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

% ***Judgment reserved on: 22.04.2026***
Judgment pronounced on: 01.07.2026

\+ **W.P.(C) 7264/2022**

PISAL SAGAR VISHNU .....Petitioner

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Piyush Beriwal, Ms. Ruchita Srivastava, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

AMIT MAHAJAN, J.

1. The present Writ Petition, has been filed under Article 226 of the Constitution of India, assailing the impugned Penalty Order dated 22.05.2019 passed by the Disciplinary Authority imposing the penalty of *dismissal from service,* the appellate order dated 21.08.2019 affirming the same and order dated 10.08.2020 passed by the Reviewing Authority whereby the revision petition preferred by the Petitioner came to be dismissed.

2. Succintly stated, the Petitioner was serving as a Constable/GD in the Central Industrial Security Force (***'CISF'***).

3. The controversy arises from an incident dated 04.02.2018, occurring during the period when the Petitioner was availing leave

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from service. The case of the Respondents is that while on leave, the Petitioner, along with one Late Sh. Ganesh Balu Pisal and certain other persons, assembled at Dhom Dam, District Satara, Maharashtra, consumed liquor in a public place and thereafter became involved in a scuffle and altercation during the course of which Ganesh Balu Pisal lost his life.

4. Consequent thereto, criminal proceedings were initiated by registration of FIR No.23/2018 under Sections 302 and 34 of the Indian Penal Code, 1860 at Wai Police Station, District Satara. Simultaneously, departmental proceedings were also initiated under Rule 36 of the CISF Rules, 2001. The Articles of Charge reads as under: -

> ***"Article of charge – I***
> *That CISF number 104384004 constable GD PisalSagar Vishnu left for his home due to some domestic issues on leave w.e.f 31.01.2018 till 24.02.2018. That during leave on the night of 04.02.2018 Constable GD PisalSagar Vishnu with his friend one Ganesh BaluPisal who was employed with Indian Army and along with other friends consumed liquor at Dhom Dam in public place.* ***The act of consuming liquor in public place*** *by Constable GD PisalSagar Vishnu amounts to gross indiscipline, due to which reputation of force has been damaged.*
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> ***Article of charge – II***
> *That CISF number 104384004 constable GD PisalSagar Vishnu left for his home due to some domestic issues on leave w.e.f 31.01.2018 till 24.02.2018. That during leave on the night of 04.02.2018 Constable GD PisalSagar Vishnu with his friend one* ***Ganesh BaluPisal who was employed with Indian Army*** *and along with other friends*

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consumed liquor at Dhom Dam in public place and thereafter got involved in fighting/beating/scuffle. The act of consuming liquor in public place and ***there after getting involved in scuffle*** *by Constable GD PisalSagar Vishnu amounts to gross indiscipline, due to which reputation of force has been damaged. Hence the Charge.*

Article of charge – III

That CISF number 104384004 constable GD PisalSagar Vishnu left for his home due to some domestic issues on leave w.e.f 31.01.2018 till 24.02.2018. That during leave on the night of 04.02.2018 Constable GD PisalSagar Vishnu with his friend one Ganesh BaluPisal who was employed with Indian Army and along with other friends consumed liquor at Dhom Dam in public place and thereafter got involved in fighting/beating/scuffle, ***during which Ganesh BaluPisal died. Thereafter he was arrested at about 400 hours by local police from police station Wai, District Satara Maharashtra and a criminal case under Section 302 and 34 of Indian Penal Code was lodged against him through FIR No.23/2018.*** *This act on the part of Constable GD PisalSagar Vishnu amounts to gross misconduct, heinous crime, gross indiscipline, due to which reputation of force has been damaged. Hence the Charge."*

(emphasis supplied)

5. Hence, the allegations broadly related to:

a) consumption of liquor in a public place while being a member of a disciplined force;

b) involvement in scuffle, assault and altercation after such consumption; and

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c) participation in the occurrence during which death of Ganesh Balu Pisal took place.

6. Upon conclusion of inquiry, after giving due opportunity to the Petitioner to file its Defence/Reply and cross-examine witnesses, the Inquiry Officer held the charges proved. The Disciplinary Authority, after considering the testimonies of 11 witnesses, their statements in the preliminary inquiry and the Statement dated 14.02.2018 of the Petitioner admitting the entire incident, affirmed the findings of the Inquiry Officer and thereafter imposed the penalty of *dismissal from service* by a detailed order dated 22.05.2019.

7. The Appeal preferred by the Petitioner came to be dismissed on 21.08.2019. The relevant observations and observations on the grounds raised therein are reproduced hereinbelow: -

> *"5. The appellant has submitted the appeal date 16/06/2019 addressing the Deputy Inspector General, CISF NCR Headquarters New Delhi against the said punishment passed by the disciplinary officer on 16/06/2019. The appellant has requested in the appeal to be freed from the charges leveled against him on the basis of the following issues and the punishment given by the disciplinary officer for the said charge, whose para-wise comment is as follows:-*
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> *XXX XXX XXX*
>
> *II. If he had consumed alcohol, he would have had a medical report, but there is no medical report to prove that he had consumed alcohol. How was the charge proved against him without a medical report?*
>
> *In the statements given by the prosecution witnesses-05, 07 and 08 to the local police, it has been told that all other than Amol Saheb Rao Pisal had consumed alcohol, which makes it clear that the appellant had also consumed alcohol. The appellant himself told the prosecution witness-1 on the phone that he along with six of his friends had consumed liquor at Dhom Dam, which is mentioned by him in the daily diary. Therefore, the argument of the*

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appellant is not valid that without the medical report how it is prove that he has consumed alcohol.

III. During his investigation process, the statements of PW-05, PW-07 and PW-08 clearly stated that he had not consumed alcohol, yet why is this allegation being imposed on him that he had consumed alcohol.

In the statements given by the prosecution witnesses during the preliminary inquiry on 14/02/2018, all three have stated that the appellant had consumed liquor on Dhom Dam on 04/02/2018, and told to the police about the appellant's consumption of alcohol and was also clearly stated in his statement. Here clearly the appellant has influenced the prosecution witnesses, the prosecution witnesses-05, 07 and 08, so as to strengthen his stand.

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V. That PW-01 has stated that he spoke to them over the telephone and told them everything about the 163 11 incident, If he had spoken to them and told everything about the incident, he would have written about this in the daily diary which has been given as evidence in this investigation process, but it is clearly written in the daily diary that Assistant Police Inspector Baban Yedge from Wai police station gave information about the whole incident by telephone, Whereas PW-01 says that if he was talked over the telephone, then what is written in the daily diary is wrong?

