IN THE HIGH COURT AT CALCUTTA

CONSTITUTION WRIT JURISDICTION

[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
AND
THE HON'BLE JUSTICE SMITA DAS DE

WP.CT/18/2026

THE LIEUTENANT GOVERNOR AND OTHERS ... PETITIONERS

VS.

DHARAM RAJ ... RESPONDENTS

For the petitioners	: Mr. Shatadru Chakraborty, Sr. Adv. Mr. Dibesh Dwivedi, Adv.
For the respondent No. 1	: Mr. P.C. Das, Adv.
Heard on	: April 22, 2026
Judgment on	: April 28, 2026

SABYASACHI BHATTACHARYYA, J.

1. The Andaman and Nicobar Islands Administration, through its functionaries, has preferred the instant challenge against the judgment dated February 18, 2026 passed by the Central Administrative Tribunal, Kolkata Bench, Kolkata (Circuit setting at Port Blair) in Original Application No. 351/1053/2018, whereby the learned Tribunal

2026:CHC-PB:93-DB

quashed and set aside an order of punishment dated May 16, 2018 passed against the respondent by the Chief Secretary and the consequential appellate order dated August 07, 2018, directing the petitioners to reinstate the applicant/respondent in service with all consequential benefits.

2. Learned senior counsel appearing for the petitioners argues that the learned Tribunal, despite coming to the categorical findings that the charges in the Charge Memoranda were specific and not vague and there was no procedural lapse in conducting the Departmental Inquiry, set aside the punishment only on the ground that it was the Secretary (Personnel) was the competent authority as per the Gazette Notification of February 12, 2009 to impose both minor and major penalties on the applicant/respondent and, as such, the imposition of punishment by the Chief Secretary, as Disciplinary Authority, despite he being the Appellate Authority as well, was bad in law and consequentially that the appellants have not adhered to procedure laid down in the Rules and have denied natural justice to the applicant/respondent by denying him a legitimate forum for appeal.

3. However, it is argued that under Article 311(1) of the Constitution of India, a person in a service as the respondent cannot be dismissed or removed by an authority subordinate to that by which he was appointed. In the present case, it is the Chief Secretary who was the Appointing Authority of the petitioner, as evident from Order No. 1962 dated April 09, 1990, whereby the applicant/respondent was appointed. Thus, as

per Article 311(1) of the Constitution, no authorities subordinate to the Chief Secretary, including the Secretary (Personnel), could impose the punishment of dismissal /removal of the applicant. In support of his arguments, learned counsel cites *Parshotam Lal Dhingra vs. Union of India* reported at *AIR 1958 SC 36.*

4. It is next contended by the petitioners that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, "CCS-CCA Rules") governs the applicant/respondent. Under Rule 12(2)(b) thereof, any of the penalties specified in Rule 11 may be imposed on a person appointed to a Central Civil Post included in the General Central Service by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the Appointing Authority or the authority specified in the Schedule in this behalf.

5. Thus, the Chief Secretary, being the Appointing Authority, was fully empowered to impose the punishment of dismissal on the respondent.

6. Learned senior counsel appearing for the petitioners next relies on sub-rule (2) of Rule 14 of the CCS-CCA Rules which provides that whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under the said Rule or under the provisions of the Public

Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

7. Again, under sub-rule (4) of Rule 14 of the CCS-CCA Rules, the Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charge is proposed to be sustained.

8. On a combined reading of the above provisions, it is contended that the Disciplinary Authority himself is empowered to issue of article of charge and also conduct the inquiry. However, there is no bar in the inquiry being conducted by a authority lesser in rank then the Appointing Authority who has been appointed for such purpose.

9. It is argued by learned senior counsel that Article 311(1) of the Constitution merely provides that punishment cannot be imposed by an authority subordinate to the Appointing Authority. The said provision, however, does not debar the Appointing Authority itself to impose such punishment. Thus, it may very well be that the Appointing Authority imposes the punishment whereas the disciplinary proceeding was conducted and show cause was issued by an authority subordinate to the Appointing Authority. The only restriction, it is submitted, is that the initiating authority should be superior to the delinquent officer.

10. In support of such proposition, learned counsel cites *The State of Jharkhand and others vs. Rukma Kesh Mishra*, reported at *2025 SCC*

OnLine SC 676, where it was held that under Article 311(1), the appointing or superior authority is only required to impose punishment but need not initiate/conduct the disciplinary proceedings, which can be done by an authority subordinate to the Appointing Authority.

