

(2015) 05 CAL CK 0058
In the Calcutta High Court
Case No : Writ Petition S.T. No. 305 of 2011

Krishna Pada Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 323, 342, 354, 384, 506

Citation : (2015) 05 CAL CK 0058

Hon'ble Judges : P.K. Chattopadhyay, J;Debangsu Basak, J

Bench : Division Bench

Advocate : Bikash Ranjan Neogi, Gobinda Chowdhury, Soma Chakraborty and Ananya Neogi, for the Appellant; Tapan Kumar Mukherjee and K.M. Hossain, Advocates for the Respondent

Final Decision : Allowed

Judgement

Debangsu Basak, J.—The petitioner has challenged the Order dated August 25, 2011 passed by the West Bengal Administrative Tribunal in O.A. No. 549 of 2010 and O.A. No. 550 of 2010. By the impugned order the West Bengal Administrative Tribunal has dismissed two several applications filed before it. Two dismissed employees of the West Bengal Police Force had approached the West Bengal Administrative Tribunal. Both the petitioners before the West Bengal Administrative Tribunal are before us by filing two separate writ petitions challenging the same Order dated August 25, 2011 passed by the learned Tribunal.

2. Mr. Neogi, learned Counsel for the writ petitioner contended that there are three articles of charges against the writ petitioner in relation to an incident allegedly took place on March 14, 1998 when the writ petitioner was attached to the Bagdah Police Station. Mr. Neogi submitted that none of the charges was established before the Inquiry Officer on the basis of the materials and evidence

on record. It is submitted on behalf of the writ petitioner that a material witness was not examined and the conclusion arrived at by the Inquiry Officer is not based upon the materials and evidence available before it. In relation to the alleged incident occurring on March 14, 1998 for which disciplinary proceedings had been initiated against the writ petitioner, a criminal proceedings was also initiated. Such criminal proceedings has resulted in the acquittal of the writ petitioner. Mr. Neogi referred to the judgment and order dated October 19, 2006 passed by the Criminal Court. Mr. Neogi submitted that by the time the judgment and order dated October 19, 2006 of the Criminal Court had been pronounced by the learned Court, the writ petitioner had been proceeded against departmentally.

3. Mr. Neogi contended that the Inquiry Officer had submitted a report on March 10, 1999 holding the said writ petitioner guilty of the charges alleged. The disciplinary authority had accepted the report of the Inquiry Officer. The disciplinary authority had thereafter, issued a second show cause notice on April 19, 1999. The writ petitioner had challenged the said second show cause notice before the West Bengal Administrative Tribunal by filing an application being O.A. No. 3325 of 1999. No order was passed therein. The disciplinary authority had passed a final Order on April 25, 2003 dismissing the writ petitioner from service. The writ petitioner had preferred a statutory appeal before the Deputy Inspector General of Police, Presidency Division which was not allowed. The writ petitioner had challenged the final order passed by the disciplinary authority and the subsequent order of the appellate authority before the West Bengal Administrative Tribunal by filing an application being O.A. No. 1537 of 2004. The criminal case initiated against the writ petitioner was disposed of on October 19, 2006. The aforesaid fact was brought to the notice of the learned Tribunal and the learned Tribunal by an Order dated November 16, 2009 disposed of the application of the writ petitioner being O.A. No. 1537 of 2004 by granting liberty to the said writ petitioner to file a review application before the Inspector General of Police, Southern Bengal. The writ petitioner had filed a review application on December 8, 2009. The review application was dismissed on March 14, 2000. Challenging the Order dated March 14, 2010, the writ petitioner had filed another application being O.A. No. 550 of 2010.

4. Mr. Neogi contended that the learned Tribunal did not appreciate the ratio laid down in (State of A.P. v. K. Allabakash) and 2009 Volume 9 Supreme Court Cases page 25 (Southern Railway Officers Association v. Union of India) correctly. Mr. Neogi submitted that it is the duty of the Court to see whether the finding of delinquency against the writ petitioner has been passed on evidence or not. Even in a domestic inquiry, there must be some evidence to establish the guilt of the delinquent. A Court or a Tribunal while exercising powers of judicial review is entitled to consider whether a relevant piece of evidence had been taken into consideration or not. In support of such contentions Mr. Neogi relied upon All India Reporter Union of India (UOI) Vs. H.C. Goel, AIR 1964 SC 364 : (1964) 9 FLR 161 : (1964) 1 LLJ 38 : (1964) 66 PLR 305 : (1964) 4 SCR 718 Nand Kishore Prasad Vs. State of Bihar and Others, AIR 1978 SC 1277 : (1978) 2 LLJ