It is submitted by the appellant that, on 05/02/2018 PW-01 did not have any kind of talk on the phone with him, If anything was done, he would mention it in the daily diary, this statement of the appellant is not acceptable as PW-01 has clearly recorded during his statement that, he requested Assistant Police Inspector Bawan Yadje to talk to the force member on mobile phone in the presence of Assistant Commandant/CISF Unit IPGCL New Delhi, Shri S.S. Chib for confirmation of the force member after receiving information about the incident. ***Upon which the speaker jointly spoke to the appellant, and information of the incident was obtained. Liquor was purchased from Wai Town for the purpose of drinking liquor, which has been presented as documentary evidence (PW 1/Exh. P-3) in the investigation by PW01. On the basis of the above facts, it has been clarified by the presenting officer that the appellant had consumed liquor during the liquor party on 04.02.2018 in the open ground of Dhom Dam.***

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VI. It is stated by the presenting officer that he has influenced the prosecution witnesses so as to strengthen his stand. This is absolutely untrue. He cannot influence the prosecution witnesses because his case which is on in the court has freed him out on the bail it clearly states that he should not affect the witnesses in any way in the context of the case. If done in anyway way, his bail will be canceled and if he has to go, he will go to jail again then why would he take the risk.

During the investigation process, prosecution witnesses- 05, 07 and 08 have given a statement that the appellant force member did not drink alcohol. In response to the question 165 13 asked by the presenting officer during the reexamination of the above prosecution witnesses, it has been clarified by the above prosecution witnesses that they had recorded their statement during the initial investigation of the case on 14/02/2018. Accordingly, on perusal of the above statements in the case file, it was found that, it has been clearly stated by the above three prosecution witnesses that the appellant had consumed alcohol during the party at Dhom Dam on 04.02.2018. The appellant himself told PW-01 on telephone that he had consumed alcohol. It is clear from the above fact that in the statements recorded after the incident on 14/02/2018, the above three prosecution witnesses have made statements regarding the incident with truth. Apart from this, the statements made by PW-05, PW-07 and PW-08 to the Wai Police have also clearly recorded that the appellant had consumed alcohol during the party on Dhom Dam on 04.02.2018.

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X. That he had not consumed any kind of alcohol and he had not quarreled with anyone. PW-05, PW-07, PW-08 have clarified in their statement and they had no quarrel with anyone. PW-08 has clearly stated that Ganesha's quarrel was with him and not with the appellant. Witness present during the incident which happened on the Dhoom Dam with the appellant, stated that he had not consumed alcohol and there was no quarrel with Ganesh of any kind.

In his defense statement, the appellant has stated the fact of having a liquor party on Dhom Dam with his six other friends on the night of 04/02/2018 but the appellant's statement that he had not drunk liquor and re-filing in response to the final hearing and briefing

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note of the presenting officer that there was no medical report regarding his drinking was totally unilateral and false. Because, after perusing the case file, it was found that in the statement recorded by the appellant earlier on 14/02/2018 during the preliminary inquiry, it is clearly recorded that he had joined his six other friends on 04/02/2018 had consumed alcohol at night on the Dhom Dam. Therefore, the said statement of the appellant is not admissible.

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6. The undersigned made a thorough perusal of the statements of the witnesses and documentary evidence available in the case file in addition to the arguments presented by the appellant and found that the appellant force no. 104384004 Ex-constable (GD) Pisal Sagar Vishnu went on 15 days from 31.01.2018 to 24.02.2018 casual leave with other valid permissions at his home, while working in CISF unit IPGCL / PPCL New Delhi, which is confirmed by the statement given by the prosecution witness-01 and the exhibit-01 presented by him. During leave, the appellant committed an undesirable act along with his army friend Ganesh Badu Pisal and other friends by consuming alcohol at a public place Dhom Dam on the night of 04.02.2018, due to which Ganesh Badhu Pisal died during that time. Therefore, the appellant was arrested on 05/02/2018 at around 04:00 o'clock by the local police (station incharge, Wai, District-Satara) and case number 23/2018 has been registered under sections 302 and 34 of IPC. ***The use of alcohol in public place by the appellant implies indecent behavior, gross crime, gross misconduct and gross indiscipline, which tarnishes the image of the force. The appellant was a disciplined force member of the CISF and should have always taken care of discipline even while on leave but did not do so and indulged in gross indiscriminate acts which tarnished the force's image. The appellant has been done above act by ignoring the rules and laws of the CISF, which is unforgivable.***

7. I also found that during the investigation process, prosecution witnesses-05, 07 and 08 have stated that the appellant did not drink alcohol. In response to the question asked by the presenting officer during the re-examination of the above prosecution witnesses, it has been clarified by the above prosecution witnesses ***that during the preliminary investigation of the case on***

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14.02.2018, he had recorded his statement. Accordingly, after observing the above statements in the case file, it was found that the above three, the prosecution witnesses clearly stated that the liquor was consumed by the appellant during the party on Dhom Dam on 04/02/2018. It is clear from the above fact that in the statements recorded after the incident on 14/02/2018, the above three prosecution witnesses have given a statement of the incident with respect to the truth. *Apart from this, in the statement given by the prosecution witness-05, prosecution witness-07 and 08 to the Wai police,* ***it is clearly recorded that the appellant consumed the alcohol during the party at Dhom Dame on 04/02/2018.*** *All the above prosecution witnesses belong to the appellant's village and are his well-known friends as well as all three were present during the incident on 04/02/2018 at Dhom Dame. Therefore, it is clear that the statements recorded by the three prosecution witnesses during the departmental inquiry by the appellant have been affected and the statement of nonconsumption of alcohol has been recorded for their defense, based on the documents available in the case file but clearly it is beyond the truth.*

8. On examining the case file, I also found that the investigating officer has completed the entire departmental inquiry proceedings under the rules specified under Rule-36 of CISF Rules 2001. During the departmental inquiry, the appellant was given appropriate opportunity to defend himself at all levels. Other issues raised by the appellant in the appeal do not support the case on merit. ***The appellant did not reveal any facts in his appeal that should be considered and interfered with the decree passed by the disciplinary officer, so I believe that the punishment passed by the disciplinary officer is equivalent to the seriousness of the act of indiscipline committed by him.***

9. Therefore, I undersigned, by using the powers conferred under Rule-52 of CISF Rules 2001, rejected the appeal Petition dated 16.06.2019 submitted by Force No. 104384004 Ex-constable/GD Pisal Sagar Vishnu CISF Unit IPGCL/PPCL New Delhi due to Devoid of Merit."

