instituted Original Application No.153 of 2007 before the Tribunal which has been allowed by means of the impugned order dated 25th November 2010. Hence, this petition by the Union of India.

Case as put forth by the Employees:

13. The sheet anchor of the arguments made on behalf of the employees in these cases is that the Department, to bring home the charges against the employees, has mainly relied on the confessional statements made by certain accused persons during the course of investigation of criminal case before the Investigating Agency in respect of the charges under the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the **TADA Act**), which in absence of any deposition of these accused persons before the Inquiry

Officer during the course of disciplinary proceedings, could not be relied upon to prove the charges against the employees. Further contention raised on behalf of the employees is that it is a case where there is no evidence worth the name which was gathered during the course of disciplinary proceedings and in absence of any evidence to prove the charges available on record of the disciplinary proceedings, the punishment either of dismissal from service or compulsory retirement could not have been inflicted by the Disciplinary Authority.

14. Further submission made on behalf of the employees to impeach the order of punishment is that mere statement of Police Officers before whom the statements of the accused persons in the criminal case were recorded during the course of investigation of the criminal case do not form ground for inflicting punishment for the reason that the accused persons in their deposition made before the Court during the trial had retracted their statements said to have been made by them before the Investigating Officer(s) during the investigation.

15. It is also the case put-forth by the employees that any confessional statement made to the Police Officer during the

course of investigation, by the accused persons in the criminal case could though be admissible in trial of the criminal case in terms of the provisions contained in Section 15 of the TADA Act, however, such confessional statement is only admissible against the co-accused or an abettor or conspirator, if such co accused is charged and tried in the same criminal case together with the accused making the confessional statement. It has been argued, thus, that so far as the disciplinary proceedings against the employees drawn and conducted by the Department is concerned, the employees were never either made accused in the criminal case nor were they ever tried by the criminal Courts together with the accused persons in the criminal case, hence, in terms of Section 15 of the TADA Act, if such confessional statement was not admissible in evidence in the criminal trial, the same could not have been taken aid of to prove the charges against the employees in the disciplinary proceedings.

16. It is further argued on behalf of the employees that in the criminal case the Petitioner – Yashwant Balu Lotale in Writ Petition No.11229 of 2013 was not an accused and that an attempt was made by the accused persons in the criminal case to arraign this employee as an accused in the criminal case by

moving an Application under Section 319 of the Code of Criminal Procedure (**Cr.P.C.**) before the trial Court, however, the said Application was opposed by the prosecutor/State/CBI by filing a reply thereto wherein, it was stated that there was no evidence on the basis of which this employee could be made an accused in criminal trial and that he, thus, could not be tried together with other accused persons facing trial. The reply to the said Application filed by the CBI before the learned trial Court is on record at Page Nos.29 to 31 of Writ Petition No.11229 of 2013, wherein it is clearly stated that there was no evidence which was brought on record against the persons named in the Application (which included Yashwant Balu Lotale) to conclude that they had committed any offence. Thus, as far as Yashwant Balu Lotale is concerned, he was never made an accused in the criminal case; nor did he face the trial and accordingly, the submission is that any confessional statement made during the course of investigation of the criminal case could not have been relied upon by the Disciplinary Authority to inflict the punishment against him for the reason that if such confessional statement could not be admissible in evidence in criminal trial for the reason that Yashwant Balu Lotale was not a co-accused, placing

reliance on such confessional statement made during the course of investigation of the criminal case, to prove the charge in the disciplinary proceedings is not legally permissible. It has also been argued on behalf of the employees that as far as S. M. Padwal, the other employee who is the Respondent in Writ Petition No.9062 of 2013 filed by the Union of India, though he was placed under suspension on the ground that a criminal case against him was under investigation, however, since nothing incriminating against him was found by the Investigating Agency i.e. CBI, hence, no criminal prosecution was lodged against him. The submission, thus, is that even in respect of S. M. Padwal, no criminal trial proceeded and accordingly, the statements made during the course of investigation of the criminal case by the accused persons will not form any evidence to be read against him to prove the charge in the departmental proceedings.

17. Learned Counsel representing Yashwant Lotale, the Petitioner in Writ Petition No.11229 of 2013, has also drawn our attention to the order of punishment of compulsory retirement dated 31st January 2008 passed by the Disciplinary Authority, wherein he has observed, ***"there is no direct evidence of CO taking such money directly from smugglers. In the facts***

and circumstances, it is obvious that the CO was in the know of happenings. The only point of doubt can be whether he was an active player or a passive accomplice. From the evidence before me I conclude that he was a passive accomplice. Thus I agree with the report of the IO that the charges are proved."

