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2025:GUJHC:24473

Reserved On : 20/03/2025
Pronounced On : 24/04/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 25294 of 2007
With
R/SPECIAL CIVIL APPLICATION NO. 13000 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
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GULABSINH DEVUSINH JHALA & ORS.
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR. SHALIN MEHTA, Senior Counsel assisted by Ms. ADITI S RAOL(8128) for the Petitioner(s) No. 1.2,1.3,1.4,1.5,2,3,4
ADVOCATE NAME DELETED for the Petitioner(s) No. 1.1
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESTENTATIVES for the Petitioner(s) No. 1
MS. MANISHA LAVKUMAR SHAH, learned Additional Advocate General assisted by Mr. JAY TRIVEDI, AGP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2,3

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CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

COMMON CAV JUDGMENT

1. Heard Mr. Shalin Mehta, learned senior counsel assisted by Ms. Aditi Raol, learned advocate appearing for

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the petitioners and Ms. Manisha Lavkumar Shah, learned Additional Advocate General assisted by Mr. Jay Trivedi, learned Assistant Government Pleader appearing for the respondents - State.

2. The petitioners of SCA No. 25294 of 2007 are Un-armed Police Constables and the petitioners of SCA No. 13000 of 2008 are Armed Police Constables in the Gujarat Railway Police in the Mobile Squad. The details of the respective petitioner is duly produced at Annexure-6 to the petition.

3. The reliefs as prayed for in SCA No. 25294 of 2007 reads thus:

> *"6. In the aforesaid facts and circumstances and the ground, the petitioners pray that Your Lordships will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction;*
>
> *(A) declaring the impugned orders as illegal, unconstitutional, arbitrary, in violation of Article 14 of the Constitution India and further be pleased to quash and set aside the impugned orders i.e. order of removal as well as order in appeal upholding the removal order*
>
> *(AA) Your Lordships will be pleased to declare the impugned order dated 6.2.2008 at Annexure-XVII issued to the petitioners as illegal, arbitrary and in violation of Article 14 of the Constitution of India and further be pleased to quash and set aside the same;*
>
> *(AB) Quash and set aside the impugned common suspension order, dated 04.04.2002 (at Annexure 'VI A'), and the common charge-sheet, dated 13.07/08.2002 (at Annexure 'VI B'), and further declare that the period of suspension be treated as period spent on duty;*
>
> *(B) directing the respondents to reinstate the petitioners in service with full back wages and all other consequential*

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benefits including promotions to the respective ranks from the date that their immediate juniors in service had been promoted and calculate the salaries due to them accordingly and further calculate their pensions, wherever applicable, based on the salary that they would have received at the time of their retirement based on such promotion/promotions and further direct the Respondents to pay to the petitioners, penal interest calculated at 9% compound interest on such payments from the date on which the payments became due till the date of actual payment;

(C) pending admission and final hearing of this petition, Your Lordships may be pleased to stay all impugned orders;

(D) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted."

4. The reliefs as prayed for in SCA No. 13000 of 2008 reads thus:

"6. In the aforesaid facts and circumstances and the ground, the petitioners pray that Your Lordships will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction;

(A) Declaring the impugned orders as illegal, unconstitutional, arbitrary, in violation of Article 14 of the Constitution India and further be pleased to quash and set aside the impugned orders i.e. orders of removal dated 28-10-2005 as well as order in Appeal dated 25-4-2007 and order in Revision dated 6-2-2008, upholding the removal orders;

(B) Directing the respondents to reinstate the petitioners in service with full back wages and all other consequential benefits;

(C) Pending admission and final hearing of this petition, Your Lordships may be pleased to stay all impugned orders;

(D) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted."

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5. The Special Civil Application No. 13000 of 2008 is treated as a lead matter and in view thereof the facts are narrated from the SCA No. 13000 of 2008 and the decision rendered in SCA No. 13000 of 2008 would also govern to SCA No. 25294 of 2007.

6. The petitioners herein are aggrieved by the orders of removal passed by the respondent no.3 herein dated 28.10.2005 (pg.21-80) which was upheld by the respondent nos. 2 and 1 herein in Appeal by order dated 25.04.2007 (Pg.301-310) and in Revision by order dated 06.02.2008 (Pg.350-419) respectively. The impugned orders are duly produced at Annexures-1 to 5, 14 and 16 respectively.

7. Brief facts leading to the filing of the present petition reads thus:

7.1. The petitioners of Special Civil Application No. 25294 of 2007 are total 4 in number (1 A.S.I. and 3 Head Constables, belonging to the Local Crime Branch [LCB]) and petitioners of SCA No. 13000 of 2008 are total 5 in number (1 Head Constable, 3 Armed Police Constables and 1 Police Constable). The petitioners were assigned the duty of patrolling in the trains between two Railway Stations, i.e. Ahmedabad (Kalupur) and Dahod (mobile chowki) and this duty was allotted to the petitioners, w.e.f. 01.02.2002 to 27.02.2002. As per the allotted duty, the petitioners were to

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travel by Rajkot - Bhopal Express (1269 DN) upto Dahod and from Dahod, the petitioners were to return back by Sabarmati Express (9166 UP). As per the normal timings for the month of February 2002, the departure time of 1269 DN from Ahmedabad was 18:55 hours to reach Dahod at 00:07 hours. The return journey was to be by Sabarmati Express, whose departure time was 00:38 hours from Dahod to reach Ahmedabad at 7:00 hours.

7.2. The petitioners left Ahmedabad Railway Station by Rajkot-Bhopal Express as usual as referred to above as scheduled on 26.02.2002 and reached Dahod at 00:35 hours. Upon reaching Dahod, the petitioners came to know that Sabarmati Express was to reach Dahod at 00:30 hours in the early morning of 27.02.2002 and was running late indefinitely and thus, as per the normal practice, the petitioners returned to Ahmedabad by Shanti Express, which left Dahod around 4:45 hours in the early morning and had reached Ahmedabad around 10:05 hours on 27.02.2002. Upon reaching Ahmedabad, petitioners came to know that, S-6 coach of Sabarmati Express which reached Godhra Railway Station at around 07:53 hours was burnt, due to which 58 unfortunate passengers died on the spot.

7.3. The petitioners were shocked, due to the occurrence of such incident, however, it never occurred to the petitioners that the petitioners would be held responsible

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for the death of 58 passengers by the authority. Unfortunately, by the order dated 01.03.2002, all the petitioners were placed under suspension by the then District Superintendent of Police (Railway) - the respondent no.3 herein. The charge-sheet was served upon the petitioners on 09.01.2003, copy of which is duly produced at Annexure-7-A and 7-B.

7.4. The petitioners replied to the aforesaid suspension order dated 01.03.2002 and charge-sheet on 12.09.2002, copy of which is duly produced at Annexure-9.

7.5. It is the case of the petitioners that, in the course of the departmental proceedings, the petitioners placed on record, the extract of Station Dairy of the Ahmedabad Railway Police Station, with respect to train patrolling to show that it is a regular practice of the patrolling team to avail of alternative train, in case of late running of either of two trains, i.e. train in which they would go to Dahod and the train in which they come back from Dahod. The said list is produced at Annexure-10.

7.6. The petitioners within a span of three months time, i.e. from 09.09.2001 to 03.02.2002, in several such incidents of patrolling team, travelled by different trains, then what they were allotted. It is the case of the petitioners that, such changes are absolutely routine and normal and

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nobody has taken any disciplinary action against any member of any patrolling team for coming by another train due to train running indefinitely late.

7.7. The departmental inquiry was held by Shri Noel Parmar, Deputy Superintendent of Police, who submitted his report to the respondent no.3, based on which the respondent no.3 issued show cause notice on 22.02.2005 to the petitioners asking them to show cause as to why they should not be removed from their services. The show cause notice alongwith the report of the inquiry officer is duly produced at Annexure-11. The petitioners submitted their reply on 01.04.2005, copy of which is duly produced at Annexure-12.

7.8. It is the case of the petitioners that, despite the reply to the show cause notice, the respondent no.3 on 28.10.2005 passed the final order "removing" the petitioners from their service, copy of which is duly produced at Annexure-1 to 5 of the petition. The petitioners thereafter preferred Departmental Appeal against the said order, vide Appeal dated 17.11.2005, copy of which is duly produced at Annexure-13. The said Appeal came to be rejected by the Additional DGP, Railway, by order dated 25.04.2007, copy of which is duly produced at Annexure-14.

7.9. The petitioners, as a last resort, filed the Revision Application dated 05.07.2007 before the Additional Chief Secretary, Department of Home, State of Gujarat, which is

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duly produced at Annexure-15.

7.10. Pending the Revision Application, the petitioners approached the Court by filing Special Civil Application No. 25294 of 2007 to 25297 of 2007, wherein, by order dated 03.10.2007, the respondent authorities were directed to decide the Revision Application, within a period of 8 weeks, from the date of receiving the copy of the order and liberty to revive the petitions by filing simple note was reserved, in case of adverse order in revision.

7.11. However, the said Revision Application came to be rejected by order dated 06.02.2008, which is duly produced at Annexure-16.

7.12. The petitioners accordingly revived the aforesaid petitions, as the order in Revision was being adverse to the petitioners herein. The aforesaid has given rise to the filing of the present petitions, wherein, the petitioners herein have challenged the impugned orders as referred above.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

8.1. Mr. Shalin Mehta, learned senior counsel appearing for the petitioners submitted that the findings of the inquiry officer Shri Noel Parmar are absolutely imaginary and based on no evidence, and therefore, the findings are perverse. Shri Parmar, is an investigating officer of Godhra case in respect of F.I.R. No. 9 of 2002 registered by Godhra Railway Police,

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on 27.02.2002.

8.2. Mr. Mehta, learned senior counsel, alleges bias against Shri Parmar. It is submitted that the entire tenure of the inquiry report was that there was some pre-planned conspiracy to burn S-6 coach and if that was indeed the case, then it was legitimate for the petitioners to ask question as to why advance information and intimation was not given or as to why the authorities did not make proper arrangement of security for the passengers of S-6 coach.

8.3. It is further submitted that, in order to put blame on the petitioners, Shri Noel Parmar - Inquiry Officer conveniently concluded that the event of burning of S-6 coach was pre-planned to make it appear that the petitioners ought to have been knowing about the incident. It is shocking that the inquiry officer blames tragic burning of S-6 coach upon the petitioners. It is submitted that, despite such reply to the show cause notice, the respondent no.3 by order dated 28.10.2005 passed the final order removing the petitioners from their services.

8.4. It is submitted that, the petitioners therefore were constrained to prefer appeal challenging the order of disciplinary authority. The learned Appellate Authority has assigned further reasons, while passing the impugned order.

8.5. It is submitted that, at the most, it is a case of false entry, but the petitioners cannot be held responsible for

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the riots and the penalty of "removal" is harsh compared to the charges levelled against the petitioners.

8.6. It is submitted that the basic allegation against the petitioners is that instead of coming back by Sabarmati Express, they came back in Shanti Express and because of this, grave incident of burning of S-6 coach of Sabarmati Express at Godhra Railway Station could not be prevented, due to want of proper police force. Thus, they have shown negligence and carelessness towards their duty.

8.7. It is submitted that the issuance of charge-sheet was based on the report of the inquiry conducted by one Shri S.L. Bhatt, the Police Inspector at Railway Station, Ahmedabad, in which the following conclusions were drawn, which reads thus:

> *"That persons of Mobile Squad as well as Special Squad have to travel by the train allotted to them and they have to come back by the train fixed for them and to do patrolling in the said train. Therefore, persons of Mobile Squad as well as Special Squad (IPC 328) should have gone by Bhopal Express and come back by Sabarmati Express. Instead of doing that by making false excuse that Sabarmati Express was running late indefinitely, the persons of the Mobile Squad as well as Special Squad had come back from Dahod railway station by Shanti Express. Consequently, passengers could not get immediate police help at Godhra station in the event that happened there and if the persons belonging to the Mobile Squad as well as Special Squad were present in the said train, they could have resolved ordinary altercation by their intervention and therefore, they could have prevented small incident assuming major incident."*

8.8. It is submitted that, on the basis of the inquiry officer's report holding that the charge levelled against the

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petitioners proved, after issuing show cause notice, by order dated 28.10.2005, the disciplinary authority removed the petitioners from service, which was confirmed by both the Appellate Authority and Revisional Authority by orders dated 25.04.2007 and 06.02.2008 respectively.

8.9. Mr. Mehta, learned senior counsel has placed on record the written submissions on behalf of the petitioners, which reads thus:

> *"10. It is submitted the aforesaid charge concluded to have been proved, on the face of it, appears to be based on surmises and conjectures. Viewed thus, the issue to be determined in the present case is whether the charge framed against the petitioners would constitute misconduct in the first place.*
>
> *11. It would therefore be appropriate at this stage to examine what generally constitute 'misconduct', especially in the context of disciplinary proceedings entailing penalty. Code of conduct as set out in the Conduct Rules clearly indicate the conduct expected of a member of the service. It would follow that conduct which is blameworthy for a Government servant in the context of Conduct Rules would be misconduct. If a Government servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. Disregard of an essential condition of the contract of service may constitute misconduct. The definition of Misconduct" in Stroud's Judicial Dictionary runs as under:*
>
> *"Misconduct means, misconduct arising from ill motive; acts of negligence, error of judgment, or innocent mistake, do not constitute such misconduct."*
>
> *12. Having cleared the ground of what would constitute 'misconduct' for the purpose of disciplinary proceeding, a look at the charge framed against the petitioners would affirmatively show that the charge levelled and held to be proved against the petitioners is based on a mere surmise drawn from the aforesaid report of the inquiry conducted by*

one Shri S. L. Bhatt, Police Inspector on the incident that happened at Godhra on that fateful day. The petitioners had no information, knowledge or intimation that Sabarmati Express would be attacked as alleged. The petitioners were in plain clothes and belonged to Mobile Squad, they would not carry arms or wireless sets to attract least attention of them being policemen. No law and order duties were assigned to these personnel. Thus it is clear the charge levelled against them does not constitute misconduct for the purposes of disciplinary proceedings.

