IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO.934 of 2015
In
R/SPECIAL CIVIL APPLICATION NO.7157 of 2002

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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EA SINGH(EDWIN ANNETT SINGH) & ORS.
Versus
STATE OF GUJARAT

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Appearance:
MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1,1.1,1.2,1.3
MR SAHIL B. TRIVEDI, AGP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 26/06/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present Letters Patent Appeal filed under Clause 15 of the Letters Patent, 1865 is directed against the judgment and order dated 05.12.2014 passed by the learned Single Judge rejecting the writ petition filed by the appellant – original petitioner assailing the order dated 20.06.2002 passed by the

State Government, whereby the appellant – original petitioner was compulsorily retired from the service by way of punishment, after rendering almost 37 years of service. Thus, the original petitioner was deprived of all his retiral benefits. It is noticed that during the pendency of the Letters Patent Appeal, the appellant (original petitioner) has passed away on 05.09.2020 and the appeal is represented through his legal heirs.

FACTS :

2. The petitioner joined the services as a Police Sub-Inspector (PSI) in the year 1965 and in due course, he was promoted as a Police Inspector (PI) in the year 1980 and thereafter, he was promoted to the post of Deputy Superintendent of Police (Dy.S.P.) in the year 1992. He reached at the age of superannuation on 31.08.2002.

3. During the period from 18.12.1990 to 15.08.1991, when he was serving as the Police Inspector and he was posted at Vejalpur Police Station, during such period, on 06.02.1991, an F.I.R. being CR No.I-57 of 1991 was registered by him against the accused persons under the provisions of Sections 420, 465, 467, 468, 471, 472 of the Indian Penal Code, 1860 (for short, “the IPC) and Section 25(1)(C) of the Arms Act, 1959. It appears that the FIR is registered for possessing illegal arms on the basis of the forged licenses. The investigation of the said offence was conducted in part by the petitioner and during such investigation, he was transferred on 15.08.1991 from Vejalpur Police Station and in place of the petitioner, one Shri V.K.Amliyar, Police Inspector, was posted and the papers of investigation were handed over to him.

4. After one month of taking over the charge by Shri Amliyar, he filed a charge-sheet against the accused persons on 19.09.1991. The same culminated into the trial proceedings being Criminal Case No.2838 of 1991. By the judgment and order dated 29.04.1995, the trial Court acquitted all the accused. However, while acquitting those accused vide judgment and order dated 29.04.1995, the trial Court made certain observations against the Investigating Officer commenting upon the manner in which the investigation was done, regarding the forged licenses.

5. Taking clue from the observations recorded by the trial Court, the charge-sheet dated 31.07.1999 was issued by the Home Department, State of Gujarat to the petitioner *inter alia* alleging four charges as below. The same are translated and incorporated as under : -

> *"(i) Charge No.1 - During the investigation Shri Singh had recovered four bogus arms licenses of another province and arms from the accused, but did not make necessary inquiry whether the said licenses were bogus or not.*
>
> *(ii) Charge No. 2 - He has not obtained opinion of FSL whether the arm attached as Muddamal was in working condition or not.*
>
> *(iii) Charge No. 3 - He has not attached papers of bogus arms license, seal and stamp from main accused of offence i.e. Abidbhai.*
>
> *(iv) Charge No. 4 - Accused No.3 - Abbasbhai, on remand was taken to Mumbai on 14.04.1991 and according to Gujarat Police Manuals and Criminal Procedure Code, though the accused on remand should be put in lock-*

up at that time, however, the accused was kept by the delinquent with him in private hotel instead of keeping in police lock-up."

6. The regular departmental inquiry was conducted and the Inquiry Officer, vide his inquiry report dated 22.08.2000 found charge Nos.1 and 4 not proved, whereas charge Nos.2 and 3 were proved.

7. The Inquiry Officer submitted his report before the Disciplinary Authority, however, the Disciplinary Authority did not agree with the findings recorded with regard to the charges Nos.2 and 3 and hence, the authority issued a show-cause notice dated 03.01.2001 calling upon the petitioner to file his defence statement. The petitioner accordingly filed a detailed reply / representation to the Disciplinary Authority on 20.05.2001 and requested for exonerating him from the charges levelled against him.

8. On 20.06.2002, after a period of more than one year, at the verge of retirement of the original petitioner, i.e. on 31.08.2002, the Disciplinary Authority issued the impugned punishment order compulsorily retiring the petitioner from service.

9. The impugned order dated 20.06.2002, does not refer as to under which provision the said order is passed.

10. Being aggrieved by the said order, the original petitioner filed a writ petition being Special Civil Application No.7157 of 2002. By the order dated 23.08.2004, the learned Single Judge allowed the said petition mainly on two grounds i.e. (i) on

merits, no case is made out against the petitioner; and (ii) on the ground of delay in initiating the departmental inquiry.