(emphasis supplied)

8. Thereafter, the Petitioner invoked revisional/review jurisdiction under Rule 54 of the CISF Rules. During pendency of the same, the criminal trial culminated in acquittal of the two accused, i.e. the

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Petitioner and Sunil, essentially on the ground that all the witnesses had turned hostile as they did not support the case of the prosecution, *vide* judgment dated 24.09.2019 passed by the learned Sessions Court in Sessions Case No.88/2018. The relevant extract is reproduced herein below: -

> *"20. In order to establish the circumstantial evidence the prosecution has examined PW1 Pradip Sitaram Sanas who is panch witness of seizure panchanama Exh.25 by which police have seized the clothes from dead body and prepared seizure panchanama.* ***He did not support to the case of prosecution.*** ***He specifically states that, nothing was seized in his presence.*** *Similarly PW3 Bhagwan Krishna Choudhari who is seizure panch of panchanama Exh.31 by which police have seized the clothes of accused Sagar Vishnu Pisal,* ***but he also did not support to the case of prosecution.*** *He states that, nothing was seized in his presence. During crossexamination nothing incriminating evidence came on record to believe his testimony.* ***Both the witnesses did not corroborate with the version of PW9 Vinayak BajiraoVetal and their evidence and medical evidence on record is not sufficient to establish any circumstance to believe the prosecution story.***
>
> *21. I have carefully scrutinised the evidence of Investigating Officer PW9 Vinayak BajiraoVetal. His evidence is formal. He has prepared seizure and spot panchanama in presence of panchas,* ***but the panchas did not support to the case.*** *They have not corroborated with the version of Investigating Officer to prove the circumstantial evidence.* ***The eye witnesses Shekhar Santosh Gadekar, Akash Sunil Choudhari, Amol SahebraoPisal and Kiran Shamrao Chavan have not supported to the case of prosecution.*** ***The learned A.P.P. declared them hostile.*** *Nothing came on record to believe their testimony.* ***Therefore, the sole evidence of Investigating Officer is also not sufficient to convict the accused.***
>
> *22. On scrutiny of total evidence on record, prosecution failed to prove the contents of FIR Exh.27. Prosecution also failed to prove the seizure panchanama and spot panchanama on record. Prosecution also failed to*

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prove the direct evidence by examining the eye witnesses. ***The eye witnesses examined by them Shekhar Santosh Gadekar, Akash Sunil Choudhari, Amol SahebraoPisal and Kiran Shamrao Chavan did not support to the case of prosecution. Prosecution miserably failed to prove its case beyond all reasonable doubt.*** *In such circumstances I hold so and answer the points accordingly and proceed to pass the following order.*

ORDER

Accused No.1 Sagar Vishnu Pisal and accused No.2 Sunil PilobaGadhave are acquitted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code vide Section 235(1) of Criminal Procedure Code."

(emphasis supplied)

9. The principal submission advanced by the Petitioner before the Reviewing Authority was that once acquittal had been recorded in the criminal case, the very substratum of departmental action ceased to survive and consequently continuation of punishment became unsustainable. The Reviewing Authority considered the said contention in detail and recorded that the departmental proceedings proceed on the standard of preponderance of probabilities unlike the threshold of proof beyond reasonable doubt. The Reviewing Authority further observed that material available in departmental proceedings, including witness statements, documentary evidence and surrounding circumstances, sufficiently established the misconduct alleged against the Petitioner and that no ground for interference with punishment existed. The relevant observations on the grounds raised are reproduced herein below: -

"

I	*That, he was punished of the punishment of removed from service under Rule No. 36 of*

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	CISF Rules 2001 with immediate effect under letter no -V-15017 / CISF / Anu / 5th Aa.Va./ Rule-36 / Pisavi / 2018-13040 dated 05/11/2018. An appeal against this conviction was submitted to the Deputy Inspector General (NCR Region) which was quashed by the Appellate Officer, which is unjustifiable, whereas all the allegations leveled against him are false and baseless.
➢	*The above statement of the petitioner is not acceptable. The departmental inquiry has been conducted on the allegations made against the petitioner under the procedures contained under Rule-36 of CISF Rules 2001,* ***in which the petitioner has been given ample opportunity to defend himself but he has failed to refute the case of the prosecution.*** *The investigation officer has found all the allegations to be true only on the basis of the statements of witnesses and the evidence presented by them. The disciplinary authority has also imposed the above sentence by passing a verdict on the basis of evidence available in the investigation findings, representations submitted by the petitioner against the investigation report and the case file, which is equivalent and justified the misconduct of the petitioner. The appellate authority, after considering the appeal of the petitioner, has been dismissed for lack of merit.*
II	*He came to his house on leave from 31/01/2018 to 24/02/2018, during the night of 04/02/2018 his friend had an accident and he died and due to the skepticism and negligence of the police, his name was added to his murder. The petitioner was implicated in the false charge of committing his murder, due to the false charge, the police arrested him and put him in Satara Jail and filed a case against him under Sections 302 and 34 in Case No. 23/2018.*
➢	*The statement of the petitioner is not correct that his friend had an accident, as no evidence has been presented during the departmental inquiry to make it clear that his friend had died*

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	due to an accident. The argument of the petitioner is also not correct that the police added his name to those who committed the murder. It is clear from the evidence collected in the police action and from the statements of all the prosecution witnesses during the departmental investigation and from the documentary evidence presented by them and the circumstantial evidence, ***there was a fight between the petitioner and the deceased on 04.02.2018 while drinking liquor at Dhoom Dam, a public place in Maharashtra and in the same fight, the physical movement of Ganesh Batu Pisal (deceased) was stopped, who was later declared dead by the doctor of the local rural government hospital 'Y'.*** *It is clear from the evidence that the deceased Ganesh Badhu Pisal was angrier and he started arguing and quarreling with Pisal Sagar Vishnu. Ganesh Badu Pisal / the deceased became more agitated and fought with Sunil and also cut his hand.* ***He also started pushing against Pisaal Sagar Vishnu, then Pisaal Sagar Vishnu grabbed the hand of Ganesh Badhu Pisaal / the deceased and Sunil strangled him.*** *Shortly after Sunil caught his throat, the physical movement of Ganesh Balu Pisal stopped. The FIR and the post-mortem report and the Panchnama report in connection with the incident* ***showed injuries and bruises on various parts of the deceased. Based on the above facts, all the three allegations leveled against the petitioner have been confirmed.***
III	*The news of this case was reported to the unit by "Y" Police Station, due to which a suspension order was sent on 05/02/2018 and he was issued a charge sheet alleging that he committed undesirable acts on the night of 04/02/2018 by consuming liquor at Dhoom Dam in a public place. The force member has behaved indecently and has committed a gross crime by consuming liquor in public place. On the same day, the petitioner consumed alcohol and killed Ganesh Pisal after being beaten and quarreled. In the same offense, the petitioner*

