BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

------ Chairman

Hon'ble Mr. D.K.Kotia

-------Vice Chairman (A)

CLAIM PETITION NO. 33/10

Pradeep Singh Negi son of Late Shri Hem Chandra Singh Negi, resident of C/O Smt. Jayanti Negi, District Udyog Kendra, Gopeshwar, District Chamoli.

CLAIM PETITION NO. 34/10 With
Narendra Singh son of Shri Daleep Singh, resident of Village Ratkot, Post Office Bangar Patti, Sawali, District Pauri.

……..Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Ministry of Home Affairs, Uttarakhand, Secretariat, Dehradun.
2. Upper Police Mahanideshak Apradh Evam Kanoon, Uttarakhand, Dehradun..
3. Police Mahanirikshak Garhwal Region, Uttarakhand, Dehradun.
4. Senior Superintendent of Police, Haridwar.

…….Respondents.

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: SEPTEMBER 22, 2014.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)

1. The claim petition No. 34/2010 Narendra Singh Vs. State & others is also connected with claim petition No.33/10 Pradeep Singh Negi Vs. State & others. The facts and point of law involved in both the cases are same and similar, so both the petitions are being disposed of by a common judgment.

2. Relief sought in both the claim petitions are same. Petitioners have filed these petitions under Section 4 of U.P. Public Services Tribunal, 1976 for the following relief:-

   a- To quash the impugned dismissal order dated 28.4.2009, appellate order dated 7.9.2009 and revisional order dated 18.1.2010 and reinstate the services of the petitioner with full back wages and the amount withheld for the period of suspension may also be ordered to pay to the petitioner.

   b- And to grant any other relief which the Hon'ble Tribunal may deem proper in the circumstances of the case along with the cost of the claim petition."

3. Both the petitioners were appointed to the post of Constable on 10.10.2001 in Uttarakhand Police Service at Haridwar. It is alleged against the petitioners that the petitioners took custody of one accused Sushil Chaudhary involved in a criminal case in Dehradun, to produce him before the Ld. A.C.J.M., Dehradun on 17.10.2008. It is further alleged that both the petitioners assisted Sushil Chaudhary to make a call to a person namely Roshan Lal, Aadhat Market, Dehradun and also took the accused Sushil Chaudhary to his place and took money in ransom from Roshan Lal, Aadhati. Thereafter both the petitioners took the accused Sushil Chaudhary to the Court and produced before the Learned Magistrate. After completing the judicial proceedings before the Ld. Magistrate, the accused was taken back to the jail, Jwalapur, Haridwar. It is pertinent to mention here that the accused Sushil Chaudhary was kept in Jwalapur, Haridwar Jail and had to take back to the same jail by the petitioners. Thereupon a criminal case was instituted against both the petitioners, simultaneously a departmental enquiry was also initiated against both the petitioner. A preliminary enquiry conducted and in the preliminary enquiry both the petitioners were found guilty for the misconduct. Thereupon, the departmental authorities instituted the regular departmental enquiry. The necessary charges were framed. The petitioners were given show cause notice against the said charges. The petitioners submitted their reply to the show cause notice. The enquiry officer held the petitioners guilty. Thereupon the show cause notice was given by the departmental

authority and both the petitioners were dismissed from the services by the separate orders. The petitioners preferred an appeal before the appellate authority, which was dismissed by the appellate authority. Thereafter revision was preferred before the revisional authority, the said revision was also dismissed.

4. Petitioners have challenged the dismissal order on the ground that at the time of filing of the claim petition, the criminal case was pending before the Court and they alleged that the departmental authorities should have stayed the proceedings of the departmental enquiry till completion of the criminal trial. Instead of doing so, the respondents proceeded further and dismissed the petitioners from the service. During the course of the hearing of this petition, the accused had been acquitted by the Ld. Magistrate, hence petitioners have alleged that they are entitled to be reinstated after quashing the dismissal order only on the ground that the criminal proceeding has terminated in their favour.
5. The respondents have contested the petition. They have alleged that the petitioners were involved in a very grave misconduct, so they have been rightly dismissed from the service. The authorities were competent to pass such an order. It is further alleged by the respondents that the acquittal of the petitioners cannot give any benefit to the petitioners for their reinstatement. The respondents have also alleged that the criminal proceedings as well as the departmental proceedings can proceed simultaneously against the delinquents. The criminal proceedings are independent to the departmental enquiry. Standard of proof in both the cases are different. In a criminal case the prosecution has to prove his case beyond reasonable doubt against the accused, whereas in the departmental enquiry, the enquiry officer has to assess the evidence on the basis of preponderance and probabilities. Thus, both the matters are different, hence the petitioners cannot take the benefit of their acquittal from the criminal court. At the last respondents have prayed that the petition be dismissed with cost.
6. We have heard learned counsel for the parties and perused the record. Ld. Counsel for the petitioners submitted that the petitioners are entitled to reinstatement and all other consequential benefits in view of the fact that they stood acquitted by the criminal court. Ld. Counsel for the

