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

Date of decision: 08th DECEMBER, 2025

IN THE MATTER OF:

\+ **W.P.(C) 7141/2008**

Z.S.SAGAR .....Petitioner

Through: Mr. S. N. Kaul, Advocate

versus

UOI & ANR. .....Respondents

Through: Mr. Ruchir Mishra, Mr. Mukesh Kumar Tiwari, Ms. Reba Jena Mishra, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present Writ Petition has been filed under Article 226 of the Constitution of India with the following prayers:-

> *"(1) issue a writ of certiorari for quashing the order dt. 7.4.2008 passed by the Deputy Inspector General on behalf of President Of India, with all consequential benefits;*
>
> *(2) Direct the respondents through a writ of mandamus to open the seal covers and if the petitioner has been approved for promotion he be promoted to the rank of I.G. with all consequential benefits from date his next junior was promoted.*
>
> *(3) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case*

may also be passed in favour of the Petitioner and against the Respondents."

2. Shorn of unnecessary details, facts leading to the present case are as follows:-

i. Zileh Singh Sagar, (*hereinafter referred to as* "**Petitioner**") joined the Central Industrial Security Force (*hereinafter referred to as* "**CISF**") on 01.11.1972 as Assistant Commandant (Direct). In November 1994 the Petitioner was promoted to the rank of Deputy Inspector General (*hereinafter referred to as* "**DIG**").

ii. On 17/19.05.2000 the Director, CISF vide letter No. E-32018/2/99/Rectt/No.II/679, issued instructions for conducting recruitment examination for SI(Steno) and ASI (Clerk) (*hereinafter referred to as* '**the examination**') at various centres.

iii. CISF's Heavy Engineering Corporation Unit (*hereinafter referred to as* '**HEC**'), Ranchi was nominated to be one such centre where about 2258 candidates had been called for written test.

iv. The Commandant, CISF Unit, HEC was nominated for conducting the test as per the instructions issued by FHQ vide letter No.E32018/3/99-Rectt/1665 dt. 17.11.1999 and No. 32018/2/99/Rectt/Vol.2/679 dt. 17/19-5-2000. At the time of issuance of those letters the post of Commandant at CISF Unit, HEC, Ranchi was vacant.

v. Since the post of Commandant at HEC, Ranchi was vacant, the Petitioner brought the matter to the notice of Mr S.K Jaiman, then IG (Eastern Sector). Pursuant to this, directions were issued by the IG that when the post of Commandant is vacant the DIG may himself supervise and conduct the examination. Subsequently, the examination was conducted by the Petitioner who was the DIG between 24.06.2000 and 25.06.2000.

vi. On 23.09.2000 about three months after the examination was conducted, one Mr. S.P. Dwivedi filed a complaint against the Petitioner. In the complaint against the Petitioner, Mr. S.P. Dwivedi alleged that the Petitioner had conducted certain irregularities while supervising the examination. At the time of filing the compliant by the complainant Mr. S.P Dwivedi against the Petitioner, the Petitioner was posted in Hyderabad.

vii. A preliminary enquiry was conducted in early 2002, however, it was declared void as the same had been conducted in the absence of the Petitioner. Thereafter, in April 2002, a second preliminary enquiry was ordered, which was conducted under Mr. Kripekar, I.G.

viii. The charge sheet was issued to the Petitioner vide letter dated 12.12.2002. Three Articles of Charge (*hereinafter referred to as* '**AoC**') were issued to the Petitioner on the basis of this second preliminary enquiry, which read as under:

"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI Z.S. SAGAR, DIG, CISF

ARTICLE- I

That the said Shri Z.S.Sagar, while posted and functioning as DIG, CISF Unit-HEC, Ranchi during the period from 30.4.1997 to 11.7.2000, committed a gross misconduct in that he unauthorisedly usurped the responsibility of Commandant, CISF HEC, Ranchi and conducted the written examination for the recruitment of SI (Steno) and ASI (Clerk) held on 24th and 25th June, 2000 at Ranchi and thereby violated the instructions issued by FHQrs. Vide letters No. E-32018/3/99-Rectt/1565 dated 17.11.1999 and No. E-32018/2/99-Rectt/Vol. II/679 dated 17/19.5.2000. Thus, Shri Sagar failed to maintain absolute devotion to duty and also acted in a manner unbecoming of an officer of his service and status in an Armed Force of the Union.