18. According to the learned Counsel representing Yashwant Lotale, despite arriving at a conclusion that there was no evidence establishing the charge of having accepted illegal gratification from the smugglers and also despite doubting whether this employee was an active player or passive accomplice, the Disciplinary Authority has concluded that he was a passive accomplice. Thus, the reasoning given by the Disciplinary Authority is not based on any definitive conclusion on the basis of evidence; rather it is based on conjectures and surmises and hence, merely on account of suspicion, even in disciplinary proceedings, an employee cannot be punished.

19. Urging the aforesaid grounds, it has thus, been argued by the learned Counsel representing the employees that the punishment orders passed by the Disciplinary Authority against the employees are based on no evidence and hence while

exercising the jurisdiction under Article 226 of the Constitution of India, this Court can judicially review the same and set aside the punishment orders. It is also argued that, thus, the judgment and order dated 25th November 2010 passed by the Tribunal which is under challenge in Writ Petition No.9062 of 2011 does not warrant any interference by this Court, whereas, the order dated 13th June 2013 passed by the Tribunal which is assailed in Writ Petition No.11229 of 2013 is liable to be set aside. Learned Counsel for the Petitioner in Writ Petition No.11229 of 2013 has taken an additional ground for impeaching the order passed by the Tribunal, dated 13th June 2013 by stating that the Tribunal, after noticing the respective pleas of the parties without any analysis worth the name, has suddenly concluded that the disciplinary authority and the appellate authority have dealt with all the points fairly which were raised by the employee and hence the Original Application was dismissed without giving any reasons therefor.

Case set-up by the Union of India:

20. Defending the orders of punishment inflicted upon the employees in these two cases, learned Counsel representing the Union of India has urged that the orders of punishment do not

suffer from any illegality or irregularity so as to call for any interference by this Court in these Writ Petitions. The submission on behalf of the Union of India in Writ Petition No.9062 of 2011 is that the Tribunal, while passing the impugned order dated 25th November 2010 has completely erred in law inasmuch as that it was not permissible for the Tribunal to have interfered with the order of punishment for the reason that any order passed in disciplinary proceedings can be interfered with only if it suffers from any procedural irregularity or some legal flaw is found in the decision making process adopted by the Disciplinary Authority.

21. It has further been argued by the learned Counsel for the Union of India that no illegality was committed by the Disciplinary Authority while placing reliance the confessional statements made by the accused persons during the course of investigation of the criminal case under the TADA Act for the reason that such confessional statements were recorded strictly following the procedure for recording such statements and the Police Officers, before whom such statements were recorded, were examined on behalf of the Department during disciplinary proceedings, who proved such statements.

22. The Union of India has further pleaded that the submission that the confessional statement made during the course of investigation of the criminal case was inadmissible in evidence in the departmental proceedings, is erroneous, for the reason that Section 15 of the TADA Act or any other Rule of evidence either emanating from the Indian Evidence Act, 1872 or the Cr.P.C. whatsoever, has no application so far as conducting the departmental inquiry is concerned. It has also been argued that the strict rule of evidence for bringing home the criminal charge against the accused persons in criminal trial, is not applicable for the purpose of establishing charges against an employee in the departmental proceedings; rather the charges in the domestic inquiries are required to be proved by preponderance of probabilities. It is, thus, the case of the Union of India that no fault can be attributed to the Disciplinary Authority while he relied on the confessional statement made by the accused persons in the criminal case which was recorded during the course of investigation.

23. Lastly; learned Counsel representing the Union of India has also stated that on account of various mis-conducts and laxity on

the part of the employees, the contraband goods such as explosives and grenades etc. were allowed landing which were used in the ill-famed Bombay blast which occurred in 1993, causing enormous damage to human lives and property and accordingly, it has been urged on behalf of the Union of India that Writ Petition No.9062 of 2011 deserves to be allowed, whereas Writ Petition No.11229 of 2013 is liable to be dismissed.

ISSUES:

24. On the basis of the pleadings available on record and the respective submissions made by the learned Counsel for the parties, one issue which emerges for our consideration and decision is as to whether the confessional statements made by accused persons during the course of investigation of a criminal case where the employees were not tried as co-accused and the accused persons retracted from the confessional statements in their deposition during the course of trial, forms sufficient evidence to bring home the charges in departmental proceedings.