84 : (1978) 3 SCC 366 : (1978) 3 SCR 708 : (1978) 1 SLJ 591 : (1978) 10 UJ 395 and *Moni Shankar Vs. Union of India (UOI) and Another*, (2008) 2 CLT 105 : (2008) 118 FLR 1092 : (2008) 3 JT 484 : (2008) 3 SCALE 455 : (2008) 3 SCC 484 : (2008) 1 SCC(L&S) 819 : (2008) 3 SLJ 325 .

5. Relying on *State of U.P. and Others Vs. Saroj Kumar Sinha*, AIR 2010 SC 3131 : (2010) 124 FLR 857 : (2010) 1 JT 617 : (2010) 2 LLJ 334 : (2010) 2 SCALE 42 : (2010) 2 SCC 772 : (2010) 1 SCC(L&S) 675 : (2010) 3 SCR 326 : (2010) 2 SLJ 59 : (2010) 2 SLR 159 : (2010) 2 UJ 788 Mr. Neogi submitted that the Inquiry Officer ought to have examined the evidence adduced on behalf of the defendants in order to see whether unrebutted evidence was placed to hold that the charges are proved. Referring to 2011 Volume 3 Services Law Reporter (State of West Bengal and Ors. v. Vidyasagar Pandey and Anr.) Mr. Neogi submitted that the findings of judicial authorities must prevail upon findings of the disciplinary authority.

6. Mr. Neogi contended that the findings of the Inquiry Officer are perverse and the order of dismissal has been passed on the basis of such perverse findings. Therefore, according to Mr. Neogi the same is not sustainable in law and consequently, the orders passed by the appellate authority as well as the revisional authority are liable to be quashed and set aside.

7. The writ petition is being opposed by the respondents. Mr. Tapan Mukherjee, learned Senior Counsel appearing on behalf of the respondents submitted that the writ petitioner had been given due hearing in respect of the charges leveled against him and due process of law had been followed in the departmental proceedings. Mr. Mukherjee contended that there is no illegality or infirmity in the actions taken by the respondent authority. According to Mr. Mukherjee, enough materials were available before the Inquiry Officer to hold the writ petitioner guilty. Mr. Mukherjee submitted that the standard of proof in a criminal proceedings is different from the civil proceedings. While in the criminal proceedings the guilt must be established beyond reasonable doubt, in a civil proceedings such as the disciplinary proceedings, the delinquent may be proceeded against on the basis of preponderance of probabilities. Mr. Mukherjee submitted that findings of a Criminal Court will have no effect on previously conducted domestic inquiry. In support of such propositions, Mr. Mukherjee relied upon *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, AIR 2011 SC 1931 : (2011) 129 FLR 937 : (2011) 4 JT 14 : (2011) 3 LLJ 13 : (2011) LLR 634 : (2011) 4 SCALE 56 : (2011) 4 SCC 584 : (2011) 1 SCC(L&S) 721 : (2011) 3 SCR 589 : (2011) AIRSCW 2583 , 2009 Volume 9 Supreme Court Cases page 24 (*Southern Railway Officers Association v. Union of India*) and *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, AIR 2005 SC 4217 : (2005) 107 FLR 407 : (2005) 8 JT 425 : (2005) 7 SCC 764 : (2005) SCC(L&S) 1020 : (2005) 3 SCR 314 Supp : (2006) 1 SLJ 267 .

8. Mr. Mukherjee further submitted that the writ petitioner did not challenge the disciplinary proceedings, the charge sheet, the report of the Inquiry Officer

before the learned Tribunal and is, therefore, not entitled to challenge any of the same under Article 226 of the Constitution of India. Mr. Mukherjee had relied upon L. Chandra Kumar Vs. Union of India and others, AIR 1997 SC 1125 : (1997) 83 CLT 815 : (1997) 92 ELT 318 : (1997) 228 ITR 725 : (1997) 3 JT 589 : (1997) 3 SCALE 40 : (1997) 3 SCC 261 : (1997) SCC(L&S) 577 : (1997) 2 SCR 1186 : (1997) 105 STC 618 : (1997) AIRSCW 1345 : (1997) 3 Supreme 147 in this regard. Mr. Mukherjee contended that a question of fact should not be decided unless the same is pleaded before the learned Tribunal and reliance is placed on State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, AIR 2011 SC 1931 : (2011) 129 FLR 937 : (2011) 4 JT 14 : (2011) 3 LLJ 13 : (2011) LLR 634 : (2011) 4 SCALE 56 : (2011) 4 SCC 584 : (2011) 1 SCC(L&S) 721 : (2011) 3 SCR 589 : (2011) AIRSCW 2583 in support of such proposition.

