

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P (C) No. 6984/2009**

% ***Judgment Reserved on: March 24, 2017***
Judgment Pronounced on: June 28, 2017

UNION OF INDIA & ORS. Petitioners
Through: Mr.R.V. Sinha, Advocate with Mr.
R.N Singh & Mr. A.S. Singh,
Advocates.

versus

P.K SHARMA Respondent
Through: Ms. Vidushi Shubham, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Challenge in this writ petition is to order dated 08.10.2007 passed by the Central Administrative Tribunal (in short 'the Tribunal) in O.A No. 2850/2005 whereby the Tribunal set aside the penalty imposed on the respondent by the Disciplinary Authority vide order dated 21.04.2005 of reduction of pay by two stages from Rs.8,700 to Rs.8,300 in the pay scale of Rs.6500-10500 w.e.f. 01.05.2005 for a period of two years during which he was to earn no increment of pay.
2. Brief facts leading to the filing of the present petition are that the respondent while posted as Inspector at the Indira Gandhi International Airport, Delhi gave a false examination report in respect of Bill of Entry No. 724870 dated 21.12.1998 filed by M/s Intertrade Incorporated, Noida declaring the imported goods to be 'Plastic

Buttons' valued at Rs.56,531/- whereas on verification the packet was found to be intact and in its original packing. Goods on examination were found to be cellular phones along with batteries and chargers valued at Rs.74,80,000/-. The respondent was asked to show why a penalty under Section 17 of the Customs Act, 1962 should not be imposed on him. Prior to this show cause notice he was put under suspension vide order dated 15.01.1999. The show cause notice was adjudicated upon by the Commissioner of Customs, New Delhi who vide order dated 19/25.08.1999 imposed a penalty on the applicant but the same was set aside by the Custom, Excise & Service Tax Appellate Tribunal (in short 'CESTAT') vide order dated 12.07.2000. The suspension order was revoked vide order dated 18.08.2000 and the respondent re-joined his duties.

3. The respondent was also charge-sheeted under Rule 14 of the CCS (CCA) Rules, 1965 vide memo dated 01.08.2000 on the same charge i.e. false examination report entered by him with respect to Bill of Entry No.724870 dated 21.12.1998. On denial of the charges by the respondent, an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 was conducted by the Inquiry Officer who in his report concluded that the charges levelled against the respondent were not found to be proved. The Disciplinary Authority however, disagreed with the findings of the Inquiry Officer and imposed the penalty of reduction of pay by two stages in the pay scale of Rs.6500-10500 for a period of two years during which he was to earn no increment of pay. An appeal was preferred by the respondent before the Commissioner of Central Excise who rejected the same vide order dated 19.10.2005 against which the respondent filed the O.A No.2850/2005 in which the

Tribunal set aside the penalty imposed by the Disciplinary Authority on the basis that the main document i.e. the Bill of Entry was neither made available to the respondent nor its copy was produced during the enquiry proceedings which caused prejudice to the respondent. The petitioners have impugned this order of the Tribunal in this petition.

4. Mr. R.V. Sinha, learned counsel for the petitioners had submitted that the Tribunal had exceeded its jurisdiction while exercising the power of judicial review. He places reliance on ***B.C Chaturvedi v Union of India (1995) 6 SCC 749*** (paragraphs 12, 13 and 18) and ***Union of India & other v P. Gunasekaran (2015) 2 SCC 610*** (paragraph 12, 13 and 23).
5. Learned counsel for the petitioners had further argued that the disagreement note by the Disciplinary Authority, order by the Disciplinary Authority as well as the Appellate Authority were all well-reasoned and based on the relevant material on record and therefore the Tribunal was not justified in quashing the order of the Disciplinary Authority and the Appellate Authority.
6. The learned counsel for the petitioners had further urged that the fact that the original Bill of Entry was not supplied to the respondent will have no bearing on the present case as the genuineness of that document was never questioned by the respondent and he could not prove any prejudice by the non-production of the original Bill of Entry. He placed reliance on a judgment of the Allahabad High Court titled as ***Raj Babu Agnihotri v Labour Commissioner 2002 (4) SCT 791*** (paragraphs 4, 7, 8 and 9).
7. The learned counsel for the petitioners had further argued that the fact that the respondent was acquitted in the proceedings under the