11. Learned senior counsel appearing for the petitioners further argues that the basic limitation in a disciplinary proceeding is that the removal of the concerned officer has to be by an officer same or higher in rank than the Appointing Authority. If the Appointing Authority passes the order of dismissal, despite itself being the Appellate Authority, an appeal shall lie against such order then to the next higher officer. In support of such submission, learned counsel for the petitioner cities *Monmatha Nath Ghosh vs. Director of Public Instruction, Government of West Bengal and others* reported at *1957 SCC OnLine Cal 232* and *Iuwangjao Kabul vs. Union of India and others* reported at *1967 SCC OnLine Mani 26.*

12. Placing reliance on *Chandrasekharan vs. State of Kerala* reported at *AIR 1964 Ker 87,* learned senior counsel argues that the right to appeal is not a necessary postulate of the opportunity of show cause under Article 311(2) of the Constitution. It was held therein that the concerned officer was not deprived of the Constitutional protection of the Article merely because the Government, which was the Appellate Authority, inquired into and imposed the punishment.

13. Learned senior counsel for the petitioners next contends that as such, although in the Gazette Notification which was in force at the time when the disciplinary action was initiated and the punishment was

imposed, the Secretary (Personnel) was the designated Appointing Authority and the Chief Secretary the Appellate Authority, in view of the Administrative hierarchy in the Andaman and Nicobar Islands, an appeal lies against any order of the Chief Secretary before the Lieutenant Governor. In fact, the applicant/respondent accepted such position and actually availed of such opportunity by preferring an appeal before the Lieutenant Governor, whose order was also set aside by the impugned judgment of the Tribunal.

14. Thus, the plea of the applicant/respondent losing a forum of appeal is not tenable in the circumstance of the present case.

15. Since there is no bar when an official subordinate to the Appointing Authority but higher in rank then the delinquent officer initiating the disciplinary proceeding and conducting the inquiry, the two Charge Memos dated July 21, 2016 and August 24, 2017 were in consonance with law.

16. Even otherwise, it is argued that there is no bar in the Disciplinary Authority issuing the charge memo through another official.

17. Learned counsel appearing for the applicant/respondent contends that the disciplinary proceeding and consequential punishment, which were impugned before the Tribunal, were barred by *res judicata.* On a previous occasion, a disciplinary proceeding was initiated on the self-same charge memos, which was set aside and quashed, along with the connected penalty order, by the Tribunal. A writ petition, bearing

WP.CT/28/2022 (*The Lieutenant Governor and Others -Vs- Shri Dharam Raj*), was preferred against the same, which was decided on October 19, 2023 by a coordinate Bench of this Court. Although the coordinate Bench remanded the matter to the Tribunal for re-evaluation and further deliberation, it did not set aside the order of the Tribunal quashing the charge sheet and penalty order. Thus, it is contended that the previous judgment of the Tribunal had attained finality and the Disciplinary Authority could not reopen the disciplinary proceeding against the respondent. In support of such contention, learned counsel places the operative portion of the Division Bench judgment dated October 19, 2023.

18. By relying on the first paragraph of the said judgment, it is argued that the Division Bench was considering an appeal arising out of an order dated August 05, 2022, whereas the earlier order of the Tribunal, quashing the initial disciplinary proceeding and the consequential penalty, was passed on July 25, 2022. Thus, effectively, the judgment of the Tribunal dated July 25, 2022 was never set aside, debarring the subsequent disciplinary action by operation of the principle of *res judicata.*

19. Learned counsel for the respondent submits that dismissal of an employee is equivalent to capital punishment. The punishment meted out to the applicant/respondent was disproportionate with the minor offence alleged against the respondent, being that the respondent failed

to report to work and had violated an order of this Court. Thus, the penalty imposed on the respondent, in any event, was disproportionate and ought to be set aside.

20. Thirdly, learned counsel relies on the Gazette Notification dated February 12, 2009, which provides that the Secretary (Personnel) is the Appointing Authority and the Chief Secretary is the Appellate Authority against the order passed by the said Appointing Authority in respect of all penalties. On the strength of the same, learned counsel appearing for the respondent argues that the assumption of jurisdiction by the Chief Secretary in imposing punishment, despite himself being the Appellate Authority, deprived the applicant/respondent of a forum of appeal.