Another issue which falls for our consideration is as to whether there is any evidence on record of the departmental proceedings drawn and conducted against the employees in

these cases other than the confessional statements made by certain co-accused persons in the criminal case during the course of investigation before the Investigating Agency/Officer, on the basis of which the charges leveled against them can be said to be proved or it is a case of no evidence.

ANALYSIS:

(A) Nature of evidence sufficient to prove a charge in departmental proceedings against the employee.

(B) Scope of judicial review under Article 226 of the Constitution of India of the punishment order passed in departmental proceedings.

25. By now, it is well settled that standard of proof required for holding a person guilty in criminal charges and in an inquiry conducted by way of a departmental proceedings is entirely different. In a criminal case, onus of establishing the guilt is on the prosecution and if the prosecution fails to establish the guilt beyond reasonable doubt, the accused will be presumed to be innocent, however, strict burden of proof required to establish guilt in a criminal case is not required in departmental proceedings and it is preponderance of probabilities which is sufficient to bring home a charge in the departmental matters.

We may, in this regard, refer to the judgment of the Hon'ble Supreme Court in the case of ***State of Rajasthan and Ors. Vs. Heem Singh***[1], wherein certain observations made by the Hon'ble Supreme Court in the case of ***State Vs. S. Samuthiram***[2] have been quoted with approval. Though **Heem Singh (supra)** was a case where the question for consideration of the Hon'ble Supreme Court was as to whether acquittal in criminal proceedings shall affect the decision in the disciplinary proceedings and lead to automatic reinstatement of such employee, nevertheless, the distinction between the standard of proof has been outlined in **Heem Singh (supra)** relying upon **S. Samuthiram (supra)** in the following words:

> *"It is settled law that the strict burden of proof required to establish guilt in criminal court is not required in disciplinary proceedings and preponderance of probabilities is sufficient. There may be a case where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of other witnesses turn hostile etc."*

26. We may also refer to a latest judgment of the Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Dilip Paul,***[3] wherein the nature of evidence required to prove a charge in domestic inquiry has been underscored in paragraphs

1 **(2021) 12 SCC 569**
2 **(2013) 1 SCC 598**
3 **2023 SCC OnLine SC 1423**

53, 54 and 55, which are extracted hereinbelow:

> ***53.*** *In the aforesaid context, we may refer to the decision of this Court in State of Haryana v. Rattan Singh, (1977) 2 SCC 491, wherein the Court held that all material that are logically probative to a prudent mind ought to be permissible in disciplinary proceedings keeping in mind the principles of fair play. The relevant observations are reproduced below:—*
>
> > *"**4.** It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record."*

(Emphasis supplied)

> ***54.*** *In view of this unequivocal and clear proposition of law set out in* ***Rattan Singh*** *(supra), it could be said that there was no legal bar on the Central Complaints Committee to look into the allegations levelled in the second complaint dated 18.09.2012. Since strict and technical rule of evidence and procedure does not apply to departmental enquiry the connotation "evidence" cannot be understood in a narrow technical sense as to include only that evidence adduced in a regular court of law when a person is examined as a witness by administering oath. There should not be any allergy to "hearsay evidence" provided it has reasonable nexus and credibility.*
>
> ***55.*** *In our judgment, the correct principle of law is found in the following observations of Diplock, J. in Regina v. Deputy Industrial Injuries Commissioner, Ex parte Moore, [1965] 1 Q.B. 456.*
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> > *"These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but that he must take into account any material which, as a matter of reason, has some probative value. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his."*
>
> *(Emphasis supplied)*

27. It is true that in disciplinary proceedings, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and the materials which are logically probative for a prudent mind is permissible to be taken aid of to bring home

the charge in domestic inquiries and in a case where charges in the disciplinary proceedings are proved on the basis of preponderance of probabilities, interference of this Court will not be warranted, however, there are certain circumstances in which this Court, in exercise of its power of judicial review under Article 226 of the Constitution of India, can interfere with the order of punishment awarded in departmental inquiries. One such situation where order of punishment awarded in departmental proceedings can be interfered with by this Court in a petition under Article 226 of the Constitution of India, is where there is no evidence to establish the guilt of an employee. Apart from this, in certain other circumstances as well the order of punishment awarded in disciplinary proceedings can be judicially reviewed. The Court may interfere where the proceedings against the delinquent officer are found to have been held in a manner inconsistent to the rules of natural justice or in violation of statutory rules prescribed for the mode of inquiry or where the conclusion or finding reached by the Disciplinary Authority is based on no evidence. We may further note that the Court may also interfere in such matters if the conclusion or the finding is such that no reasonable person would have ever reached.