13. As for the charge of negligence and carelessness on the part of the petitioners, it is submitted the Hon'ble Supreme Court in ***Union of India vs. J. Ahmed [1979) 2 SCC 286] (para 11)*** *as under:*

"11 xxx * * * * *

There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that degree of culpability would be very high".

From the above observations of the Hon'ble Supreme Court it is crystal clear that the negligence in discharge of duty would not constitute misconduct unless the consequences are directly attributable to the negligence of the delinquent. In the present case as submitted above, the law and order was not within the province of the duties of the petitioners. They belong to Mobile Squad without any duties of law and order.

14. It is further submitted the expression of "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law." ***[Sher Bahadur vs. Union of India and Others 2002) 7 SCC 142].***

It is therefore submitted the present case of the petitioners is a clear case of finding them guilty of the charge without having any evidence to link them with the alleged

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misconduct.

15. In summing up, it is thus crystal clear that there is no case stricto sensu for disciplinary proceeding against the petitioners. It appears that there was large scale disturbances in the State. Then followed the usual search for face saving formula to cover up the failure on the part of railway and government machinery in averting or controlling it. The petitioners came handy. A charge was framed which does not constitute misconduct. The charge on the face of it is a mere surmise."

8.10. Mr. Mehta, learned senior counsel relied upon the following decisions:

(a) (2009) 2 SCC 541

(b) (2010) 2 SCC 772

(c) (1964) 3 SCR 652

(d) (2008) 12 SCC 230

(e) (2019) 4 GLR 2877

(f) 1999 (Supp) SCC 579

(g) (2010) 13 SCC 427

(h) (2009) 2 SCC 570

(i) 1970 (3) SCC 548

***SUBMISSIONS ON BEHALF OF THE RESPONDENTS - STATE*:**

9.1. Ms. Manisha Lavkumar Shah, learned Additional Advocate General appearing for the respondent - State submitted that, all the 9 petitioners, were served with the charge-memo on 13.08.2002. Pursuant thereto, taking into consideration, the reply filed by the respective petitioners, an Enquiry Officer of the rank of Deputy Superintendent of Police, Western Railway, Vadodara

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came to be appointed by an order dated 09.01.2003. The witnesses were examined and the petitioners herein were permitted to cross-examine the witnesses and lead evidence in defense of the charges levelled against them. In the course of enquiry, the enquiry officer framed 5 issues, wherein, issue nos. 1, 2, 4 and 5 stands proved on the basis of documentary evidences and oral evidences and issue no.3 stands partly proved.

9.2. Placing reliance on the findings arrived at by the enquiry officer qua issue nos. 1, 2 and 3, it is submitted that, though the petitioners were supposed to remain present on their patrolling duty in Sabarmati Express train, they were not present in the said train. It is submitted that, even if, the incident could not have been averted, at least, the numbers of death could have been reduced. Thus, the petitioners are responsible for the said incident. It is submitted that, the conspiracy may have been carried-out in their presence also, however, the extent of damage and loss of lives, would not have happened or could have been controlled. It is further submitted that, one of them could have arrested one or two persons or at least, they could have given the information, as to how the offence took place. In view of the aforesaid, the petitioners herein remained totally negligent. It is submitted that the petitioners herein also never sought for permission from any of the higher officers for boarding Shanti Express, instead of Sabarmati Express and the same has resulted in serious carelessness and negligence in discharge of their duties

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as mentioned in Issue No.3.

9.3. It is submitted that, Shri Noel Parmar, the Deputy Superintendent of Police, Western Railway, Vadodara submitted the enquiry report alongwith all documentary evidence, which were taken into consideration, during the course of departmental proceedings, vide communication dated 29.10.2004. The disciplinary authority having independently taken into consideration the report filed by the enquiry officer and all the relevant material on record by the enquiry officer, issued show cause notices on 22.02.2005 to all the petitioners.

9.4. It is submitted that the petitioners have submitted their respective replies on 01.04.2005. Upon due consideration of the final defense statement filed by the petitioners and after appreciating the documents and depositions on record, the disciplinary authority on 28.10.2005 passed the order of removal against the petitioners.

9.5. It is submitted that the aforesaid order passed by the disciplinary authority was subject mater of Appeal and Revision before the competent forum, wherein, the said order of removal passed by the disciplinary authority was confirmed by the appellate authority and revisional authority.

9.6. In light of the concurrent findings arrived at by the competent authorities, this Court may not exercise the writ jurisdiction under Article-226 of the Constitution of India.

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9.7. Ms. Shah, learned AAG submitted that, the due procedure as enumerated in the rules is followed. It is submitted that, it is an admitted fact that, there is no procedural lapse neither at the inquiry nor at the disciplinary stage nor at the appellate stage. It is submitted that, the principles of natural justice is duly complied with including affording of opportunity of hearing and necessary consideration even at the revisional stage.

9.8. It is submitted that the sequence of events, as depicted demonstrates that the entire departmental proceedings have been conducted, in accordance with the rules and the due process of law, has been strictly followed. It is submitted that, adequate opportunity of hearing has also been afforded to the petitioners as well. It is not even the case of the petitioners that, important witnesses have not been examined or that the documents relied upon in the departmental proceedings have not been duly approved. The entire departmental enquiry rests on the documentary evidences, as duly proved by witnesses, who had authored or proved to the first time information, regarding such documents.

9.9. It is submitted that, the station diaries, entries in railway register, effected by petitioners have been proved and are admitted by the petitioners. The duty form assigning duties to the petitioners, has been exhibited as Document No.2 which stands proved. The relevant extracts from the petitioners' hand-

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written diaries which were required to be filled-in by each of the petitioners in their own hand, also stands proved. It is further submitted that, the false entry posted by the petitioners herein at the Dahod railway outpost, recording the false factum of 9 petitioners boarding Sabarmati Express is also proved. The varied justifications offered for explaining the false entries effected in the Station Dairy, abandonment of Sabarmati Express and boarding of Shanti Express has not been accepted by any of the authorities. The findings of fact as written by the enquiry officer are duly collaborated with the documentary evidence, which at no stage is questioned by the petitioners. Reliance is placed on the following judgments:

I. (2022) 5 SCC 695 (Para 22, 25)
II. (2022) 13 SCC 237 (Para 17)
III. (1977) 2 SCC 491 (Para 4)
IV. (2015) 2 SCC 610 (Para 12, 13 and 20)

9.10. Ms. Shah, learned AAG submitted that, the principal contention raised by the petitioners during the course of hearing with respect to the fact that the enquiry officer (Shri Noel Parmar) was biased, during the course of the enquiry, as he was part of the team carrying-out criminal investigation into Gordhra riots and therefore, the entire proceedings stands vitiated. It is submitted that, the petitioners have given-up the aforesaid ground and have specifically stated in their reply to the show cause notice (pg.158) that they did not allege any bias, during the departmental proceedings, as from the manner in which the

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enquiry officer behaved, they believed that he would hold in the favour of the petitioners. it is submitted that, admittedly, the petitioners have raised no grievance before any authority, objecting to the appointment or continuation of Shri Parmar, Dy.S.P., Western Railway, Vadodara, as the enquiry officer, during the entire departmental enquiry.

9.11. It is submitted that, it is not open for the petitioners to improvise their cases, than that of which was pleaded before the departmental authority. It is submitted that, at the first instance, Shri K.C. Bava, Dy.S.P., Western Railway, Vadodara was appointed as an enquiry officer. Upon superannuation of Shri Bava, Shri Noel Parmar, Dy.S.P., Western Railway, Vadodara was appointed as enquiry officer. The appointment of Shri Parmar, was by virtue of the designation of Dy.S.P., Western Railway, Vadodara and not by virtue of name.

9.12. It is submitted that, the petitioners are required to prove that the petitioners were adversely treated by the enquiry officer Shri Parmar, during the course of enquiry proceedings and that the enquiry officer has taken into consideration the irrelevant facts and has conveniently ignored the relevant facts, during the course of enquiry proceedings. It is submitted that, the enquiry report is based on the documents on record and evidence recorded after affording full and complete opportunity to cross-examine the witnesses and lead independent evidence. All the authorities declined to accept the aforesaid belated,

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unsubstantiated allegation of bias.

9.13. Ms. Shah, learned AAG submitted that, with respect to the contention of proportionality that the punishment imposed is disproportionate to the alleged misconduct. It is submitted that, it is for the disciplinary authority and the administrative authority to decide the quantum of punishment and the role of the Court is secondary. It is submitted that, the discretion is invested with the aforesaid upon the authorities, to impose appropriate punishment, keeping in view the magnitude of gravity of the misconduct. It is submitted that, the High Court while exercising of power of judicial review cannot substitute itself for conclusion of penalty and imposed some other penalty unless it shock the conscious of the Court. It is in rarest of rare cases, the Court may impose appropriate punishment with cogent reasons in support thereof. It is submitted that, the interference with the quantum of punishment is not a routine matter. The benchmark of police personnel is quiet higher than that of any other government servant, when it comes to responsibilities towards duty.

9.14. It is submitted that, it is well settled principle of law that the High Court or the Tribunal, in exercise of power of judicial review would not normally interfere with the quantum of punishment. It is submitted that, the doctrine of proportionality can be invoked only in rarest of rare case. Placing reliance on the aforesaid submissions, it is submitted that, in the facts of the

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present case, dereliction of duty by a civilian would be examined from a different perspective, as against the dereliction of duty by a police officer entrusted to protect the safety of a train and all its passengers. It is a keen to the duty of the soldier manning and army outpost.

9.15. To substantiate the aforesaid submissions, reliance is placed on the following decisions:

I. (2001) 2 SCC 386 (Para 23-26)
II. Civil Appeal No. 219 of 2023 (Para 6.2, 6.3)
III. Special Civil Application No. 6022 of 1991 (Para 10-19)
IV. (1997) 7 SCC 463 (Para 12)

9.16. Ms. Shah, learned AAG submitted that, the duty chart for every railway police officer, is assigned by the concerned Police Officer of the Railway Station. It is submitted that, since the year 1997, a scheme has been floated by the Railway Department categorizing the trains into 'A' and 'B' Category. The trains falling in the A Category are such trains, where frequency of untoward incidents like chain snatching, altercations, etc. is high. The instructions issued in this behalf dated 03.04.1997 are annexed at page no. 96 of the petition. The instructions issued to the concerned Police Inspector of the concerned Railway Station are to be implemented in every train falling in A Category, to ensure that at least 3 Armed Personnel with rifles and cartridges must be present. The rest of the ASIs are provided with sticks and ropes. It is submitted that, additionally, police officers in plain clothes are also required to patrol the train. The Sabarmati

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Express is a Category A train.

9.17. It is submitted that, out of 9 police personnel, 3 of them are armed with rifles and cartridges and the rest 6 with sticks and ropes were required to patrol and ensure safety of the return of train i.e. Sabarmati Express (9166- Down) which is a "Category - A" train i.e. having a higher propensity for crime. It is submitted that, the petitioners were not required to simply to travel from one destination to another. It is submitted that, their duty was to protect the passengers from any rowdyism, altercation, crime and on safely reaching the prescribed destination enter in the railway register that the Train has safely reached its destination.

9.18. It is submitted that, it is shocking that the petitioners herein choose to trivialize their responsibilities and duties as a Police Officers, by stating that their presence in the specific train would hardly have made any difference. The unfortunate incident which occurred at the Godhara Railway Station on account of chain pulling, stone pelting and setting Coach No. S-6 ablaze by pouring Kerosene could have been averted by the petitioners. It is submitted that the contention of the petitioners that, their presence would have make no difference and hence their abandonment of the entire train merits no punishment much less a serious punishment and much less the punishment of removal is such that the petitioners belonging to the disciplined force, are repeatedly made submissions undermining their duties as

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travelling from one Station to another.

9.19. It is submitted that the argument of the petitioners that the false entry posted at the Dahod Railway Station Outpost to the effect that they are departing by Sabarmati Express was made in good faith, as the timeline between the two trains is only 35 minutes, and hence, this is a routine practice followed by the petitioners. However, 9 Police Officers forgot to correct this entry and returned by the Shanti Express instead of Sabarmati Express. Leaving an entire train full of passengers, without the designated Police on board is dismissed by the petitioners as a routine occurrence which happens when a particular train is indefinitely late. It is submitted that, it is on record that entries posted in the Railway Station Diary are reported to the control room. This fact is admitted and not disputed by the petitioners herein. It is submitted that, thus the entry made by the petitioners at the Dahod Railway Station that they are boarded the Sabarmati Express is duly conveyed to the control room and there is no change in this entry, since the petitioners have not bothered to rectify the false entries made in the register. It is submitted that, admittedly no authority is informed of the change of plans adopted by the petitioners of boarding the next available train. It is submitted that, inexplicably the petitioners wait at the Railway Station at 04:30 hrs. without verifying when Sabarmati express scheduled train is due from the Station Master, before aligning a Shanti Express.

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9.20. It is submitted that, in view of the concurrent findings based on documentary evidence duly corroborated by oral evidence the order of "Removal from Service" passed by the Disciplinary Authority and duly confirmed by the Appellate and Revisional Authority, after hearing the petitioners, required no interference and the present petition be dismissed in limine.

9.21. Ms. Manisha Lavkumar Shah, learned Additional Advocate General placed reliance on the following judgments:

I. Order passed by the High Court in Special Civil Application No. 6022 of 1991, order dated 07.11.2016 (Para-10 and 11).