petitioner contended that the Ld. Magistrate has acquitted petitioners, the orders of dismissal as a sequence of departmental enquiry deserve to be set aside in the facts of circumstances. The orders passed by the respondents are not sustainable in the eyes of law. Ld. A.P.O. refuted the contention and contended that the acquittal of the petitioners is not a hurdle to sustain the punishment, which has already been awarded to them.

7. From the perusal of the record it is clear that it is not the case of considering the reinstatement after the decision of acquittal or the discharge by the competent criminal court on the ground that the dismissal from the services was based on conviction by the criminal court in view of the provisions of Article 311(2) II proviso (A) of the Constitution of India or analogous provisions applicable in the case. In this case where the departmental enquiry has been held independently of the criminal proceedings, acquittal in criminal court is of no help. The law is otherwise. Even if a person is acquitted by a criminal court, departmental enquiry can be held, the reason being the standard of proof required in a departmental enquiry and that in a criminal case are all together different. In a criminal case standard of proof required is beyond reasonable doubt while in departmental enquiry it is the preponderance of probabilities that constituted the test to be applied. The nature and scope of criminal case are very different from that of departmental enquiry and an order of acquittal therefore cannot conclude the departmental enquiry. In **S.A. Venkat Raman Vs. Union of India 1954 SCR 1150** the petitioner therein was subjected to a disciplinary enquiry and he was dismissed from service. After the dismissal of the petitioner, charge sheet was submitted against the petitioner therein in a criminal court in respect of the very same charges. The petitioner challenged the institution of criminal proceedings on the ground that amounts to putting him in double jeopardy. Within the meaning of Article 20(2) of the Constitution of India, the Constitution Bench of Hon'ble apex Court rejected the plea and held that there is no bar in initiation or continuance of criminal proceedings merely because he was punished earlier in the disciplinary proceedings.. It was further held that both the proceedings can be

initiated simultaneously**. Thereafter The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan 1960 3 SCR 227** came before the Hon'ble apex Court in which it was held that the principles of natural justice do not require the employer should wait for the decision of the criminal court before taking the disciplinary action against the employee. This matter also came before Hon'ble Apex Court in the case of **State of Rajasthan Vs. B.K. Meena 1996 (2) SCC (L&S)1455** and the Hon'ble Court in Para 14 has held as under:-

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be `desirable', `advisable' or `appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges…….. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that `the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, `advisability', `desirability' or `propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case ……One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion.....If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of

delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest.

Thereafter **Ajit Kumar Nag Vs. Indial Oil Corporation Ltd. 2005 (7) SCC 764** following earlier decision of the Court has held as under:-

"As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

8. Ld. Counsel for the petitioner relied upon the judgment of **M.Paul Anthony Vs. Bharat Gold Mines Ltd. 1999 (2) SLR 338.** In the said judgment the Hon'ble Apex Court in Para 34 & 35 has held as under:-

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the

charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand.

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

9. In the case of **Dev Kumar Jain Vs. PNB and others 2013(2) U.D. 336** the petitioner was an officer incharge of Punjab National Bank Extension Counter, Mussoorie, Dehradun and he collected various cheques, totaling about Rs.19,76,504-50 and it was to be deposited in the account of M.B.E.S.U. Branch office, Karanpur Dehradun, but the petitioner never credited this amount in the aforesaid bank. C.B.I. made the complaint before the Court and he w as prosecuted. Ultimately the petitioner was acquitted. Simultaneously, a departmental enquiry proceeded against him and the aforesaid charges were framed against the petitioner, which were found partially proved. On the basis of the enquiry, the petitioner was removed from the service of the Bank. The Hon'ble High Court held that the petitioner is not entitled to be reinstated in view of the acquittal made by the Criminal Court. The Hon'ble Uttarakhand High Court in the aforesaid case in Paragraphs 5,6 & 8 has held as under:-