Interference is also permissible when findings are clearly perverse and the test to determine perversity in such matters is to see whether the authority concerned acting reasonably could have arrived at such conclusion or finding on the basis of material on record. We may, at this juncture, refer to the judgment of the Hon'ble Supreme Court in the case of ***United Bank of India Vs. Biswanath Bhattacharjee***[4]. Paragraphs 17, 18, 19 and 20 thereof are apposite to quote, which are as under:

> ***17.*** *In one of the earliest decisions of Union of India v. H.C. Goel [Union of India v. H.C. Goel, 1963 SCC OnLine SC 16 : (1964) 4 SCR 718 : AIR 1964 SC 364] relating to departmental proceedings, this Court observed that where a public servant is punished for misconduct after a departmental enquiry is conducted, a clear case where interference under Article 226 of the Constitution is warranted is when there is no evidence to establish the official's guilt : (AIR pp. 369-70, paras 22-23)*
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> *"22. … The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that since no mala fides are alleged against the appellant in the present case,*

4 **(2022) 13 SCC 329**

no writ of certiorari can be issued in favour of the respondent.

23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

18. *Apart from cases of "no evidence", this Court has also indicated that judicial review can be resorted to. However, the scope of judicial review in such cases is limited [T.N.C.S. Corpn. Ltd. v. K. Meerabai, (2006) 2 SCC 255 : 2006 SCC (L&S) 265] . In B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] a three-Judge*

Bench of this Court ruled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority; it does not reappreciate the evidence. The Court held that : (B.C. Chaturvedi case [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , SCC pp. 759-60, paras 12-13)

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*

> *13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, 1963 SCC OnLine SC 16 : (1964) 4 SCR 718 : AIR 1964 SC 364] , this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."*

19. *Other decisions have ruled that being a proceeding before a domestic tribunal, strict rules of evidence, or adherence to the provisions of the Evidence Act, 1872 are inessential. However, the procedure has to be fair and reasonable, and the charged employee has to be given reasonable opportunity to defend himself (ref : Bank of India v. Degala Suryanarayana [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] a decision followed later in Punjab & Sind Bank v. Daya Singh [Punjab & Sind Bank v. Daya Singh, (2010) 11 SCC 233 : (2010) 2 SCC (L&S) 758]). In Moni Shankar v. Union of India [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court outlined what judicial review entails in respect of orders made by the disciplinary authorities : (Moni Shankar case [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] , SCC p. 492, para 17)*

> *"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to*

> *be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere."*

> ***20.*** *This Court struck a similar note, in State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , where it was observed that : (SCC p. 587, para 7)*

> > *"7. … If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record."*

28. It is also equally well settled that mere suspicion even in the matter of departmental proceedings cannot be allowed to take the place of proof and that the Disciplinary Authority should arrive at its conclusion of guilt of the employee concerned on the basis of some evidence with some degree of definiteness establishing the guilt of delinquent for which he is charged.

29. It is also to be seen that departmental proceedings are *quasi*-judicial in nature and though the provisions of the Evidence Act are not applicable strictly in such proceedings, however, broadly speaking, there are two safeguards while

conducting departmental proceedings against the charged employee which are to be borne in mind by the Courts and these safeguards are; (i) that principles of natural justice are complied with, and (ii) the Courts exercising powers of judicial review are entitled to consider as to whether while inferring misconduct on the part of the charged officer, relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom and further that inference in such matter on facts must be based on evidence which meets the requirements of legal principles. In **Heem Singh (supra)**, the Hon'ble Supreme Court in paragraph 34 has observed as under:

> ***34.*** *We have to now assess as to whether in arriving at its findings the High Court has transgressed the limitations on its power of judicial review. In Moni Shankar v. Union of India [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] , a two-Judge Bench of this Court had to assess whether the Central Administrative Tribunal had exceeded its power of judicial review by overturning the findings of a departmental enquiry by reappreciating the evidence. In regard to the scope of judicial review, the Court held thus : (SCC p. 492, para 17)*
>
> > *"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal*