II. AIR 2024 SC 4034 in the case of State of Rajasthan v/s. Bhupendra Singh (Para-28 to 37).

III. (2022) 5 SCC 695 in the case of Regional Manager UCO Bank v/s. Krishnakumar Bhardwaj.

IV. 2022 SCC OnLine SC 284 in the case of Union of India and others v/s. Managobinda Samantaray.

V. Civil Appeal No. 219 of 2023 in the case of Union of India v/s. Cont. Sunil Kumar, judgment dated 19.01.2023.

VI. (2001) 2 SCC 386 in the case of Om Kumar and others v/s. Union of India.

VII. (1997) 7 SCC 463 in the case of Union of India and Another v/s. G. Ganayutham.

VIII. (2008) 7 SCC 580 in the case of State of Meghalaya and Others v/s. Mecken Singh N. Marak.

IX. (2015) 2 SCC 610 in the case of Union of India v/s. P.

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Unasekaran, wherein, the Hon'ble Apex Court held that the scope of interference by writ court in disciplinary proceedings is very limited, where, writ court cannot act as an appellate forum and the High Courts in exercise of their powers under Articles-226 / 227 may not go into the proportionality of punishment.

X. In the case of State of U.P. & Ors. v/s. Man Mohan Nath Sinha and Anr. reported in (2009) 8 SCC 310, wherein, the Hon'ble Apex Court held that the power of judicial review is confined to decision making process, rather than the decision itself.

XI. In the case of State of U.P. v/s. SheoShanker Lal Srivastava and Ors. reported in (2006) 3 SCC 276, wherein, the Hon'ble Apex Court held that the High Court of Tribunal would not normally interfere in the quantum of punishment.

XII. In the case of Union of India v/s. Subrata Nath reported in 2022 SCC OnLine SC 1617, wherein, the Hon'ble Apex Court held that the Courts ought to refrain from interfering with findings or facts recorded in departmental inquiry except such findings are patently perverse or grossly incompatible with evidence on record.

XIII. In the case of South India Cashew Factories Workers' Union v/s. Kerala State Cashew Development Corporation Limited and Others reported in (2006) 5 SCC 201. In the aforesaid judgment, the Hon'ble Apex Court held that, merely because the enquiry officer is an employee of the management, it cannot be

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lead to the assumption that he is bound to decide the case in favour of the management. It is also held that the inquiries are generally conducted by the officers of the employer and in absence of such any special individual bias, attributable to a particular officer, it cannot be held that, such inquiry is biased, just because it was conducted by the officers of the employer. On the aforesaid ground, it cannot be held that the entire enquiry is vitiated. It is also held that, if an enquiry officer has made some unnecessary observations, the same does not result into bias.

In the facts of the said case before the Hon'ble Apex Court, no objection was raised during the entire inquiry or pleadings before the Labour Court or the earlier proceedings before the High Court. The bias of the inquiry officer has to be specifically pleaded and proved before the adjudicator. Such plea was admittedly absent before the Labour Court. In the aforesaid set of facts, the Hon'ble Apex Court held that, the preliminary order of the Labour Court setting aside the inquiry, on the ground that the inquiry was conducted by an officer of the management and he had made some observations in the enquiry report, which were not warranted in the case, is not a vitiating factor and such reasons are not sufficient to set aside the enquiry.

10.1. Mr. Mehta, learned senior counsel dealt with the aforesaid judgments relied upon by Ms. Manisha Lavkumar Shah, learned AAG and in rejoinder and submitted that the proposition

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of law in the aforesaid judgments are well settled, however, the same would depend upon the facts of each case. Though, Mr. Mehta, learned senior counsel placed reliance on Para-12 of the decision in the case of State of Meghalaya reported in (2008) 7 SCC 580 (supra), to substantiate the submission whether the competent authority was justified in removing the respondent from service.

The Hon'ble Apex Court in Paras-16 to 18 held that the respondent belonged to a disciplined force and was supposed to carry out instructions given to him by his superior. The respondent, not only floated the instructions, but conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition which could be misused. When a statute gives discretion to the administrator to take a decision, the scope of judicial review would remain limited.

10.2. Mr. Mehta, learned senior counsel submitted that with regard to the decision in case of 2022 SCC OnLine SC 284 (supra), the respondent was a CISF Constable and was found to be sleeping at Watch Tower No.5 by Officer ASI / Exe B. Panda and it was alleged that the said respondent had abused, misbehaved and assaulted the officer on the right shoulder with a short lathi. It is submitted that, such conduct of the officer as a natural consequence is such that, the same is required to be dealt with in appropriate manner, in view of such conduct of the

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respondent. However, the same is not applicable in the facts of the present case, wherein, the competent authority has also not attributed knowledge of riots to the petitioners herein and the petitioners herein have derelicted their duties, to the extent that instead of returning by Sabarmati Express, the petitioners returned by Shanti Express and had no knowledge about the untoward incident that had occurred on that date.

11. It is apposite to deal with the judgments relied upon by Mr. Shalin Mehta, learned senior counsel appearing for the petitioners.

I. In the case of ***Union of India and Others v/s. Prakash Kumar Tandon*** reported in ***(2009) 2 SCC 541***, reliance is placed on Para-12 of the said judgment. In the said judgment, the disciplinary proceedings were initiated only after a raid was conducted by the vigilance department. The inquiry officer was the chief of the vigilance department, and he evidently being from the vigilance department should not have been appointed as the inquiry officer at all.

The Hon'ble Apex Court in Para-15 has held that the principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order on the said application and the same ought not to have been refused. It is not for the

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railway administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi-judicial authority, and therefore, must perform his functions fairly and reasonably, which is even otherwise the requirement of the principles of natural justice.

In light of the aforesaid, the Hon'ble Apex Court in the aforesaid facts, dismissed the appeal filed by the Union of India.

II. In the case of ***State of Uttar Pradesh and Others v/s. Saroj Kumar Sinha*** reported in ***(2010) 2 SCC 772***, relied on Paras-28 to 30, wherein, the Hon'ble Apex Court has held that enquiry officer acting in quasi-judicial authority is in the position of an independent adjudicator. That the enquiry officer has to be wholly unbiased. The rules of the natural justice are required to be observed to ensure that the justice is not only done, but is manifestly seen to be done.

In the facts of the said case, the delinquent in accordance with rules made a written request to the appellant – State of Uttar Pradesh demanding copies of documents relied upon, in the charge-sheet by representation dated 10.06.2001. In spite of the mandate of Rules, 1999, neither the disciplinary authority nor the enquiry officer made available such documents to the delinquent, rather a reminder was issued to the delinquent by the enquiry officer on 15.06.2001 to submit reply to the charge-sheet.

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Apprehending that the enquiry officer may be biased, the delinquent submitted a representation dated 19.06.2001 to the Government for change of the enquiry officer. The said request was accepted by the State. It later transpired that the earlier enquiry officer had completed the inquiry report on 03.08.2001, whereas, the new enquiry officer was appointed on 22.09.2001. The respondent only came to know about the existence of the report dated 03.08.2001, in the month of April, 2003. In such circumstances, the Hon'ble Apex Court in Para-40 held that the 1st enquiry report dated 03.08.2001 is vitiated. The 2nd enquiry report in view thereof cannot be legally termed as an enquiry report, which is in reiteration of the earlier enquiry report. Asking the delinquent to give reply to the enquiry report, without supply of the documents adds insult to injury.

In the aforesaid facts, the Appeal was dismissed, having arrived at the conclusion that the respondent had been denied a reasonable opportunity to defend himself in the enquiry.

III. In the case of ***Associated Cement Companies Limited v/s. Workman and Another*** reported in ***(1964) 3 SCR 652***, reliance is placed on Para-12 of the said judgment, wherein, the Hon'ble Apex Court held that, if an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eye witness to the impugned incident. Under such circumstances, the Hon'ble Apex Court has held that, injustice is

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likely to result if a domestic enquiry is held by an officer who has himself witnessed the alleged incident, the same is very eloquently illustrated by the statements contained in the Manager's letter to Malak Ram. That is why the Hon'ble Apex Court thought it fit that the conduct of domestic enquiries should be left to such officers of the employer who are not likely to import their personal knowledge into the proceedings which they are holding against the enquiry officers.

In the facts of the present case, no criminal proceedings are inflicted against the petitioners herein.

IV. In the case of ***Cantonment Executive Officer and Another v/s. Vijay D. Wani and Others*** reported in ***(2008) 12 SCC 230***, placing reliance on Para-7 of the judgment, Mr. Mehta, learned senior counsel submitted that, the question of bias is always the question of fact. The Court has to be vigilant while applying the principles of bias as it primarily depends on the facts of each case. The Court should only act on real bias and not merely on likelihood of bias. In the facts of the said case, three persons who conducted the inquiry, were also the members of the board and that the Board was to take a decision in the matter, whether the report submitted by the enquiry committee should be accepted or not. The Hon'ble Apex Court has held in para-13 that, a person cannot be a judge in his own cause. Once the disciplinary committee finds the incumbent guilty, they cannot sit in the judgment to punish a man on the basis of the

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opinion formed by them. Objectivity is the hallmark of a judicial system in our country. The very fact that the disciplinary committee which found the respondent in the said case guilty participated in decision-making process for finding the respondent guilty and dismissed him from service is bias, which is apparent and real.

In the facts of the present case, the aforesaid decision is not applicable. The report given by Shri Noel Parmar, Investigating Officer and is accepted by the competent authorities.

V. In the case of ***Y.V. Shah v/s. State of Gujarat and Vice Chairman & Managing Director, G.I.D.C., Gandhinagar*** reported in ***2019 (4) GLR 2877***, reliance is placed on paras-10 to 14, wherein, in the facts of the said case, the enquiry officer was associated with the drawing / design of the quarters which have ultimately collapsed. In light of the aforesaid, the delinquent requested to appoint the D.E.O., who is not associated with the case (work) either directly or indirectly, and therefore, can deal with the case without any bias. Placing reliance on the ratio laid down by the Hon'ble Apex Court in the case of Ram Lakhan Sharma reported in AIR 2018 SC 4860, it was held that the enquiry officer, who was approving authority of the design, ultimately held that the building has not collapsed because of such faulty design, but because of the materials used by the petitioner. Hence, it can safely be presumed that the enquiry

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officer was very well connected with such findings, wherein, it was held that the building had not collapsed because of faulty design, and hence, it can be presumed that there was all possibility of bias in the departmental proceedings.

VI. Mr. Mehta, learned advocate relied on the decision reported in **1997 Supplementary SCC 579**, wherein, the Hon'ble Apex Court intervened in the findings of the fact arrived in the disciplinary proceedings, in light of the fact that, the inquiry officer concluded on no evidence and without proper appreciation of the background and circumstances of the case.

In the facts of the present case, the inquiry report is made after following due procedure and due appreciation of the documentary as well as oral evidences.

VII. In the case reported in **(2010) 13 SCC 427**, the Hon'ble Apex Court held that the Notice must state the charges only and not definite conclusion of the alleged guilt, on the principle of *Audi alteram partem*, which is the basic principle of natural justice.

In the opinion of this Court, looking to the facts of the present case, the said judgment is not applicable, wherein, the notice is not challenged and petitioners participated in the disciplinary proceedings, having not objected / raised such contention.

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VIII. In the case reported in **2009 (2) SCC 570**, the Hon'ble Apex Court has held that, mere production of the document is not enough, the same has to be proved by examining the witnesses.

The aforesaid decision is not applicable in the facts of the present case, wherein,due procedure has been followed in accordance with rules.

IX. The case reported in **1970 (3) SCC 548**, is with regard to the non-supply of statement of allegation to the delinquent in spite of the representation.

ANALYSIS:

12.1. Having heard the learned advocates appearing for the respective parties, the following undisputed facts emerge for consideration of the present petitions:

Sr. No.	Date	Events	Page No.
1.	18.02.2002 to 01.03.2002	The 9 Petitioners were allotted patrolling duty between Rajkot Bhopal Express (1269 Down) departing from Ahmedabad to Dahod, and returning by the Sabarmati Express (9166 Up) from	

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		Dahod to Ahmedabad. Out of 9 Petitioners, 3 Petitioners were Armed Constables with rifles and cartridges and 6 others were in plain clothes.	
2.	26.2.2002	Petitioners board the Rajkot - Bhopal Express (1269 Down) from platform no.12 at Ahmedabad Railway Station at 18:35 hours. Due entries were made before Police Station Officer (PSO) in the station dairy at Ahmedabad Railway Police station being Entry no. 14/2002.	
3.	27.2.2002	Petitioners reached Dahod Railway Station at 00:35 hours in Rajkot - Bhopal Express (1269 D). At 00:35 hours on reaching Dahod Railway Station, the petitioners effect / certified necessary entry no.13 as regard to the train having arrived safely "સુરક્ષિત" in the station dairy.	
4.	27.02.2002	At 00:35 hours Petitioners also made an entry in the Railway Register at the Railway Out Post, Dahod that they are departing by the Sabarmati Express (Up). That no entry in the Dahod Register at	

		Dahod Railway Station of departing in Shanti Express. Petitioners boarded Shanti Express from Dahod to Ahmedabad at 5:21 hours. After reaching Ahmedabad, the Petitioners made an entry, in the Railway Station diary at 10:05 of Shanti Express train having been reached Ahmedabad 'safely' "Khariyat". No reason or justification for boarding another train than the one assigned on duty.	
5.	27.02.2002	Sabarmati Express reached Dahod Railway Station at 06:38 hours and departed Dahod Railway Station at 06:40 hours.	
6.	27.02.2002	Sabarmati Express reached Godhara railway station at 07:35 hours. The unfortunate incident of chain pulling, stone pelting and setting ablaze coach S6 of Sabarmati Express took place at Godhara Railway Station wherein 58 people including women and children lost their lives.	
7.	1.3.2002	Petitioners were placed under	82 - 83