*"**5**. The main thrust of the argument of the counsel for the petitioner is that both the criminal proceedings as well as departmental proceedings were initiated against him on the same set of charges. Now since he has been acquitted by the criminal court in the criminal trial and the charges in the departmental proceeding were exactly the same, the departmental proceeding should not have been proceeded against him and in any case entire proceeding stand vitiated.*

***6**. In support of his arguments, counsel for the petitioner relief upon two judgments of Hon'ble apex Court such as in Capt. M.Paul Anthony Vs. Bharat*

Gold Mines Ltd. and Another reported in (1999) 3 SCC 679 and Roop Singh Negi Vs. Punjab National Bank and Others reported in (2009) 2 SCC 570. The main difference between the case of Captain M.Paul Anthony (supra) and the present case is that in the said case before the Hon'ble Apex Court the department proceeded against a person ex-parte which is not a case before this Court. The other case law cited by the petitioner (i.e. Roop Singh Negi) is also not applicable on the facts of the present case. It is true that in Roop Singh Negi's case both criminal proceeding as well as departmental proceeding were initiated against Roop Singh Negi and in the departmental proceeding, appellant (Roop Singh Negi) made a confession, which was considered by the department but the fact that there was a discharge order in his favour by the criminal court was not considered and this was the anomaly pointed out by the Hon'ble apex Court in the above case. The relevant portion of Roop Singh Negi's case on which reliance has been placed read s as under:-

*(**23**) Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have sever civil consequences , appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable In a departmental proceeding but the principles of the natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."*

***8**. Moreover, merely because the petitioner has been acquitted in a criminal trial it would not mean that departmental proceedings could not have been initiated against him. A criminal trial and a departmental proceeding proceed at different levels, and the appreciation of evidence in the two is entirely different. In a criminal court, prosecution has to establish its charges beyond a reasonable doubt, whereas in a departmental proceeding the charges can be proved on the basis of the preponderance of probabilities.''*

10. There is obviously two lines of dictum of the Hon'ble Apex Court operating in the field. The Hon'ble Apex Court in Para 21 & 22 has held in **Pandiyan Roadways Corporation Ltd Vs. N.Bala Krishanan 2007 (9) SCC 755** has held as under:-

''In Pandiyan Roadways Corpn. Ltd. v. N. Balakrishnan, (2007) 9 SCC 755, this Court re-considered the issue taking into account all earlier judgments and observed as under: "There are evidently two lines of

decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd (supra), and G.M. Tank v. State of Gujarat, (2006) 5 SCC C446. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (See: Commr. of Police v. Narender Singh, (supra) or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (See: G.M. Tank, (supra), Jasbir Singh v. Punjab & Sind Bank, (2007) 1 SCC 566; and Noida Entrepreneurs' Assn. v. Noida, (2007) 10 SCC 385, para 18).....We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. (See: e.g. Krishnakali Tea Estate (supra); and Manager, Reserve Bank of India v. S. Mani, (2005) 5 SCC 100). . Each case is, therefore, required to be considered on its own facts."

11. After analyzing all the judgments of Hon'ble Apex Court the Hon'ble Supreme Court has elaborately discussed the position of settled law as on date in **Divisional Controller Karnataka State Road Transport Corporation Vs. N.G. Vittal Rao (2012)1 SCC442**. The proposition of law which has stood as on today is the charges leveled in departmental enquiry had been the same which were in the criminal trial and the witnesses had been the same and there was no additional or extra witnesses; without considering the gravity of the charge, if the accused had been acquitted by the regular Court, the delinquent would be entitled to the acquittal. In the criminal case there are different witnesses and there is additional charge apart from the criminal case, the acquittal of the criminal case would not warrant the reinstatement of the delinquent. The Hon'ble Apex Court in Para 33 has held as under:-

"In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges leveled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same; there were no additional or extra witnesses; and without

considering the gravity of the charges, we are of the view that the award of the Labour Court did not warrant any interference. Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not challenged by the present appellant by filing writ appeal. Therefore, the delinquent employee is entitled to the said relief."