21. It is contended that the appointment letter to the respondent was also signed by the Secretary (Personnel). Hence, even going by the arguments of the appellants, it was the Secretary (Personnel) who was the authority appointing the respondent and thus could have imposed the punishment if at all. Instead, the Chief Secretary arrogated to himself such power and imposed the punishment, thus leaving the respondent with no option to prefer an appeal, which would then lie to the Chief Secretary himself. Such unlawful assumption of jurisdiction, it is submitted, is palpably *de hors* the law and the extant rules.

22. Upon careful consideration of the arguments advanced by the parties, this Court comes to the following conclusions:

Who was the Appointing Authority of the applicant/respondent?

23. The first memo of charge was issued to the respondent on July 21, 2016 and the second, on August 24, 2017. At that juncture, the Notification dated February 12, 2009 was in force, where it was stipulated that the Appointing Authority of the persons in the rank of the respondent would be the Secretary (Personnel) and the Appellate Authority in respect of all the penalties imposed by the Secretary (Personnel) would be the Chief Secretary.

24. The question which then arises is whether the term 'Appointing Authority' should be construed to mean the authority who actually appointed the concerned officer or the designated Appointing Authority as per the rules prevalent at the time when the disciplinary proceeding was initiated. The answer lies in Section 2(a) of the CCS-CCA Rules. The said provision is quoted below for convenience:

> "2. Interpretation
> In the rules, unless the context otherwise requires, -
>
> *(a) "Appointing authority", in relation to a Government servant, means –*
>
> *(i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or*
>
> *(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or*
>
> *(iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or*
>
> *(iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of*

the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,

whichever authority is the highest authority;"

25. Thus, the authority which appointed the Government servant to the service is also included within the definition of "Appointing Authority" as per sub-clause (iii) of Clause (b) of Rule 2.

26. The applicant/respondent was appointed vide Office Order No. 1962 dated April 09, 1990, which categorically mentioned that the Chief Secretary, Andaman and Nicobar Administration, was pleased to order the appointment of the candidates mentioned in the Annexure attached to the order. The respondent's name featured against Serial No. 43 of the said Annexure.

27. Again, vide Order No. 872 dated March 12, 2004, the Chief Secretary, Andaman and Nicobar Administration, was pleased to confirm 234 Lower Grade Clerks, as per the list given thereunder. The respondent's name featured against Serial No. 110 of the said list.

28. Both the said orders were issued by the Chief Secretary under the signature of the Assistant Secretary (Personnel). However, there cannot be any manner of doubt that it is the Chief Secretary who was specifically mentioned in the Order itself to appoint and confirm the respondent in service. It is a well-known practice in official and administrative circles that an order passed by a superior authority is circulated/issued by a subordinate official under the latter's signature. The superior officials do not usually take upon themselves the task of

circulating the order. However, such course of action does not necessarily mean that the official (or clerk, in some cases) who signed the order was actually the Appointing Authority or the person taking the decision. In the present case, in view of it being categorically mentioned in the Orders that it was the Chief Secretary who was the Appointing (and confirming) Authority, there cannot be any manner of doubt that the Chief Secretary was the Appointing Authority of the respondent within the contemplation of Rule 2(a)(iii) of the CCS-CCA Rules.

29. Hence, although the Secretary (Personnel) was the designated Appointing Authority as per the prevalent Circular at the juncture when the disciplinary proceeding was initiated, and might broadly have come under the purview of Rule 2(a)(i) and/or (ii) of the CCS-CCA Rules, any of the authorities stipulated under Rule 2(a) of the CCS-CCA Rules could be termed as Appointing Authority if no other rider was there. However, at the end of Clause (a) of Rule 2 of the CCS-CCA Rules, it is categorically stipulated that out of the different authorities mentioned therein, *whichever authority is the highest* would be considered to be the Appointing Authority. Applying such test, since the Chief Secretary is higher in rank than the Secretary (Personnel), it is only the Chief Secretary who could qualify as the Appointing Authority of the respondent.

Did the Chief Secretary have the power to impose penalty, although the memoranda of charge were issued and the inquiry conducted by the Secretary (Personnel)?

30. Article 311(1) of the Constitution is quoted below :-

> *"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. –*
>
> *(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*
> *(2)… … … … "*

31. The said provision merely stipulates that a member of a Civil Service of the Union or an all-India Service or a Civil Service of a State or one who holds a civil post under the Union or a State shall not be dismissed or removed by an authority subordinate to that by which he was appointed, the provision being designed obviously to save the dismissed employee the ignominy of being someone subordinate to him/her. However, there is nothing in the said provision restricting the Appointing Authority himself to pass the order of dismissal. What the provision provides is merely that nobody subordinate to the Appointing Authority shall impose such penalty, but does not debar the Appointing Authority himself from doing so. The said provision has been reiterated in *Parshotam Lal Dhingra (supra)*[1].