ARTICLE II

That the said Shri Sagar, while posted and functioning in the aforesaid capacity, committed a gross misconduct in that after the completion of written test of SI (Steno) on 25.06.2000, he took the answer sheets to his residence in his brief case with an ulterior motive, instead of keeping them in a box duly locked and sealed, and returned the same on the following day on being demanded by Inspector Ajay Kumar Barik and thus violated the instructions issued by FHQrs. Vide letters dated 17.11.99 and 17/19.5.2000 cited above. Thus, Shri Sagar failed to maintain absolute unbecoming to duty and intergrity and also acted in a manner unbecoming of an officer of his service and status in an Armed Force of the Union.

ARTIGLE-III

That Shri Sagar while posted and functioning in the aforesaid capacity, after having associated himself

with the recruitment of SI (Steno) and ASI (Clerk), he committed gross irregularities, such as - left the examination hall attended for 30-35 minutes on 24th 25th June, 2000, and thereby acted in violation of the instructions issued by FHQrs vide letter dated 17.11.99 and 17/19.5.2000 cited above. Thus, Shri Sagar failed to maintain absolute devotion to duty and acted in a manner unbecoming of the officer of his service and status in an Armed Force of the Union."

ix. A reply to the AoC was filed by the Petitioner on 13.03.2003 whereby the Petitioner denied the charges levelled against him. Thereafter on 31.07.2003, a Departmental Enquiry was initiated against the Petitioner.

x. Mr. A.R. Kini, IPS, IG(NES), CISF, Kolkata was appointed as the Enquiry Officer (*hereinafter referred to as the* "**EO**") and Mr. R.P. Thakur, IPS, DIG (EZ), Patna was appointed as the Presiding Officer (*hereinafter referred to as the* "**PO**").

xi. Near about the conclusion of the Departmental Enquiry, the EO was changed and Mr. M.S. Bali, IG took his place. The Petitioner was held guilty of all charges and the report was conveyed to the Petitioner on 25.02.2005.

xii. In the meanwhile, in March 2003, December 2003 and July 2005 three Departmental Promotion Committees (*hereinafter referred to as* "**DPCs**") were held. These DPCs pertained to the promotion of the Petitioner to the rank of I.G. and pending enquiry, their recommendations were kept in a sealed cover.

xiii. While the DE against the Petitioner was pending, three officers junior to the Petitioner were promoted to the post of I.G.

Though the Petitioner challenged this in WP No. 17172 of 2003 and W.P. 10662 of 2004 before the Calcutta High Court, however, they were withdrawn on 02.12.2008.

xiv. On 10.05.2005, the Petitioner sent his representation to the President of India against the findings in the enquiry report and on 28.07.2006 the matter was referred to the UPSC for advice.

xv. The UPSC exonerated the Petitioner of all the three charges. However, as far as Charge No.2 is concerned they gave the observation that the officer did not tally the answer sheets with the attendance sheets and put proper seals at the conclusion of each examination and left his work to be done on the following day of the examination which was a violation of instructions contained in para V(d) of the letter dated 19.05.2000, which reads as under:

> *"V(d) After the schedule time for completion of exam, the question papers as well as answer sheets will be collected from the candidates by the respective invigilators and handed over to the respective Commandant/Dy Commandant and these will be packed alongwith the list as mentioned at para (III) (b) above and sealed in the presence of all the members. The un-used answer sheets will also be packed and sealed separately."*

xvi. Thereafter a second opinion was sought from the UPSC. However, after UPSC refused to accord a second opinion, the Respondent No. 2 approached the Department of Personnel and Training (*hereinafter referred to as* "**DoPT**"). It is based on this

report that the impugned order dated 07.04.2008 was passed against the Petitioner.

xvii. *Vide* the impugned order dated 07.04.2008 the Petitioner was awarded the punishment of reduction of pay by one stage in the time scale of pay for a period of one year with further direction that he will not earn increment during the period of such reduction and that on the expiry of this period the reduction would have the effect of postponing his pay increment in the future.

xviii. Aggrieved by the same the Petitioner approached this Court by filing the present Writ Petition seeking to quash the impugned order dated 07.04.2008 passed by the Director General, CISF.

xix. During the pendency of the present Writ Petition, the Petitioner retired from service as DIG in CISF on 30.6.2010.