11. The State Government assailed the said order by preferring Letters Patent Appeal No.2621 of 2004. The Division Bench of this Court allowed the appeal filed by the State Government vide judgment and order dated 22.09.2005 by observing that the learned Single Judge had erroneously allowed the writ petition and set aside the order of punishment on the ground of delay in issuing the charge-sheet.

12. The matter was, thus, remanded and thereafter, the learned Single Judge again heard the captioned writ petition and by the impugned judgment and order dated 05.12.2014, the same was dismissed, which has given rise to the present appeal. It is this order of the learned Single Judge dated 05.12.2014, which is under challenge in the present Letters Patent Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS :

13. Learned advocate Mr.Vaibhav Vyas, appearing for the appellants, who are the legal heirs of the original deceased petitioner, has contended that in fact, this is a case of no evidence and the findings recorded by the Disciplinary Authority are also perverse. He has submitted that in fact, the trial Court has not recorded the name of any Investigating Officer and an observation is only made to the effect that there was some lacuna in holding the investigation and in the present case, since the investigation is done in part by the original petitioner, he cannot be solely held responsible for such lacuna. It is submitted that after the petitioner was

transferred, the investigation was handed over to Shri V.K.Amliyar and after period of one month, he filed the charge-sheet and in case, he had noticed that further investigation was required to be done and it was necessary, he should not have filed the charge-sheet.

14. Learned advocate Mr.Vyas, has further contended that the trial Court, during the trial proceedings, had also the power to order further investigation, however, no such action was taken. He has submitted that merely because some observations were made by the trial Court with regard to the investigation, the Disciplinary Authority had directly issued the charge-sheet levelling four charges against the petitioner without application of mind to the facts narrated by the trial Court in its judgment.

15 It is, thus, submitted that the petitioner could not have been singled out and the charges, which were not proved, in fact are held to be proved by the Disciplinary Authority, more particularly, the charges Nos.2 and 3, without application of mind to the contents of the defence statement, filed by the petitioner.

16. While referring to charge No.1, learned advocate Mr.Vyas has submitted that it is alleged that the petitioner has not conducted detailed investigation in order to demonstrate that the licenses were in fact forged. It is submitted that in fact, he has collected all the necessary evidence and deputed his subordinate officer, who went to District Sagar (Madhya Pradesh), as the licenses, which were found from the accused indicated that the same was issued from District Sagar

(Madhya Pradesh). It is submitted that necessary statement of the employees of the District Magistrate was recorded and the registers were also procured and after examining the necessary records, which were produced by him during the examination before the trial Court, it was in fact established that the licenses were forged and hence, no further investigation was required. It is thus, alleged that even after collecting such evidence, any further investigation was still needed, the second Investigating Officer, Shri V.K.Amliyar, could have further investigated it and for that the petitioner cannot be held responsible. Thus, it is submitted that even if the trial Court has made such observations with regard to the investigation, the same are incorrect and it is not that the accused are acquitted only on this basis, however, one of the vital witnesses has also turned hostile and the said fact has also weighed upon the trial Court.

17. Learned advocate Mr.Vyas, has further submitted that in any case, if the State Government was aggrieved by such acquittal, they could have preferred an appeal however, no appeal is preferred against the acquittal recorded by the trial Court. It is submitted that even the Inquiry Officer has recorded the findings that the said charge was not proved however, the Disciplinary Authority disagreed with the same and without recording appropriate reasons for disagreement and without considering the defence statement produced by the original petitioner, the said charges, though not proved by the Inquiry Officer, have been proved by the Disciplinary Authority. Thus, it is alleged that the petitioner could not have been compulsorily retired from his service on the basis of the

order passed by the Disciplinary Authority disagreeing with the findings of the Inquiry Officer with regard to the charge No.1.

18. So far as the charge No.2 is concerned, learned advocate Mr.Vyas, has submitted that it is alleged that no opinion of the FSL was obtained, for ascertaining that whether the revolver, which was collected from the accused, was in working condition or not. It is submitted that before the trial Court, it was not the case of the prosecution that muddamal weapon was used by the accused and hence, after necessary panchnama was recorded regarding the recovery of muddamal i.e. the weapon, the petitioner had verified the working condition of the weapon and under these circumstances, it was not mandatory to further send the weapon to the FSL.

19. Learned advocate Mr.Vyas, has submitted that in fact, a presumption is drawn by the Disciplinary Authority that the weapon could have been used in another offence also and if the weapon is sent for the FSL report, such fact could have been known. Learned advocate Mr.Vyas, has submitted that in the case of Jarnail Singh vs. State of Punjab, AIR 1999 S.C. 321, the Supreme Court has observed that no further test firing was necessary in order to find out whether the weapon was in working condition or not, once it is found that the weapon can be fired on a preliminary examination. It is submitted that the Supreme Court has held that once it is found by the police officer that the mechanism of the weapon was in order, it can reasonably be inferred that it was in working condition and hence, in such circumstances, no further investigation is required by sending the same to an expert. Thus, it is

submitted that the charge is also ill-conceived and in fact, no such observation has been made by the trial Court that the Investigating Officer should have sent the weapon to the FSL.