9. Mr. Mukherjee submitted that the revisional authorities had exercised its jurisdiction according to the order of the learned Tribunal. Mr. Mukherjee contended that G.M. Tank (supra) has no application in the facts of this case as the charges of the criminal case are different to that of the disciplinary proceedings initiated. Mr. Mukherjee further contended that the order of the Inquiry Officer as well as of the disciplinary authority cannot be challenged as the said issue is barred by the principles of res judicata in view of explanation IV of Section 11 of the Code of Civil Procedure, 1908. Reliance is place on Shiv Chander More and Others Vs. Lietenant Governor and Others, AIR 2014 SC 2669 : (2014) AIRSCW 4067 : (2014) 4 JT 143 : (2014) 3 SCALE 663 in this regard.

10. On the question of reinstatement Mr. Mukherjee submitted that when the petitioner as a constable of a disciplined force has been dismissed from service after complying with the principles of natural justice and due process of law, the fact that he has been acquitted in a criminal trial cannot be made the basis of an order for reinstatement in service. Reliance is placed on State of West Bengal and Others Vs. Sankar Ghosh, (2013) 12 AD 599 : AIR 2014 SC 405 : (2014) 140 FLR 525 : (2013) 15 JT 360 : (2014) LabIC 1579 : (2014) 2 LLN 331 : (2014) LLR 319 : (2013) 14 SCALE 245 : (2014) 3 SCC 610 : (2014) 1 SCC(L&S) 619 : (2014) 3 SCJ 77 : (2014) 1 SCT 580 : (2014) 1 SLJ 273 in this regard.

11. What would be the effect of an order of acquittal passed by a Criminal Court in respect of a delinquent employee who has been proceeded against departmentally in a disciplinary proceedings in respect of the same incident which has given rise to the criminal proceedings as well as to the departmental proceedings is well-settled.

12. Authorities cited on this subject at the Bar on behalf of the parties are K. Allabakash (supra), G.M. Tank (supra), Southern Railway Officers Association (supra), Ajit Kumar Nag (supra), Nemi Chand Nalawaya (supra) and Vidyasagar Pandey (supra).

13. In K. Allabakash (supra) while holding that the acquittal of the accused was

in view of the failure of the prosecution to prove the case, such acquittal should not be construed as an exoneration of the delinquent in the departmental proceedings.

14. In Ajit Kumar Nag (supra) it has been held as follows:-

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

15. In the case of G.M. Tank (supra) Hon"ble Supreme Court has considered the earlier decision in the case of Ajit Kumar Nag (supra). In the case of G.M. Tank (supra), it has been held that there was no iota evidence against the delinquent. The same witnesses as that of the departmental proceedings were examined in the criminal case. The Criminal Court on the examination of the same had come to the conclusion that the prosecution could not prove the guilt alleged against the appellant beyond any reasonable doubt and had acquitted the delinquent by its judicial pronouncement with the finding that the charge has not been proved. The judicial pronouncement was made after a regular trial and hot contest. Under those circumstances, it has been held that it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In paragraph 31 of the said report it has been held as follows:-

"31. In our opinion, such facts and evidence in the departmental as well as

criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honorable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

16. In Southern Railway Officers Association (supra) it has been held as follows:-

"37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge."

17. In Vidyasagar Pandey (supra) it has been held as follows:-

"15. Since both the criminal and departmental proceedings initiated against the respondent No. 1 are based on the identical charge arising out of the same set of facts, the findings of the learned Magistrate in respect of the said charge must prevail upon the disciplinary authority as the findings of the judicial authority should prevail upon the findings of the disciplinary authority on a particular issue.

16. The Constable concerned namely, the respondent No. 1 herein was not held guilty in the criminal case and the learned Magistrate acquitted the said Constable by a judicial pronouncement. The disciplinary authority in an unjust and unfair manner held the Constable concerned guilty and dismissed him from service even in absence of any evidence which was not considered earlier by the learned Magistrate while deciding the criminal case. The disciplinary authority unfortunately failed to show due regards to the findings of the judicial authority which we strongly disapprove.