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	was arrested on 05/02/2018 by the local police station, Y, District- Satara, due to the same allegations, the petitioner was dismissed from service with immediate effect. However, he did not commit any indecent behavior, malpractices that indicate gross indiscipline. He has been implicated in this.
➢	*It is clear from the statement* ***by Inspector / Works Ravi Ranjan (PW-01) that****, on 05.02.2018 at around 1235 hrs, Assistant Police Inspector Bawan Yadje from "Y" Police Station, District Satara informed on his mobile that the petitioner was arrested in the above event and a case has been filed under Section 302/34 of IPC, FIR No. 23/2018. The Petitioner was interviewed with PW-01 in which the petitioner stated that,* ***on 04.02.2018, along with 06 other associates he was drinking liquor in the ground next to Ghoom Dam and while drinking liquor, the deceased Ganesh Badhu Pisal's dispute was started over the case of Amol Sahebrao Pisal assaulting his own sister.*** *The deceased had drunk a lot of liquor so he was not listening to anyone and the quarrel did not escalate so the petitioner sent 04 companions back from there, due to which the deceased became angrier and started quarreling with the petitioner and at the same time, he cut off the hand of Sunil Gadhve, so Sunil Gadhve caught the throat of the deceased* ***and the petitioner grabbed both his hands. The physical movement of the deceased Ganesh Badhu Pisal was stopped during the assault, who was later declared dead before treatment by the doctor.*** *Therefore, while denying the allegations leveled against him by the petitioner, it is not factual to say that he did not commit any indecent behavior, act of misconduct which is indicative of gross indiscipline.*
V	*Sessions case number 88/2018 in District Court Satara, case 302 and 34, ended the hearing of that case and* ***the court acquitted him innocent, he had nothing to do with this case in any way. This thing has been proved in the court. The petitioner, citing the***

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	attached copy of the order dated 25.09.2019 of the Hon'ble Court, has also stated that the case and the charge under which he was dismissed from service with immediate effect, the Court has acquitted him innocent.
➢	***Although the petitioner is acquitted by the court for lack of evidence as the required standard of proof in a criminal case is beyond a reasonable doubt, the Departmental Inquiry requires evidence of Preponderance of Probabilities. The circumstantial evidence in this case is sufficient which clearly shows the gross misconduct of the petitioner. The petitioner has been given ample opportunity to refute the allegations during the investigation, but he has failed to refute the prosecution cases. The charge proved against the petitioner is very serious, therefore it is sufficient for the said punishment.***
VI	*Keeping in view the order given by Hon'ble District Sessions Court, Satara in Case No. 88/2018, it is requested to withdraw the duty with monetary benefit, for which the petitioner will always be grateful.*
➢	*On the request of the petitioner, 15 days casual leave with all valid permissions was sanctioned by the competent officer from 31.01.2018 to 24.02.2018. Being a member of a disciplined and trained force, he is expected to make good use of the leave while remaining in discipline while solving his domestic problems during the holiday.* ***But instead of doing so, he quarreled with his army friend, Ganesh Badhu Pisal, along with his acquaintances by consuming alcohol at a public place like Dham in Maharashtra, resulting in his death.*** *This gross misconduct of the petitioner and the act of indiscipline have tarnished the image of force among the common citizens.* ***Therefore, the misconduct of the petitioner is not excusable in departmental proceedings.***

10. Aggrieved, the Petitioner has now approached this Court.

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11. The learned Counsel for the Petitioner had submitted that the Inquiry proceedings stand vitiated on account of non-examination of Vinayak Bajirao Vetal (Investigating officer of the FIR); Sunil Piloba Gadhave (the main accused) and the Preliminary Inquiry Officer.

12. It is submitted that the chargesheet did not contain any medical report indicating alcohol consumption by the Petitioner on 04.05.2018 at Dhom Dham.

13. It is submitted that there was no eye witness to the incident and not one of the prosecution witnesses stated that it was the Petitioner who killed Ganesh Balu Pisal.

14. It is submitted that *vide* judgement dated 25.09.2019 ld. Additional Sessions Court, Satara, Maharashtra, acquitted the Petitioner from the offence punishable under section 302 r/w 34 of the IPC.

15. It is submitted that the law is well settled that, when the Departmental proceedings and the criminal case are based on identical and similar set of facts, and if the delinquent employee gets an honourable acquittal in Criminal proceeding, then it would be unjust, to proceed against him departmentally.

16. *Per Contra*, the learned counsel for the Respondents, had submitted that the Writ Petition is liable to be dismissed as all the grounds raised before this Court have already been addressed by the Disciplinary/Appellate and Reviewing Authority and the Petitioner seeks to reopen factual findings properly recorded in Disciplinary proceedings. This Court, while exercising jurisdiction under Article 226/227 of the Constitution of India, cannot reappreciate evidence or

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interfere with the conclusion of the Inquiry. Judicial Review is concerned with the decision-making process and not with the correctness of the decision itself.

17. It was submitted that the Disciplinary Proceedings were conducted strictly in accordance with Central Industrial Security Forces Rules 2001, adhering the Principles of Natural Justice

18. It was submitted that the Petitioner was charged with grave and serious misconduct relating to consumption of alcohol in public place, being involved in a scuffle/quarrel and altercation that led to the death of one Ganesh Balu Pisal. As recorded by the Reviewing Authority, the standard of preponderance of probabilities stood satisfied in the departmental proceedings and thus, proportionate penalty of dismissal from service was imposed upon the Petitioner keeping in mind his own admission to the charges *vide* his statement dated 14.02.2018.

19. It is submitted that the judgement of acquittal clearly indicates that the prosecution witness turned hostile and the Petitioner was acquitted only because the benefit of doubt was extended, which cannot have a bearing on the observations and evaluation evidence made by the Disciplinary/Appellate and Reviewing Authority.

20. Arguments heard and the material placed on record perused

Analysis and Findings: -

21. At the outset, it would be apposite to mention that the scope of Judicial Review in Disciplinary matters is well settled. Court exercising power of Judicial Review does not sit as an Appellate Authority over the findings of the Disciplinary Authority and

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ordinarily does not reappreciate evidence. Interference is warranted where the findings are perverse, based on no evidence, or where the Inquiry is vitiated by violation of Statutory Provisions or Principles of Natural Justice.

22. The decision of the Constitution Bench of the Hon'ble Supreme Court in *B.C. Chaturvedi v. Union of India, (1996) 6 SCC 749*, is a seminal Authority delineating the limited scope of Judicial Review in Disciplinary Matters. The relevant extract is reproduced as under: -

> *"12. **Judicial review is not an appeal from a decision but a review of the manner in which the decision is made**. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. **When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding**. When the authority accepts that evidence and conclusion receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence.** If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere*

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with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. ***The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment.*** *In disciplinary evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

14. In Union of India v. S.L. Abbas [(1993) 4 SCC 357: 1994 SCC (L&S) 230 : (1993) 25 ATC 844] when the order of transfer was interfered with by the Tribunal, ***this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer****. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant. In Administrator of Dadra & Nagar Haveli v. H.P. Vora [1993 Supp (1) SCC 551 : 1993 SCC (L&S) 281 :(1993) 23 ATC 672] it was held that the Administrative* ***Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant.*** *Recently, in State Bank of India v. Samarendra Kishore Endow [(1994) 2 SCC 537 : 1994 SCC (L&S) 687 : (1994) 27 ATC 149 : JT (1994) 1 SC 217] a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority.* ***It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.***