3. Before adverting to discussion on merits, it would be imperative to mention that while the hearing of this case was going on the learned Counsel for the Respondent pointed out to this Court that *vide* an order of this Court dated 26.03.2015 this Court had noted that the result of DPC was put in a sealed cover which has been opened and as required by the process of law, the same has been forwarded to the Cadre Controlling Ministry i.e., Ministry of Home Affairs on 13.03.2015. The result of the DPC enclosed in a sealed cover reads as under:

> *"The committee examined the character rolls of Shri Z.S. Sagar (SC), against whom a vigilance case is pending and assessed him as "Unfit" for promotion to the rank of Inspector General in the Central Industrial Security Force, Ministry of Home Affairs, for the vacancy of 2009-10."*

4. Therefore, in view of the fact that the Petitioner has retired and the DPC report found the Petitioner to be "Unfit" for promotion to the rank of IG in the CISF, this Writ Petition is rendered academic. Nonetheless, in view of the fact that the findings of the disciplinary authority have been assailed on the grounds of procedural irregularity and perversity, this Court considers it appropriate to examine the matter on merits.

5. Assailing the Impugned Order, the learned Counsel for the Petitioner has submitted as under :-

i. The complainant Mr. S.P. Dwivedi had a vested interest in filing a false and frivolous complaint against the Petitioner & during the period of 1999 to 2000 the Petitioner had caught hold of certain forged and bogus medical reimbursement claims submitted by the said Mr. S.P. Dwivedi, whereafter, the Petitioner reported these malpractices to F. Hqr. As a result of this report Mr. S.P. Dwivedi received DG's "displeasure" on 29.12.2000.

ii. The DE was procedurally flawed and against the principles of natural justice. When the enquiry was almost complete, the Enquiry Officer was changed. Mr A.R. Kini (IPS) IG, CISF was replaced with Mr. M.S. Bali (IPS), IG Northern Zone, CISF. In the EO's report dated 21.11.2005 all the charges against the Petitioner stood proven.

iii. The CVC's 2nd stage advice contained in letter dated 17.02.2005, was made available to the Petitioner whereafter he submitted his reply dated 10.05.2005 and the Respondent submitted the records of the DE to the UPSC for advice. The Report of the UPSC exonerated the Petitioner for all charges except for Charge No-II and even with

respect to Charge No-II, the observations of the UPSC were not a subject matter of the Charge Sheet issued to the Petitioner.

iv. Under Charge No. II, the Petitioner was charged with taking the answer sheets of the examination to his residence in a briefcase, with an ulterior motive, instead of keeping them in a box duly locked and sealed. The charge further stated that the Petitioner only returned the same on the following day when demanded by Inspector A.K. Barik and this was violative of the instructions issued by DG, CISF dated 17.11.1999 and 19.5.2000. However, the Petitioner was held guilty of a different misconduct by the UPSC. The instructions which are contained in para V(d) of the letter dated 19.05.2000 issued by Respondent No. 2. was not the subject matter of the Charge as per Charge No. II of the charge sheet issued to the Petitioner.

v. There was no specific Charge against the Petitioner with respect to violation of para V(d) of the instructions contained in letter dated 19.5.2000 issued by DG, CISF, independent to AoC No. II. Its legal effect was that when the EO gave findings which was not within the scope of the charge sheet, in particular Charge No. II, particular misconduct wherein the petitioner had been held guilty of absolutely different misconduct, then the proceedings was entirely vitiated.

6. Petitioner has also placed reliance on the following judgements of the Apex Court:

i. Narender Mohan Arya vs United India Insurance Company Limited, 2006 SCC (L&S 840)

ii. Director (Inspection & Quality Control) Export Promotion Council of India vs Kalyan Kumar Mitra (1987) 2 CAL LJ 344

iii. MY Bijlani versus UOI & Others (2006 (5) SCC Cases 88

iv. Roop Singh Negi vs Punjab National Bank and Others (2009) 2 SCC Cases 570

7. The learned Counsel for the Petitioner has also contended that in the case of the Petitioner, the Respondents failed to prove that the Petitioner had acted in a manner that was in contravention of para V(d) of the instructions issued by DG, CISF *vide* letter dated 19.05.2000. During the course of enquiry, the Petitioner at no time admitted before the additional AoC that there was a violation of para-V(d) of instructions dated 19.5.2000 as part of Article II of Memorandum of Charge dated 12.12.2002 issued to Petitioner.