20. With regard to the charge No.3, which pertains to non-attaching of the papers of bogus arms licenses, seal and stamps from the main accused i.e. Adidbhai, it is submitted that the accused – Adidbhai was not the main accused in the commission of offence. Learned advocate Mr.Vyas, while referring to the observations made by the trial Court, has submitted that the main accused, who were put to trial were – (1) Anwarbhai Yakubbhai, (2) Arvind Shivram Tiwari; and (3) Radheyshyam Deviprasad Pandey, who had forged the licenses by using the forged seal and stamps etc., and in this regard, a case was registered against them at Sahara Police Station, Mumbai, wherein they were arrested by the police and pursuant to their release on bail, they had absconded and had remained absconding. It is submitted that after the investigation was handed over to Shri V.K.Amliyar, no attempts were made by him to trace out them and in fact, he had failed to arrest such accused persons and they were shown as absconders in the charge-sheet. It is submitted that the allegations against the accused - Abidbhai was that he had obtained the forged license from the above referred main accused and hence, there was no question of recovering false seals, stamps etc. from Abidbhai. It is thus, submitted that the Inquiry Officer and the Disciplinary Authority have recorded the incorrect findings and while inviting the attention to such findings, he has submitted that the charge was proved on the premise that the petitioner should have filed revision / appeal

against the order of the trial Court under the provisions of Section 438 of the Cr.P.C., and therefore, the strictures against the Investigating Officer made by the trial Court, stood proved against the petitioner.

21. While referring to the charge No.4, learned advocate Mr.Vyas, has submitted that it is alleged that the original petitioner had in fact kept the accused with him in a private hotel instead of putting him in the lock-up. Before commenting upon the said charge, learned advocate Mr.Vyas has referred to the provisions of Rule 441(5) of the Gujarat Police Manual, which has been referred by the Inquiry Officer in his report. It is submitted that after examining the Rule, the Inquiry Officer has not held the said charge proved however, the Disciplinary Authority disagreed with the findings recorded by the Inquiry Officer and held the same as proved. Learned advocate Mr.Vyas, has further submitted that the charge itself is misconceived, since it is alleged that the petitioner has kept the accused for two days along with him in the hotel, however, the petitioner left for Mumbai on 14.03.1991 in the night by the train and reached Mumbai on 15.03.1991 and kept a watch along with the accused. Thereafter, a night halt was done at a hotel on 15.03.1991 and on the next day, i.e. on 16.03.1991, the petitioner along with the accused left Mumbai for Ahmedabad, in the night during the train and had reached Ahmedabad on 17.03.1991 in the morning. He has submitted that this fact has been recorded by the Inquiry Officer in his inquiry report (at page Nos.148-149) and he has precisely recorded the said charge as not proved.

22. Learned advocate Mr.Vyas, has submitted that in the punishment order, it has been recorded by the Disciplinary Authority that the petitioner had halted at Mumbai for four days and three days nights and on incorrect fact, the charge is held to be proved against the original petitioner and this finding is contrary to the record, and hence, the same is perverse.

23. It is submitted that Rule 441(5) of the Gujarat Police Manual, does not refer that it is mandatory for the Investigating Officer to hold the accused in a police lock-up. Learned advocate Mr.Vyas, has submitted that in the present case, two police personals were already deputed with the accused, in order to see that he does not escape and looking to the investigation to be carried out and the watch to be kept, he in his wisdom, thought it fit to stay in the hotel with the accused instead of lodging him in the police lockup.

24. Learned advocate Mr.Vyas, has submitted that the most glaring aspect in the present matter is that though the Inquiry Officer has recorded the definite findings exonerating the petitioner for charge Nos.1 and 4, however, the Disciplinary Authority did not agree with such findings and a show-cause notice dated 03.01.2001 was issued for disagreement. He has submitted that in the show-cause notice itself, the charge Nos.1 and 4 are held to be proved by the Disciplinary Authority and thereafter, the explanation from the petitioner has been called for. It is submitted that such an approach runs contrary to the decisions of the Supreme Court in the case of Yoginath D. Bagde vs. State of Maharashtra, (1999) S.C. 3734, in the

case of S.P. Malhotra Vs. Punjab National Bank, (2013) 7 S.C.C. 251, in the case of Lav Nigam vs. Chairman and MD, ITI Ltd. & Anr., (2006) 9 S.C.C. 440 and in the case of Punjab National Bank & Ors Vs. K.K. Verma, (2010) 13 S.C.C. 494.

25. Learned advocate Mr.Vyas, has further submitted that the advice of the GPSC, on which, the reliance is placed by the Disciplinary Authority, while passing the order dated 20.06.2002, is also not supplied to the petitioner and hence, the same would be in violation of principles of natural justice, which would vitiate the inquiry. In support of his submissions, he has placed reliance on the judgment in the case of Union of India vs. R.P. Singh, 2014 (7) S.C.C. 340.