32. In the Notification dated September 21, 1961 issued by the Chief Commissioner, Secretariat, Andaman and Nicobar Administration, it was stipulated that in respect of Class-III posts included in the Amalgamated

[1] *AIR 1958 SC 36.*

Clerical Establishment of the Andaman and Nicobar Administration, the Head of Office concerned will be competent to impose penalties (i) and (iii) specified in Rule 13 of the then prevailing 1957 Rules. As per the said Notification, as amended, the Chief Secretary was the Appointing Authority of the respondent's cadre.

33. Thus, there was no bar in law to the Appointing Authority itself imposing penalty, major or minor, on the delinquent officer.

Could the Secretary (Personnel) issue the charge memoranda and conduct the inquiry in the disciplinary proceeding?

34. Under Rule 14 (2) of the CCS-CCA Rules, where the Disciplinary Authority is of the opinion that there are grounds of inquiry into the truth of any imputation of misconduct of misbehaviour against a Government servant, it may itself enquire into the truth thereof or appoint any other authority to do so.

35. As reiterated in *The State of Jharkhand and others (supra)*[2], the initiation of a departmental proceeding can be by an officer subordinate to the Appointing Authority. Only the dismissal/removal shall not be by an authority subordinate to the Appointing Authority. It was further held that unless the relevant discipline and appeal rules applicable to an officer/employee of an authority within the meaning of Article 12 of the Constitution so require, disciplinary proceedings by issuance of a charge

[2] *2025 SCC OnLine SC 676*

sheet cannot be faulted solely on the ground that either the Appointing Authority or the Disciplinary Authority has not issued the same or approved it.

36. In the present case, it was not necessary that the Appointing Authority himself would issue the memoranda of charges and it was well within the powers of the Secretary (Personnel) to do so, being subordinate to the Appointing Authority.

37. The primary source of power to undertake departmental inquiry/disciplinary proceedings is derived from Article 311 (2) of the Constitution, which provides that no person as stipulated in Clause (1) of Article 311 shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Thus, the said provision does not require that the Appointing Authority himself has to initiate or conduct the disciplinary proceeding, which principle was reiterated in *The State of Jharkhand and others (supra)*[3].

38. Under Rule 12(2)(b) of the CCS-CCA Rules, the Appointing Authority or the authority specified in the Schedule in this behalf have the power to impose penalty on a person appointed to a Central Civil Post included in the General Central Service. Thus, the said provision merely stipulates that the penalty may be imposed by the Appointing Authority himself. On the other hand, Rule 14(2) provides that either the

[3] *2025 SCC OnLine SC 676*

Disciplinary Authority himself or an authority appointed by him may enquire into the truth of any imputation of misconduct or misbehaviour against a Government servant. Again, under Rule 14(4), it is not necessary that the Disciplinary Authority himself shall deliver a copy of the articles of charge or the statements of the imputations of misconduct or misbehaviour on the delinquent government servant. The said sub-rule stipulates that the Disciplinary Authority may "cause to be delivered" a copy of the said articles of charge, etc.

39. Hence, even if we proceed on the premise that the Disciplinary Authority for the purpose of imposition of punishment was the Chief Secretary (Appointing Authority), under Rule 14 sub-rules (2) and (4), the Chief Secretary could have delegated the power to enquire into and to deliver articles of charge to another authority, in the present case the Secretary (Personnel). Hence, there is no bar in law to the Secretary (Personnel) having issued the memoranda of charges as well as conducting the inquiry himself.

Could the Appellate Authority impose penalty?

40. In *Monmatha Nath Ghosh (supra)*[4] a learned Single Judge of this Court held that the limitation laid down by Article 311 of the Constitution is to the extent that no officer may be removed or dismissed by an authority subordinate to his Appointing Authority. However, it does not debar the Head of the Department, even if he was the Appellate

[4] *1957 SCC OnLine Cal 232*

Authority, to impose the punishment, in which case an appeal would lie to the next higher authority.

41. The said proposition was reiterated in *Iuwangjao Kabul (supra)*[5] where a Division Bench before the Judicial Commissioner, Manipur held that there was neither impropriety nor illegality in the Government passing the final order of punishment and that the plea that the officer was deprived of his right of appeal to the Government against the order of the Appointing Authority had no force.