Customs Act, 1962 would have no bearing on the departmental enquiry as both are distinct in nature. The provisions of the Indian Evidence Act are not strictly applicable to disciplinary proceedings and the doctrine of preponderance of probabilities applies in such proceedings. There is no statutory rule or provision which stipulates that the departmental proceedings cannot be opened or initiated after a decision of acquittal in a criminal case arising from the same cause of action. He places reliance on ***S. Govinda Menon v Union of India & Anr. AIR 1967 SC 1274*** (paragraphs 7 and 9) and ***Om Prakash v Delhi Society for Prevention of Cruelty of Animals & Ors. 2011 IX AD (DELHI) 741*** (paragraph 11).

8. Per contra, Ms. Vidushi Shubham, learned counsel for the respondent had argued that there is no infirmity or illegality in the order of the Tribunal and therefore it does not warrant any interference.
9. The learned counsel for the respondent had argued that the Tribunal was correct in coming to the conclusion that prejudice was caused to the respondent as the original Bill of Entry on which the departmental proceedings have been rested, was neither made available to the respondent nor its copy was produced during the enquiry as the same was not traceable. Reliance is placed on the judgment of the Apex Court in ***Kuldeep Singh v The Commissioner of Police & Others (1999) 2 SCC 10*** (paragraph 36 and 37)
10. The learned counsel for the respondent had further argued that once the respondent was acquitted of all charges under the Customs Act, 1962, departmental proceedings under the CCS (CCA) Rules could not be initiated for the same cause of action. Reliance was placed upon the decision of the Tribunal in the matter of ***R.D Gupta v Union of***

India (O.A No. 2862/97) affirmed by this Court in **W.P (C) No. 876/2001** decided on 08.02.2001.

11. The learned counsel for the respondent had further argued without prejudice to the submissions enumerated above, under section 47 of the Customs Act, 1962, the proper authority for clearance of import consignments is the Superintendent, and that the Inspectors are entrusted to assist the Superintendent in the examination and other procedural aspects. Superintendent is to grant 'out of charge' only after being satisfied that the examination report is correctly entered/reported by the Inspector. In the present case the respondent was charged with entering a false examination report in the EDI system, therefore, it was mandatory upon the Department to have interrogated Mr. J.S. Juneja, Superintendent (Shed) before levelling charges which was neither done during preliminary investigation nor in the departmental proceedings. She submitted that this was in itself enough ground to quash the departmental proceedings.
12. We have gone through the records of the case and heard the learned counsel for the parties.
13. The first issue which we deem appropriate to settle is whether the respondent once having been acquitted of the charges under the Customs Act, 1962 can then be proceeded against in a departmental enquiry under the CCS (CCA) Rules on the same cause of action i.e. giving the false examination report allegedly entered by the respondent in respect to Bill of Entry No.724870 dated 21.12.1998 submitted by M/s Intertrade Incorporated, Noida. The Hon'ble Supreme Court in **South Bengal State Transport Corpn. v. Sapan Kumar Mitra, (2006) 2 SCC 584** while dealing with the effect of

acquittal in criminal proceedings in disciplinary proceedings on the basis of the same cause of action held as under:-

“10. Similarly in Senior Supdt. of Post Offices v. A. Gopalan [(1997) 11 SCC 239 : 1998 SCC (L&S) 124] the view expressed in Nelson Motis v. Union of India [(1992) 4 SCC 711 : 1993 SCC (L&S) 13 : (1993) 23 ATC 382] was fully endorsed by this Court and similarly it was held that the nature and scope of proof in a criminal case is very different from that of a departmental disciplinary proceeding and the order of acquittal in the former cannot conclude the departmental proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued. That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case, departmental proceedings could not be continued and the order of removal could not be passed.