26. Finally, it is submitted by the learned advocate Mr.Vyas, that looking to the blotless tenure of 37 years of the petitioner, the punishment imposed upon him compulsorily retiring him, is harsh and disproportionate to the alleged misconduct and hence, the same requires to be quashed and set aside. In support of his submissions, he has placed reliance on the judgment reported in the case of Collector Singh vs. LML Limited, Kanpur, (2015) 2 S.C.C. 410. Reliance is also placed by him on the decision of the Supreme Court in the case of Union of India and Ors. vs. P. Gunasekaran, (2015) 2 S.C.C. 610.

SUBMISSIONS ON BEHALF OF THE STATE :

27. At the outset, learned Assistant Government Pleader Mr.Trivedi, has submitted that the judgment and order passed by the learned Single Judge rejecting the writ petition does not require interference since the same is appropriately passed

after examination of the facts and also in light of the proved misconduct.

28. Learned Assistant Government Pleader Mr.Trivedi, at the outset, has submitted that the scope of judicial review in disciplinary proceedings, is very restricted and limited and the High Court cannot act as an Appellate Authority, while examining the findings of the disciplinary proceedings. In support of his submissions, reliance is placed by him on the judgment of the Supreme Court in the case of Union of India vs. Subrata Nath, 2022 (16) Scale 828. Reliance is also placed on the decision of the Supreme Court in the case of ***P. Gunasekaran (supra)***.

29. Learned Assistant Government Pleader Mr.Trivedi, has submitted that the Disciplinary Authority, after considering the observations made by the trial Court, thought it fit to initiate departmental proceedings against the petitioner since, due to lacuna in the investigation, all the accused were acquitted. It is submitted that after the judgment of the trial Court, when the disciplinary authority noticed that serious illegality has been committed by the petitioner, such inquiry proceedings were initiated. He has referred to the observations made by the trial Court in this regard and has submitted that in fact further investigation was required to be done, so far as the forged license found from the accused, however, it was not done and due to such lacuna, the acquittal was recorded by the trial Court. Learned Assistant Government Pleader Mr.Trivedi, has further submitted that the charges, which are incorporated in the charge-sheet, are very serious in nature, more particularly,

the petitioner has failed in his duty in undertaking proper investigation. He has submitted that the petitioner had failed to check as to whether the revolver, which was recovered from the accused, was in working condition and appropriate opinion was required to be taken from the FSL in this regard. However, since he did not do so, the trial Court was also impressed upon such lackadaisical investigation done by the petitioner.

30. Learned Assistant Government Pleader Mr.Trivedi, has submitted that in fact, it is also glaring to note that the accused was kept by the petitioner along with him in a private hotel, when he was taken to Mumbai, which is impermissible, since he could have been detained in the lock-up and after the investigation was done, the accused could have been brought back to Ahmedabad. Learned Assistant Government Pleader Mr.Trivedi, has submitted that this shows the nexus of the petitioner with the accused persons and hence, in all probabilities, it can be presumed that he has not investigated the entire episode in appropriate manner. Thus, it is submitted that the conduct of the original petitioner runs contrary to the provisions of Rule 411(5) of the Gujarat Police Manual, and hence, the Disciplinary Authority has appropriately considered the said aspect and held against the petitioner.

31. With regard to the contention raised by the learned advocate Mr.Vyas, relating to the show-cause notice dated 03.01.2001, which pertains to disagreement on the findings recorded by the Inquiry Officer, concerning charge Nos.1 and 4, it is submitted that in fact, the Disciplinary Authority has acted in accordance with law and only after charge Nos.1 and 4,

which were held to be not proved, are incorporated and the petitioner was called upon to offer his explanation to such charges. It is submitted that it is not the case of the petitioner that no opportunity of hearing was afforded to him before holding the charge Nos.1 and 4 as proved.

32. Learned AGP has submitted that pursuant to the show-cause notice, the petitioner has also made a detailed representation on 21.05.2001, which is considered by the Disciplinary Authority, while passing the order of compulsorily retirement. Thus, it is submitted that the findings recorded by the Disciplinary Authority and the Inquiry Officer may not be disturbed since the Disciplinary Authority has considered all the aspects along with the defence statement filed by the petitioner. Thus, it is urged that the Letters Patent Appeal may be rejected and the order passed by the learned Single Judge may not be disturbed.

33. At this stage, learned advocate Mr.Vyas, while placing reliance on the judgment in the case of ***P. Gunasekaran (supra),*** has submitted that the Court, while exercising the power under Article 226 of the Constitution of India, can interfere with the findings recorded by the Disciplinary Authority on the parameters, which are specified by the Supreme Court in the said case. It is submitted that the findings recorded by the Disciplinary Authority, require to be quashed and set aside in light of the such parameters, which are prescribed by the Supreme Court.

34. We have heard the learned advocates appearing for the respective parties. We have also perused the impugned

judgment order passed by the learned Single Judge.