> *principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See State of U.P. v. Sheo Shanker Lal Srivastava [State of U.P. v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276 : 2006 SCC (L&S) 521] and Coimbatore District Central Coop. Bank v. Employees Assn. [Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669."*
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> *(emphasis supplied)*

30. The Apex Court in **Heem Singh (supra)** has further observed that there are two facets of judicial review in departmental matters. First is the rule of restraint and the second is when interference is permissible. It has further been observed that the determination of whether a misconduct was committed lies primarily within the domain of the employer and the Courts cannot be permitted to assume the mantle of the Disciplinary Authority, nor does the Judge wear the hat of an employer. Further observation made in the **Heem Singh (supra)** is that the Disciplinary Authorities are required to follow the rules of natural justice, however, the strict rules of evidence which apply to the judicial proceedings are not applied in departmental inquiries and that the standard of proof is not the

strict standard governing a criminal trial i.e. of proof beyond reasonable doubt but standard is governed by the preponderance of probabilities.

31. Hon'ble Supreme Court, in the said case, has further observed that the other end of the spectrum is the principle that the Court has jurisdiction to interfere when the findings in the domestic inquiry are based on no evidence or where such findings suffer from perversity and that failure to consider vital evidence amounts to perverse determination of fact. It is also observed by the Hon'ble Supreme Court that service jurisprudence recognizes proportionality as a legal principle in allowing the authority of the Court to interfere when the finding or the penalty are disproportionate to the weight of evidence or misconduct. It has also been observed that though the law does not permit the Court to reappreciate the evidence / findings in departmental inquiries or to substitute the view which appears to the Court to be more appropriate, however, it is to be seen that the finding in departmental inquiries is based on some evidence to satisfy the conscious of the Court that there is some evidence to support the charge of misconduct and to guard against perversity. Paragraph 37 of the judgment in **Heem Singh**

(supra) summarizes the scope and nature of judicial review permissible by a Court in departmental matters which is extracted hereunder:

> ***"37.*** *In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The Judge does not assume the mantle of the disciplinary authority. Nor does the Judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support*

> *the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the Judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the Judges' craft is in vain."*

32. From the aforesaid discussion, we conclude that the power of judicial review of this Court under Article 226 of the Constitution of India in departmental matters, though, is not an appellate jurisdiction so as to reappreciate the evidence or substitute its own findings to the findings recorded by the Disciplinary Authority, however, interference in such matter is very well permissible by the Courts in case the findings of the Disciplinary Authority are based on no evidence or on evidence which can not be relied upon for want of probative value or the same are perverse or there have been violation of principles of natural justice or statutory prescription relating to conduct of inquiry. The Court has also the jurisdiction to interfere in departmental proceedings when the Disciplinary Authority appears to have failed to consider the vital evidence. The principle of proportionality is also recognized which is available to the Courts while judicially reviewing the departmental matters and interference is also permissible when the findings or the

penalty imposed are disproportionate with the weight of evidence or misconduct.

We also conclude that the strict rule of evidence as per the Evidence Act which is applicable to bring home a criminal charge in a criminal trial i.e. proof of guilt beyond reasonable doubt is not applicable to the departmental proceedings and the charge in department proceedings has to be proved on preponderance of probabilities, however, if there is a case of no evidence or perversity in findings or the findings arrived at by the Disciplinary Authority are such which is difficult for a person of common prudence to arrive at, interference in departmental matters is permissible by the Courts or Tribunals.

DISCUSSION AND CONCLUSION:

33. We shall now proceed to consider the findings recorded by the Disciplinary Authority against the employees qua the evidence available on record of disciplinary proceedings to prove the charge in the light of the afore-discussed principles of law. If we find that it is a case of no evidence or that the findings in the departmental proceedings against the employees are perverse in the sense that no person of common prudence would have

arrived at the same, the order of punishment will be difficult to be sustained. However, before undertaking the said exercise, we may also reflect upon the evidentiary value in departmental proceedings of confessional statements made by accused in criminal case before the Investigating Officer during the course of investigation where the employee against whom the departmental proceedings are drawn is not an accused. In both the departmental proceedings which are subject matter of these Writ Petitions, admittedly, the employees were not tried as accused persons in the criminal case, where the CBI had investigated and prosecuted certain departmental officers as also private individuals. It is also not in dispute rather it is even otherwise abundantly clear from a perusal of the record available before us that both, the Inquiry Officer as also the Disciplinary Authority have heavily relied upon the confessional statements made by the accused persons during the course of the criminal case before the Investigating Officers. As to whether such confessional statements can be made basis for bringing home the charge in the departmental proceedings is, thus, an issue which assumes relevance for deciding these Writ Petitions.