8. He has also placed reliance on the following Judgments of the Punjab and Haryana High Court:

i. Jagdish Kumar versus State of Punjab and others vide para-10 of the judgment dated 5.7.1994

ii. Ashok Kumar Bhatia versus Punjab State Cooperative Supply and Marketing Federation Limited and Another (CWP No.1281 of 1987 decided on 18.7.1991

9. The learned Counsel for the Petitioner has also submitted that it is not the case of Respondent that UPSC has not correctly examined the evidence on record in Petitioner's case. Respondent No.1 had referred the case of the Petitioner for a 2nd time in view of CVC's advice. However, the UPSC refused to change their advice and upheld their earlier advice saying that no additional material has been placed to reconsider the earlier advice. When the matter was referred to the DoPT, they suggested enhancement of punishment as per Impugned Order on the same material on the basis of which UPSC had suggested reduction of pay by one stage for one year.

There was no legal basis on which the DoPT could have done so, as none of the three charges levelled against the petitioner stood proved.

10. *Per contra*, the learned Counsel appearing for the Respondent has vehemently opposed the arguments advanced by the learned Counsel for the Appellant. The learned Counsel for the Respondent has advanced three broad arguments. Firstly, the Petitioner has underscored the limited scope of judicial review when it comes to administrative proceedings. Secondly, he has advanced arguments specific to the charges levelled against the Petitioner. Thirdly, he has advanced arguments specific to the findings of the IO and the advice of the UPSC.

11. With respect to the first limb of his argument the learned Counsel for the Respondent has submitted that the scope of judicial review in enquiry proceedings is limited. He has submitted that this Court while exercising power under Article 226 of the Constitution of India, cannot re-evaluate the evidence de-novo. It has also been submitted that the scope of examination in an administrative proceeding, like the one in the present case, is limited to assessing whether process was duly followed and not the decision itself. Therefore, this Court may only examine the deficiency in the proceedings and not the decision itself. He has also submitted that in the present case the Petitioner had been given all opportunities to make his submissions and witnesses were also examined.

12. With respect to Charge No. 1 i.e. failure to maintain devotion to duty and unbecoming of an officer, the learned Counsel for the Respondent has submitted as under:-

i. The Directorate CISF vide letter dated 17/19.05.2000 had issued detailed guidelines regarding the conduct of recruitment

of SIs (Steno) and ASI (Clerks) wherein it stated that the written examination will be conducted under the supervision of the Commandant/Dy. Commandant. The instructions contained therein specifically stated that any clarification could be sought from the DIG (Pers) and AIG (R&S) of CISF HQrs. on their telephone numbers, in case of any immediate requirements.

ii. The post of Commandant at HEC Ranchi was vacant and it was incumbent upon the Petitioner to have brought this fact to the notice of DIG (Pers) and AIG (R&S) of CISF HQrs. and obtain further instructions for conducting the examination rather than stepping into the shoes of the Commandant.

iii. The Petitioner made a false statement that he was ordered by the then IG to conduct examination. This is a plea which has been advanced by him as an afterthought. Prior to issuance of Charge Memo when the Petitioner's explanation was called for *vide* CISF Directorate letter dated 23.11.2000, the Petitioner in his reply dated 15.02.2001 did not state that he was given verbal directions by Mr. SK Jaiman, IG (Retd.) to conduct the recruitment examination. The alibi of the Petitioner that he had sought instructions from the then IG (ES) did not make any sense as the IG (ES) was not given any power to issue clarification under the supervision of CISF Directorate. Therefore, the Petitioner ought to have taken permission or clarification from the CISF Directorate and not from IG (ES). Pertinently, the IG was a defence witness in the enquiry proceedings.

iv. A perusal of the certificate annexed by the Petitioner which has been cited as an authority to conduct the examination would demonstrate that it was not an official order. The very nature of the text and format thereof, purportedly issued by the IG, raises a serious question on the genuineness of the authorization letter. It has been submitted that this letter was obtained by the Petitioner in order to cover up his misconduct. Had the same been genuine, the Petitioner ought to have produced the same during P.E.