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		suspension by the District Superintendent of Police, Western Railway, Vadodara, on the account of the dereliction in discharging their duties.	
8.	1.3.2002	Mr. S. L. Bhatt, Police Inspector, Ahmedabad was appointed to conduct the preliminary Enquiry.	
9.	1.4.2002	Shri S.L. Bhatt, Police Inspector, Railway Police Station, Ahmedabad submitted a preliminary report to the Superintendent of Police, Western Railway, Vadodara narrating the dereliction on the part of the Petitioners in boarding Shanti Express instead of Sabarmati Express.	108 - 113
10.	13.8.2002	Petitioners were served with the Charge Memo accompanied by Articles of Charge, List of Witnesses and a list of Documentary evidence sought to be relied upon during the departmental enquiry. The charge memo stipulated the imposition of a major punishment under Rule 3 of the Bombay Police (Discipline and Appeal) Rules, if all or any of the	89 - 93

		charges stands proved against the petitioners, which reads thus (true translation): ***"...Charge-sheet:-*** *During the duty of your Unit at Railway Police Station, Ahmedabad, the PSO of Ahmedabad Railway Police Station Chowki of Platform No. 12 made entry in the Station Diary at 18/35 hours on 26/2/2002 and you were sent as 'Moving Chowki" for train patrolling duty from Ahmedabad in Rajkot Bhopal Express Train. You had to reach Dahod and then return to Ahmedabad on 27/2/02 with Sabarmati Express Train. But, as Sabarmati Express Train was arriving late on that day, instead of returning in the train fixed for you, you made bogus entry in the register that you departed in Sabarmati Express Train No. 9165 Down and left in Shanti Express Train leaving from Dahod Railway Station and reached Ahmedabad and at 10.05 hours gave kheriat report for Shanti Express Train at Ahmedabad Railway Police Station.* *This Sabarmati Express Train reached and departed from Godhra and due to lack of police protection, the people of Muslim Community stopped the train at A Cabin of Godhra Railway, pelted stones on the coaches of the train, poured petrol and kerosene on Coach No. S/6 and set fire thereon and therefore, total 58 person died including men, women and children travelling in this coach. In addition,*	

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		serious incident occurred of causing damage of the properties of the railway. The repercussions of this incident was felt in the entire state of Gujarat. *Thus, you - all the Police Staff were duty bound to travel as 'Moving Chowki' in Sabarmati Express Train leaving from Dahod as per the duty assigned to you on 27/02/02. Despite this, bogus entry was made in the register and you returned to Ahmedabad in Shanti Express Train. If you had departed in the Sabarmati Express Train itself to reach to Ahmedabad, the grave incident occurred at Godhra could have been prevented. Thus, you have shown serious negligence and carelessness towards your duty.* *2. Statement of imputations, list of evidences and list of witnesses are enclosed herewith.* *3. It is hereby informed to submit your statement of defense including evidences relied on in reply of the above mentioned charges. It should also be informed as to whether you desire to conduct oral examination. If you desire to conduct oral examination, it is hereby informed to submit the names of the address of the persons whom you desire to examine as your witnesses. If you fail to submit your statement of defense or names and addresses of the witnesses within seven days from the date of receipt of this yadi, if shall be considered that you do not wish to submit your statement of defense and that you do not desire to*	

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		examine or produce any witnesses. *4. It is hereby informed that in case any of the above mentioned charge is proved, as to why the same should not be considered as sufficient and valid reason to impose penalty as prescribed in Rule – 3 of the Mumbai Police (Penalty and Appeal) Rules 1956. Whatever, statement is made regarding action to be taken against him, shall be taken into consideration at the time of passing final order of penalty.* *Sd/- illegible* *J. K. Bhatt* *Police Superintendent* Western Railway, Vadodara."	
11.	12.9.2002	Petitioner No. 1 i.e. Jabir Hussain Rasulmiya, submitted a reply against the charge-sheet denying all the charges which were levelled against all the delinquents. Petitioners, inter-alia raised the following grounds: - • Petitioners were not heard before they were served with the charge memo. • Authenticity of the documentary evidence attached with the charge-	114 - 124

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		memo. • *Ex parte* Preliminary Enquiry. • Routinely when a train is late Police Officers board the next available train.	
12.	16.09.2002	Application preferred by the Petitioner no. 1 seeking reinstatement.	125-129
13.	09.01.2003	After considering the reply submitted by the petitioners, the Disciplinary Authority i.e. Superintendent of Police, Western Railway, Vadodara passed an order for commencing of Departmental Enquiry and appointed Dy. S.P. Mr. K.C. Bava, Dy. S.P., Western Railway, Vadodara to proceed as the Enquiry Officer. During the course of the Enquiry, on account of superannuation of Mr. K.C. Bava (DySP), Western Railway, Vadodara, Mr. Noel Parmar (DySP) Western Railway, Vadodara came to be appointed as an Enquiry Officer.	84
14.	29.10.2004	The Enquiry was conducted in accordance with the Gujarat Civil Service (Appeal and Disciple) Rules,	146

		2002 and the petitioners were permitted to cross examine all the witnesses, lead evidence in their support, and deal with all the documentary evidence supplied, the Enquiry Officer along-with his Enquiry Report submitted the following documents for due consideration to the Disciplinary Authority. i. Documents related to the issues framed. ii. List of Documents submitted along-with charge memo. iii. Examination-in-chief and cross examination of witness. iv. The Enquiry officer returned a finding of charges 1, 2, 4 and 5 to be proved and charge no 3 to be partly proved. The findings arrived at by the inquiry officer, reads thus (true translation): *"Discussion as to whether the issues formed are proved or not proved:-*	

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		Issue No.1 :- *Whether on 26-02-02, the Delinquents got entry made in the Station Diary of Ahmedabad Railway Police Station at 18.15 hours to proceed on duty of Moving Chowki Train Patrolling in Rajkot Bhopal Express Train and departed in this train to go to Dahod?* ***Issue No. (2):-*** *Whether the delinquents have declared before the P.S.O., Ahmedabad Railway Police Station that, as the Sabarmati Express was running behind its schedule on 27/02/2002, they had returned to Ahmedabad from Dahod in Shanti Express?* ***Issue No. 3:-*** *Had the delinquents remained present on duty of Moving Chowki Train-Patrolling in the Sabarmati Express Train departing from Dahod on 27/02/2002 and had they returned to Ahmedabad therein, they could have prevented the incident of burning the coach of the Sabarmati Express at Godhra.* ***Issue No. 4:-*** *Whether the delinquents have committed serious negligence and dereliction in duty by not returning in the train assigned to him?* ***Issue No. 5:-*** *Whether the Charge-Sheet, or any part thereof, serviced to the Delinquents by the Superintendent of Police, Western Railway, Vadodara on 13/08/2002 , is proved or not?* *Issue No. 1: Yes, proved.*	

		Issue No. 2: Yes, proved. *Issue No. 3: Partly proved, yes.* *Issue No. 4: Yes, proved.* *Issue No. 5: Yes, proved.* ***Issue No. 1:-*** *No allegation arises qua Issue No. 1 i.e. their Daily Activity, as recorded by the Delinquents in their Note-book and Patrol-Book for 26, 27/02/2002, has already been taken on records qua the Documentary Evidence during the Departmental Inquiry. The Delinquents have recorded the entries regarded their movement to and from the Ahmedabad Railways Police Station. This documentary evidence has been taken on record during the Departmental Inquiry against the delinquents, which corroborates this issue. Thus, this issue is proved.* ***Issue No. (2):-*** *This issue, too, has been corroborated as stated above as well as by Dilipkumar Parsottambhai, Head Constable – Buckle No. 4148 PSO - Head Constable, Ahmedabad Railways Police Station, who remained present as a witness for the State. Moreover, the note-books and patrol-books of the delinquents corroborate the issue. Thus, the above stated documentary evidence has been taken on record during the Departmental Inquiry and therefore, this issue is corroborated.* ***Issue No.(3):-*** *As the Sabarmati Express was running behind the schedule, the delinquents had, instead of returning therein, returned to Ahmedabad in the Shanti Express. Thus, it is due to their negligence that this offense could not be*	

		prevented. *This issue is proved that, though the delinquents were assigned duty in the Sabarmati Express, they were not present on their duty. I am an Investigating Officer of the Godhra Carnage and the Delinquents have, in their defense, produced witnesses as well as documentary evidence as to the fact that they had to returned through another train if the train wherein they were assigned duty was running behind the schedule.* *For a time being, even if it is believed as a practice prevalent at that time, such practices can be admitted in ordinary circumstances. No Police Inspector / P.S.I. would give instruction to return through the first available train when there is a law and order situation.* *The Delinquents are police personnel. A Head Constable is the head of the Squad and remaining four are Police Constables. When Karsevaks are traveling, Bandobast is assigned in view of gravity of situation. Even if it is assumed once that the Senior Officers like P.I./ P.S.I. had not given any instruction with regard to the Bandobast, in view of the communal riots of 1992, it is the Delinquents who are duty bound and such a rule or practice ought not to be followed on every occasion. When the train was running behind the schedule, they should have thought as to why it was late and they should have contacted the police station of earliest train station or the control-room. Had they done so, they would*	

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		have known that the Karsevaks were aboard the train. However, though a Head Constable was the head of the 'Moving Chowki' the Delinquents did not bother to do so. *I have investigated the offense. It was a pre-planned conspiracy. In the staff of moving squad were present on the train, they could have known about the chain-pulling and and as they were on the train, the guard or the engine-driver could have required support, i.e. Bandobast, by communicating through walkie-talkie.* *Even if the offense could not be prevented, it would have surely prevented such a large number of casualties.* *Thus, they are partly responsible. If the conspiracy had been successful even if they were present, at least such a large scale damage to the lives and properties might have been prevented. Moreover, the staff of the squad could have nabbed one or two of the accused, immediately. Thus, they have shown negligence and therefore, this issue is partly proved.* ***Issue No. 4 :-*** *During the Departmental Inquiry, the Delinquents have produced evidence in form of Defense Witnesses to establish that it was a settled practice that in case of a train running behind its schedule, the squad would return in any other train. Such a fact is inadmissible. Such practice can be said to be acceptable in ordinary circumstances.*	

		But, it is a fact that when Karsevaks are on move and they were about to return and police personal ought to perform their duty, invariably, even if they do not any prior information in which train the Karsevaks were returning. Instead of giving consideration to the this aspect, they should have performed the duty assigned to them. But, they have not paid attention to this aspect. They did not take permission from any officer and went on to take decision as to how they should perform their duty and they returned to Ahmedabad. Thus, as discussed at Issue No.3, they have committed serious negligence and misconduct and therefore, I consider the issue also as proved. ***Issue No. 5:-*** *Proved.* *Sd/- (illegible)* *Noel Parmar,* *Deputy Superintendent of Police* *Western Railways, Vadodara Division,* *Vadodara"*	
15.	22.2.2005	The Disciplinary Authority issued a Show Cause Notice to the petitioner to show cause why the punishment of removal, as contemplated in the Charge Memo, under Rule 3 of the Bombay Police (Punishment and Appeals) Rules, 1956 should not be imposed on the petitioners for grave	139 - 156

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		dereliction of duty and gross negligence.	
16.	1.04.2005	Petitioners submitted their reply to show cause notice.	157 - 285
17.	28.10.2005	After considering the reply filed by the Petitioners, the final order of "Removal" came to be passed, by Superintendent of Police (Railway), Vadodara, Western Railway, Vadodara.	21 - 80
18.	17.11.2005	Petitioners thereafter preferred Appeal challenging the order dated 28.10.2005 of removal by the Disciplinary Authority, Superintendent of Police, Western Railway, Vadodara.	286 - 300
19.	25.04.2007	Appeal came to be rejected by the Additional DGP, CID Crime Branch and Railways, Gujarat State, Gandhinagar.	301 - 310
20.	5.07.2007	Petitioners preferred Revision Application before the Additional Chief Secretary, Home Department, State of Gujarat.	311 - 349
21.	September 2007	Petitioners of Special Civil Application No. 25294 of 2007 to Special Civil Application No. 25297 of 2007 preferred petition	

		challenging the order of Removal and so also rejection of Appeal. Petitions were filed at the stage when the Revision Application was pending before the Revision Authority.	
22.	3.10.2007	Hon'ble Court directed the Revisional Authority to hear the petitioners and take a decision within a period of 6 weeks. The petitioners were permitted to revive the petition in case of adversarial orders.	-
23.	6.2.2008	Additional Chief Secretary, Home Department, State of Gujarat, heard the petitioners, framed 13 issues, returned detailed finding on each of those issues and upheld the findings and the consequential order passed by the Disciplinary authority and the Appellate Authority. Revision applications were rejected.	350 to 419

12.2. From the aforesaid, following emerge:

(A). Though the petitioners were assigned the duty of patrolling on Sabarmati Express train from Dahod to

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Ahmedabad as referred above, the petitioners failed to derelict their duties, which the petitioners are not in a position to dispute. Upon perusal of the record, it emerges that the petitioners defended themselves by taking contentions before the disciplinary authority that even if the petitioners would have been present, their presence would not have make any difference. It emerges that, the petitioners have contended that the petitioners could not have stopped the incident, as they never had the sufficient ammunition, and only the local police or C.B.I. could have stopped the unfortunate incident. The petitioners have placed on record the extract of station dairy of Ahmedabad Railway Station with respect to train patrolling to show that it is regular practice of the patrolling team to avail alternative train, in case of late running of either of two trains, which is duly produced by way of a chart at Annexure-10, Pg. 130, to substantiate the aforesaid contention for the period between 09.09.2001 and 03.02.2002. The aforesaid is of no avail to the petitioners, in view of the undisputed fact that the petitioners were assigned the duty to travel from Dahod to Ahmedabad in Sabarmati express train, having derelicted the same.

(B) This Court has perused the documentary evidences produced before this Court by Ms. Shah, learned AAG, before the competent authority, which include the following

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documents:

a. Station diary dated 26.02.2002 being 14/2002

b. Station dairy dated 27.02.2002 being 13/2002

c. Copy of the duty register of the petitioners from 18.02.2002 to 01.03.2002.

d. Copy of the register of station dairy at Dahod.

e. Certificate by Station Master dated 27.02.2002.

f. Extract of Note-books of the petitioners.

g. Statement of Station Master- Khelluram Tondaram Meena at Dahod Railway Station.

h. Statement of Un-armed A.S.I.- Shankarbhai Madhabhai.