42. In the said judgment, a Division Bench judgment of the Kerala High Court in *Chandrasekharan (supra)*[6] was followed, where the Kerala High Court went to the extreme of holding that right of appeal is not a necessary postulate of an opportunity of showing cause within the meaning of Article 311 (2) of the Constitution.

43. However, with utmost respect, we are unable to agree with such proposition as an absolute one since, in our humble opinion, in cases of dismissal or removal of service, the punishment is not only major but affects the very source of livelihood of the dismissed employee, which denudes him of a life of dignity. In certain cases, such punishment has been equated with capital punishment.

44. Thus, although it may be that right of appeal does not automatically emanate from an opportunity of hearing or showing cause,

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[5] *1967 SCC OnLine Mani 26*
[6] *AIR 1964 Ker 87*

in cases where the consequence is so serious as to rob a person from his livelihood, a provision of appeal, if existent, has to be given full effect.

45. In the present instance, it is nobody's case that there is no right of appeal against an order of dismissal. The respondent argues that if the Chief Secretary himself, who is the Appellate Authority against an order of dismissal passed by the Secretary (Personnel), imposes the punishment, the respondent would be deprived of a forum of appeal.

46. However, in view of Article 311(1) of the Constitution, no authority subordinate to the Appointing Authority can impose the punishment of disposal. Thus, in view of the Chief Secretary being the Appointing Authority of the respondent, it was beyond the authority of the Secretary (Personnel), who is subordinate to the Chief Secretary, to have imposed such punishment.

47. Under Rule 2(a) of the CCS-CCA Rules, the highest authority amongst those mentioned therein is to be deemed as the Appointing Authority, which in the present case is the Chief Secretary. Thus, the order of punishment, if imposed by the Secretary (Personnel), would be squarely vitiated due to contravention of Article 311 (1) of the Constitution.

48. On the other hand, as per the existing Notification at the time of issuance of the memoranda of charge and holding the disciplinary proceeding, the Chief Secretary was designated as the Appellate Authority.

49. However, the conundrum is easily resolved, since the Lieutenant Governor, in the administrative hierarchy of the Andaman and Nicobar Islands, is the top Executive Officer, being the Administrator, and is by default the Appellate Authority against orders passed by all subordinate officials. Thus, in any event, an appeal lies against a punishment imposed by the Chief Secretary before the Lieutenant Governor, who is the next highest authority.

50. Even otherwise, it does not lie in the mouth of the respondent to argue that he was deprived of a forum of appeal, being fully aware of the provision of appeal before the Lieutenant Governor and having availed of it by actually preferring such appeal. It is quite surprising that the respondent himself, after having preferred an appeal before the Lieutenant Governor and turning out unsuccessful therein, takes the point before this Court that he was deprived of an appellate forum.

51. Thus, such argument cannot also be sustained.

Was the penalty imposed on the respondents justified on merits?

52. The applicant/respondent has not preferred any challenge against the impugned judgment of the Tribunal.

53. The learned Tribunal, in paragraph No. 19 of the impugned judgment, considered the case of *B. C. Chaturvedi vs. Union of India and others* reported at *(1995) 6 SCC 749,* where the scope of judicial review

was discussed and it was held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

54. The learned Tribunal also considered *State of Karnataka and others vs. Umesh (Civil Appeal Nos. 1763 -1764 of 2022)* where the self-same principle was reiterated. The Hon'ble Supreme Court further observed therein that in the exercise of judicial review, the Court does not act as an appellate forum over the findings of the Disciplinary Authority and does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary inquiry. A judicial review, it was held, must be restricted to determine whether the rules of natural justice have been complied with, the finding of misconduct is based on some evidence, the statutory rules governing the conduct of the disciplinary inquiry have been observed, whether the findings of the Disciplinary Authority suffer from perversity and whether the penalty is disproportionate to the proven misconduct.

55. After considering such decisions, the learned Tribunal proceeded to observe that once findings of fact, based on appreciation of evidence, are recorded by the Disciplinary Authority and the Appellate Authority, normally the Court/Tribunal may not interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence, it was observed, is not permitted to be canvassed before the High Courts/Tribunals since they do not sit

as Appellate Authorities over the factual findings recorded during department proceedings.

56. The learned Tribunal further found that in the present case, by adhering to the aforesaid settled principles of law, it was of the opinion that the charges in the charge memoranda were specific and not vague and there was no procedural lapse in conducting the departmental inquiry. Thus, the learned Tribunal otherwise concurred with the findings of the Disciplinary Authority as well as the Appellate Authority on merits of the case but merely reversed the same on the erroneous premise that the imposition of penalty by the Chief Secretary deprived the applicant/respondent of an appellate forum.