13. With respect to Charge No. 2 i.e. taking Answer Sheets to his Residence is concerned, the learned Counsel for the Respondent has submitted as under:-

i. As per the instructions issued by the CISF Directorate vide its letter dated 17/19.05.2000 after the schedule time for completion of examination, the papers as well as the answer sheets were to be collected from the candidates by the respective invigilators and handed over to the respective Commandant/ Dy. Commandant who were supposed to pack them along with the list and seal the in the presence of all the members. The instructions also stated that the unused answer sheets were to be packed and sealed separately.

ii. The Respondent submitted that the Petitioner kept the answer sheets in his briefcase, which remained with him overnight. The Petitioner returned them the next day on 26.06.2000. PW-2/Mr. S.P. Singh, Deputy Commandant in his statement specifically stated that the answer sheets of SI (Steno) written tests were not

kept in the box but were kept by the Petitioner in his briefcase. In response to Q. No.3, PW-2 has stated that after the written test was completed, he saw some loose papers, question papers, lying on Petitioner's table, which he thought was probably to protect answer sheets from getting mixed up with loose sheets and the DIG placed these papers in his brief case.

iii. PW-7/T P Singh in his statement dated 13.05.2002 deposed that on 26.06.2000 the answer sheets of the SI (Steno) exam were kept by the Petitioner in his briefcase and taken to his residence without the official seal, and PW-4/A K Barik has deposed that when he was sorting the answer sheets on 26.06.2000, he noticed that the answer sheets of SI (Steno) were not in the box. He informed the same to the Petitioner and the Petitioner then handed over the same to Shri Barik after taking the answer sheets out of his briefcase.

iv. It is stated that once the boxes were sealed on 24th and 25th June, 2000 there was no reason whatsoever to re-open the same on 26.06.2000. Since the answer sheets of SI (Steno) were not kept in the box and were kept by the Petitioner in his briefcase, the boxes were opened on 26.06.2000 again to keep the answer sheet of SI (Steno). The fact that the boxes were opened on 26.6.2000 is unequivocally established from the statements of the witnesses including the deposition of the Petitioner. Thus, there was clear violation of instructions issued by CISF Directorate, on the part of Petitioner. Hence, the fact that the Petitioner had taken the answer sheets of SI (Steno) to his

residence on 25.06.2000 and had brought them back on 26.05.2000 stands clearly established by the evidence on record.

14. As far as Charge No. 3 i.e. leaving examination hall unattended for 30-35 minutes is concerned, the learned Counsel for the Respondent has submitted as under :-

i. Numerous witnesses have deposed that the Petitioner had left the Examination Centre unattended for 30-35 minutes even after associating himself with the recruitment process. Learned Counsel for the Respondent has submitted that one T.P. Singh, in his reply to a questionnaire clarified that the Petitioner used to go out from the examination hall and return after about 40-60 minutes.

ii. PW-2/S.P. Singh. Dy. Commandant, during his reply to questionnaire stated that the Petitioner had left the Examination Centre in the forenoon session of both the days of examination and returned after about 30-40 minutes in the afternoon session. The EO had not placed reliance on the statements of the security aid and driver of the Petitioner for the obvious reason that the driver of the Petitioner and personal staff are generally loyal to the respective official and it is not expected from them that they will say anything against the officer under whom they are serving/they have served.

iii. The statement of Constable Om Nath Singh, who was the security aide of the Petitioner, is contradictory, in as much as at one place he says that the Petitioner was available in the

Examination Centre throughout the duration of the examination whereas in his statement taken before the Preliminary Enquiry Officer on 10.05.2002, he deposed that he does not remember whether the Petitioner left the examination hall while the Examination was still going on.

iv. The EO after examining the statements of the DWs observed that none of the DWs had categorically opposed the Charge that the answer sheets for SI (Steno) examination had not been carried by the Petitioner to his resident. None of the defence witness were physically in a position to oversee the transactions during which the answer sheets were kept by the Petitioner in his brief case and when they were returned next day after Insp./Min. AK Barik pointed it out to the Petitioner. Moreover, none of the defence witness have categorically stated that the system of sealing of answer sheets soon after the examination was followed by the Petitioner.

15. With respect to the findings of the IO an the advice of the UPSC, the Petitioner has advanced the following submissions :

i. The advice of the UPSC tendered vide letter dated 28.08.2006, though statutory, does not have any binding value on the disciplinary authority and in case of dissent they are entitled to refer the matter to DoPT.

ii. The limited role of the reference to UPSC was with regard to quantum of punishment to be imposed upon the charged officer. The analysis of the UPSC regarding evidence and the findings thereon do not bind the disciplinary authority.

iii. In the instant case, the CVC in its 2nd stage advice dated 17.02.2005 had advised for imposition of suitable major penalty on the Petitioner and the UPSC advised for imposition of penalty of 'Censure'. Accordingly, the disciplinary authority referred the matter to the DoPT, whereafter, the penalty of reducing the pay by one stage was imposed upon the Petitioner.