12. In the light of the above proposition of law, we have to examine what is the charge against the petitioner in the departmental enquiry. The petitioner had been charged that on 17.10.2008 under trial Sushil Chaudhary, who was detained in Haridwar Jail was to be produced before the Dehradun Court. While the petitioners were on escort duty of the prisoner Sushil Chaudhary, it is alleged that both the petitioners assisted Sushil Chaudhary to make a call to a person namely Roshan Lal, Aadhat Market, Dehradun and also assisted him in threatening for demanding ransom. In the criminal case the petitioner has filed the copy of judgment in which the accused Sushil Chaudhary was facing trial under Section 384 119 IPC. It is alleged in the criminal prosecution that on 15.10.2008 at about 5 P.M. when the complainant Shri Roshan Lal was going to his home along with Sri C.P. Singh Rawat, mobile call was received by Sri Roshan Lal and it was told on phone that Sushil Chaudhary was speaking from Haridwar Jail and stated to Sri Roshan lal that he is coming on 17.10.2008 to Dehradun Court and he should arrange a sum of Rs.20,000/- for him. If the amount of Rs.20,000/- was not arranged by him, the family members of Roshan Lal would be in difficulty because his aids and assistants are out side the jail and also asked him to talk to his boss. Some other persons also talked from same mobile to the complainant, if he had not managed the same amount on 17.10.2008, they will also not find out Roshan Lal. Sri Roshan Lal in reply told that he will arrange the money on 17.10.2008. It is also revealed on the next date that Sushil Chaudhary was loitering in Ballupur Chowk and took Rs.2,500/- from Sri C.P. Singh and Rs. 5000/- from Mehar Singh after threatening them. The trial proceeded on the said ground. It is also in issue that the Police people were escorting the prisoner Sushil Chaudhary in the market. When the evidence started, Sri Roshan Lal and other main witness Sri Ved Singh were declared hostile. Both the witnesses did not support the prosecution. Sri C.P.Singh was also produced before the Court as P.W.

3, who was also declared hostile by the prosecution. The criminal court acquitted the accused Sushil Chaudhary on giving him benefit of doubt.

13. Petitioners were charged in the enquiry that they were on the escort duty of Sushil Chaudhary, accused while taking him to the court for producing him before the Court on 17.10.2008 and they assisted Sushil Chaudhary to intimidate one Sri Roshan Lal on phone. Perusal of the charge reveals that they only provided the assistance on the telephone for making a call to Sushil Chaudhary on 17.10.2008. Thus, it is a negligence on the part of the petitioners. The evidence on this point would be discussed in the later paragraphs of the judgment.

14. In the case in hand the petitioner was charged and the charge sheet was handed over to the petitioner. The disciplinary authority being convinced by the preliminary report submitted by the preliminary enquiry officer, issued the charge sheet. The preliminary enquiry was conducted by the Assistant Superintendent of Police, Dehradun. The statements of Sri Mehar singh, Sri C.P.Singh, Sri Roshan Lal and Sri Arun Kumar were taken during the course of preliminary enquiry. When the charge sheet was prepared by the appointing authority, the appointing authority had made the witnesses of sight to Sweety Agarwal and Himanshu Shah, Reserve Inspector. Sweety Agarwal conducted the preliminary enquiry at Haridwar because the Sushil Chaudhary the under trial was lodged at Haridwar and the petitioners were on escort duty of the prisoner. Sweety Agarwal, while conducting the preliminary enquiry, came to know that the Assistant Superintendent of Police, Dehradun was conducting the preliminary enquiry, so the said enquiry was sent to him. The A.S.P. submitted his report and it was opined by the A.S.P. that the petitioners were negligent and they took the prisoner to Ballupur area from where the prisoner demanded a ransom from Sri Roshan Lal on phone. The petitioners had to take the prisoner to the judicial lockup, Dehradun and thereafter he had to be produced before the Ld. Court and thereafter had to take back to Haridwar Jail. The petitioners were not supposed to take the prisoner to any other place for any other activity. The other witness Himanshu Shah, R.I., Police Line, Haridwar had not seen the incident.

15. The scope of the judicial review is though very limited. The Court or the Tribunal would not interfere with the findings of the fact arrived in the departmental enquiry proceedings excepting in a case of malafide or perversity. That where, there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity would have arrived at that finding and with objectivity, the Court cannot re-appreciate the evidence like an appellate Court so long as there is some evidence to support the conclusion arrived by the departmental authority, the same has to be sustained. While exercising the power of judicial review the Tribunal cannot normally substitute its own conclusion with regard to the misconduct of the delinquent for that of the departmental authority.

16. In this regard, we would like to examine the judgment of the Hon'ble Apex Court, which lays down the proposition of law as to when the Tribunal can re-appreciate the evidence adduced before the enquiry officer. The Hon'ble Supreme Court, in case of **B.C.Chaturvedi v. Union of India, 1995(5) SLR, 778** has held as under:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or ***conclusions are based on some evidence*****,** the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be ***based on some evidence***. Neither the technical rules of Evidence Act nor of proof 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 re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have never 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 (1964) I LLJ 38 SC , this Court held at page 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."