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17. ***The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority****. A Constitution Bench of this Court in State of Orissa v. Bidyabhushan Mohapatra [AIR 1963 SC 779: (1963) 1 LLJ 239] held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment.* ***The penalty was not open to review by the High Court under Article 226. If the High Court reached***

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a finding that there was some evidence to reach the conclusion, it became unassessable. *The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant.* ***The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty****. This view was reiterated in Union of India v. Sardar Bahadur [(1972) 4 SCC 618: (1972) 2 SCR 218] [(1983) 2 SCC 442: 1983 SCC (L&S) 342: AIR 1983 SC 454]. It is true that in Bhagat Ram v. State of H.P. [(1983) 2 SCC 442: 1983 SCC (L&S) 342: AIR 1983 SC 454] a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami v. State of T.N. [1989 Supp (1) SCC 686 : 1989 SCC (Cri) 617 : AIR 1989 SC 1137] a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India case [(1994) 2 SCC 537 : 1994 SCC (L&S) 687 : (1994) 27 ATC 149 : JT (1994) 1 SC 217] where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in*

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disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

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

(emphasis supplied)

23. Thus, it is no more *res-integra* that judicial review in Disciplinary Proceedings is concerned not with the correctness of the decision, but with the decision-making process, and the imposition of penalty is solely the prerogative of the concerned Disciplinary Authority and interference is only permissible if the punishment imposed is so disproportionate that *shocks the conscience of the Court.*

24. In the present case, the four authorities have already considered all the grounds raised before this Court and passed detailed orders addressing the same.

25. *The Article of Charge I* alleged that during sanctioned leave, the Petitioner, along with deceased Ganesh Balu Pisal and other associates, *consumed liquor at Dhom Dam, a public place*, on the

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night of 04.02.2018. Though the defence was taken that there is no medical report to substantiate the charge of consumption of alcohol, the material on record, including the statements of the witnesses and his own admission in his statement dated 14.02.2018, proved the above charge. PW-1 that the Petitioner himself admitted consumption of liquor along with six companions before him and the involvement in the altercation that led to the death of Ganesh Balu Pisal. Documentary material including Daily Diary entry also reflected purchase and consumption of liquor. PW-05, PW-07 and PW-08 during cross-examination stated that the Petitioner had not consumed alcohol, their earlier statements recorded during the preliminary inquiry dated 14.02.2018 and statements given before police indicated that the Petitioner had consumed liquor at Dhom Dam. It was noted that the subsequent deviation by witnesses appeared to be due to influence of the Petitioner. It emerged from the testimony of the above witnesses and the Defence statement as well that liquor (one bottled of antiquity and McDowell) was purchased from nearby village and they all consumed alcohol (except Amol). From the Statement of PW-4, PW-5, PW-7 and the Petitioner himself, it was deduced that only the Petitioner and Sunil remained with the deceased/Ganesh while everyone left i.e. Ganesh was last seen with them. On the basis of the above Charge I relating to consumption of alcohol in a public place was treated as proved. Significantly, the statement recorded from the Petitioner himself on 14.02.2018, wherein he admitted participation in the liquor gathering and admitted consumption of alcohol along with his companions and also actively participating in the

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scuffle/altercation which eventually led to the death of Ganesh Balu Pisal. The same is reproduced herein below: -

> *"STATEMENT OF CISF No.104384004 CT/GD PISAL SAGAR VISHNU OF CISF UNIT IPGCL DELHI.*
> *I CISF No.104384004 CT/GD Pisal Sagar Vishnu told that on 14.02.2018 at District Jail Satara Maharashtra at around 2030* ***I was consuming alcohol*** *with Pisal Sagar Vishnu 07 friends in Dhoom Dam. During this my friend Amol and Ganesh (dead) were going to fight with him and Ganesh was telling Amol why he has beaten his sister, I will kill you and fight with her. I rescued them both and intervened and drove Amol away. The deceased Ganesh told me why did you. drive Amol away? Now I will not leave you and started beating me, when I started suffocating. I called Ganesh's cousin Sunil and said get my throat released, I am having trouble breathing, on this Sunil took the hand of the deceased Ganesh to me. Removed it from the throat and put both his hands on his chest and grabbed it.* ***Seeing this, I grabbed the leg of the dead Ganesha. While the deceased Ganesha bit Sunil twice at two places, causing Sunil to again press the deceased Ganesha, after some time the movement of the deceased Ganesha stopped.*** *Then Sunil brought a car from his house and I started living with the deceased Ganesh. First we both took the private hospital to Ghorawade, but the private hospital refused to accept the deceased Ganesh and asked him to go the government hospital. After we went to the government hospital with the deceased Ganesh. Then the doctor saw him and told that he had died. After this, the doctor called the police and informed about the incident or the death of the deceased. The police came to the hospital and took both of us into custody.*
> *I made and signed this statement in the presence of Jailor Group 2B Gawli* ***with full consent and without any fear in my full senses****."*
>
> (emphasis supplied)

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26. The departmental authorities relied upon the said statement and treated it as truthful disclosure made immediately after the incident. The explanation subsequently furnished by the Petitioner was not that the statement had been extracted by coercion, obtained under threat, fabricated, manipulated, or that signatures had been forcibly procured. No allegation of involuntariness was ever established. The only explanation offered by the Petitioner was that at the relevant point he was lodged in jail, mentally disturbed and therefore "*did not know what he stated"*. Mere assertion of disturbed mental condition, absent supporting material, cannot automatically efface a prior inculpatory statement.

27. Thus, once an admitted statement exists acknowledging participation in the liquor party, and such statement stands corroborated by surrounding circumstances and witness accounts regarding procurement of liquor and gathering at Dhom Dam, Charge No. I can be said to have been proved on preponderance of probabilities and the same view has been affirmed by the three forums i.e. the Disciplinary/Appellate and Reviewing Authority, which appears to be a plausible view.

28. As regards Charge No. II that after consuming liquor, the Petitioner became involved in quarrel/scuffle/fighting, here again, the appropriate authorities relied not merely upon witness testimonies, but the Petitioner's own version recorded during preliminary inquiry. As per his own version, Ganesh in a severely intoxicated state started physically fighting with other members present there and initially though the Petitioner intervened and attempted to diffuse the situation

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by asking other companions to leave, admittedly after other companions had departed, only he, deceased Ganesh and Sunil remained present. The statement attributed to him records that Ganesh thereafter quarrelled with him; that he grabbed Ganesh while Sunil intervened; that Sunil had been bitten; and during the physical altercation Ganesh stopped moving. The Petitioner denied participation in any quarrel and claimed that he merely attempted to pacify the dispute between deceased Ganesh and Amol. Statements of village officials and witnesses, namely PW-3, PW-4 and PW-6, also indicated that Ganesh died during the altercation involving the Petitioner and Sunil. PW-1 further stated that the Petitioner had informed him telephonically regarding quarrel with Ganesh. The post-mortem report and *panchnama* also recording injuries on the body of the deceased, which were treated as corroborative material. Accordingly, Charge-II relating to involvement in scuffle/fight after liquor consumption was held proved.