17. The identical issue was also considered by a Division bench of this Court in the case of State of West Bengal 31 Ors. Vs. Sankar Ghosh and Another, (2010) 4 CALLT 236 wherein the Division Bench observed:-

"12. In the present case, when both the criminal and departmental proceeding initiated against the respondent No. 1 were based on identical set of facts and on the identical charge regarding involvement of the respondent No. 1 in connection with a dacoity case, the findings of the learned Additional Sessions Judge must prevail upon the Disciplinary Authority.

13. The learned Tribunal relying on the findings of the learned Additional Sessions Judge, therefore, rightly held that the respondent No. 1 herein should be reinstated in service as the findings of the judicial authority should prevail

upon the findings of the Disciplinary Authority."

18. In *Nemi Chand Nalawaya* (supra) it has been held that,

"11. We are, therefore, of the view that the High Court was not justified in quashing the punishment and directing reinstatement with back wages and consequential benefits. In fact, the order of the High Court directing back wages amounts to rewarding a person who has been found guilty of a misconduct. However, having regard to the fact that the proven charge did not involve either misappropriation or fraudulent conduct and the other circumstances of the case, we are of the view that the punishment of dismissal should be substituted by compulsory retirement, which does not involve reinstatement."

19. Acquittal of a delinquent by a criminal court does not ipso facto absolve a delinquent from the disciplinary jurisdiction of the employee. An order of dismissal could be passed even if the delinquent officer had been acquitted of the criminal charge. The standard of proof required in the criminal proceedings being different to that of the standard of proof required in departmental proceedings, the same charges and evidence may lead to different results. In the criminal proceedings, the accused may be acquitted on the benefit of doubt as the charge may not be proved beyond reasonable doubt on the basis of the evidence on record. The same evidence may result in finding of guilt after the same is evaluated on the basis of preponderance of probability. However, where the facts and evidence in the departmental as well as the criminal proceedings are the same, without there being any iota of difference, the order of honourable acquittal of the delinquent in the criminal proceedings should be taken note of. When both the criminal and departmental proceedings initiated against the delinquent are based on identical charge arising out of the same set of facts, the findings of the criminal court in respect of the charge must prevail upon the disciplinary authority as the findings of the judicial authority should prevail upon the findings of the disciplinary authority on a particular issue.

20. In the instant case, we find that both the criminal proceedings as well as the disciplinary proceedings were initiated with regard to an incident which had allegedly taken place on March 14, 1998. The writ petitioner herein along with the writ petitioner in W.P.S.T. No. 302 of 2011 were posted in Bagdah Police Station at the material point of time. The writ petitioner has been charged with gross misconduct and indiscipline unbecoming of a member of a police force in view of the alleged incident of March 14, 1998. It has been alleged in the charge-sheet that on March 14, 1998 at about 10-00 hours to 10-30 hours while one Paritosh Chowdhury along with his illegally emigrated Bangladeshi relatives had proceeded from Asaru Bazar, the writ petitioner along with others had intercepted and interrogated them. In the mean time, the said Paritosh Chowdhury had reached the bus stop. Paritosh Chowdhury had given Rs. 28,000/- to an Auto Rickshaw driver Dipak Mondal, who had reached there also. The writ petitioner had seen the episode and had snatched away the money from the Auto Rickshaw driver with an ulterior motive. Thereafter, the writ petitioner

had brought Paritosh Chowdhury and his relatives to Bagdah Police Station Barrack where the writ petitioner along with others compelled the said Paritosh Chowdhury to hand over the cash of Rs. 10,000/- to the writ petitioner. The second charge is that the writ petitioner did not arrest the illegally emigrated relatives of Paritosh Chowdhury. The third charge is that, the writ petitioner did not inform the duty officer of the Police Station or the Officer-in-Charge of the Police Station about the incident.

21. A list of witnesses proposed to be examined appears from the charge-sheet. It does not disclose that the concerned Auto Rickshaw driver would be examined as a witness.