From the perusal of the above, it is clearly held by the Hon'ble Supreme Court that Court and the Tribunal may not interfere with the findings of the enquiry officer regarding the appreciation of evidence where the authority found that the proceedings against the delinquent officer were consistent to the rules of natural justice or in violation of statutory rules. The Tribunal has no power to re-appreciate the evidence as an appellate court. Thereafter, the Hon'ble Supreme Court in case of High Court, judicature at Bombay through its **Registrar Vs. Shri Udaysingh & others, 1997(4), SLR, 690**. In this case, a complaint was made by a litigant against Civil Judge (Junior Division) for demanding of illegal gratification of Rs. 10,000 to deliver the judgment in her favour. As soon as, she received such information, she complained the matter immediately to her advocate, Assistant Govt. Pleader, who in turn District Govt. Pleader informed the District Judge of the said demand of illegal gratification made by Civil Judge (J.D.). The District Judge, awarded an adverse entry to the delinquent and the Hon'ble High Court initiated a departmental enquiry and ultimately, he was dismissed from the service by the disciplinary authority. The High Court set aside the dismissal of the delinquent and held that the District Judge was biased against the officer and he recorded evidence of three Advocates and the complainant and there was no other evidence to come to the conclusion that the delinquent officer was actuated with a corrupt motive to demand illegal gratification to deliver favorable judgment. In these circumstances, the Hon'ble High Court allowed the appeal held as under:-

"10. Accordingly, the order of the Tribunal in reversing the imposing of the penalty was set aside. In another judgment in State of Tamil Nadu v. S. Subaramaniam [1996] 7 SCC 509, this Court has considered the scope of the power of judicial review vis-a-vis re-appreciation of evidence and concluded as under :
"The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of removal. Thus this appeal by special leave.

The only question is : ***whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved.*** The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate on complaints relating to service conditions of employees, it is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. 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 delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi v. Union of India : (1996)ILLJ1231SC , State of Tamil Nadu v. T.V. Venugopalan : (1994)6SCC302 , Union of India v. Upendra Singh : (1994)ILLJ808SC , Government of Tamil Nadu v. A. Rajapandian : (1995)ILLJ953SC and B.C. Chaturvedi v. Union of India at pp. 759- 60. In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed.

11. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt. Kundanben, defendant in the suit for eviction. It is true that due to time lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, there is bound to be some discrepancies in evidence. But the Disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. ***Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct***. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether as a reasonable man, in the circumstances, would be justified in reaching that conclusion. The question, therefore, is: whether on the basis of the evidence on record, the charge of misconduct of demanding an illegal gratification for rendering a judgment favourable to a party has been proved? In that behalf, since the evidence by Kundanben, the aggrieved defendant against whom a decree for eviction was passed by the respondent alone is on record, perhaps it would be difficult to reach the safe conclusion that the charge has been proved. But there is a contemporaneous conduct on her part, who complained immediately to her advocate, who in turn complained to Assistant Government Pleader and the Assistant Government Pleader in turn complained to the District Government Pleader, who in turn informed the District Judge. The fact that the District Judge made adverse remarks on the basis of the complaint was established and cannot be disputed. It is true that the High Court has directed the District judge to substantiate the adverse remarks made by the District Judge on the basis of the statements to be recorded from the advocates and the complaint. At that stage, the respondent was not working at that station since he had already been transferred. But one important factor to be taken note of is that he admitted in the cross-examination that Shri Gite, District Government Pleader, Nasik had no hostility against the respondent. Under these circumstances, contemporaneously when Gite had written a letter to the District Judge stating that he got information about the respondent demanding illegal gratification from some parties, there is some foundation for the District Judge to form an opinion that the respondent was actuated with proclivity to commit corruption; conduct of the respondent needs to be condemned. Under these circumstances, he appears to have reached the conclusion that the conduct of the respondent required adverse comments. But when enquiry was done, the statements of the aforesaid persons were recorded; supplied to the respondent; and were duly cross-examined, the question arises: whether their evidence is acceptable or not? In view of the admitted position that the respondent himself did

> admit that Gite had no axe to grind against him and the District Judge having acted upon that statement, it is difficult to accept the contention that the District Judge was biased against the respondent and that he fabricated false evidence against the respondent of the three advocates and the complainant. When that evidence was available before the disciplinary authority, namely, the High Court, it cannot be said that it is not a case of no evidence; nor could it be said that no reasonable person like the Committee of five Judges and thereafter the Government could reach the conclusion that the charge was proved. So, the conclusion reached by the High Court on reconsideration of the evidence that the charges prima facie were proved against the respondent and opportunity was given to him to explain why disciplinary action of dismissal from service could not be taken, is well justified.
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> 12. Under these circumstances, the question arises : whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is: what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.