34. It is not in dispute that a criminal case was registered and

investigated in relation to the blasts which shook the city of Bombay in the year 1993. One of the employees herein viz. S.M.Padwal was though suspended initially on account of his alleged involvement in the criminal case, however, on investigation by the CBI, since no incriminating material was found against him, he was not tried in the criminal case and even the suspension was revoked subsequently. As far as the other employee viz. Yashwant Balu Lotale is concerned he was not an accused in the criminal case at all. Thus, both the employees in the instant case did not face any criminal trial.

35. For a moment, keeping aside the nature of evidence required to prove the guilt of an employee in departmental proceedings, we shall discuss the evidentiary value of confessional statement made before the Investigating Agency / Officer during the course of investigation of a criminal case.

36. Section 161 of the Cr.P.C. empowers an Investigating Officer to examine orally any person supposed to be acquainted with the facts and circumstances of the case being investigated by such Investigating Officer/Agency. The Police Officer recording statement under Section 161 of the Cr.P.C. is also

required to reduce the statement into writing made to him in the course of investigation.

37. Section 162 of the Cr.P.C., however, clearly provides that no statement made by any person before Police Officer in the course of an investigation, shall be signed by the person making it. Section 162 further provides that any such statement cannot be used for any purpose at any inquiry or trial except that such a statement may be used by the accused to contradict such witness and also by prosecution with the permission of the Court, to contradict a witness. Thus, the statements made during the course of investigation under Section 161 can be used only for contradiction during the course of trial, however, the same cannot be used for any other purpose at any inquiry or trial as mandated by Section 162 of the Cr.P.C. In other words statement recorded under Section 161 of Cr.P.C. is not admissible in evidence in criminal trial.

38. Certain provisions of Indian Evidence Act may also be noted though only in the context of evidence required to be adduced during the course of trial and not in the departmental proceedings. Section 25 of the Indian Evidence Act provides

that a confession made to a Police officer shall not be proved against a person accused of any offence. Section 26 provides that no confession made by any person whilst he is in custody of a Police Officer shall be proved against such person unless it is made in immediate presence of a Magistrate. Section 27 of the Evidence Act, however, carves an exception to the principle of evidence available in Section 26, that too, to a limited extent. According to this provision when any fact is deposed to as discovered in consequence of information received from a person accused of any offence who is in the custody of a police officer, only that much of such information, which relates to the fact discovered, may be proved. Meaning thereby, a fact so discovered may be proved even if deposition is made in the custody of a Police Officer.

39. Thus, the legal principle which emerges as per cumulative reading of Sections 25 and 26 of the Indian Evidence Act and Sections 161 and 162 of the Cr.P.C. is that any statement made before a Police Officer cannot be proved during the course of a criminal trial and accordingly no confession made by any person in custody of Police Officer shall be proved against such person. The statement recorded under Section 161 of the Cr.P.C. can,

during the course of trial, be used only for the purpose of contradiction.

40. Since in the instant matters, the Disciplinary Authority has relied upon the confessional statement made during the course of investigation by the Investigating Officer of a criminal case pertaining to TADA, we may also note Section 15 of the TADA Act which carves an exception to the provisions of the Indian Evidence Act and the Cr.P.C., however, the exception is circumscribed by certain conditions. According to Section 15 of the TADA Act, a confession made by a person before a Police Officer not below the rank of a Superintendent of Police and recorded by such Police Officer, shall be admissible in trial of such person or co-accused, abettor or conspirator for an offence under the TADA Act. However, so far as the admissibility of confessional statement under Section 15 of the TADA Act against co-accused or abettor or conspirator is concerned, the proviso appended to Section 15 needs to be noticed, according to which, for such confessional statement to be admissible against co-accused, such co-accused should be charged and tried in the same case together with the accused whose confessional statement is relied upon as an evidence against co-accused.

41. Accordingly, even in a criminal trial, confessional statement made before the Investigating Officer is admissible as evidence against co-accused only in a situation where the co-accused is charged and tried in the same case along with the accused. In other words, confessional statement made by an accused during the course of investigation of a criminal case concerning offence(s) under TADA will not be admissible in evidence against a co-accused if the co-accused is not charged in the same case or if he is not tried in the same case, that too, together with the accused whose statement is sought to be relied upon against the co-accused.