16. Some ancillary arguments which have been raised by the Petitioner are:

i. The Petitioner's reliance on the findings of UPSC which did not exonerate him or conclude that all the charges were disapproved, rather advised the penalty of Censure is of no merit. The Petitioner has tried to mislead that the UPSC has exonerated the Petitioner of all the 03 charges and that the punishment of 'Censure' was no bar to his promotion to the next rank.

ii. Assuming the advice of the UPSC was acceded to, the sealed covers of the Petitioners would not have been opened in term of para 3.1 of the DoPT OM No.22011/4/91-Estd.(A) dated 14.09.1992. As per the said Circular if the any penalty is imposed on a government servant as a result of disciplinary proceedings against him, the findings of the sealed covers shall not be acted upon. Therefore, the Petitioner's admission to the extent of UPSC's advice was genuine and reasoned makes this Writ Petition academic.

17. Heard learned Counsels for the Parties and perused the material on record.

18. Before adverting to merits of the present Petition, this Court deems it necessary to delineate the contours of judicial review in context of administrative enquiries. It is trite law that the High Courts under Article(s) 226 and 227 of the Indian Constitution do not sit as a second Court of first appeal in disciplinary matters and, therefore, this Court, while exercising its powers under Article(s) 226 and 227 of the Indian Constitution, shall not venture into re-appreciation of evidence. The limited scope of interference that is permissible is to see whether there has been any procedural irregularity or violation of principles of natural justice and fair play or whether the findings in the administrative enquiry are based on no evidence at all.

19. The scope of administrative review is further circumscribed when it comes to disciplinary proceedings relating to members of the Armed Forces and Paramilitary Forces. These are disciplined forces where the paramount consideration is maintaining cohesion, discipline and respect for hierarchy and chain of command. The Courts are not meant to sit over in appeal as second courts of first appeal. The Apex Court in the case of Union of India v. P. Gunasekaran, **(2015) 2 SCC 610**, has held 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 I 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation 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."

20. The Apex Court in State of Rajasthan v. Bhupendra Singh, **2024 SCC OnLine SC 1908,** has reiterated the settled principle that the High Court while exercising its powers under Article 226 and 227 of the Constitution of India, does not sit as an appellate form over the decisions of the disciplinary authorities. The Apex Court, while relying on their earlier decision in State

of A.P. v. S. Sree Rama Rao, **1963 SCC OnLine SC 6**, has held that as long as there is some evidence to 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 arrive at an independent finding on the evidence. The Apex Court clarified that the High Court shall not ordinarily interfere with administrative decision, unless, it is illogical or suffers from procedural impropriety or was shocking to the conscience of the Court. The relevant paras of the judgment read 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:*
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> > *'**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 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)

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***26.** In Union of India v. K.G. Soni, (2006) 6 SCC 794, 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 K.B. 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.'

21. In Bhupendra Singh (Supra), the Apex Court has also placed reliance on the case of State Bank of Patiala v. S.K. Sharma, **(1996) 3 SCC 364**. However, we deem it apposite to deal with it separately, because in S.K. Sharma (Supra), the Apex Court has drawn clear cut distinctions between substantial and procedural violations. The gist of the Apex Court's observations is that a violation of a substantial statutory rule would ipso facto vitiate the enquiry. However, when it comes to procedural rules the metric of assessment would be the test of prejudice. The relevant parts of the observation of the Apex Court reads as under:

*"**33.** We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):*

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the

theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of

directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice

— or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the

rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

22. Having delineated the general jurisprudence of judicial review of administrative action, this Court must test whether the contentions raised by the Petitioner withstand the anvil of these parameters. The principal contention of the Petitioner is that the departmental proceedings initiated against him were vitiated on account of procedural irregularities and resultant prejudice. It has been submitted that the complainant S.P. Dwivedi, had a vested interest in filing the complaint as the Petitioner had earlier issued a Show Cause Notice to him for claiming fake medical reimbursements. The said Show Cause Notice resulted in a "Displeasure" note being recorded against Mr. S.P Dwivedi by the Director of the CISF. Resultantly, Mr. S.P Dwivedi wanted to settled scores with the Petitioner.

23. It is further alleged that Mr. S.P Dwivedi manipulated witnesses and misused his position to prejudice the enquiry, and that the provisional promotion of officers junior to the Petitioner created a lobby of vested interests against the Petitioner. It was also argued that the Petitioner had been prejudiced as the EO was changed before the conclusion of the enquiry and that he has been held guilty of a misconduct by the UPSC for which has not been specifically charged. Finally, it has been submitted that the Disciplinary Authority acted in derogation of the advice tendered by the UPSC without assigning any reasons whatsoever.