(Emphasis supplied)

14. The Hon’ble Supreme Court while again re-iterating the ratio laid down in ***South Bengal State Transport Corporation’s case (supra)*** in ***Samar Bahadur Singh v. State of U.P., (2011) 9 SCC 94*** held as under:

“7. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings

as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.

(Emphasis supplied)

15. Therefore we have no hesitation in holding that there is no bar in initiating disciplinary proceedings if the charged officer is acquitted of criminal proceedings arising out of the same cause of action. The result of one proceeding does not have a bearing on the other proceedings. The CESTAT might have found that the respondent did not collude with the importer and hence was not liable of a penalty under the Customs Act, 1962 but that does not mean that he is not guilty of misconduct, maintaining absolute integrity and devotion to duty as per Rule 14 of the CCS (CCA) Rules.
16. The factum of non-supply of the original Bill of Entry No.724870 dated 21.12.1998 has not been denied by the petitioner. In fact the petitioners had clearly stated that the same is not traceable. The Tribunal in the impugned order held that the non-supply of this Bill of Entry did in fact cause prejudice to him as the entire departmental proceedings rested on this document. The Inquiry Officer also in his report came to the same conclusion but the Disciplinary Authority and Appellate Authority did not agree with the findings of the Inquiry Officer and held that no prejudice was caused by the non-supply of this Bill of Entry. We reproduce the findings of the Appellate Authority in its order dated 19.10.2005:

“12. I, find that the Department’s case is for feeding of false examination report of the goods which were never got examined by the appellant and were seized. The examination report was fed through the Computer Logging of the appellant whose Password was in the custody of the appellant only and it was his duty to keep it secret. The appellant has taken plea that the Hon’ble CEGAT has set aside the penalty imposed upon him under the Customs Act in this case which was booked under the Customs Act and he was made a party in the same. In this context, I find that the proceedings under the Customs Act are different from the proceedings under CCS (CCA) Rules, in as-much-as the proceedings under the Customs Act pertain to irregular import and involvement of the officer in fraudulent import whereas the proceedings under the CCS (CCA) Rules, 1965 pertain to conduct of the officer. Thus both the proceedings are different in nature, under different set of Rules and have different implications and there is no bar in conducting both the proceedings side-by-side at the same time. The result of one proceedings does not have bearing on the other proceedings. CEGAT might have found that he was not colluding with the importer and hence not liable to penalty under the Customs Act but that does not mean that he is not guilty of misconduct and maintaining absolute integrity and devotion to duty.

.....

15. The contention of Shri Sharma that on the day of incidence he was allotted the bills of entry ending with digits of 2 & 3 and the bill of entry under dispute ended with digit ‘Zero’. Thus the said bill of entry was not allotted to him and he did not examine the same. In this context, it is pointed out that there is no bar in the computer to accept the bill of entry with digit ending with ‘Zero’ from logging of the appellant. Moreover, the examination report of a particular bill of entry No. 724870 was in between the examination report of other two bills of entry bearing Nos. 723303 & 724583 from the same logging of the Computer. The EDI System maintains log of each officer who works on the System. The log of Shri Sharma reveals that he filed examination

report in respect of bill of entry No. 723303 dt. 15.12.98 at 04:33 PM and bill of entry No. 724583 dt. 19.12.98 at 06:00 PM and bill of entry No. 724870 dt. 21.12.98 was examined in between these two bills of entry. As per his log maintained by the System, he never logged off from these System and hence cannot claim that someone else used his logging for feeding examination report in case of bill of entry no. 724870 dt. 21.12.98. This proves the fact that the examination report of disputed bill of entry No. 724870 was fed from his computer terminal only when his logging was alive for the day. There is no report of leaking of the Password at the time when examination report of bill of entry bearing No. 724870 was fed in the computer. The reliance placed by the appellant on paper reports and stray cases does not put seal of confirmation to his view point. In cases quoted by him for mis-use of the passwords, the person who misused the password were arrested and serious action was taken against them.”