42. Thus, if in a criminal trial, the confessional statement made by an accused is not admissible in evidence against co-accused, where co-accused is not charged or not tried in the same case together with the accused, in our opinion, the question of admissibility of such confessional statement in departmental proceedings where the charged employee is not an accused in the criminal case, does not arise at all, especially when in the departmental proceedings accused in the criminal case has not been examined and he later, during the course of criminal trial,

retracts or resiles from his confessional statement.

43. Analyzing the evidence available on record of the disciplinary proceedings, we find that the department has relied upon the confessional statements made by four accused persons during the course of investigation of criminal case and these accused persons are (i) Uttam Potdar (smuggler) (ii) Mohd. Sultan Sayyed, Superintendent, Customs Officer (iii) R. K. Singh, Assistant Commissioner and (iv) Dawood M. Phanse (smuggler). These persons were not examined during the course of departmental proceedings; rather, to prove the confessional statement Police Officers were examined. Smt.Meeran Chadha Borwankar, Superintendent of Police was examined before the Inquiry Officer as witness in the departmental proceedings. This witness in the departmental proceedings has only stated she had recorded the confessional statement of Uttam Potdar during the course of investigation of the criminal case conducted by her and that the confessional statement was made by Uttam Potdar without any duress.

44. Similarly, so far as the confessional statement made by Dawood M. Phanse during the course of investigation of the

criminal case is concerned, he was never examined during the course of departmental inquiry; rather to prove that such a confessional statement was made during the course of criminal proceedings, one Mr. K. L. Bishnoi, Dy. Commissioner of Police was examined before the Inquiry officer as a witness in the departmental proceedings who stated that he recorded the statement of confessional statement of Dawood M. Phanse which was made by him without any duress during the course of investigation of the criminal case.

45. In respect of the confessional statement made by Mohd. Sultan Sayeed, the Superintendent of Customs, it is to be seen that Mohd. Sultan Sayeed was never examined during the course of departmental proceedings; rather one Shri C. Prabhakar, Superintendent of Police was examined as witness during the course of departmental proceedings who stated that Mohd. Sultan Sayeed made the confessional statement before him in the investigation of the criminal case without any duress however, it is to be noticed that Mohd. Sultan Sayeed retracted from his confessional statement in the criminal case and that he was never examined in the departmental proceedings. As observed above, the confessional statement of another accused

in the criminal case, Shri R. K. Singh, Assistant Collector Customs has also been relied upon by the Disciplinary Authority but he was never examined as a witness and in respect of his confessional statement, one Shri T. S. Bhal, Superintendent of Police made a deposition during the course of the departmental proceedings that he had recorded confessional statement of R. K. Singh without any duress during the course of investigation of the criminal case. One also notices that R. K. Singh, accused in the criminal case also retracted from his confessional statement during the course of trial of the criminal case.

46. Thus, what we find is that the confessional statements made by Uttam Potdar, Mohd. Sultan Sayyed, R. K Singh and Dawood M. Phanse during the course of investigation of the criminal case have been relied upon to bring home the charges against the employees in the departmental proceedings, however, as observed above such statements cannot be the basis of proving the charge in departmental proceedings for two reasons. Firstly, because these persons were not the witnesses of the charge against the employees in the departmental proceedings; rather they had allegedly made confessional statements in respect of the charge in the criminal case. It may

also be noticed that the employees were never tried in the criminal case along with these persons and, as concluded by us above, since such a confessional statement cannot be relied upon even against the co-accused in the criminal case if the co-accused persons are not tried in the same criminal case, the question of placing reliance on such confessional statements in the departmental proceedings against the employees does not arise at all.

47. As regards the evidence of the Police Officers deposed by them during the course of departmental proceedings, one may only observe that these Police Officers are not the witnesses of the charge on the basis of which the employees are said to have been found guilty of misconduct in the departmental proceedings; rather they are the witnesses of the fact that they had allegedly recorded the confessional statements of the accused persons during the course of investigation of the criminal case. Accordingly, the depositions made by the Police Officers during the course of departmental proceedings, in our opinion, do not assume character of evidence sufficient for bringing home the charge against the employees in the departmental proceedings. We are of the considered opinion

that what could be said to have been proved on the basis of the statement of the Police Officers made by them in the departmental proceedings is the fact that they had recorded the confessional statements of the accused persons during the course of investigation of the criminal case and such evidence cannot be relied upon to prove the charge against the employees in the departmental proceedings for the reason that these witnesses were not the witnesses of the charge in the departmental proceedings.