The perusal of the above quoted judgment, the Hon'ble Apex Court has held that in the departmental enquiry, the misconduct has not to be proved beyond reasonable time. In the case of disciplinary enquiry, the technical rules of evidence have no application. The preponderance and some evidence on record would be necessary to reach to the conclusion that the delinquent has committed the misconduct. If there is some evidence, it is for the enquiry officer to appreciate and not to the court and the Tribunal.

17. In the light of the above proposition of law, now we have to examine the evidence adduced before the enquiry officer . Both the witnesses were examined in the presence of the delinquent. The petitioner had cross-examined the witnesses and they have not shown that both the witnesses had some malafide against the petitioner. The petitioners were also examined during the course of the enquiry. It is established

by Sweeti Agarwal, ASP, Line, Hardwar that during the course of the enquiry, it is revealed that both the petitioners were in charge of the custody of accused, Sushil Chaudhary and one of the petitioners provided the facility to Sushil Chaudhary to call on the mobile number of Roshan Lal to intimidate Roshan Lal to extract ransom from him. The petitioner Pradeep was specifically asked in his statement during inquiry as to whether he had any mobile telephone bearing no. 9412971434 and the petitioner admitted this fact in his statement recorded by the enquiry officer. He was also asked as to whether Sushil Kumar accused was in the custody of the petitioners and they have admitted this fact also. Petitioner Pradeep was also put a specific question as to whether he had made any call to Roshan Lal Bansal, the complainant of the criminal case on his mobile no. 9897942121.The petitioner, Pradeep denied the said fact and he said that he does not know Roshan Lal Bansal. He has also admitted that Rs. 8000/- were recovered from his possession when he was returned to Jail and he said that he took this amount with him from the jail. The petitioner, Pradeep was also shown the call details received from the BSNL in which it is shown that the call was made from the mobile of the petitioner, Pradeep bearing no. 9412971434 to Roshan Lal. The call details were also available on record. He neither denied the said fact nor he admitted this fact. He had not given any explanation for the said fact. The petitioner, Narendra has also admitted that the fact of Rs. 8000/- were recovered from the possession of the accused Sushil Kumar while he was admitted in the Jail. In these circumstances, the enquiry officer has held them guilty of the charge leveled against them. At last, the enquiry officer has held that both the petitioners were negligent and they did not discharge their duties in accordance with law. In the light of the above evidence, the enquiry officer has held that the petitioners were guilty. In the light of the judgment as quoted above, there is some evidence, coupled with the other oral evidence and with the preponderance of facts, it is revealed that there is an evidence on record. It has also been established that the disciplinary authority being fact finding authority have exclusive powers to consider the evidence with a view to maintain discipline. Both the authorities are vested with the discretion to impose

appropriate punishment keeping in view of the magnitude or gravity of the misconduct. The Tribunal while exercising the powers of judicial review, cannot normally substitute its own conclusion after re-appreciation of the facts on record. The Hon'ble Apex Court as laid down that the Tribunal has to see as to whether the findings of the enquiry officer had been based on some evidence or not. If there is some evidence and the conclusion supports the same fact, the disciplinary authority is entitled to hold the delinquent official guilty of the charges. The Tribunal in its powers of judicial review does not act as an appellate authority to re-appreciate the evidence.

18. The Hon'ble Supreme Court in the case of **State of West Bengal & others Vs. Sankar Ghosh, 2014 (3) SLR, 682**. The matter came up before the Hon'ble Supreme Court, the respondent was a Constable in the Calcutta Armed Police. He was arrested under Section 392, 395 and 412 of the Indian Penal Code read with Section 25 and 237 of the Arms Act for his complicity in the commission of dacoity using a motor cycle. Thereafter, he was arrested and the department suspended him immediately. Thereafter, the enquiry was initiated against him. The enquiry officer held him guilty of the charges levelled against him and the said finding was concurred by the departmental authorities and he was dismissed from the service. The appellate authority also dismissed his appeal. During the course, the respondent/delinquent was acquitted in the Criminal case by the Session Judge. The delinquent filed a claim petition before the West Bengal Administrative Tribunal and allowed the petition and the State Govt. was directed to reinstate the petitioner. Aggrieved by the said order, the Calcutta High Court also dismissed the appeal and the appeal was preferred before the Hon'ble Supreme Court. The Hon'ble Apex Court in Para 10 & 11 held as under:

"10. We may, at the very outset, point out that the Respondent was a member of the disciplined force. He was working as a Sepoy in the 2nd Battalion of the Kolkata Armed Force and at the relevant point of time he was working as Sepoy on deputation with the traffic department of Kolkata Police. It is true that the Respondent was dismissed from service due to his involvement in the criminal case, wherein he was charged with the offences under Sections 395/412 Indian Penal Code and Sections 25/27 of the Arms Act. It is also the stand of the department that being a member of the disciplined force, his involvement in such a heinous crime tarnished the image/prestige of the Kolkata Police Force in the estimation of the

members of public in general. Before the Enquiry Officer from the side of the department, four witnesses were examined, including Jiban Chakraborty, the S.I. Police. Exh. A-3 to A-12 are the documents produced before the Enquiry Officer. PW3, S.I. Jiban Chakraborty, the Inspector of Police before the Enquiry Officer deposed as follows:
During investigation he arrested some suspects into this case. In pursuance to the statement of the suspects he arrested the C.O. from his residence situated in 389, Milangarh, Natagarh under P.S. Ghosla (24 Pgs.-N) on 26.11.03 at 01.05 hrs. He prepared the arrest memo (Exhibit No. A5). He conducted in search at this residence and recovered a sum of Rs. 10,000/- from his possession being the stolen recovered money of the said case. He also recovered the motor cycle bearing No. WB24F-3050 from his house. During investigation he also recovered one private car. He stated that both the motor cycle and the private car were used during the commission of the crime. During investigation he came to know that the O.C. is a Constable of Kolkata Police posted to 2nd Bn of Kolkata Police working on deputation traffic deptt. The C.O. was produced before the Ld. Court of SDJM, Barrackpore and was remanded to P.O. till 29.11.03 on further production, the C.O. was remanded to jail custody and enlarged on Bail on 30.3.04. After completion of investigation he submitted charge-sheet against the C.O. and Ors. Under Section 395/412 Code of Civil Procedure,25/27/35 Arms Act
During cross examination, the P.W. stated that he seized motor cycle was registered in the name of Sri Swapan Ghosh and the same was seized from the possession of Swapan Ghosh. During cross examination the P.W. stated that it is not a fact that the C.O. has no complicity into the case. After thorough investigation & enquiry prima facie charge established against the C.O. and others.
11. The enquiry officer believed the evidence of PW3 and concluded that the charges leveled against the respondent were proved beyond any shadow of doubt, except the charge that the respondent stayed out without permission. PW3 had categorically stated that he conducted a search at the residence of the respondent and recovered a sum of Rs.10,000/- from his possession being the stolen money. He had also recovered the motor cycle bearing No.WB24F-3050 from the respondent's house which was used for the commission of the crime. During the investigation, he had also recovered one private car from the respondent's residence. Investigation revealed that both the motor cycle and the private car were used during the commission of the crime."

19. As mere on the evidence of PW-3 above, the enquiry Officer believed the evidence and held that the charges levelled against the Respondent were proved beyond any shadow of doubt. Thus the evidence which was produced before the enquiry officer, was only on recovery of the Motorcycle and Rs. 10,000/- from his possession which was subject matter of the dacoity. A recovery of the private care was also made during the investigation. These both were involved in the commission of the offences. Only on that basis, the charge was found proved. The case in hand, is also identical to the above evidence

20. The Hon'ble Supreme Court in **Para 25 of M.V. Bijlani Vs. Union of India 2006(4) SCC 713** has held as under:-

> "Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures."

21. In the case of **Divisional Controller, Karnataka State Road Transport Corporation (Supra)** the the employee of the Corporation stayed beyond his duty hours at his place of employment and he opened the door of the blacksmith section with the aid of a duplicate key and pulled the gas cylinder trolley and equipment from blacksmith section to the cash room along with four other employees of the appellant Corporation and opened the inner door of the cash room by cutting the padlock and used the gas cylinder equipment for committing the theft from the cash chest. A departmental enquiry was initiated against the employee and a criminal case was also registered against him. The employee was dismissed from the service and the matter was challenged before the lower Court and held him guilty of the charges leveled against him. A writ was preferred before the Single Judge. The Single Judge converted the dismissal order into the termination order and awarded the retiral benefits to him as he had retired till that time. In the writ appeal the division bench of the Karnataka High Court allowed the appeal and he was directed to be reinstated in the service with all benefits. In the criminal case, which was proceeding against him, he was convicted by the Trial Court and the first appellate Court also dismissed the appeal. The employee also preferred a criminal appeal before the Hon'ble High Court,. the High Court allowed the appeal and acquitted the employee in the year 1997. During the course of writ appeal, the said point of the acquittal was also raised. After the entire discussion of the legal position, the Hon'ble Supreme Court maintained the judgment of the lower Court and the termination of the delinquent was upheld as the

said order had not been challenged before the Hon'ble Supreme Court. The Hon'ble Apex Court while dismissing the appeal, in Para 11, 24 & 33 has held as under:-