29. Even assuming that the Petitioner was not the principal assailant, the witness statements and his own admission nevertheless place him inside the occurrence itself and excludes the theory of complete non-participation. Further, consistent case emerging from the departmental material was that other companions had left earlier and the final episode occurred when only the Petitioner and Sunil remained with the deceased/ Ganesh. Therefore, the conclusion that the Petitioner participated in the altercation cannot be termed unsupported. At the minimum, the material has disclosed active

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involvement in the scuffle and events before Ganesh's death and satisfied the yardstick of preponderance of probabilities.

30. Now, Charge No. III concerns the gravest allegation, namely that after liquor consumption and scuffle, Ganesh Balu Pisal died and FIR No. 23/2018 under Sections 302/34 IPC came to be registered. Again, though there was no eyewitness, but admittedly only Sunil and Pisal Sagar remained with Ganesh before his death. Ganesh's death is also not denied. Even the Petitioner has admitted the same in his preliminary statement dated 14.02.2018, that he grabbed Ganesh's Hands while Sunil suffocated him to death. The defence version that the Petitioner had left the place around 20:45 hrs, returned only after receiving a call and was absent when the death occurred, was found implausible. The Presenting Officer considered the timing sequence improbable and treated it as an attempt to distance the Petitioner from the occurrence. It was found that documentary evidence including post-mortem report, *panchnama* and hospital records showed that Ganesh died after the altercation and had sustained multiple injuries. Thus, on the threshold of preponderance of probabilities the material on record was considered sufficient to infer that the death occurred during the altercation involving the Petitioner, deceased Ganesh and Sunil.

31. This Court is conscious that the Petitioner ultimately came to be acquitted by the criminal court. However, the acquittal by itself does not conclude the matter. With respect to the disciplinary proceedings, the Reviewing Authority noticed that the acquittal was on account of failure to establish criminal guilt to the required standard.

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Simultaneously, it held that the available circumstantial evidence remained adequate for disciplinary purposes.

32. The admitted factual position remains that firstly, the deceased Ganesh admittedly died during the occurrence; the Petitioner was present; the Petitioner admitted participation in physically restraining the deceased; he admitted that only he and Sunil remained after others had left; and he admitted involvement in the events immediately preceding cessation of movement of the deceased. The Petitioner's own version does not project himself as an uninvolved bystander who reached later or had no knowledge whatsoever. On the contrary, his earlier statement places him directly in the chain of events

33. The argument that since the criminal court acquitted him, the departmental findings must necessarily collapse, therefore cannot be accepted. It cannot be lost sight of that the acquittal was merely because most of the witnesses turned hostile and did not support the case of the prosecution. In this regard reference may be drawn to the judgment passed by the Hon'ble Apex Court in the case of ***Deputy Inspector General v. S. Samuthiram*****, (2013) 1 SCC 598,** wherein, the Charges against the accused Officer stood proved in the departmental enquiry due to cooperation of witnesses but prosecution failed in criminal proceedings because two key witnesses turned hostile while three others were not considered worthwhile to be examined on account of non-cooperation of key witnesses. It was categorically held that technical acquittals or acquittals resulting from witnesses turning hostile, cannot dilute the findings of departmental proceedings which is based on analysis of material available as the same is not an

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"*honourable acquittal*". It was further held that acquittal in criminal case does not entail automatic reinstatement as the acquittal may have been because the prosecution could not meet the higher level of proof, while the employee might have been found guilty on preponderance of probabilities which is a lower threshold. The relevant extract is reproduced herein below: -

> ***" Criminal proceedings***
> ***17.*** *We have indicated that a criminal case was also registered against the respondent by Tenkasi Police Station being Crime No. 625 of 1999 under Section 509 IPC and Section 4 of the Eve-teasing Act, 1998, which was registered as STC No. 613 of 2002 before the Judicial Magistrate, Tenkasi.* ***Before the criminal court, PW 1 and PW 2, the husband and the wife (victim) turned hostile. The prosecution then did not take steps to examine the rest of the prosecution witnesses.*** *Head Constable Adiyodi (No. 1368) and Head Constable Peter (No. 1079) of Tenkasi Police Station were crucial witnesses. The facts would clearly indicate that it was the abovementioned Head Constables who took the respondent to Tenkasi Police Station along with PWs 1 and 2, though PWs 1 and 2 had clearly deposed before the enquiry officer of the entire incident including the fact that the abovementioned two Head Constables had taken the respondent along with PWs 1 and 2 to Tenkasi Police Station.* ***The criminal court took the view that since PW 1 and PW 2 turned hostile, the criminal case got weakened.*** *The prosecution, it may be noted also took no step to examine the Head Constables by name 1368 Adiyodi and 1079 Peter of Tenkasi Police Station, so also the doctor, PW 8 before the criminal court.* ***It was under such circumstances that the criminal court took the view that there is no evidence to implicate the respondent-accused, consequently, he was found not guilty under Section 509 IPC read with Section 4 of the Eve-teasing Act and was, therefore, acquitted.***
> ***18. We may indicate that before the order of acquittal was passed by the criminal court on 20-11-2000, the departmental enquiry was completed***

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and the respondent was dismissed from service on 4-1-2000. The question is : when the departmental enquiry has been concluded resulting in the dismissal of the delinquent from service, whether the subsequent finding recorded by the criminal court acquitting the respondent delinquent will have any effect on the departmental proceedings?

19. *The propositions which the respondent wanted to canvass placing reliance on the judgment in M. Paul Anthony case [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] read as follows : (SCC p. 691, para 20)*

> *"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*
>
> *(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*
>
> *(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.*
>
> *(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*
>
> *(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date,*

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so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

20. *This Court in Southern Railway Officers Assn. v. Union of India [(2009) 9 SCC 24 : (2009) 2 SCC (L&S) 552] held* ***that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The Court reiterated that the order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge.***

21. *In State Bank of Hyderabad v. P. Kata Rao [(2008) 15 SCC 657 : (2009) 2 SCC (L&S) 489] (SCC p. 662, para 18) this Court held that there cannot be any doubt whatsoever that the jurisdiction of the superior courts in interfering with the finding of fact arrived at by the enquiring officer is limited and that the High Court would also ordinarily not interfere with the quantum of punishment and* ***there cannot be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith.*** *In that judgment, this Court further held as follows : (SCC p. 662, para 20)*

"20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in M. Paul Anthony v. Bharat Gold Mines Ltd. [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] however, remains unshaken although the applicability thereof had been found to be dependent on the fact situation obtaining in each case."