(C). This Court has considered amongst the documents, statement of Station Master, viz. Khelluram Tondaram Meena at Dahod Railway Station, which is produced on record by way of Annexure-13 in the list of documents, wherein he was stated thus (true translation):

"Date:- 24/03/2002

My name is Khelluram Tondaram Mina, Age – 40 years, occupation – Service, R/a. Station Colony, House No. 135, Dahod, District. Panchmahal.

Being asked personally, I dictate that I am performing duty as Station Master since the year 1999 and my job is transferable.

On last 26, 27/02/2002, I reported on my duty as Station Master from 18.00 hours to 6.00 hours in the morning. I was present on my duty. We operate the trains as per the information of the trains given to us by the Control.

On 27/02/02, Rajkot – Bhopal Express Train arrived at

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00.36 hours at night and departed towards Ratlam at 00.38 hours.

The routine time of Sabarmati Express Train to go from Ratlam to Ahmedabad is 00.36 hours. But on that day, i.e. on 27/02/02, it was informed by the Control that the train was running four hours late and we inform the time of late running train after asking to Ratlam Control. If the running train is late for indefinite time, in that case if the train is late for more than twenty hours, it is stated to be running late for indefinite time. If anyone has stated that the time of the train was shown as late for indefinite time, then it is not true. Many staff of GRP personnel deployed for train patrolling arrive at Dahod Railway Station and inquire about the timings. Information of train and schedule are informed. But as the staff of GRP were asking me regarding the time of train schedule and as informed to me by the Control, it was informed that Sabarmati Express Train was running four hours late and that it was (not?) informed whether the train was running late for indefinite time. Entries are made at Dahod Railway Station regarding arrival and departure of up-down train and accordingly, entry was made in the register regarding arrival and departure of Sabarmati Express Train. Copy of concerned page of the register is produced herewith.

The facts stated by me are true and correct."

(D). The statement of Shankarbhai Madhabhai dated 10.03.2002 reads thus (true translation):

"My name is Shankarbhai Madhabhai, Buckle No. 778, ASI, Mobile Patrol, HQ.

I hereby state upon being asked in-person that I discharge my duty as an A.S.I. in the Mobile Patrol branch at the Police Headquarters, Western Railway.

It has been instructed to set up a mobile patrol with the purpose of providing immediate police assistance to the passengers commuting in some of the important trains passing through Gujarat State. It is decided to deploy 'A' Category mobile patrol in long-distance and important trains and 'B' Category mobile patrol in remaining other trains. The said scheme has come in force with effect from 14/04/1997 by the order vide No. GNH/R.B./260/97, dated 03/04/1997. As per this scheme, this

arrangement has been made in total 24 trains.

The policemen working in the moving patrol are verified by their separate Supervisory Officers with respect to their presence, absence, weapons, occurrence book, uniform, etc. Accordingly, they record the remarks in the Station Diary of the Police Station. In case any irregularity is found, they are entrusted with responsibility to seek explanations and dispose of the matter by presenting it before the Superintendent of Police. It is necessary for the policemen of each mobile patrol that they depart in their designated train and return to the scheduled station on time with the designated train. As per this scheme, policemen of mobile patrol are required to go to Dahod by Rajkot-Bhopal Express Train, departing from Ahmedabad and to return to Ahmedabad from Dahod with Sabarmati Express. In special circumstances, only if their returning train is late for the indefinite period, they may resort to the alternative arrangement, i.e. returning in other trains.

On 27/02/2022, it happened that Sabarmati Express was shown as departed at Godhara Railway Station, and consequently, communal riots erupted in the entire state of Gujarat. On 26/02/2002, Jabir Hussain Rasulmiyan, Head Constable, B.No. 1641, Kishorbhai Balubhai, Unarmed Police Constable, B.No. 354, Rasikbhai Rajabhai, Unarmed Police Constable, B.No. 407, Punabhai Motibhai, Unarmed Police Constable, B.No. 1450 and Kishorbhai Devabhai, Unarmed Police Constable, B.No. 1246 of Ahmedabad Railway Police Station departed from Ahmedabad on 18:25 hours, who were required to go to Dahod and return to Ahmedabad with Sabarmati Express from Dahod Railway Police Station. However, they did not follow it and all of them went to Ahmedabad by Shanti Express. Therefore, the passengers could not be provided the assistance of mobile petrol in the incident that took place at Godhara.

I hereby produce mobile patrol scheme and copy of the Office Order, dated 03/04/1997. The facts herein are proper and true as per my dictation.

Sd/-
Police Inspector, Ahmedabad
Railway Police Station."

(E) The aforesaid statements and documents produced on record are un-controverted and in view thereof,

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Sabarmati Express train which was late by 6 hours, does not fall within the criteria of a train running 'indefinitely late'. It further emerges that, if the train is delayed for at least 20 hours, than only in such situation, officers are permitted to travel by other train, after informing immediate superior officer. In the facts of the present case, no such permission is sought for by the petitioners herein to board Shanti Express instead of Sabarmati Express, which as per the findings of the competent authority, in the opinion of this Court, is correctly held to be serious, careless and negligent behavior on the part of the petitioners in discharging their duties as mentioned in the issue No.3.

(F) In the course of hearing, it is also pointed out to the Court that the petitioners in the course of inquiry submitted that the petitioners would have become martyr, if they had boarded the train. The petitioners herein are belonging to the police force and such statement from the police personnel is such that the same is rightly not accepted by the disciplinary authority. It is not in dispute that the Sabarmati Express train falls under category-'A'.

(G). There are no procedural lapses on the part of the competent authority, while arriving at the impugned findings. It is not even the case of the petitioners that the inquiry is violative of the principles of natural justice or it is not even the case of the petitioners that important witnesses have not

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been examined or that the documents relied upon in the disciplinary proceedings are not proved. The station diary entries in the railway registers effected by the petitioners are also proved and admitted by the petitioners. The duty form assigning the duties to the delinquent officer has been duly exhibited as document no.2, which is proved. The relevant extract of the same, which are hand-written by the petitioners, and which were required to be filled-in by each of the petitioners, are also proved. The false entries posted by the petitioners herein at Dahod Railway Station, wherein, it is recorded that the petitioners are boarding in Sabarmati Express, however, petitioners have travelled by Shanti Express, is also proved and is not in dispute. The inquiry report is on the basis of the evidence led by the respective parties which is also not questioned by the petitioners.

(H) The inquiry is conducted in accordance with the Gujarat Civil Services (Discipline and Appeal) Rules, 2002 and on perusal of the inquiry report, in due compliance of the Gujarat Civil Services (Discipline and Appeal) Rules, the P.O. permitted the petitioners to cross-examine all the witnesses led in support of evidence and dealt with the documentary evidences supplied. The inquiry officer alongwith the enquiry report submitted the following documents for due consideration to the disciplinary authority:

"i. Documents related to the issues framed.

ii. List of Documents submitted along-with charge memo.

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iii. Examination-in-chief and cross examination of witness.
iv. The Enquiry officer returned a finding of charges 1, 2, 4 and 5 to be proved and charge no 3 to be partly proved."

Considering the findings arrived at by the inquiry officer, as referred to above, the same are in consonance with the charges framed against the petitioners herein.

(I) In light of the aforesaid, the misconduct having been proved, the petitioners herein are imposed the punishment of removal as provided under Rule-3 of the Bombay Police (Punishment and Appeal) Rules, 1956. At this stage, it is apposite to refer to Rule-3 of the Bombay Police (Punishment and Appeal) Rules, 1956, which reads thus:

"(1) Without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely:

(a-1) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order;

(a-2) Suspension; (i) Reduction in rank, grade or pay or removal from any office of distinction or withdrawal of any special emoluments;

(1-a) Compulsory Retirement;

(ii) Removal from service which does not disqualify from future employment in any department other than the Police Department;

(iii) Dismissal which disqualifies from future employment in Government Service.

(1-A) (i) The appointing authority or any authority to which it is sub-ordinate or any other authority empowered by the State Government in this behalf may place a Police Officer under

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suspension where: -

(a) an inquiry into his conduct is contemplated or is pending, or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.

Explanation-The suspension of a Police Officer under this sub-rule shall not be deemed to be a punishment specified in clause (a 2) of sub-rule (ii) A Police Officer who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended by the appointing authority under this rule.

(iii) An order of suspension under sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is sub-ordinate.

(2) The following punishments may also be imposed upon any Police Officer if he is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which does not require his suspension or dismissal or removal: -

(1) Caution.

(ii) A reprimand (to be entered in the service book) (iti) Extra drill.

(iv) Fine not exceeding one month's pay.

(v) Stoppage of increments:

Provided that-

(a) the punishment specified in clause (iii) shall not be imposed upon any officer above the rank of Constable;

(b) the punishment referred to in clause (iv) shall not be imposed upon an Inspector.

Explanation-For the purposes of this rule. -

(1) A Police Officer, officiating in a higher rank at the time of the commission of the default for which he is to be punished, shall be treated as belonging to that higher rank.

(2) The reversion of a Police Officer from a higher post held by him in an officiating capacity to his substantive post does not amount to reduction.

(3) The discharge of a probationer whether during or at the end of the period of probation on account of his unsustainability for the service does not amount to punishment,

(4) The discharge of a temporary police officer on purely administrative grounds does not amount to punishment."

(J). Mr. Mehta, learned senior counsel submitted that the 'punishment of removal' imposed upon the petitioners is disproportionate to the alleged gravity of the misconduct.

In the opinion of this court, the punishment imposed / penalty of removal is in consonance with Rule-3 of the Bombay Police (Punishment and Appeal) Rules, 1956, as referred to herein-above, the charges levelled against the petitioners are proved, the competent authorities held petitioners guilty of "misconduct", which requires no interference, having applied the wednesbury test/ principle, considering the material on record, in absence of any perversity or absurdity in the punishment imposed.

(K). The contention is raised by Mr. Mehta, learned senior counsel that considering the charges levelled against the petitioners would show that the same are held to be proved, merely based on surmises and conjectures and that the petitioners had no information, knowledge or intimation

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that the Sabarmati express would be attacked and that the petitioners were in plain cloths and belonged to Mobile Squad, would not carry arms or wireless sets to attract least attention of them being policemen. The charges levelled against the petitioners does not constitute misconduct for the purposes of disciplinary proceedings and at the most it is the case / charge of negligence and carelessness on the part of the petitioners.

(a) In the opinion of this Court, it is not in dispute that, the petitioners themselves have accepted that the petitioners have made false entry at Dahod Railway Station. The petitioners were allotted duty on Sabarmati Express train, however, boarded Shanti Express. The petitioners thought it fit not to ratify such entry or to inform the higher officers. The petitioners herein are members of the police force and are expected to act in accordance with the duty so assigned to them and having failed to do so, the competent authority imposed the punishment upon the petitioners of "removal from service".

(b). From the record, it emerges that the at the time when the Sabarmati express went from Dahod to Godhra, the S-6 compartment was without any police personnel, i.e. all the 9 police personnel chose to travel by Shanti Express, though Sabarmati train was late by only 6 hours. The passengers were without any police personnel, on such train.

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The aforesaid results in negligence as also misconduct on the part of the petitioners in dereliction of their duties. The charges levelled against the petitioners are proved concurrently, with full-fledged departmental inquiry, which is also not in dispute. The competent authorities have acted in bona-fide manner. There appears to be no misuse of jurisdiction on the face of record and in accordance with the constitutional requirement of satisfying the principles of fairness as provided in Article-311(2) of the Constitution of India.

(c). The findings of fact arrived at by the competent authorities upon holding detailed inquiry and elaborately discussing the evidence on record, in absence of breach of cardinal principles of natural justice or in violation of any natural irregularity on the face of record neither proved nor alleged by the petitioners herein, do not require any interference.

In the opinion of this Court, the order of removal passed by the disciplinary authority is duly confirmed by the appellate authority as well as the revisional authority. All the competent authorities have arrived at the following findings concurrently, which reads thus:

i. All the petitioners belong to the railway police force. The petitioners were entrusted the duty of patrolling by Rajkot-Bhopal express from Ahmedabad to Dahod and

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entrusted the duty to ensure the safety of the passengers. Upon arriving at the assigned railway station, the petitioners were required to record and report of 'Kheriyat' (safely) in the station diary.

ii. The petitioners herein arriving at Dahod railway station, had recorded two parallel entries; entry no. 14, records 'khariyat' of Rajkot-Bhopal express from Ahmedabad to Dahod and the other entry regarding all the petitioners boarding the Sabarmati express, from Dahod to Ahmedabad. Both the entries are recorded at 12:35 a.m. the The aforesaid entries are reported to the control-room and the false entry of boarding Sabarmati express is not rectified by the petitioners.

iii. All the petitioners boarded the Shanti express at 5:21 hours, without any permission from the higher officers. Upon arriving at Ahmedabad, at 10:05 a.m, petitioners posted entry no. 13 in the railway station dairy that Shanti express has arrived, *khariyat (safely)*. As referred to above, the deposition of the Railway Officer and Station Master state that, it was never informed that the train was indefinitely delayed. All the petitioners were informed that the train was running by 6 hours.

iv. The findings of fact is recorded by the competent authorities that the petitioners were informed by the station master that a definite time of the Sabarmati express would be known, once the train reaches Ratlam Station. The aforesaid

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is admitted by the petitioners. The train reached at Ratlam Station at 4:19 hours and departed at 4:21 hours.

v. The competent authorities have concurrently held the petitioners guilty of gross negligence, misconduct and grave dereliction of duty. The impugned orders passed by the three statutory competent authorities, having examined the relevant documents, depositions and submissions on record. The impugned orders are passed, upon following due procedure in accordance with the rules and considering the oral and documentary evidences on record.

vi. In the opinion of this Court, the aforesaid findings of fact arrived by all the competent authorities are such that, the same having arrived at, upon following the due process of law, considering the documentary and oral evidences on record, evidences duly proved, witnesses were examined, cross-examined during the departmental inquiry, in accordance with the statutory rules, requires no interference.