11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of Article 311(2)(b) of the Constitution of India, 1950, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied

24.Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony (supra) does not lay down the law of universal application. Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.

33. In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges leveled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same; there were no additional or extra witnesses; and without considering the gravity of the charge, we are of the view that the award of the Labour Court did not warrant any interference.Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not challenged by the present Appellant by filing writ appeal. Therefore, the delinquent employee is entitled for the said relief."

22. In the aforesaid case a clear proposition of law has been laid down after discussing all the judgments of Hon'ble Apex Court that the view taken in the judgment of Capt. M.Paul Anthony is not a universal law and it depends on the facts and circumstances of each case. The employee inspite of acquittal, was terminated from his service and the termination was maintained by the Hon'ble Apex court. Thereafter again the matter came up before the Hon'ble Supreme Court in the case of State of West Bengal Vs. Sankar Ghosh (supra). In this case the criminal case also proceeded against the employee and he was acquitted by the Criminal Court and a benefit of doubt was given to the employee, simultaneously an enquiry was also conducted against the employee and he was dismissed from the service. When the dismissal order was challenged

before the Hon'ble Apex court on the ground that he had already been acquitted by the Criminal Court, the Hon'ble Apex Court held that the acquittal by the Criminal Court cannot be an automatic reinstatement of the Government servant. The enquiry proceedings on the basis of the evidence of preponderance and in the criminal case the evidence is based on the strict principle of the Evidence Act and guilt has to be proved beyond reasonable doubt. In the instant case the Government servant was dismissed from the service inspite of his acquittal, the Hon'ble Apex Court in Para 18 has held as under:-

"18. Above rule indicates that even if there is identity of charges leveled against the respondent before the Criminal Court as well as before the Enquiry Officer, an order of discharge or acquittal of a police officer by a Criminal Court shall not be a bar to the award of the departmental punishment. The Tribunal as well as the High Court have not considered the above mentioned provision and have committed a mistake in holding that since the respondent was acquitted by a Criminal Court of the same charges, reinstatement was automatic. We find it difficult to support the finding recorded by the Tribunal which was confirmed by the High Court. We, therefore, allow the appeal and set aside the order of the Tribunal, which was affirmed by the High Court. However, there will be no order as to costs."

23. The petitioner has filed evidence of witnesses, who were produced before the Court and they were declared hostile and they did not support the prosecution's version. Ld. Counsel for the petitioner relied upon the said evidence and argued that the said evidence could be considered by this Court and the findings recorded by the enquiry officer can be reversed on that ground. It is a settled principle of law as we have pointed out earlier that this Court is not the Court of appeal so did not accept any further evidence in the claim petition. The evidence, which has been recorded by the enquiry officer has to be considered by the Tribunal; the Tribunal could not impose any evidence on his own or on the behest of the petitioner. The Tribunal has no power to admit the additional evidence during the hearing of the claim petition. The additional evidence can only be taken before the enquiry officer or before the statutory appellate authority or before the revisional Court. This Tribunal is not competent to admit the additional evidence as an

appellate Court. Hence, the evidence, which has been produced by the petitioner, is of no avail. Whereas the judgment is concerned, that can only be considered by this Court to the effect that the petitioners have been acquitted and they have been given benefit of doubt and the effect of the said judgment has been considered in this judgment.

24..In view of the above discussion, both the petitions bearing No.33/10 Pradeep Singh Negi Vs. State & others and 34/10 Narendra Singh Vs. State & others are devoid of merits and hence liable to be dismissed.

ORDER

Both the claim petitions bearing Nos. 33/10, Pradeep Singh Negi Vs. State & others and 34/10, Narendra Singh Vs. State & others are hereby dismissed. No order as to costs.

Let a copy of this judgment be placed in claim petition No. 34/10 Narendra Singh Vs. State & others.

(D.K.KOTIA)
VICE CHAIRMAN (A)

+ (JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED: SEPTEMBER 22 , 2014
DEHRADUN
VM