22. Paritosh Chowdhury named in the charge-sheet had filed a written complaint before the Officer-in-Charge of the Bagdah Police Station. This complaint is dated May 2, 1998. The complaint of Paritosh Chowdhury does not speak about any Auto Rickshaw driver being involved in the alleged incident. The Inquiry Officer has submitted a report on March 10, 1999. The inquiry report details the depositions of the witnesses and the documents examined by the Inquiry Officer. Paritosh Chowdhury had deposed as the first witness before the Inquiry Officer. In the deposition Paritosh Chowdhury states that he had made over a bundle of 500 rupee notes of approximately Rs. 30,000/- to the Auto Rickshaw driver when he was apprehended by the writ petitioner and others on March 14, 1998. The writ petitioner had seen such episode and had snatched away the bundle of currency from the Auto Rickshaw driver. The Inquiry Officer recorded that the writ petitioner had asked for examination of the Auto Rickshaw driver. The said Auto Rickshaw driver has been identified as one Dipak Mondal. The Inquiry Officer records that all possible efforts were taken for the examination of the Auto Rickshaw driver and in spite of best of efforts the Auto Rickshaw driver could not be examined.

23. On the basis of the complaint of Paritosh Chowdhury a criminal proceedings was initiated in respect of the alleged incident of March 14, 1998. The writ petitioner was charged under Sections 342, 323, 354, 384 and 560 of the Indian Penal Code. Six points for discussions have been considered by the Additional Chief Judicial Magistrate in such proceedings. They are as follows:-

1. Whether the accused persons wrongfully restrained Paritosh Chowdhury and his associates on 14.3.98, at 11.30 a.m. or not?
2. Whether the accused persons voluntarily caused hurt to the de facto complainant Paritosh Chowdhury and his associates or not?
3. Whether the accused persons committed any offence of outraging, the modesty of Purnima Boral or not?
4. Whether the accused persons extorted money from de facto complainant and others or not?
5. Whether the accused persons gave any criminal intimidation to the de facto

complainant or not?

6. Whether the accused persons committed any offence U/s. 342/323/354/384/506 of I.P.C. or not?

24. Paritosh Chowdhury had deposed in such proceedings. The involvement of the Auto Rickshaw driver has not been alleged in the criminal proceedings. A different version of the alleged snatching of money has been given in the criminal proceedings. With regard to the point No. 4 raised in the criminal proceedings it has been held that nowhere from the evidence on record the names of the accused in the criminal trial had transpired. The de facto complainant being Paritosh Chowdhury also did not say anything against the accused persons in the criminal proceedings. The writ petitioner is one of the accused persons in the criminal proceedings.

25. In such factual background, the writ petitioner is sought to be discharged from service as (a) he had allegedly snatched money, (b) he did not arrest the illegally emigrated relatives of Paritosh Chowdhury, and (c) he did not inform the matter to the duty officer.

26. Before the Inquiry Officer 8 witnesses on behalf of the prosecution have been examined. The Auto Rickshaw driver Dipak Mondal was however not produced as a witness. The Inquiry Officer records that efforts to examine the Auto Rickshaw driver were made but in spite of best efforts he could not be examined. Paritosh Chowdhury is one of the witnesses in the disciplinary proceedings and was one of the witnesses in criminal proceedings also. With regard to the alleged snatching of money by the writ petitioner in the departmental proceedings, Paritosh Chowdhury claimed that he tried to hand over a bundle of rupees 500 notes aggregating approximately to Rs. 30,000/- to a Auto Rickshaw driver. The writ petitioner noticing the episode snatched away the bundle. Apart from Paritosh Chowdhury, Madhusudhan Chowdhury, Pallab Kanti Ghosh, Sub-Divisional Police Officer and six others had deposed. The writ petitioner in his written statement had pointed out the discrepancies in the evidence of the prosecution witness before the disciplinary authority. Writ petitioner had also pointed out that three versions of the incident of snatching money had come out from the depositions of the prosecution witnesses. The Inquiry Officer mentioned in his report that there were three episodes of the same incident of snatching emanating out of the depositions of the prosecution witnesses. The Inquiry Officer however held that such three episodes were the results of depositions/examinations of the different witnesses at different times.