(L). Mr. Mehta, learned senior counsel appearing for the petitioners, alleged bias against Shri Noel Parmar who was appointed as Presiding Officer (P.O.).

i. It is apposite to deal with the issue of Bias (the petitioners never raised the aforesaid objection, at the time when Shri Noel Parmar was appointed as Presiding Officer (P.O.). It is admitted by the petitioners that they were never

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objected to the appointment of the I.O.

iii. The aforesaid objection was raised for the first time before the disciplinary Authority, which was dealt with by the disciplinary Authority in detail, holding that in absence of any objection raised, at the relevant point of time, when Shri Parmar, was appointed as I.O., the said objection is not tenable.

iii. The revisional authority has categorically dealt with the said contention, wherein, in absence of any documents on record to prove bias, such contention is negated.

iv. At this stage, it is apposite to refer to the meaning of 'Bias'. According to dictionary, 'anything which tends or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased'. In other words, 'a predisposition to decide for or against one party without proper regard to the true merits of the dispute'. 'Bias' may be defined as a leaning of the mind, prepossession, inclination, propensity towards an object, condition of mind, partiality, mental process which is always the judgment, special influence, one-sided inclination, a predisposition to decide for or against one party without proper regard to the merits of the dispute. Bias may spring from personal, political, religious, communal, racial,

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commercial or economic considerations. "Bias" is a leaning of the mind, prepossession, inclination, propensity towards an object, bent of mind a mental power, which sways the judgment, that which sways the mind towards one opinion rather than another, as, bias of arbitrator, of judge or jury or witness. There are mainly four types of Bias, viz. (i) Pecuniary bias; (ii) Personal bias; (iii) Official bias, departmental bias, policy bias or bias as to subject-matter and (iv) Bias on account of judicial obstinacy.

v. While considering the principle of bias, the said principle co-exists with the principle of waiver. Waiver may be express or implied. Any objection may be inferred to have been waived, if the concerned delinquent is aware and conscious of the bias in the adjudicator as well as his right to object thereto, acquiesced in the proceedings by failing to take objections at the earliest opportunity. By appearing before the adjudicator and keeping silent, knowing all the facts, the said delinquent will be deemed to have abandoned his right later on to object to hearing by the concerned adjudicator on the ground of bias.

vi. In the facts of the present case, the petitioners appeared before the inquiry officer, cooperated in the inquiry proceedings and it is only after the inquiry was over that the petitioners raised objections for the first time against the inquiry officer Shri Noel Parmar, before the disciplinary

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authority with regard to the bias. It is alleged that Shri Parmar, inquiry Officer was biased against the present petitioners, in light of the fact that, Shri Parmar was also the investigating officer of Godhra riots.

vii. It is not in dispute that the petitioners have not been charged with any criminal liability nor are they prosecuted in the criminal proceedings of Godhra incident, which occurred on 27.02.2002.

viii. Shri Parmar was appointed as an inquiry officer, by virtue of the designation of the Dy. S.P., Western Railway, Vadodara.

ix. The inquiry undertaken in the criminal proceedings and the departmental proceedings are distinct in nature.

x. It emerges from the record in reply to the show cause notice at page-158, the petitioners never alleged bias against the appointment of Shri Parmar as inquiry officer, as from the manner in which the enquiry officer behaved, the petitioners believed that the enquiry officer would hold in favour of the petitioners. In absence of such contentions having been taken, at the initial stage, the competent authority declined to accept the said contention.

xi. In the course of hearing, Mr. Mehta, learned senior counsel is not in a position to controvert the fact that,

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at the first instance, Shri K.C. Bava, Deputy Superintendent of Police, Western Railway, Vadodara was appointed as Inquiry Officer. Upon Shri Bava, having been superannuated from service, Shri Noel Parmar, Deputy Superintendent of Police, Western Railway, Vadodara was appointed as Inquiry Officer. The said appointment was a statutory appointment, by virtue of designation of Deputy Superintendent of Police, Western Railway, Vadodara. Further, no criminal proceedings are initiated against the petitioners.

Mr. Mehta, learned senior counsel alleged personal bias against the P.O.

It is apposite to discuss the factors which may give rise to personal bias. The person judging may be a relative or a friend or a business associate of a party, there may be a personal grudge, enmity or grievance or professional rivalry against such party. Resultantly, there is a likelihood that a Judge may be biased towards one party or prejudiced towards the other.

In the facts of the present case, as held by the competent Authorities, dealing with the said allegation of the bias, in absence of any documents / proof on record to prove the alleged Bias, such contention is negatived.

13. In the opinion of this Court, the facts of the present case are governed by the POSITION OF LAW as referred below

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with respect to the proportionality, misconduct, concurrent findings of fact and bias:

***PROPORTIONALITY, MISCONDUCT AND JUDICIAL REVIEW*:**

A. In the case of **State of Rajasthan V/s. Bhupendrasing reported in AIR 2024 SC 4034**, the learned Single Judge and the Hon'ble Division Bench of the High Court of Rajasthan held that the disciplinary inquiry, was based on no evidence and the inquiry which was initiated was intervened by the Hon'ble Supreme Court. Upon discussing the scope of examination and interference under Article-226 of the Constitution of India, while relying upon the various judgments of the Hon'ble Apex Court and discussing the same in Para-23 to 28 and 31, it is held as under:

> *"23.The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') in a case of the present nature, is no longer res integra. In State of Andhra Pradesh v. S Sree Rama Rao, AIR 1963 SC 1723, a 3-Judge Bench stated:*
>
> *'7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High*

Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.'

(emphasis supplied)

24.The above was reiterated by a Bench of equal strength in State Bank of India v Ram Lal Bhaskar, (2011) 10 SCC 249. Three learned Judges of this Court stated as under in State of Andhra Pradesh v Chitra Venkata Rao, (1975) 2 SCC 557:

'21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25: (1964) 2 LLJ 150]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the

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enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

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23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477: (1964) 5 SCR 64].

24 The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

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26. For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and reassessing the evidence. The appeal is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.'

(emphasis supplied)

25.In State Bank of India v S K Sharma, (1996) 3 SCC 364 : (AIR 1996 SC 1669), two learned Judges of this Court held:

'28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152 : (AIR 1982 SC 710)] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable - a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985

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AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding - which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate - take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66: (1963) 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid - or void, if one chooses to use that expression (Calvin v. Carr [1980 AC 574 : (1979) 2 All ER 440: (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L and S) 1184: (1993) 25 ATC 704) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L and S) 62) it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct - in the light

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of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L and S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.'

26.In Union of India v K G Soni, (2006) 6 SCC 794 : (AIROnline 2006 SC 563), it was opined:

'14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.'

(emphasis supplied)

27.The legal position was restated by two learned Judges in State of Uttar Pradesh v. Man Mohan Nath Sinha, (2009) 8 SCC 310:

'15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on

merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.'

28.Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to re-appreciate the evidence, which the above- enumerated authorities caution against. The present coram, in Bharti Airtel Limited v. A. S. Raghavendra, (2024) 6 SCC 418, has laid down:

'29. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand.'

(emphasis supplied)

31.It is well-settled that if the Disciplinary Authority accepts findings recorded by the Enquiry Officer and proceeds to impose punishment basis the same, no elaborate reasons are required, as explained by three learned Judges of this Court vide Boloram Bordoloi v Lakhimi Gaolia Bank, (2021) 3 SCC 806:

'11. ... Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. ...'

Mr. Mehta, learned senior counsel relied on Para-36 of the

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said judgment and submitted that the aforesaid judgment is not applicable in the facts of the present case, in light of the fact that, in the facts of the said case, though the delinquent had returned the money within a period 1 1/2 year, the factual position could not be controverted.

In the opinion of this Court, it is not in dispute that the petitioners were assigned the duty to return by Sabarmati Express, however, while making the note to travel by Sabarmati Express, petitioners travelled by Shanti Express and endorsed 'Kheriyat'.

B. In the case of ***Om Kumar and Others v/s. Union of India*** reported in ***(2001) 2 SCC 386***, wherein, the Hon'ble Apex Court in Para-23, 24, 26 and 66 to 71 held thus:

> *"Submissions of counsel and legal issues emanating therefrom*
>
> ***23.*** *It was argued at great length by learned Senior Counsel Shri K. Parasaran and Dr Rajeev Dhavan that the question as to the quantum of punishment to be imposed was for the competent authority and that the courts would not normally interfere with the same unless the punishment was grossly disproportionate. The punishments awarded satisfied the Wednesbury rules. On the other hand, learned amicus curiae argued that, on the facts of the case, the cases of these two officers justify reference to the Vigilance Commissioner.*
>
> ***24.*** *We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury principles, (See Associated Provincial Picture Houses v. Wednesbury Corpn. This Court had occasion to lay down the narrow scope of the jurisdiction in*

several cases. The applicability of the principle of "proportionality" in administrative law was considered exhaustively in Union of India v. Ganayutham where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

I(a) Wednesbury principles

26. *Lord Greene said in 1948 in the Wednesbury case that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union v. Minister of Civil Service (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".*

66. *It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.*

67. *But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated*

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as arbitrary. [In G.B. Mahajan v. Jalgaon Municipal Council (SCC at p. 111).] Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata Cellular v. Union of India (SCC at pp. 679-80), Indian Express Newspapers Bombay (P) Ltd. v. Union of India (SCC at p. 691), Supreme Court Employees' Welfare Assn. v. Union of India (SCC at p. 241) and U.P. Financial Corpn. v. Gem Cap (India) (P). Ltd. (SCC at p. 307) while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise then being discriminatory), this Court has confined itself to a Wednesbury review always.

68. *Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on Wednesbury principles applies.*

Proportionality and punishments in service law

69. *The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under Article 14.*

70. *In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham.*

71. *Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum*

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of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

C. In the case of ***State of U.P. v/s. SheoShanker Lal Srivastava and Ors.*** reported in ***(2006) 3 SCC 276***, wherein, the Hon'ble Apex Court in Para-21 and 22 held thus:

"21. *The High Court while accepting that the appellant was rightly held to be guilty of the charges of misconduct, therefore, committed a manifest error in interfering with the quantum of punishment.*

22. *It is now well settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."*

D. It is apposite to refer in the case of ***State of Meghalaya and Others v/s. Mecken Singh N. Marak*** reported in ***(2008) 7 SCC 580***, Para -16 to 18 which reads thus:

"16. *The respondent belonged to a disciplined force. He was supposed to carry out instructions given to him by his superior. Not only did he flout the instructions, but conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition which could be misused. When a statute gives discretion to the administrator to take a decision, the scope of judicial review would remain limited. The proved charges clearly established that the respondent, who was a police officer failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the exchequer and society.*

17. *Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate*

authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted.

18. *For the foregoing reasons the appeal succeeds. The judgment rendered by the Division Bench of the Gauhati High Court dated 7-3-2006 delivered in Writ Appeal No. 282 of 2006 setting aside the order removing the respondent from service is quashed. The direction given by the Division Bench to the appellate authority, namely, the Inspector General of Police to consider and inflict punishment, short of removal from service, commensurate with the gravity of the proven misconduct of the respondent is set aside. The order passed by the competent authority removing the respondent from service is restored. The appeal is accordingly allowed. There shall be no order as to costs."*

E. In the case of ***State of Uttar Pradesh & Another v/s. Man Mohan Nath Sinha and Another*** reported in ***(2009) 8 SCC 310***, the Hon'ble Apex Court has held in Para-15 and 16, which read thus:

"15. *The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant*

case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.

16. *Resultantly, the appeal is allowed and the order dated 23-5-2008, passed by the High Court is set aside. Writ petition is restored to the file of the High Court for fresh hearing and disposal. Needless to say that the respective arguments of the parties are kept open to be agitated before the High Court which obviously will be considered on their own merits. We request the High Court to dispose of the matter as expeditiously as may be possible and preferably within four months. No order as to costs."*

F. In the case of ***General Manager (Operation -1)/Appellate Authority, UCO Bank And Others v/s. Krishnakumar Bharadwaj reported in (2022) 13 SCC 237***, wherein, the Hon'ble Apex Court in Para-17 held thus:

"17. *So far as the scope of judicial review in the matters of disciplinary inquiry is concerned, it has been settled that the constitutional courts while exercising their power of judicial review under Articles 226 or 227 of the Constitution would not assume the role of the appellate authority where jurisdiction is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. At the same time, the power of judicial review is not analogous to adjudication of the case on merits as an appellate authority."*

G. In the decision rendered in Special Civil Application No. 6022 of 1991 dated 07.11.2016, wherein, it is held by the High Court as under:

"It is now well-settled by a plethora of judgments of the Supreme Court that in exercise of its powers under Articles 226

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and 227 of the Constitution of India, the High Courts should not venture into the re-appreciation of evidence or interfere with the conclusion arrived at by the disciplinary authority in the inquiry proceedings, if the same are conducted in accordance with law, or go into the reliability/adequacy of evidence, or interfere, if there is some legal evidence on which the findings are based, or correct error of fact, however, grave it may be, or go into the proportionality of punishment unless it shocks the conscience.

It is equally well-settled that the High Courts, in exercise of its powers under Articles 226 and 227 of the Constitution of India, can only consider, whether the inquiry held by the competent authority was in accordance with the procedure established by law, and the principles of natural justice, whether irrelevant or on extraneous consideration and/or exclusion of admissible or material evidence or admission of inadmissible evidence being influenced the decision rendering it vulnerable.

This Court may interfere if the finding is wholly arbitrary and capricious based on no evidence which no reasonable person could have ever arrived at.

The inquiring authority vide its report concluded that all the charges except one were held to be established reflecting upon the writ-applicant's devotion and diligence towards the work. The disciplinary authority later considered the relevant records of the case including the findings of the inquiring authority and the submissions made by the writ-applicant and thought fit to pass the order of dismissal from service.

I take notice of the fact that the inquiring authority has examined each and every charge levelled against the writapplicant including the documents produced by the presenting officer and came to the conclusion that all the charges except one were fully proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond the reasonable doubt.

The documents on record support all the allegations levelled against the writ-applicant.