48. The punishment order dated 31st January 2008 passed against the employee – Yashwant Balu Lotale shows that the evidence which has been relied upon for proving the charge against this employee as is available on record are (i) statement of Uttam Potdar (ii) statement of Mohd. Sultan Sayyed (iii) statement of R. K. Singh (iv) Dawood M. Phanse (v) statement of wife of Uttam Potdar, and (vi) statement of Salim Mirah Shaikh. So far as the statements of Uttam Potdar, Mohd. Sayyed, R. K. Singh and Dawood Phanse are concerned these are the confessional statements made by them before the Investigating Officer during the course of the criminal case. These witnesses are not the witnesses of charge against the

employees in the departmental proceedings; rather they had only made confessional statements during the course of investigation of the criminal case. These persons were also not examined during the course of departmental proceedings. As already discussed above, merely because some of the Police Officers, who recorded these confessional statements, were examined during the course of the departmental proceedings, it cannot be said that such confessional statements can be read in evidence for proving the charge against the employees in the departmental proceedings. The reason as to why these confessional statements do not assume character of evidence in the departmental proceedings has already been discussed above.

49. As far as the statement of wife of Shri Uttam Potdar is concerned, the Disciplinary Authority himself has stated in the order of punishment that this statement was not being relied upon. In respect of the statement made by Salim Mirah Shaikh also the disciplinary authority has clearly recorded that since said statement was not marked in the disciplinary proceedings, the same was also not relied upon.

50. Apart from the aforesaid evidence, the only other evidence

which was produced during disciplinary proceedings is the alert circular of the Commissioner of Customs dated 25th January 1993. Existence of the said alert circular on the record of the disciplinary proceedings only establishes that such circular was issued. The Disciplinary Authority himself has recorded in the order of punishment that this circular is not relevant to prove any commission of mischief by the employee; rather it is relevant only to prove his omission to do his duty in spite of specific alert. There is no other evidence on record of the disciplinary proceedings other than what has been discussed above. We have already concluded that on the basis of the alleged evidence available on record as discussed above, the charge against the employees did not stand proved and accordingly, from the over-all view of the evidence available on record of the disciplinary proceedings, our indefeasible conclusion is that it is a case where there was no evidence at all and accordingly, the conclusion arrived at by the Disciplinary Authority while passing the punishment orders is erroneous.

51. The legal principle relating to judicial review of the disciplinary action has already been discussed above. The

principle that any punishment order passed in disciplinary proceedings can be subjected to judicial review in a case where the punishment order is based on no evidence, is already well established. From these discussions, it is apparent and well established that it is a case where despite existence of no evidence to prove the charge in the departmental proceedings, the employees have been punished by the Disciplinary Authority. The evidence available on record is only the confessional statements made by the accused persons during the course of investigation of the criminal case which, for the reasons already stated above, in our opinion, could not be made basis of inflicting the punishment upon the employees in this case. In absence of any evidence, it is not even a case where guilt of the employees in the departmental proceedings can be said to have been proved even on preponderance of probabilities.

52. For the reasons stated above, we have no hesitation to hold that the Tribunal, while passing the impugned judgment and order dated 13th June 2013 in Original Application No.465 of 2010 was in error in dismissing the said Original Application. We are also inclined to hold for the reasons given and discussions made above that the other judgment and order dated 25th

November 2010 passed by the Tribunal in Original Application No.153 of 2007 does not suffer from any illegality so as to call for any interference by us in this matter.

53. Resultantly, Writ Petition No.11229 of 2013 is hereby allowed and the order dated 13th June 2013 passed by the Tribunal in Original Application No.465 of 2010 is hereby set aside. The order of punishment dated 31st January 2008 and the appellate order dated 12th April 2010 are also hereby quashed.

Writ Petition No.9062 of 2011 filed by the Union of India is liable to be dismissed, which is hereby dismissed.

54. Consequences to follow.

55. The employees viz. S. M. Padwal and Yashwant Balu Lotale shall be entitled to all consequential benefits such as arrears of salary and pension etc. which shall be made available to them within a period of two months from today.

56. There will be no order as to costs.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**