ANALYSIS OF THE PLEADINGS AND FACTS :

35. Before we express our opinion on the merits of the case and on the rival submissions advanced by the learned advocates appearing for the respective parties, it would be apposite to refer to the observations made by the Supreme Court in the case of ***P. Gunasekaran (supra),*** which has been relied upon by both the learned advocates appearing for the respective parties. The said judgment is further considered by the Supreme Court in the case of ***Subrata Nath (supra).*** The law on the scope of judicial review of the disciplinary proceedings and interfering with the finding recorded by the Disciplinary Authority is no more *res integra*. The Supreme Court has in the case of ***P. Gunasekaran (supra),*** has succinctly prescribed the broad parameters within which the High Court ought to exercise its powers under Articles 226 and 227 of the Constitution of India in the matter relating to the disciplinary proceedings, the same are 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, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. 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 Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:*
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> *(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."

36. Keeping in mind the aforesaid principles, we shall now endeavor to examine the disciplinary proceedings.

37. It is an established fact from the pleadings that the charges, which are levelled and alleged against the petitioner vide a charge-sheet dated 31.07.1999, emanate from the observations recorded by the trial Court in the judgment dated

29.04.1995 passed in Criminal Case No.2838 of 1991 acquitting the accused for the offences.

38. As the facts indicate, which are recorded by the trial Court that on 22.12.1990, in the evening hours at 18:45, the petitioner, who was serving as a Police Inspector and was posted at Vejalpur Police Station, apprehended the accused No.2 – Sagir Ahmed Abdul Rashid Shaikh from his home and a weapon i.e. revolver along with some cartridges and the licenses were recovered from him, which showed that they were issued from Sagar District (Madhya Pradesh).

39. Similar allegations were levelled against the other accused with regard to procuring the bogus licenses.

40. It is also not denied by the respondent authorities that the petitioner was posted as Police Inspector of Vejalpur Police Station from 18.12.1990 to 15.08.1991 and he registered the FIR against the accused persons, on 06.02.1991, under the provisions of Sections 420, 465, 417, 468, 471, 472 and 120B of the IPC and Section 25(1)(B) of the Arms Act. After registration of the FIR, the petitioner conducted the investigation. It is also not denied that on 15.08.1991, the petitioner was transferred from Vejalpur Police Station and at that time, the investigation of the above referred offence was not over and after, he was transferred, the investigation was handed over to one Shri V.K.Amliyar, Police Inspector, who was posted at Vejalpur Police Station in his place. The papers of the investigation were handed over to him. It is also established from pleadings that on 19.09.1991, i.e. after a period one month of taking over the charge from the original petitioner,

the Police Inspector, Shri V.K.Amliyar, filed the charge-sheet against the accused persons, some of them were absconding.

41. We have scanned the observations recorded by the trial Court. In the entire judgment, we do not find that the trial Court has specifically recorded that the investigation was done in a lackadaisical manner by the petitioner. The trial Court has observed that it was the duty of the Investigating Officer to further undertake the necessary investigation relating to forged or bogus licenses. We find such observations made at various places however, we do not find that the trial Court has recorded the name of the petitioner, and by naming him, it is observed that the investigation was done in a lackadaisical manner.

42. It is not in dispute that after the investigation was handed over by the petitioner to Shri V.K.Amliyar, he has not conducted further investigation. We may, at this stage, record the investigation done by the petitioner relating to the forged licenses in the offence and as recorded by the trial Court. The facts recorded by the trial Court reveals that in fact, the petitioner had collected necessary information and had deputed his subordinate officer, who was sent to the District Sagar, Madhya Pradesh and he recorded the statement of concerned employee of office of District Magistrate. Such record was recovered, including the Register of the licensees, who were issued the licenses. In paragraph No.12, the trial Court has specifically recorded that as per the Register at Exh.114, the entries reveal that the licenses were issued in the name of other persons and not in the name of the accused.

The necessary statement of such employee (witness) was recorded, which is also recorded by the trial Court and the employee of the District Magistrate, District Sagar, Madhya Pradesh, when he was shown the disputed licenses, it is specifically stated that he cannot say whether the licenses were issued by him or not since he was not posted at the relevant time in the office of the District Magistrate.

43. The trial Court, at this stage, has commented that, it was necessary for the Investigating Officer to record further statement of the license holders and since the Investigation Officer has failed to do so, it is treated as lacuna in the Investigation Officer. We may, at this stage, assert that the trial Court could have ordered further investigation or ought to have commented about the investigation done by a particular officer either by naming the petitioner or subsequent Investigating Officer, Shri V.K.Amliyar. After such evidence was collected by the original petitioner, it fell upon the wisdom of the subsequent Investigation Officer Shri V.K.Amliyar, who was handed over the investigation to collect further evidence by undertaking further investigation as required. However, Shri V.K.Amliyar did not do so and filed the charge after a period of one month, though some of the accused were absconding and hence, we fail to understand that how the disciplinary authority has singled out the petitioner for the alleged defective investigation, though the investigation was thereafter handed over by him to Shri V.K.Amliyar. It is also an admitted fact that the State authorities have not even sought a bare minimum explanation from Shri V.K.Amliyar, who was handed over the investigation and he is also not arraigned as a witness. In wake

of the fact, the substratum of holding a departmental inquiry and issuing the charge-sheet containing four charges to the petitioner, appears to be ill-conceived. The petitioner has been made a scapegoat. Since the trial court has not named the Investigating Officer, it was very essential for the Higher Authority or the Disciplinary Authority to first hold a necessary discreet inquiry on the observations recorded by the trial Court on the faulty investigation, and only after some preliminary or fact finding inquiry was undertaken and specific role of each of the investigating officer was established, the charge-sheet could have been issued framing appropriate charges.