27. As mentioned earlier, the disciplinary authority confirmed the findings of the Inquiry Officer.

28. On the second round of proceedings before the West Bengal Administrative Tribunal, and during its pendency, the decision of the criminal proceedings had arrived. The West Bengal Administrative Tribunal had by its Order dated March 25, 2004 took note of the order passed in the criminal proceedings and

observed: "only the appropriate authority can take a decision in the light of the pronouncement of the Hon"ble Supreme Court as to whether the petitioner can get benefit of subsequent acquittal order passed by the Criminal Court and at the same time, we hold that this decision should be taken by the appropriate authority of the department alone lest our interference would be a strict sense of the term of judicial review. In view of our above findings in both the applications, we grant liberty to both the writ petitioners of both the applications to file a review application along with copy of the judgment of the Criminal Court for reconsideration of the punishment order by the appropriate authority and Inspector General of Police, South Bengal." The Tribunal had also held: "scope of review would be whether the order of the Criminal Court in the given facts and circumstances, can give a scope of reconsideration in view of the specific charges for which the proceedings was initiated and concluded." The writ petitioner was also granted liberty to approach the Tribunal if ultimately aggrieved by the order of the Inspector General of Police.

29. The writ petitioner had made a review application before the reviewing authority in terms of the Order dated March 25, 2004. The reviewing authority found that in the disciplinary proceedings the charges against the writ petitioner had been established by preponderance of probability. The reviewing authority took the view that in this case the criminal acquittal would not help to discharge the writ petitioner from the liabilities of the findings vis-a-vis the departmental proceedings.

30. We have gone through the order of the reviewing authority dated March 14, 2010. The reviewing authority did not consider that there are at least four versions of the snatching of the money allegedly done by the writ petitioner. Three different versions of the same incident made available before the Inquiry Officer in the disciplinary proceedings and one version in the criminal proceedings. In the criminal proceedings, the prosecution case and that too at the instance of Paritosh Chowdhury, the de facto complainant, is that the money was snatched by the writ petitioner from Paritosh Chowdhury directly. No evidence was led to such effect before the Criminal Court in spite of Paritosh Chowdhury, the de facto complainant, making such allegations being examined as a prosecution witness. Therefore, the fact that the writ petitioner snatched the money from Paritosh Chowdhury directly has not been established even on the principle of preponderance of probability since there is no evidence to such effect at all.

31. The three versions of the snatching of money before the Inquiry Officer in the departmental proceedings revolve around the involvement of an Auto Rickshaw driver. The Auto Rickshaw driver has not been produced as a witness. It is therefore, the word of Paritosh Chowdhury against the word of the writ petitioner. In the departmental proceedings Paritosh Chowdhury stated that he had made over a sum of Rs. 30,000/- to the Auto Rickshaw driver and that the writ petitioner noticing such episode had snatched away the said money. With

regard to the snatching of the money by the writ petitioner, the same Paritosh Chowdhury gave no evidence and in fact did not name the writ petitioner as the person snatching the money in the criminal proceedings. This fact has been noted in the order of the learned Magistrate dated November 16, 2009. It is true that the order of the learned Magistrate was passed after the submission of the report of the Inquiry Officer. However, by the Order dated November 16, 2009 the West Bengal Administrative Tribunal had allowed the writ petitioner to file a review application and had laid down the scope of the review. The given facts and circumstances of the instant case particularly the allegations leveled against the writ petitioner before the criminal Court and the standard as well as quality of the evidence with regard to as well as the nature of allegations leveled against the writ petitioner in the criminal proceedings and the standard and quality of evidence in the disciplinary proceedings ought to have been evaluated by the reviewing authority. In our view, the reviewing authority did not do so. The reviewing authority rejected the review application on the ground: "But non-proving of any offence to the extent of "beyond reasonable doubt" does not mean the non-commission of the same. In this case, the criminal acquittal will not help to discharge the delinquent Constable from all the liabilities of the offence vis-a-vis the instant departmental proceeding. Besides, in departmental enquiry the rule of "Preponderance of Probability" plays a pivotal role informing the judicious opinion of E.O., Disciplinary Authority and Appellate Authority and not the rule of "beyond any reasonable doubt", which is applicable only in a criminal case."

32. The next charge relates to final records maintained at the police station. Neither the final records were produced as evidence nor the concerned police personnel were produced as witness. The writ petitioner had questioned such procedure. The Inquiry Officer was of the view that the actual intention of the writ petitioner was not clear when the writ petitioner had questioned the non-examination of the concerned police personnel and the final records. The Inquiry Officer proceeded to opine that the last two charges against the writ petitioner stood established by the report of the Sub-Divisional Police Officer. The primary documents forming the basis of the report were not produced before the Inquiry Officer. The concerned police personnel had not been produced to adduce evidence. The Inquiry Officer did not consider the primary evidence as it was not made available. The Inquiry Officer sought to rely upon the assessment of evidence by the Sub-Divisional Police Officer on these two charges. The Inquiry Officer, therefore, had no material before it even on the principle of preponderance of probability to opine that these two charges against the writ petitioner stood established.