24. This Court does not find any merit in these arguments advanced by the learned Counsel for the Petitioner concerning procedural irregularities

and resultant prejudice. Further, the allegation about witness manipulation against Mr. S.P. Dwivedi is a mere assertion sans any substantive evidence and cannot be accepted. As far as the acrimonious history between the Petitioner is concerned arguendo, assuming that the complainant was motivated, that in itself does not diminish the credibility of the allegations. The charge that the Petitioner has been accused of relates to a pressing misconduct of breach of examination integrity and the Disciplinary Authority was duty bound to examine this charge on its own merits. Though the Petitioner pointed out at the history and antecedents of the complainant, he has been unable to demonstrate from the material on record that the enquiry was not completed fairly or independently and thus, the alleged motive of the original complainant pales in significance. Similarly, the allegation that the provisional promotion officers junior to the Petitioner created a lobby with vested interests against the Petitioner is devoid of any evidence. As far as the allegation and contention of change of EO at a later stage is concerned, this Court is of the view that as long as the ultimate finding of the Departmental Enquiry rests upon evidence adduced during the enquiry and does not suffer from any procedural irregularity, the fact that the EO was replaced at a later stage of the enquiry does not ipso facto vitiate the entire enquiry.

25. Finally, there is nothing to demonstrate that the UPSC's advice was binding on the Disciplinary Authority. Non-acceptance of the advice tendered by the UPSC would not render the impugned order illegal. It has been pointed out by the learned Counsel for the Respondent that the Disciplinary Authority did not agree with UPSC advice as it had already opined for major penalty. The Disciplinary Authority once again referred the

matter when it was referred back to UPSC for reconsideration by the Disciplinary Authority in view of the nature of the charges against the Petitioner. However, in its reply dated 18.06.2007, UPSC reiterated penalty of "Censure" observing that no new fact or law had come to light and since the advise tendered by the UPSC and view of the Disciplinary Authority were not in consonance, the case was referred to DoPT. This itself shows that a thorough application of mind at all levels. It was only after due consideration and appreciation of evidence and given the nature of charges against the Petitioner that the penalty of reduction of pay by one stage in time scale of pay for a period of one year was imposed vide order dated 07.04.2008. Therefore, it cannot be said in any manner whatsoever that merely because the UPSC imposed a lesser penalty the Disciplinary Authority was bound by their advice or that their findings were perverse. With these preliminary contentions having being dealt with, this Court would now proceed to examine the levelled against the Petitioner suffer from perversity, procedural impropriety or absence of evidence.

26. As far as Charge No-I is concerned the misconduct alleged against the Petitioner is that he failed to maintain devotion to duty and his conduct was unbecoming of a member of the Force on the ground that he assumed the role of the Commandant and was conducting the recruitment examination at the CISF Unit, HEC, Ranchi sans proper authorization. It is evident that the post of Commandant at HEC, Ranchi was vacant at the relevant time when the examination was conducted. Mr S.K. Jaiman, who was the former I.G. of CISF (ES)Patna has categorically noted that about 10 days before the written examination, the Petitioner had contacted him on telephone and informed him that no Commandant was posted in CISF Unit, HEC, Ranchi, who

could conduct the examination. Mr. S.K. Jaiman has categorically noted that he informed the Petitioner that wherever no Commandant is posted the examination may be conducted by the next higher rank i.e. the DIG. In fact, Mr. S.K. Jaiman has also issued a letter to that effect. The Respondents have not been able to bring on record any material that establishes that the Petitioner illegally usurped authority. On the contrary, if he had not obeyed the instructions of the IG it would have amounted to insubordination. In these facts and circumstances, the conclusion arrived at by the EO with respect to Charge-I cannot be sustained as it has overlooked vital evidence such as the fact that the post of Commandant was vacant at the relevant time and the Petitioner had conducted the examination pursuant to receiving categorical instructions from the I.G. and therefore, the conclusion arrived at by the EO with respect to this particular charge has been rendered in ignorance of vital evidence and is perverse. The presumption of "usurpation of authority" by the Petitioner has not been backed by any evidence whatsoever and hence the charge is accordingly set aside. As such, after having perused the material on record this Court is of the opinion that Charge No-I cannot be sustained.