44. In these circumstances, we find that the Disciplinary Authority, has acted over-zealously and has without any application of mind issued the charge-sheet to the petitioner on the premise of the observations recorded by the trial Court in its judgment.

45. Another aspect, at this stage, which requires to be considered is that out of four charges, which are referred in the charge-sheet dated 31.07.1999, the Inquiry Officer did not find charge Nos.1 and 4 to be proved. The Disciplinary Authority disagreed with the findings recorded by the Inquiry Officer exonerating the petitioner for charge Nos.1 and 4 and hence, issued a show cause notice dated 03.01.2001.

46. A perusal of the contents of the show-cause notice dated 03.01.2001, establishes that while referring to the charge Nos.1 and 4, the Disciplinary Authority has, in fact, held the same as to be proved in the show-cause notice itself and thereafter, finally the original petitioner is asked to submit his

defence statement. Such an approach of the Disciplinary Authority runs contrary to the settled legal proposition of law as enunciated in the judgment of ***Yoginath D. Bagde (supra)*** and subsequent judgments. The Disciplinary Authority was required to record some tentative findings on the findings recorded by the Inquiry Officer on the unproved charge, and thereafter the explanation of the delinquent should have been called upon. In the present case, while issuing the show-cause notice dated 03.01.2001, in fact, the Disciplinary Authority has already held the charge Nos.1 and 4 proved. It is recorded that so far as the charge No.1 is concerned, a definite finding is recorded that though the Inquiry Officer has recorded that since the trial Court has not referred to the names of any Investigation Officer, and hence, the charge No.1 is not proved however, the Disciplinary Authority has recorded that only because of such findings recorded by the Inquiry Officer his responsibility does not end and after making such observation, the Disciplinary Authority has concluded that charge No.1 is held to be proved. Similarly, while referring to the Charge No.4 and recording that as per Rule 441(5) of the Gujarat Police Manuals, Part-III, it is proved that the petitioner had stayed with the accused in a private hotel, though in the Mega City like Mumbai, where police lock-ups are readily available. By making such observations, the charge No.4 is also held to be proved.

47. We may, at this stage, incorporate the observations made by the Supreme Court in below mentioned cases on the issue of disagreement by the disciplinary authority on the positive findings of the inquiry officer:-

I) In the case of Yoginath B. Bagde vs State of Maharashtra (1999) 7 S.C.C. 739, which is a case with reference to Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in which there was no provision requiring the Disciplinary Authority to give opportunity of hearing to the delinquent before differing with the inquiry officer. The Apex Court has recorded, "But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into R. 9(2) and it has to be held that before the Disciplinary Authority finally disagrees with the findings of the enquiring authority, it would given an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reason on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority was not liable to be interfered with."

II) In the case of S.P. Malhotra vs. Punjab National Bank, (2013) 7 S.C.C. 251 the appellant was appointed as a Clerk-cum-Cashier in the respondent Bank. It was held that in the event the Disciplinary Authority disagrees with the findings recorded by the inquiry officer, it must record reasons for disagreement and communicate the same to the delinquent. In that case the said court not having been resorted to, punishment of dismissal was set aside. Here also, the Apex Court relied on in ECIL (supra) and other decisions on the point, to record as under. “The view taken by this court in the aforesaid case has consistently been approved and followed as is evident from the judgments in Yoginath D. Bagde vs. State of Maharashtra & Anr. AIR 1999 SC 3374; State Bank of India & Ors. v/s K.P.Narayanan Kutty, AIR 2003 SC 1100; J.A. Naiksatam vs. Prothonotary and Senior Master, High Court of Bombay & Ors., AIR 2005 SC 1218; P. D. Agrawal vs. State Bank of India & Ors., AIR 2006 Sc 2064; and Ranjit Singh vs. Union of India & ors. AIR 2006 SC 3685.”

III) In the case of Lav Nigam vs. Chairman and M.D.ITI, (2006) 9 S.C.C. 440, a question arose as regards the procedure to be followed by the disagreeing disciplinary authority. It was held that the Disciplinary Authority is bound to give notice setting out his tentative conclusions to the charged

employee, whereafter the petitioner would again have to be served with a notice relating to punishment proposed, in the event the Disciplinary Authority stands not satisfied after considering the explanation of the delinquent.