33. In our view, the fact scenario in this case is akin to that of G.M. Tank (supra). It is a case of no evidence at all. When there is no evidence, the final verdict in the departmental proceedings on the principles of preponderance of evidence or probabilities cannot be sustained.

34. Reliance on L. Chandra Kumar (supra) in the facts of this case on behalf of the respondent authorities is misplaced. The writ petitioner did challenge the disciplinary proceedings as also the report of the Inquiry Officer before the West Bengal Administrative Tribunal at different points of time.

35. In Nemi Chand Nalwaya (supra) it has been held as follows:-

"It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, not interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquires. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice and statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikanta S. Patil)."

36. Applying the test in Nemi Chand Nalwaya (supra) to find out the perversity in the departmental inquiry, in the facts of this case it must be said that the Inquiry Officer had no material before it to hold the writ petitioner guilty of the charges.

37. Shiv Chander More and Ors. (supra) deals with constructive res judicata. It has held that the doctrine is founded on two-fold logic namely, (i) that there must be finality to adjudication by the competent Court and (ii) no man should be vexed twice for the same cause. In the facts of this case, the West Bengal Administrative Tribunal on previous occasion did not consider the order passed by the Inquiry Officer to render a final finding thereon. The order of the West Bengal Administrative Tribunal prior to the order impugned herein is the Order dated March 25, 2004. In such order the West Bengal Administrative Tribunal had directed the writ petitioner to file an application for review. In our view, the challenge to disciplinary proceedings was open till such Order dated March 25, 2004. Any other interpretation applying the principles of constructive res judicata to the facts of this case would render the Order dated March 25, 2004 bad. The parties had accepted the Order dated March 25, 2004 and had acted thereon. The challenge to the order passed by the reviewing authority has given rise to the impugned order. The West Bengal Administrative Tribunal did not pronounce finally on the merits of the order passed by the Inquiry Officer and the disciplinary authority which have been impugned herein. In our view, principles laid down in Shiv Chander More and Ors. (supra) are not applicable to the present case.

38. In Sankar Ghosh (supra) the Supreme Court has held that in view of Regulation 4 of Chapter XIX of the Police Regulation of Calcutta, 1968 discharge or acquittal in a criminal proceedings is not a bar to departmental punishment. In the instant case, we find that there is no evidence before the Inquiry Officer to hold that the charges leveled against the writ petitioner stood established. Regulation 4 of Chapter XIX of the Police Regulation of Calcutta would require some evidence for the departmental proceedings to impose any punishment.

39. The Tribunal did not consider the quality and quantity of evidence available to the Inquiry Officer to hold the writ petitioner guilty of the charges mentioned in the charge sheet. The Tribunal also did not consider that the reviewing authority did not consider such aspect after an application for review had been made by the writ petitioner. G.M. Tank (supra) was cited before the Tribunal. The Tribunal has not given any reason as to why G.M. Tank (supra) is not applicable to the facts of this case.

40. For the reasons discussed hereinabove, the report of the Inquiry Officer dated March 10, 1999 is quashed and all steps taken by the respondent authorities pursuant to and in terms of the said report including the orders passed by the disciplinary authority, appellate authority and reviewing authority also stand quashed.

41. In view of the discussions aforesaid, we set aside the impugned Order dated August 25, 2011 passed by the West Bengal Administrative Tribunal in O.A. No. 549 of 2010 and O.A. No. 550 of 2010.

42. In view of quashing of the entire disciplinary proceedings and specially on account of quashing of the order of punishment passed by the disciplinary authority and the subsequent orders passed by the appellate authority and reviewing authority, the respondent authorities are directed to allow the petitioner to resume the duties forthwith and disburse all monetary benefits as well as other benefits of service which the writ petitioner is entitled to receive without any further delay upon treating the said writ petitioner in service without any break as if no disciplinary proceedings was ever initiated against the said petitioner. Respondents authorities are directed to disburse the arrear dues including the admissible salary and allowances to the petitioner with effect from the date of dismissal till the date of joining the duty in terms of this order without any further delay but positively within a period of four weeks from date.

43. This writ petition therefore, stands allowed without any order as to costs.

Pranab Kumar Chattopadhyay, J.

I agree.