In Narendra Kumar Pandey (supra), the Supreme Court, in paras 25 and 26, observed as under:

"25. The High Court, in our view, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an

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alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. In State Bank of India and others v. Ramesh Dinkar Punde (2006) 7 SCC 212 : (2006 AIR SCW 5457), this Court held that the High Court cannot re-appreciate the evidence acting as a court of Appeal. We have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules.

26. This court in State of Andhra Pradesh v. Sree Rama Rao, AIR 1963 SC 1723 held:

"7...Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence especially when the charged officer had not participated in the inquiry and had not raised the grounds urged by him before the High Court by the Inquiring Authority."”

In a very recent pronouncement in the case of Union of India and others v. P.Gunasekaran, [2015(2) SCC 610], the Supreme Court in details has explained the position of law so far as the scope of interference in the matter relating to the disciplinary proceedings is concerned. I may quote the observations made by the Supreme Court from paras 12 to 20 as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge No. 1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

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

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

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

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

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

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

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

(I) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao1, many of the above principles have been discussed and it has been concluded thus:

"7. .....The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and

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according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. In State of Andhra Pradesh and others v. Chitra Venkata Rao [(1975) 2 SCC 557], the principles have been further discussed at paragraphs-21 to 24, which read as follows:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao (AIR 1963 SC 1723). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by

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an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjan Singh (AIR 1969 SC 966) said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High

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Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan (AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16. These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh [(1977) 2 SCC 491]. To quote the unparalled and inimitable expressions:

"4. ..... in a domestic enquiry the strict and sophisticated rules

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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, fair play 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. ....."

17. In all the subsequent decisions of this Court up to the latest in Chennai Water Supply and Sewarage Board v. T. T. Murali Babu (2014) 4 SCC 108 : (AIR 2014 SC 1141), these principles have been consistently followed adding practically nothing more or altering anything.

18. On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

"Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ...."

19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

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

In Chairman and Managing Director, United Commercial Bank (supra), the Supreme Court in paras 14 and 15 held as under:

"14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer, Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, 1996 (9) SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord

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Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All ER 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dedley) Ltd. v. Crabtres (1974 LCR 120), it was observed : "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

In Bela Bagchi (supra), the Supreme Court observed the following in para 15:

"15. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer / employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996) (9) SCC 69), it is no defence available to say that there was no loss or profit resulted

in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

In Ganesh Santa Ram (supra), the Supreme Court observed in paras 32 and 33 as under:

"32. The learned senior counsel also relied on para 14 of the above judgment. Replying on the above passage, Mr. Salve submitted that the appellant, the Branch Manager of a Bank is required to exercise higher standards of honesty and integrity when he deals with the money of the depositors and the customers and, therefore, he is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of the Bank Officer. According to Mr. Salve, good conduct and discipline are inseparable for the functioning of every officer, Manager or employee of the Bank, who deals with public money and there is no defence available to say that there was no loss or profit resulted in the case, when the Manager acted without authority and contrary to the rules and the scheme which is formulated to help the Educated Unemployed Youth. Mr. Salve's above submissions is well merited acceptance and we see much force in the said submission.

33. The Bank Manager/Officer and employees and any Bank nationalised/or non-nationalised are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge No.5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant does not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and

therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC, Etawah and Ors. v. Hoti Lal and Anr. reported in 2003(3) SCC 605. Wherein this Court has held as under :-

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned single Judge upholding the order of dismissal."”

Applying the principles discernible from the afore-noted decisions of the Supreme Court to the case in hand, I hold that the disciplinary authority committed no error in arriving at the conclusion that the writ-applicant was guilty of the acts of misconduct as alleged.

The above takes me to deal with the principal and the only argument as such canvassed on behalf of the writapplicant as regards the non-supply of the documents.

On behalf of the Bank, an affidavit-in-reply has been filed, inter alia, stating as under :

“17. With reference to paragraph 15 of the petition, I deny that the disciplinary authority has taken a decision to inflict the punishment of stoppage of 3/4 increments, as alleged. I further deny that the superior authority at Head Office has officially or otherwise dictated over the disciplinary authority to pass the order of termination against the petitioner, as alleged. I further deny that the disciplinary authority has passed the order of termination against the petitioner as alleged. I submit that the petitioner is making vague and baseless allegations against the independent authority and only because the charges are proved against the petitioner, the respondent Bank had terminated the services of the petitioner and now at this stage, the petitioner is making baseless submissions against the departmental authority. I

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however, submit that during the departmental enquiry proceedings he has never made any allegation against the authority.

I deny that the disciplinary authority on going through all the documents has reached to the conclusion to inflict the punishment of stoppage of 3/4 increments, as alleged. I further deny that the authority over the disciplinary authority had decided to terminate the services of the petitioner, as alleged. I submit that the petitioner is in habit of making repeated allegations which are baseless and vague in nature against the independent authority of the respondent Bank. I submit that the petitioner has no cause of action to approach this Hon'ble High Court by way of filing of present petition under Article 226 of the Constitution of India for appropriate prayers made by him, as alleged.

19. With reference to paragraph 17 of the petition, I submit that petitioner has been repeating various submissions and contentions which are already dealt with by me hereinabove. However, I deny that the the petitioner has reliably learnt that the disciplinary authority had suggested for stoppage of few increments whereas the higher authority at Head Office directed that the petitioner's services should be terminated, as alleged. I further submit that the documents and material which are relied upon and necessary for the purpose of enquiry have been supplied to the petitioner. I however deny that there is a case of official dictation on the part of the higher authorities over the disciplinary authority as alleged. I submit that in any case, the higher authority has not influenced the disciplinary authority to pressurize the disciplinary authority. I further deny that action of termination of the services on the part of the respondent authorities is illegal and deserves to be set aside, as alleged. I further submit that the petitioner is knowing each and every document which is necessary for the enquiry and therefore, there is no question of any other documents which have gone into the mind of the authority, as alleged. I further submit that each and every document is supplied which is necessary and relied upon by the respondent Bank, at the time of departmental enquiry and as per the orders passed by this Hon'ble Court in Special Civil Application No.4043 of 1991 also, each and every document which is relied upon and necessary to be supplied, has been supplied to the petitioner. I further submit that there is no question of violation of provisions of Articles 14 and 16 of the Constitution of India, as alleged."

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In the additional affidavit-in-reply filed on behalf of the Bank, it has been stated as under :

"5. I say that after hearing the delinquent and the Bank at full length, the Inquiry Officer had given his Report of the Inquiry to the Disciplinary Authority. I say that on the basis of the Report of the Inquiry Authority, the then Disciplinary Authority who was my predecessor had given tentative findings. I say that before he arrived at tentative findings, he also issued a letter to the petitioner, forwarding to him a copy of the findings reported by the Inquiry Authority by a letter dated 23.3.1991.

6. I say that petitioner filed his reply to the findings reported by the Inquiry Authority by a reply dated 15.4.1991. I say that when I took charge of this Zone, a copy of findings of the Inquiry Report, copy of the reply to the findings of the Inquiry Authority by the petitioner and a copy of the tentative decision arrived at by the Disciplinary Authority were there on the file.

7. I say that in the meanwhile, the petitioner preferred a petition being Special Civil Application No.4043 of 1991 in the month of June, 1991 and the order was passed by this Hon'ble Court and the said order was served on the Bank.

8. I say that before 16.8.1991, I have gone through the findings arrived at by Inquiry Authority, reply to the findings of the Inquiry Authority given by petitioner dated 15.4.1991 and considering both and looking into inquiry proceedings, I decided to come to the same conclusion which was tentatively arrived at by my predecessor as per his observations. I say that thereafter, I had also gone through the observations made by my predecessor and I find that it is a perfece order and therefore, ultimately, after looking into and considering the entire enquiry proceedings, findings of the Inquiry Authority, reply given by the petitioner to the findings dated 15.4.1991 and observations made by my predecessor, I passed a final order on 16.8.1991."

It appears that much emphasis is sought to be laid by the learned counsel appearing for the writ-applicant on the original investigating report/preliminary inquiry report of one Shri R.R.Mankame, officer of the Vigilance Cell of the Bank.

I fail to understand what is the legal basis for the demand of the copy of such report. Even if, Shri Mankame was examined as one of the witnesses in the inquiry, it is difficult for me to accept the argument that in the absence of such report prepared by Shri Mankame, the writ-applicant was unable to effectively

cross-examine him. It is settled law that a delinquent is not entitled to a preliminary inquiry report.

In the case of Krishna Chandra Tandon v. The Union of India, (1974)4 SCC 374, the Supreme Court held in para 16 as under :

"Mr.Hardy next contended that the appellant had really no reasonable opportunity to defend himself and in this connection he invited our attention to some of the points connected with the enquiry with which we have now to deal. It was first contended that inspection of relevant records and copies of documents were not granted to him. The High Court has dealt with the matter and found that there was no substance in the complaint. All that Mr. Hardy was able to point out to us was that the reports received by the Commission of Income- tax from his departmental subordinates before the charge-sheet was served on the appellant had not been made available to the appellant. It appears that on complaints being received about his work the Commission of Income-tax had asked the Inspecting Assistant Commissioner Shri R.N.Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr.Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copes of the same should be given to the delinquent. It is not the case here that either the Enquiry Officer or the Commissioner of Income-tax relied on the report of Shri R.N.Srivastava or any other officer for his finding against the appellant. Therefore, there is no substance in this submission."

In the case of Chandrama Tewari v. Union of India, (1987)4 JT 98 (SC), the Supreme Court held as under :

"However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are

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necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied up by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recoding finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non- supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer."

Thus, the non-supply of the document on which the Inquiry Officer does not rely during the course of the inquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the Inquiry Officer to arrive at his conclusion, the non-supply of which would cause prejudice being violative of the principles of natural justice. Even then, the non-supply of those documents prejudiced the case of the delinquent officer must be established by the delinquent. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of the principles of natural justice. (see Syndicate Bank v. Venkatesh Gururao Kurati, AIR 2006 SC 3542)

In the case of Union Bank of India v. Vishwa Mohan, AIR 1998 SC 2311, the Supreme Court observed as under :

"9. We are totally in disagreement with the above quoted reasoning of the High Court. The distinction sought to be drawn by the High Court that the first charge sheet served on the respondent related to the period when he was a clerk whereas other three charge sheets related to the period when he was promoted as a bank officer. In the present case, we are required to see the findings of the Inquiry Authority, the order of the

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Disciplinary Authority as well as the order of the Appellate Authority since the High Court felt that the charges levelled against the respondent after he was promoted as an officer were not of serious nature. A bare look at these charges would unmistakably indicate that they relate to the misconduct of a serious nature. The High court also committed an error when it assumed that when the respondent was promoted as a bank officer, he must be having a good report otherwise he would not have been promoted. This finding is totally unsustainable because the various acts of misconduct came to the knowledge of the bank in the year 1989 and thereafter the first charge sheet was issued on 17th February, 1989. The respondent was promoted as a bank officer some time in the year 1988. At that time, no such adverse material relating to the misconduct of the respondent was noticed by the bank on which his promotion could have been withheld. We are again unable to accept the reasoning of the High Court that in the facts and circumstances of the case "it is difficult to apply the principle of severability as the charges are so inextricably mixed up." If one reads the four charge sheets, they all relate to the serious misconduct which include taking bribe, failure to protect interest of banks, failure to perform duties with utmost devotion, diligence, integrity and honesty, acting in a manner unbecoming of a bank officer etc. in our considered view, on the facts of this case, this principle has no application but assuming that it applies yet the High Court has erred in holding that the principle of severability cannot be applied in the present case. The finding in this behalf is unsustainable. As stated earlier, the appellant had in his possession the inquiry report/findings when he filed the statutory appeal as well as the writ petition in the High Court. The High Court was required to apply its judicial mind to all the circumstances and then form its opinion whether nonfurnishing of the report would have made any difference to the result in the case and thereupon pass an appropriate order. In paragraph 13, this Court in Managing Director, ECIL, Hyderabad, (1994 AIR SCW 1050) (supra) has very rightly cautioned :

"The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts."

“In our considered view, the High Court has failed to apply its judicial mind to the facts and circumstances of the present case and erroneously concluded that non-supply of the inquiry

report/findings has caused prejudice to the respondent."

"11. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the Inquiry Authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/ depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the inquiry report/findings to him."

In the case of Burdwan Central Cooperative Bank Ltd. v. Asim Chatterjee, (2012)2 SCC 641, the Supreme Court considered the issue as regards the non-supply of the report of the Inquiry Officer and the absence of a second show-cause notice. The Supreme Court, in para 17, held as under :

"17. However, there is one aspect of the matter which cannot be ignored. In B. Karunakar's case, (AIR 1994 SC 1074 : 1994 AIR SCW 1050) (supra), despite holding that non-supply of a copy of the report of the Inquiry Officer to the employee facing a disciplinary proceeding, amounts to denial of natural justice, in the later part of the judgment it was observed that whether in fact, prejudice has been caused to the employee on account of non-furnishing of a copy of the inquiry report has to be considered in the facts of each case. It was observed that where the furnishing of the inquiry report would not make any difference to the ultimate outcome of the matter, it would be a perversion of justice to allow the concerned employee to resume his duties and to get all consequential benefits. It was also observed that in the event the Inquiry Officer's Report had not been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to what prejudice had been caused to him on account of non-supply of the report. It was held that the order of punishment should not be set aside mechanically on the ground that the copy of the inquiry report had not been supplied to the employee. This is, in fact, a case where the order of punishment had been passed against the Respondent No.1 on allegations of

financial irregularity. Such an allegation would require serious consideration as to whether the services of an employee against whom such allegations have been raised should be retained in the service of the Bank. Since a Bank acts in a fiduciary capacity in regard to people's investments, the very legitimacy of the banking system depends on the complete integrity of its employees. As indicated hereinbefore, there is a live-link between the Respondent No.1's performance as an employee of the Samity, which was affiliated to the Bank, and if the Bank was of the view that his services could not be retained on account of his previous misdemeanour, it is then that the second part of B. Karunakar's case (supra) becomes attracted and it becomes necessary for the court to examine whether any prejudice has been caused to the employee or not before punishment is awarded to him. It is not as if the Bank with an ulterior motive or a hidden agenda dismissed the Respondent No.1 from service, in fact, he was selected and appointed in the Appellant-Bank on account of his merit and performance at the time of interview. It cannot be said that the Bank harboured any ill-feeling towards the Respondent No.1 which ultimately resulted in the order of dismissal passed on 8th May, 2010. We, therefore, repeat that since no prejudice has been caused to the Respondent No.1 by the non-supply of the Inquiry Officer's Report, the said Respondent had little scope to contend that the disciplinary proceedings had been vitiated on account of such non-supply."