17. The crux of the matter is that whether the non-supply of the original Bill of Entry did in fact violate the principles of natural justice and cause prejudice to the respondent. The burden of proving such prejudice is upon the person who claims that prejudice is caused to him. In the present case the respondent has nowhere shown how prejudice was caused to him by the non-supply of the original Bill of Entry. This is not sufficient to say that non-supply of Bill of Entry caused prejudice to him but he is to further explain what prejudice was caused. The respondent in his written submissions dated 27.01.2017 submitted before this Court had simply stated that the Tribunal was correct in coming to the conclusion that prejudice had been caused by the non-supply of the original Bill of Entry. In his defence submitted before the Inquiring Authority on 29.10.2001 the respondent had, *inter alia*, stated that in the absence of the original Bill of Entry there is no

proof that the impugned Bill of Entry was marked to him and processed by him. He stated that unless he had been shown hard copy of Bill of Entry No.724870 dated 21.12.1998, he cannot say whether he examined the consignment on 21.12.1998 at 04:43 PM. He stated that in the daily working sometimes it is not possible to keep the Password a secret. He stated that he did not change his Password since he joined Import Shed as he is not much aware of computer working. He stated that he did not reveal his Password intentionally but many people are around when he feeds the report and anybody can see the Password with a little effort. He stated that he cannot say if his Password has been misused unless he is shown the hard copy with his signatures as compared to report on EDI system. The respondent had not denied that the entry relating to the impugned Bill of Entry was never made through his system. He had taken the defence that the entry was made through his computer system using his login ID and Password but by someone else who was not authorised to do so.

18. The Disciplinary Authority came to the conclusion that the fact that examination report regarding the impugned Bill of Entry was fed from his account in the computer EDI system was a circumstantial evidence that cannot be denied. Further, the respondent had claimed that his Password could have been misused by someone as there were many people working in his office and the same could have been found out by someone as he used to login and logout of his system many times every day.
19. We deem it appropriate to reproduce the findings of the Disciplinary Authority regarding the claim of the respondent that his password could have been misused by someone:

“17. The appellant has claimed that his password was mis-used by some other person and the examination report was fed by the other person. The plea does not appear to be correct due to the reasons explained in above paras because in the afternoon of 21.12.98, he examined 14 bills of entry from 1:21 PM to 6:00 PM and did not log off from the System. The bill of entry No. 724870 was examined at 04:43 PM. Thus the plea that feeding of examination report in respect of this bill of entry by some other person by using his password is not acceptable. This plea could have been accepted had he logged off from the System before 4:43 PM and then he could have been contended that some other person logged in on his ID by misusing his password and fed the examination report. Had it been so, the System would have shown logged off against his ID and then log in. I also find that Shri Sharma examined the consignment of the same importer against the bills of entry No. 713458, 722334 dt. 14.12.98 and 723798 dt. 17.12.98 where the goods declared were plastic buttons. The said consignments were cleared on self basis without any CHA and all the consignments were examined by Shri Sharma. The said importer was found to be non-existent. This fact further proves complicity of Shri Sharma with the bogus importer.

18. The password is a very important tool in Computer System and same has to be guarded with utmost care. In EDI System, password is akin to signature and it is the only proof that a particular paper was processed by a particular person. If the plea of Shri Sharma that his password was leaked and he is not responsible for such leakage is accepted for the same of argument. I am afraid that the basis sanctity behind computer operation will be lost. The entire computer operations would carry no meaning as nobody would be responsible for the commands given through his ‘password’ and the plea of Leakage of password’ can be taken as and when any wrong doing is detected.”