22. *In a later judgment of this Court in Karnataka SRTC v. M.G. Vittal Rao [(2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171] this Court after a detailed*

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survey of various judgments rendered by this Court on the issue with regard to the effect of criminal proceedings on the departmental enquiry, held that the disciplinary authority imposing the punishment of dismissal from service cannot be held to be disproportionate or non-commensurate to the delinquency.

23. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. *The respondent, it may be noted, is a member of a disciplined force and non-examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the prosecution. Considering the facts and circumstances of the case,* ***the possibility of winning over PWs 1 and 2 in the criminal case cannot be ruled out.*** *We fail to see, why the prosecution had not examined Head Constable Adiyodi (No. 1368) and Peter (No. 1079) of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with PWs 1 and 2, husband and wife, to Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW 1 (complainant husband) is found in Ext. P-1 complaint. Further, the doctor, PW 8 has also clearly stated before the enquiry officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests.* ***That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.***

Honourable acquittal

24. *The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the*

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mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. ***The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.***

25. *In R.P. Kapur v. Union of India [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope v. Emperor [ILR (1934) 61 Cal 168] which is as follows : (Raghava case [1972 SLR 44 (SC)] , SLR p. 47, para 8)*

> *"8. … 'The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted".'" (Robert Stuart case [ILR (1934) 61 Cal 168] , ILR pp. 188-89)*

26. *As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal*

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court, ***no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.****"***

(Emphasis Supplied)

34. In a similar case of ***State of Rajasthan v. Heem Singh,*** **(2021) 12 SCC 569,** wherein the Delinquent Employee (Police Constable), allegedly committed murder while on leave and hence was dismissed from service, the Hon'ble Apex Court observed that the judgment of acquittal passed due to witnesses turning hostile (including the star witness), would not have a bearing on the outcome of the disciplinary proceedings, since the disciplinary proceedings were not governed by proof beyond reasonable doubt, but are dependant upon satisfaction of the threshold of preponderance of probabilities. It was further held that though the evidence adduced may not have been sufficient to

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sustain a conviction on a charge of murder in the sessions trial, however, the State had sufficient material to conclude that the connection of the delinquent employee to the incident would tarnish the reputation of the forces and that the presence of the delinquent employee as a member of the force was not in the interest of public administration. Hence, the Hon'ble Apex Court, set-aside the directions passed by the Hon'ble High Court, for re-instatement of the delinquent employee therein. The relevant extract is reproduced hereinbelow: -

> *"**D. Proof of misconduct in disciplinary proceedings***
> ***13.** The primary charge in the disciplinary proceedings relates to the involvement of the respondent in the murder of Bhanwar Singh. According to the respondent, the disciplinary enquiry pertains to an event which took place outside the fold of his service. **It was asserted that the disciplinary enquiry in regard to the involvement of the respondent in a murder bore no nexus to his employment. This submission cannot stand scrutiny, having regard to the nature of the employment and the position of the respondent as member of the police force. The respondent was a constable in the service of the Police Department of the State of Rajasthan since 1992. Involvement of a member of the police service in a heinous crime (if it is established) has a direct bearing on the confidence of society in the police and in this case, on his ability to serve as a member of the force. Such an individual is engaged by the State as a part of the machinery designed to preserve law and order. The State can legitimately assert that it is entitled to proceed against an employee in the position of the respondent in the exercise of its disciplinary jurisdiction, for a breach of the standard of conduct which is expected of a member of the State Police Service. Confidence of the State in the conduct and behaviour of persons it has appointed to the police is integral to its duty to***

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maintain law and order. The real issue is whether the charge of misconduct stands established in this case on the basis of some evidence, applying the evidentiary principle of a preponderance of probabilities.

14. *The standard of proof in disciplinary proceedings is different from that in a criminal trial. In Suresh Pathrella v. Oriental Bank of Commerce [Suresh Pathrella v. Oriental Bank of Commerce, (2006) 10 SCC 572 : (2007) 1 SCC (Cri) 612 : (2007) 1 SCC (L&S) 224] , a two-Judge Bench of this Court differentiated between the standard of proof in disciplinary proceedings and criminal trials in the following terms : (SCC p. 577, para 11)*

> ***"11. … the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."***

15. *This standard is reiterated by another two-Judge Bench of this Court in Samar Bahadur Singh v. State of U.P. [Samar Bahadur Singh v. State of U.P., (2011) 9 SCC 94 : (2011) 2 SCC (L&S) 461] : (SCC p. 96, para 7)*

> ***"7. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities."***

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31. *A complete review of the evidence indicates there was a pre-existing hostility between the respondent and Bhanwar Singh. This hostility initially arose in the context of a land dispute. The hostility between them escalated exponentially after the death of the respondent's father for which he blamed Bhanwar Singh. It evidently rose to an extent where the respondent openly issued a death threat to Bhanwar Singh, leading Bhanwar Singh to file a police complaint against the respondent*

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apprehending a threat from the respondent to his safety. As regards the incident leading to the death of Bhanwar Singh, the respondent and his parked tractor were seen proximate in time and in terms of the location where Bhanwar Singh's dead body was found by both PW 1 Jodh Singh and PW 3 Shanker Singh. The respondent was found to be together with one of the co-accused proximate in time. These circumstances are coupled with respondent's movements at and around the time of the murder, commencing with but not confined to his being at the village on leave for two days coinciding with the murder. ***This may not have been sufficient to sustain a conviction on a charge of murder in the sessions trial. But the State had sufficient material to conclude that the connection of the respondent to the incident would affect the reputation of its police force and that the presence of the respondent as a member of the force was not in the interest of public administration. Whether on the basis of the evidence, the respondent could have been implicated in the conspiracy to commit murder of Bhanwar Singh is one aspect of the matter. Evidently direct evidence to sustain a charge of conspiracy is difficult to come by even in the course of a criminal trial. Quite independent of this is the issue whether the connection of the respondent with the circumstances leading to the death of Bhanwar Singh affected his ability to continue in the State police force without affecting its integrity and reputation. The latter aspect is the one on which the judgment of the Division Bench is found to be deficient in its reasoning.***

Xxx xxx xxx

J. The effect of an acquittal

38. In the present case, we have an acquittal in a criminal trial on a charge of murder. *The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice.* ***The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry.*** *In Southern Railway Officers Assn. v. Union of India [Southern Railway Officers Assn. v. Union of India, (2009) 9 SCC 24 : (2009) 2*

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SCC (L&S) 552] , this Court held : (SCC p. 40, para 37)

> *"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."*

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39. *In State v. S. Samuthiram [State v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , a two-Judge Bench of this Court held that unless the accused has an "honourable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an "honourable acquittal". Noticing this, the Court observed : (SCC pp. 609-10, paras 24-26)*