27. This Court would now advert to Charge-II, which pertains to the allegation that the Petitioner took the answer sheets of the SI (Steno) written examination to his residence with him in his briefcase with an ulterior motive instead of keeping them in a box duly locked and sealed and returned the same on the following day on being demanded by Inspector Ajay Kumar Barik and thus violating the instructions issued by the FHQrs. This Court has gone through the material on record and the statements of PWs Mr. S.P. Dwivedi, the then Commandant, 4th RB Ranchi, Mr S.P. Singh who was the

Deputy Commandant of the CISF Unit at HEC Ranchi at the relevant time and SI/ Min Mr. T.P. Singh who was posted at the CISF Unit at HEC Ranchi at the relevant time. A perusal of the statement of these witnesses clearly demonstrates that the answer sheets of the SI (Steno) Examination were kept by the Petitioner in his briefcase. We have gone through the statement of PW-Inspector A.K. Barik, who at the relevant time was working as the Head Clerk of CISF Unit, HEC Ranchi pointed out the absence of the said answer sheets while taking stock of the attendance. He has categorically noted that when the sealed boxes were opened on 26.06.2000, the answer sheets for the examination were missing and upon enquiry the Petitioner produced the said sheets from his briefcase. The answer sheets were packed in a cello-tape sealed envelope. It is also apposite to note that this version of events have been corroborated by other PWs. Therefore, this Court is of the view that the conduct of the Petitioner was in clear derogation of the instructions issued by the HQ and his actions of keeping the answer sheets in his briefcase tantamount to a misconduct. Accordingly, Charges No-II is sustained.

28. This Court would now like to address Charge No-III, i.e. the Petitioner left the examination hall unattended for 30-35 minutes on 24th and 25th June 2000, and thereby, acted in violation of instructions issued by Force HQrs. vide letter dated 17/19.11.1999. The relevant portion of the Enquiry Report with respect to Charge No- III reads as under:

> *"15. In this charge, the charged officer Sh ZS Sagar, the then DIG CISF Unit, HEC Ranchi has been accused of leaving the examination centre when the written test was going on during the said examination. The prosecution has tried to prove this charge through the statements of Sh SP Singh, Deputy Commandant,*

formerly of CISF Unit, HEC Ranchi, & SI/Min TP Singh, formerly of CISF Unit, HEC Ranchi. On the other hand, the driver of the charged officer HC/Dvr Dalbir Singh and the security aide Const Om Nath Singh have stated that the charged officer was continuously in the examination centre during the duration of written test and he never left the examination centre during this period. The statement of Const Om Nath Singh, however, has a contradiction, in as much as, at one place he says that Sh ZS Sagar, DIG was available in the examination centre throughout till the conclusion of the examination whereas in his statement taken before the preliminary enquiry officer on 10.5.2002, he has stated that he does not remember whether the DIG Sh ZS Sagar left the examination hall while the examination was still going on. On the other hand, the statement of Sh SP Singh, Deputy Commandant is very specific wherein he says that the DIG left the examination hall after telling him to take care of the proceedings in his absence.

16. In the light of the above, therefore, I am forced to say that even with respect to this charge, the weight of the evidence is against the charged officer and thus the charge stands proved against the charged officer."

29. This Court has gone through the statements of PWs Dy. Commandant Mr. S.P Singh and SI/ Min Mr. T.P Singh. The cross-examination of PW- S. P. Singh clearly demonstrates that the Petitioner had left the examination hall in the forenoon session of both the days after about half an hour after the commencement of the examination and would return about 30-40 minutes later, & this has been corroborated by the statement of PW-TP Singh. Therefore, in view of these categorical statements given by the two witnesses, this Court is of the view that this charge hold water and accordingly it ought to be sustained.

30. The Apex Court in State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, **(2011) 4 SCC 584**, has held that when two views are possible on the same evidence, the view taken by disciplinary Authority must prevail. As noted earlier, this Court under Article(s) 226 and 227 of the Constitution of India does not sit in appeal over the decision arrived at during a departmental enquiry on the basis of the material on record. Therefore, in view of the above this Court is of the view that Charge No. II and Charge No. III have been proved as per the threshold of preponderance of probabilities and the punishment inflicted on the Petitioner is neither grossly disproportionate nor does it shock the conscience of this Court.

31. Resultantly, the writ petition along with pending applications (if any) are dismissed.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

DECEMBER 08, 2025
Prateek/ VR