In Sarv U.P.Gramin Bank v. Manoj Kumar Sinha, (2010)3 SCC 556, the Supreme Court held in para 27, 28 and 30 as under :

"27. At the time when the plea was raised before the High Court that the impugned orders are vitiated on account of the non-supply of enquiry report, it would have been appropriate for the High Court to examine the averments made in the writ petition. A perusal of the writ petition would show that the petitioner has failed to lay any foundation to establish that any prejudice has been caused by the non-supply of the enquiry report. In the case of ECIL (AIR 1994 SC 1074 : 1994 AIR SCW 1050) (supra) a constitution Bench of this Court reiterated the ratio of law in Mohd. Ramzan Khan case (AIR 1991 SC 471) (supra) as follows :

"As held by this Court in Union of India v. Mohd. Ramzan Khan, when the inquiring authority and the disciplinary authority are not one and the same and the disciplinary authority appoints an inquiring authority to inquire into charges levelled against a delinquent officer who holds inquiry, finds him guilty and

submits a report to that effect to the disciplinary authority, a copy of such report is required to be supplied by the disciplinary authority to the delinquent employee before an order of punishment is imposed on him. It was also held that non-supply of report of the inquiry officer to a delinquent employee would be violative of principles of natural justice. The Court observed that after the Constitution (Forty-second Amendment) Act, 1976, second opportunity contemplated by Article 311(2) of the Constitution had been abolished, but principles of natural justice and fair play required supply of adverse material to the delinquent who was likely to be affected by such material. Non-supply of report of the inquiry officer to the delinquent would constitute infringement of the doctrine of natural justice."

28. The ECIL (AIR 1994 SC 1074 : 1994 AIR SCW 1050, Paras 5 to 7) matter was placed before the Constitution Bench as the attention of the Court was invited to a three-Judge Bench decision of this Court in Kailash Chandra Asthana v. State of U.P., 1988 (3) SCC 600 : (AIR 1988 SC 1338) wherein it was held that non-supply of the report would not ipso facto vitiate the order of punishment in the absence of prejudice to the delinquent. Upon a detailed consideration of the entire cash law this court laid down certain principles which are as follows :

"18. In this view of the matter, the Court dismissed the writ petition. It would thus be clear that the contention before this Court in that case was that the copy of the report of the inquiring authority was necessary to show cause at the second stage, i.e., against the penalty proposed. That was also how the contention was understood by this Court. The contention was not and at least it was not understood to mean by this Court, that a copy of the report was necessary to prove the innocence of the employee before the disciplinary authority arrived at its conclusion with regard to the guilt or otherwise on the basis of the said report. Hence, we read nothing in this decision which has taken a view contrary to the view expressed in E. Bashyan case (AIR 1988 SC 1000) by a Bench of two learned Judges or to the view taken by three learned Judges in Union of India v. Mohd. Ramzan Khan (AIR 1991 SC 471).

19. In Mohd. Ramzan Khan case the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against

the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A.K. Kraipak v. Union of India (AIR 1970 SC 150) it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasijudicial ones. An unjust decision in an administrative inquiry may have a more farreaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and

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circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In Chairman, Board of Mining Examination v. Ramjee (AIR 1977 SC 965) the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

23. What emerges from the above survey of the law on the subject is as follows.

24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was, however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity' incorporated earlier

in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Fortysecond Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other."

30. Thereafter, this Court notices the development of the principle that prejudice must be proved and not presumed even in cases where procedural requirements have not been complied with. The Court notices a number of judgments in which the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant. Ultimately, it is concluded as follows :

"44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that nonsupply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice

had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."”

In view of the above, there is no room for the writapplicant to contend that the order of dismissal deserves to be quashed on the ground that the investigation report of the Vigilance Officer was not supplied to the writ-applicant. It is also very difficult for me to accept the contention that since the preliminary inquiry report was a part of the record, the disciplinary authority might have got influenced by the contents of such report and, therefore, the copy of the report should have been supplied to the writ-applicant.

The reliance placed by Mr.Tanna in the aforesaid context on the judgment of this Court in the case of D.S.Jariwala, in my view, is of no avail to the writ-applicant including the judgment of the Division Bench of this Court rendered in the Letters Patent Appeal No.1022 of 2014.

In the overall view of the matter, I hold that no case is made out to disturb the impugned order of dismissal passed by the Bank.

This writ-application, therefore, fails and is hereby rejected. Rule discharged."

CONCURRENT FINDINGS:

H. In the case of ***State of Uttar Pradesh v/s. Lakshmi Sugar and Oil Mills Limited and Others*** reported in ***(2013) 10 SCC 509***, wherein, the Hon'ble Apex Court in Para-20 held thus:

"20. The order passed by the District Consolidation Director/Collector, Hardoi also concurred with the view taken by the Officers below and held that there was no evidence on record to show that the subject land was ever held or occupied for agricultural purposes or that any agricultural activity was ever carried out on the same. These concurrent findings of fact, in our opinion, could not have been reversed by the High Court in its writ jurisdiction. The High Court obviously failed to appreciate that it was not sitting in appeal over the findings

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recorded by the authorities below. It could not reappraise the material and hold that the land was held or occupied for cultivation and substitute its own finding for that of the authorities. In as much as the High Court did so, it committed an error. It is noteworthy that the revenue record clearly belied the assertion of the respondent company and described the land as "Parti Kadim Tilla" which meant that the land has not been cultivated for a long time and is in the form of a hillock."

BIAS:

I. In the case of ***South Indian Cashew Factories Workers' Union v/s. Kerala State Cashew Development Corporation Limited and Others*** reported in ***(2006) 5 SCC 201***, wherein the Hon'ble Apex Court in Para-11 to 15 held thus:

*"**11.** In Delhi Cloth and General Mills Co. Ltd. v. Labour Court this Court has held that merely because the enquiry officer is an employee of the management it cannot lead to the assumption that he is bound to decide the case in favour of the management.*

***12.** In Saran Motors (P) Ltd. v. Vishwanath this Court held as follows : (LLJ p. 141)*

"It is well known that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer."

***13.** Therefore, the finding of the Labour Court that enquiry was vitiated because it was conducted by an officer of the management cannot be sustained.*

***14.** The only other ground found by the Labour Court against the enquiry officer is that he made some unnecessary observations and, therefore, he was biased. The plea that the enquiry officer was biased was not raised during the enquiry or pleadings before the Labour Court or in the earlier proceedings before the High Court. The bias of the enquiry officer has to be specifically pleaded and proved before the adjudicator. Such a plea was significantly absent before the Labour Court. We also note that the Labour Court itself found that the enquiry officer relied on the evidence adduced in the enquiry and his findings were not*

perverse. After such a finding, even if he has stated some unwarranted observations, it cannot be stated that the report is biased. In TELCO v. S.C. Prasad this Court held that : (SCC pp. 380-81, para 13)

"13. Industrial Tribunals, while considering the findings of domestic enquiries, must bear in mind that persons appointed to hold such enquiries are not lawyers and that such enquiries are of a simple nature where technical rules as to evidence and procedure do not prevail. Such findings are not to be lightly brushed aside merely because the enquiry officers, while writing their reports, have mentioned facts which are not strictly borne out by the evidence before them."

***15.** In this case for finding the employee guilty, the enquiry officer relied on the evidence adduced in the enquiry and the Labour Court itself found that the findings were not perverse. In such circumstances, the preliminary order of the Labour Court setting aside the enquiry on the ground that enquiry was conducted by an officer of the management and he had made some observations in the enquiry report which were not warranted in the case is not a vitiating factor and these reasons are not sufficient to set aside the enquiry."*

J. In the case of ***Regional Manager, UCO Bank And Another v/s. Krishnakumar Bharadwaj*** reported in ***(2022) 5 SCC 695,*** in Para-22 of the said decision, the Hon'ble Apex Court has held as under:

***"22.**The submission made by the learned counsel for the respondent that the inquiry officer was biased and that caused prejudice to him, suffice it to say, that merely making allegation that he was biased is not sufficient unless supported by the material placed by him either during the course of inquiry or before the disciplinary/appellate authority. Even no submission was made before the High Court also and it deserves no consideration except rejection."*

In the facts of the said case, the Hon'ble Supreme Court was considering an appeal directed against the judgment and

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order passed by the Hon'ble High Court of Allahabad affirming the order of the learned Single Judge, pursuant to which the inquiry proceedings and consequential punishment inflicted upon the respondent delinquent were quashed and set aside. The learned counsel in the course of hearing before the Hon'ble Apex Court raised the plea against the inquiry officer, being biased, but no heed was paid to his request and it was submitted that the documents demanded by him were not made available, despite of request and order passed by the disciplinary authority being non-speaking and cryptic in nature. The aforesaid emerges from Para-15 of the said decision.

The Hon'ble Apex Court dealt with the aforesaid contentions raised by the delinquent and held that, merely making an allegation that the inquiry officer is biased is not sufficient, unless it is supported by the material placed by him either during the course of inquiry or before the disciplinary authority. The said submission was also not made before the High Court and therefore, the said contention was rejected.

In the facts of the present case also, as referred above, the petitioners were never objected to the appointment of Shri Noel Parmar, as inquiry Officer and participated in the inquiry proceedings without any objection and there are no documents on record to prove bias.

14. In the opinion of this court, when the charges levelled against the petitioners are proved, the same resulting

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into 'misconduct' by a full fledged inquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities. The Courts cannot assume the function of disciplinary / departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority unless found to be wholly arbitrary and misconceived. Undisputedly, the well grained principle of law is that, the disciplinary authority or the appellate authority in appeal, which is to decide the nature of punishment to be imposed to a delinquent employee, keeping in view of the seriousness of the misconduct of an employee. The Court cannot assume and usurp the function of the disciplinary authority. The aforesaid principle is explained in AIR 1999 SC 625 (para-22). The Hon'ble Apex Court in the case of ***Lucknow K. Gramin Bank (Now Allahabad U.P. Gramin Bank) & Anr. v/s. Rajendra Singh,*** reported in ***AIR 2013 SC 3540***, harmoniously summarized the principles laid down in Para-16, which reads thus:

> *"16. This, according to us, would be the harmonious reading of Obettee (P) Ltd. and Rajendra Yadav cases.*
>
> *The principles discussed above can be summed up and summarized as follows:*
>
> *(a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;*

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> *(b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;*
>
> *(c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;*
>
> -
>
> *(d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.*
>
> *(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."*

15. The Hon'ble Apex Court in case of ***Anil KUmar Upadhyay v/s. The Director General, SSB and Others*** reported in ***2022 SC OnLine SC 478***, wherein, considering the ratio as referred above, in Para-22 held thus:

> *"22. On the judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality, few decisions of this Court are required to be referred to:*

i) In the case of Om Kumar (supra), this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as 'Wednesbury principles'.

In the Wednesbury case, (1948) 1 KB 223, it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

ii) In the case of B.C. Chaturvedi (supra), in paragraph 18, this Court observed and held as under:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact- finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

iii) In the case of Lucknow Kshetriya Gramin Bank (supra), in paragraph 19, it is observed and held as under:

"19. The principles discussed above can be summed up and summarised as follows:

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> *19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*
>
> *19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*
>
> *19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court. 19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case. 19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."*

16. Considering the charges framed against the petitioners as referred to herein-above, wherein, petitioners are all police staffs and are duty bound to travel from Chalit Chowki in Sabarmati express, leaving from Dahod, as per the duty assigned to the petitioners on 27.02.2002. The petitioners made bogus entries in the register and return in Ahmedabad by Shanti express. If, the petitioners had departed in Sabarmati express

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train itself to reach Ahmedabad, the incident that have occurred at Godhra could have been prevented. The petitioners derelict negligence and carelessness towards their duty. The said charges stands proved. The order of removal is passed, considering the aforesaid charge and the petitioners are not charged with the criminal conspiracy. The respondent disciplinary authority passed the order of removal under Rule-3(2) of the Bombay Police (Punishment and Appeal) Rules, 1956, which is upheld concurrently by Appellate Authority and Revisional Authority by reasoned findings. Moreover, in the opinion of this Court, the petitioners herein having accepted that the petitioners have not performed their duties entrusted to them itself proves the case against the petitioners. The petitioners were entrusted the duty in Sabarmati Express train. From the record, it emerges that the train belonged to 'A' category. A Category are such trains where frequency of untoward incidents like chain snatching, altercations, etc. is high. That such instructions issued in this behalf on 03.04.1997, is annexed at page no. 96 of the petition. The said instructions which were issued to the concerned Police Inspector of the concerned Railway Station, were required to be implemented in every train falling in A Category, to ensure that at least 3 Armed Personnel with rifles and cartridges must be present. The rest of the ASIs are provided with sticks and ropes. Additionally, Police Officers in plain clothes, were also required to patrol the train. The petitioners admittedly having been assigned

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such important duty, have casually thought it fit, not to travel by the assigned train and travelled by Shanti Express. The reasonings assigned by the competent authorities do not call for any interference.

17. This Court deems it fit not to exercise the extraordinary jurisdiction under Article-226 of the Constitution of India, for the reasons assigned above. Accordingly both the Petitions fail and are ***DISMISSED***. Rule is discharged.

(VAIBHAVI D. NANAVATI,J)

Pradhyuman