> It was held that “The conclusion of the High Court was contrary to the consistent view taken by this court that in case the Disciplinary Authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the Disciplinary Authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.”
>
> Further it is observed that “It is clear that no notice at all was given before the Disciplinary Authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.”

IV) In the case of State Bank of India vs. K.P.Narayan Kutti, (2003) 2 S.C.C. 449, "In para 19 of the judgment in Punjab National Bank case extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) [Rule 50(3) (ii) of the State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case] and the delinquent officer will have to be given an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court."

48. From the conspectus of the aforementioned observations of the Supreme Court and this Court, the following aspects are required to be maintained when the Disciplinary Authority disagrees with the findings of the Inquiry Officer.

a) There has to be tentative / proposed findings of the disciplinary authority disagreeing with the inquiry officer's report recorded in the show cause notice. The show cause notice of disagreement should be issued to the delinquent calling upon him as to "why the findings which are in his favour is/are not required to be reversed".

(c) While issuing the show cause notice, the expression “charges are proved” should be avoided, since; the same will reflect a predetermined application of mind by the disciplinary authority.

d) Such show cause notice shall not stipulate the imposition of particular penalty, minor or major. The expression “why any of the penalty/punishment shall not be imposed” should be avoided.

e) After considering the reply of the delinquent to the show cause notice of disagreement, the disciplinary authority has to pass an order recording a definite finding of guilt reversing the findings of the inquiry officer, by holding the charges as proved or not proved.

f) After recording such findings, it is essential that the delinquent is issued a final show cause notice calling upon his explanation for imposition of punishment. [Vide Lav Nigam (Supra)].

g) After receipt of the reply to the show cause notice, the disciplinary authority has to pass reasoned and speaking order imposing appropriate punishment prescribed under the Rules governing disciplinary proceedings.

49. The theory of prejudice will also not apply in such cases. Thus, the procedure adopted by the Disciplinary Authority do not meet with the parameters enunciated by the Supreme

Court in the aforementioned decisions. Hence, the punishment order, which is premised on such faulty approach cannot be sustained.

50. With regard to the charges are concerned, as recorded hereinabove, the charge No.1 refers not to investigate into the forged licences. We have already discussed that if such investigation done by the petitioner was found incomplete or faulty, the second Investigating Officer could have proceeded with it and hence, the original petitioner cannot be singled out.

51. So far as the charge No.2 is concerned, it is alleged that the petitioner did not send the weapons to the forensic laboratory, the same is also held to be proved. There appears to be total non-application of mind by the Disciplinary Authority and the Inquiry Officer, while proving such charge since it is a specific case and as recorded by the trial Court that a necessary panchnama was drawn by the petitioner and he had checked that the weapon was in working condition or not. The disciplinary authority has levelled such charge on presumption that the FSL report could have established that the weapon was used in any other offence or not. The case of the prosecution from its inception before the trial court was not that the weapon was ever used. It is also not the case of the Disciplinary Authority that the weapon, which was recovered was used in any other offence. The charge – both in the trial proceedings and the disciplinary proceedings is confined to keeping the weapon with forged license.

52. We may, at this stage, incorporate the observations made by the Supreme Court in the case of ***Jarnail Singh***

(supra) :-

> *"...xxxx. Once it was found by the Police Officer that the mechanism was in order, it could be reasonably inferred that it was in working condition. Therefore, even in absence of any evidence of an armourer or an expert of that type evidence of a Police Officer, who is trained in handling guns can be accepted. We, therefore, confirm the conviction and order of sentence passed against him. The appeal is dismissed."*

53. Thus, the petitioner was in fact trained and was an expert in handling guns and after examining the same and drawing the necessary panchnama, the weapon was confiscated and when he felt that it was in working condition, there was no need for him to further send it to the FSL. It is not the case of the State that either before the trial Court or in the charge-sheet that the said weapon which was recovered from the accused, has in fact used in other offence and also that the said revolver was used by the accused in committing a particular offence and hence, in absence of such charge before the trial Court and the disciplinary proceedings, the sending of the gun to the FSL would be a futile exercise.

54. With regard to Charge No.3, which refers of not procuring the seal and stamps of accused - Abidbhai is concerned, on perusing the judgment and order passed by the trial Court, we find that he is not the main accused, who was found with bogus licences and hence, this charge is also misconceived. The petitioner has, in fact, undertaken necessary investigation through the concerned Officer from District Magistrate, Sagar at Madhya Pradesh in this regard.