> *"**Honourable acquittal***
>
> *24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression*

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"honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In R.P. Kapur v. Union of India [R.P. Kapur v. Union of India, AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari [State of Assam v. Raghava Rajgopalachari, 1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope v. Emperor [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] which is as follows : (Raghava case [State of Assam v. Raghava Rajgopalachari, 1972 SLR 44 (SC)] , SLR p. 47, para 8)

'8. … The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted".' (Robert Stuart case [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] , ILR pp. 188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason

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is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

(emphasis supplied)

40. In the present case, the respondent was acquitted of the charge of murder. The circumstances in which the trial led to an acquittal have been elucidated in detail above. The verdict of the criminal trial did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial. True, even on the more relaxed standard which governs a disciplinary enquiry, evidence of the involvement of the respondent in a conspiracy involving the death of Bhanwar Singh would be difficult to prove. But there are, as we have seen earlier, circumstances emerging from the record of the disciplinary proceedings which bring legitimacy to the contention of the State that to reinstate such an employee back in service will erode the credibility of and public confidence in the image of the police force."

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(emphasis supplied)

35. Similar observations were made by the Hon'ble Apex Court, in the case of ***Union of India v. Methu Meda,*** **(2022) 1 SCC 1,** wherein the Respondent's rejection of candidature by the Screening Committee was found sustainable, despite his acquittal in the FIR registered under Sections 347/327/326/34 and 364-A of the IPC, by observing that Acquittal was heled upon witnesses turning hostile, the same cannot be conclusive of the candidates suitability to the post that he was falsely implicated or he had no criminal antecedents and thus, the same cannot entitle him to an appointment in disciplined force: -

> **"*17.*** *In view of the above, in the facts of the present case, as per paras 38.3, 38.4.3 and 38.5 of Avtar Singh case [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] , it is clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment.* ***Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate.***
>
> ***18.*** *If we look into the facts of the present case, the instructions of the Home Department dated 1-2-2012, prevalent at the time of selection and appointment specify that such candidate would not be considered for recruitment. In Circular No. 2/2010 dated 31-3-2010, issued by the Office of the Training Sector, National Industrial Security Academy, Central Industrial Security Force (Ministry of Home Affairs), it is clarified that if a*

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candidate is found involved in any criminal case, whether it is finalised or pending, the candidate may not be allowed to join without further instructions from the headquarters. After seeking instructions from the headquarters, the Standing Committee has taken the decision on 15-10-2012 that because of acquittal giving benefit of doubt, the respondent-writ petitioner was not considered eligible for appointment in CISF.

20. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. *The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee would be final unless mala fide. In Pradeep Kumar [State (UT of Chandigarh) v. Pradeep Kumar, (2018) 1 SCC 797 : (2018) 1 SCC (Cri) 504 : (2018) 1 SCC (L&S) 149] , this Court has taken the same view, as reiterated in Mehar Singh [State v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] . The same view has again been reiterated by this Court in Raj Kumar [State v. Raj Kumar, (2021) 8 SCC 347 : (2021) 2 SCC (L&S) 745] .*

21. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. *The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal*

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position, as discussed above in the orders [Union of India v. Methu Meda, 2013 SCC OnLine MP 10701] , [Methu Meda v. Union of India, Writ Petition No. 3897 of 2013, order dated 27-9-2013 (MP)] impugned. Therefore, the impugned orders passed by the learned Single Judge of the High Court in Methu Meda v. Union of India [Methu Meda v. Union of India, Writ Petition No. 3897 of 2013, order dated 27-9-2013 (MP)] and the Division Bench in Union of India v. Methu Meda [Union of India v. Methu Meda, 2013 SCC OnLine MP 10701] are not sustainable in law, as discussed hereinabove."

36. Hence, it is well crystallized that that members of disciplined forces stand on a distinct footing and are expected to maintain standards of conduct higher than those applicable in ordinary civil employment. Departmental proceedings initiated against such personnel are not intended to determine criminal guilt in the strict sense, but to examine whether the conduct of the force member is compatible with discipline, integrity and institutional standards expected from the service. Consequently, acquittal in criminal proceedings does not *ipso facto* result in obliteration of departmental findings. The standard applicable in criminal prosecution is proof beyond reasonable doubt, whereas departmental proceedings proceed on the principle of preponderance of probabilities. Therefore, even where criminal culpability is not ultimately established, disciplinary action may nevertheless survive if the material on record, including circumstantial evidence, contemporaneous statements, admissions or surrounding facts, reasonably establishes misconduct affecting discipline or bringing disrepute to the force. This distinction assumes greater significance in cases involving members of armed or

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uniformed services, where maintenance of discipline and public confidence constitutes an essential component of service jurisprudence.

37. In the present case, as already noted above, the acquittal is on the basis of the witnesses turning hostile and not supporting the case of the prosecution. The Reviewing Authority has specifically dealt with the Petitioner's contention regarding acquittal and expressly observed that departmental proceedings proceed on preponderance of probabilities. Thus, the Reviewing Authority thereafter concluded that the Petitioner failed to dislodge the departmental case and that no ground for interference existed. This Court is unable to hold such conclusion to be irrational or perverse. At the highest, another view may perhaps be possible, however, that by itself is no ground for interference under Article 226. Once the view adopted by the departmental authorities and affirmed by the Reviewing Authority is a plausible view, this Court cannot substitute it merely because an alternate interpretation may also exist.

39. As regards the remaining question which concerns proportionality, the Petitioner was a member of CISF i.e. a disciplined armed force entrusted with duties carrying high standards of conduct, restraint and public confidence. The proved misconduct is not confined merely to private consumption of alcohol. The findings recorded are of consumption of liquor at a public place, participation in violent altercation, involvement in an occurrence culminating in death of Ganesh who was enrolled with the Indian Army and conduct bringing disrepute to the force. In such circumstances, it cannot be

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said that the penalty of dismissal shocks the conscience of this Court. The doctrine of proportionality does not permit the Court to impose its own preferred punishment. Interference arises only where punishment is outrageously disproportionate.

40. Given the gravity of allegations found proved, the admitted participation of the Petitioner in the occurrence and the standards expected from a member of a disciplined force, this Court does not find the punishment to be disproportionate warranting interference.

41. Once such charges, which strike at the core of integrity, have been partly admitted by the Petitioner and there is evidence supporting the same, the quantum of punishment imposed would lie primarily within the domain of the Competent Authority. Even otherwise, the punishment imposed cannot be said to be shockingly disproportionate in the facts of the case, particularly in view of the nature of the allegations and death of Sh. Ganesh.

42. In view of the aforesaid, we are of the considered opinion that the impugned orders passed by the appropriate authorities do not suffer from any infirmity warranting interference in exercise of jurisdiction under Article 226.

43. The writ petition is, accordingly, dismissed, along with pending application(s), if any.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

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