20. Therefore the Disciplinary Authority and the Appellate Authority did not find any prejudice to have been caused due to the non-supply of the original Bill of Entry. It is well settled law that the technical rules of evidence do not apply to a departmental enquiry and the doctrine of 'proof beyond reasonable doubt' has no relevance in a departmental enquiry. All that is needed to establish misconduct is preponderance of probability and some material on record to prove the same. The Hon'ble Supreme Court in ***Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi, (1991) 2 SCC 716*** while laying down the standard of proof required to prove the guilt of a charged officer in Disciplinary Proceedings held as under:

“37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond

reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt “but” the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.

(Emphasis supplied)

21. The Hon’ble Supreme Court in **Lalit Popli v. Canara Bank, (2003) 3 SCC 583** while laying down the standard of proof in Disciplinary proceedings held as under:

“16...In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of “proof beyond doubt” has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.”

22. The Hon’ble Supreme Court in **K.L. Tripathi v. State Bank of India, (1984) 1 SCC 43** while laying down that the scope of principles of natural justice is dependent on the facts and circumstances of each case held that:

“31. Wade in his Administrative Law, 5th Edn. at pp. 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it

does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

(Emphasis supplied)

23. We find that in the facts and circumstances of the case the tribunal was wrong in coming to the conclusion that prejudice was caused to the respondent because of the non-supply of the original Bill of Entry. The factum of the respondent having logged in through his system and fed the impugned Bill of Entry in his system is not disputed. He also did not log out from 1:21 PM till 6:00 PM and the impugned Bill of Entry was fed in at 4:43 PM. Further, the respondent had also nowhere denied entering the examination report of Bill of Entry No. 723303 and 724583 through his system.
24. The respondent in his defence submitted before the Inquiring Authority where his statement dated 06.01.1999 given to the Superintendent (Cargo Preventive) New Delhi is also reproduced, the respondent when asked if he had examined the impugned BE and entered the examination report in his system stated as under:

“It clearly shows that the goods haven’t been examined by me and somebody had fed the report in the EDI system under my password.”
25. The respondent was further asked in this examination on 06.01.1999 :

“Q: -Do you understand that this leakage of password may have serious consequences for the department in generally and you personally in particular. Does it not defeat the whole purpose of the system?”

Ans:- Yes I admit that it may have serious consequences”

26. If the respondent raised the plea that his Password could have been misused by someone in the office, then it was up to him to prove the same through some positive evidence. If such defence is accepted whenever an officer feeds any false information through his computer system, he can conveniently avoid punitive action by taking the defence that his Password had been hacked by someone.
27. In disciplinary proceedings, a Disciplinary Authority has to see whether after going through the material on record and evidence, a reasonable and prudent man would come to the conclusion that the delinquent officer had indeed committed an act of misconduct. ‘Preponderance of Probability’ is not burdened with the technicalities of the rules of evidence. If after going through the evidence the Disciplinary Authority finds the delinquent officer guilty of misconduct and the delinquent officer is not sufficiently able to rebut this finding, then the order of the Disciplinary Authority would be good in the eyes of law.
28. The Hon’ble Supreme Court in ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749*** while laying down the scope of judicial review of departmental enquiries held as under:

‘12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily

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

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the

disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

29. In the present case we find that the findings of the Disciplinary Authority were indeed based on evidence and material. No prejudice was shown because of the non-supply of the original Bill of Entry and circumstantial evidence found against the respondent was not rebutted by him. After applying the test of ‘preponderance of probability’ to the present case we find that the Disciplinary Authority was correct in reaching the conclusion that the respondent was guilty of misconduct.
30. In light of the above discussion, we allow the writ petition and set aside the order of the Tribunal dated 08.10.2007.
31. No costs.

VINOD GOEL, J.

G.S.SISTANI, J.

JUNE 28, 2017

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