55. With regard to the charge No.4 of staying in a private hotel with the accused is concerned, the Inquiry Officer after

specifically referring to the provision of Rule 441(5) of the Gujarat Police Manual has exonerated the petitioner. The same is incorporated as under : -

> ***"Gujarat Police Manual, Part – III – Rule 441(5) –***
>
> *When Parties escorting prisoners by road are required to half for the night en route, halting places shall be selected, if possible, where lock-ups or secure chowkies are available. At such places during the night, one sentry shall mount guard over the prisoner or prisoners and shall be relieved every two hours. When a halt has to be made at a place, where no such secure building is available, the escort commander shall, as far as possible, place double sentries to be changed every two hours, and shall make such further arrangements as he may consider advisable, to prevent the escape of the prisoners in his custody."*

56. It is not the case of the Disciplinary Authorities that the accused was not under any restrain. Tthe petitioner had arraigned two sentries or guards for the escort of the accused in the case while staying at the hotel. The provisions of Rule 441(5), as recorded hereinabove, does not mandatorily direct that the accused has to be kept in a lock-up but only refers to the expression, 'if possible', which the petitioner has done. There is no allegation referred in the charge-sheet that by staying in the hotel, the petitioner has in fact gained anything and no finding is either recorded by the trial Court or by the Disciplinary Authorities in this regard. In fact, he had placed two guards at the hotel as required under the provisions of Section 441(5), and hence, such charge appears to be misconceived. In fact, the Disciplinary Authorities have gone beyond the charge and said that he has stayed for 4 days and three nights with the accused in a private hotel at Mumbai with

the accused. The Inquiry Officer has categorically stated that he had only stayed for one night and during the journey of Mumbai, he has travelled in night to train, this aspect is also not considered by the Disciplinary Authorities while overturning the findings recorded in favour of the original petitioner.

57. Now, we shall examine the findings recorded by the learned Single Judge. The learned Single Judge, has in fact heavily placed reliance on the observations made by the trial Court, while examining the case of the petitioner and has recorded in the judgment, and confirmed the findings recorded by the Disciplinary Authorities without examining the vital aspects. The learned Single Judge has rejected the writ petition only on the ground of limited judicial review available to the Constitutional Courts, while examining the disciplinary proceedings.

58. In our considered opinion, it is not an absolute proposition of law that the judicial review is unequivocally barred. As held by the Supreme Court in the case of ***P. Gunasekaran (supra),*** the judicial review of disciplinary proceedings is permissible, if it satisfies the parameters prescribed in the said case.

59. We find that in the present case, the parameters-(d), (e), (g) and (i), as prescribed in paragraph 12 of ***P. Gunasehkaran (supra)*** are violated. Furthermore, the approach of the disciplinary authority in recording the disagreement to the unproved charges is also against the settled legal precedent.

CONCLUSION :

60. The very substratum of initiation of the department proceedings on the basis of some observations made by the trial Court regarding investigation itself is ill-conceived since the Disciplinary Authority and the learned single judge have lost sight of the very vital aspect that the investigation was partly conducted by the late petitioner and he was thereafter transferred and the investigation was handed to other investigating officer Shri Amaliar, who was also supposed to investigate further in case some lacuna was found in the investigation. It is not the case before the trial court or before the respondents that the petitioner had not undertaken any investigation. The Disciplinary Authority has presumed that the observations recorded in the judgment by the trial Court, are directed against the petitioner only, however as recorded hereinabove, we do not find that the trial Court has even whispered the name of either of the Investigation Officer and in such circumstances, without first initiating appropriate fact finding authority fixing the accountability of each of the investigating officer, the issuance of charge-sheet directly to the original petitioner singling him out, was uncalled for. Hence, in light of this glaring aspect, we find that the approach of the Disciplinary Authorities was biased.

61. While imposing the order of punishment, the most vital aspect, which the Respondents have ignored, is the tenure of service rendered by the original petitioner *vis a vis* the time line in initiating and conducting the disciplinary proceedings. It

is not pointed out to us that the petitioner was habitual in committing misconducts and any major or minor punishments were imposed upon him in the entire service tenure. The late petitioner had rendered 37 years of service. The FIR was in fact registered by him in the year 1991. The judgment of the trial Court was rendered in 1995. After four years, the charge-sheet was issued to him on 31.07.1999 and he was to retire on reaching the age of superannuation on 31.08.2002, however he has been compulsorily retired from the service by way of punishment on 20.06.2002 i.e. almost one and half month before the retirement, which has resulted in denial of his retirement benefits. The impugned order of punishment also does not refer to any provision of Rules under which it is passed. These are the relevant and vital aspects which were required to be kept in mind while imposing a harsh punishment wiping out the 37 years of service. The learned single judge should have also examined these factors before dismissing the writ petition.

:FINAL ORDER:

62. In light of the foregoing analysis, the impugned judgement and order of the learned single judge confirming the punishment order of compulsory retirement is quashed and set aside. As a sequel, the order imposing the punishment of compulsory retirement is also quashed and set aside. The Letters Patent Appeal and the writ petition is allowed. The respondent State is directed to pay all the consequential benefits to the appellants.

63. The intervening two months period from the date of dismissal i.e. 20.06.2002 to actual date of superannuation i.e.

31.08.2002 shall be treated as notional. The entire consequential benefits shall be paid within a period of two months from the date of receipt of writ of judgment of this Court, failing which for further delay, the amount shall carry an interest of 12% per annum.

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(MAUNA M. BHATT,J)

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