57. Even otherwise, a perusal of the inquiry report and the orders of the Disciplinary Authority as well as the Appellate Authority go on to show that full opportunity was given to the applicant/respondent, not only to show cause to the memoranda of charge but of hearing as well.

58. The articles of charge framed against the respondent were three-fold.

59. First, that the respondent was posted to the Office of PCCF, Van Sadan, Haddo vide the Administration's Order No. 1515 dated May 04, 2016 and relieved from his duties vide Administration's Order No. 1524 dated May 05, 2016 with the direction to report for duty to the Office of PCCF, Van Sadan. However, he did not comply with the said order.

60. Secondly, the respondent, while absenting himself from duty, sought permission to leave the headquarter for proceeding to mainland for medical checkup without any supporting document vide application dated May 10, 2016. In response to the same, he was directed to first report for duty to the Office of PCCF, Van Sadan and then seek leave/headquarter leaving permission from the respective Head of the Department vide Administration's Memo dated May 13, 2016. However, the respondent failed to comply with the orders of the Administration.

61. Thirdly, the respondent submitted his duty report wrongly as Protocol Officer to the Administration, which was returned to him in original with the direction to report for duty to PCCF, Van Sadan vide Memo No. 45-561/2016-PW dated June 25, 2016. However, he refused to accept the memo. Thereafter a notice was published in the Daily Telegrams on July 16, 2016 to comply with Administration's order, even after which the respondent failed to comply with the same.

62. It was further mentioned in the charge that as per the judgment dated January 13, 2017 of this Court, the respondent had to join back as Lower Grade Clerk (LGC) in the parent department within 10 days from the date of the order, but he failed to comply with the said order. Instead, the respondent filed a mandamus appeal which was ultimately dismissed vide order dated July 6, 2017, even after which the respondent failed to report for duty as LGC.

63. It is evident from a bare perusal of the inquiry report and the orders of the Disciplinary Authority as well as the Appellate Authority

that the evidence and all the facets of the charges were considered by the said authorities. However, despite repeated opportunities, the respondent abstained from hearing and from attending the proceedings.

64. Thus, there was sufficient material evidence for the Disciplinary Authority to impose the punishment of dismissal on the ground of indiscipline, as enumerated in details in the Memoranda of Charge as well as the inquiry report. As rightly observed by the learned Tribunal, the High Court or the Tribunal does not act as an Appellate Authority over the findings arrived at on the basis of evidence by the Disciplinary Authority. There is limited scope of interference only if there is any gross miscarriage of justice or any patent procedural error and/or violation of the principles of natural justice. In the present case, the Disciplinary Authority appreciated the evidence available before it at length after giving ample opportunity of hearing and show cause to the respondent and only thereafter came to its conclusions. The punishment meted out the respondent is not so grossly disproportionate as to justify interference by the Tribunal or by this Court in judicial review.

65. In any event, in the absence of any challenge to the findings of the learned Tribunal refusing to interfere with the conclusions arrived at by the Disciplinary Authority and the Appellate Authority on merits, there is no scope of interference on such count.

Is the principle of res judicata applicable?

66. With due respect to learned counsel for the respondent, the argument of *res judicata* borders on the absurd. The respondent merely tries to take advantage of a typographical error in the judgment dated October 19, 2023 passed by the earlier Division Bench, where the impugned order of the Tribunal was erroneously mentioned to be dated August 05, 2022 in the first paragraph thereof. It is nobody's case that any order was passed by the Tribunal on August 05, 2022. The Division Bench itself in paragraph No.16 referred to the impugned judgment to be dated July 25, 2022 and the entire hearing before the Division Bench, as reflected from its judgment, proceeded on the premise of a challenge to the judgment dated July 25, 2022 itself. The respondent fully participated and argued the matter on the premise that the order under challenge was the one mentioned above.

67. Again, the respondent contends that the Division Bench did not specifically set aside the Tribunal's earlier judgment while remanding the matter; so, the said judgment still stands. The Tribunal correctly came to the conclusion that it was implicit in the order of remand that the earlier order of the Tribunal dated July 25, 2022 was set aside. In the operative portion of the judgment of the Division Bench, although it was not specifically mentioned that the Tribunal's judgment impugned therein was set aside, the obvious effect of the remand order was that the Tribunal would rehear the entire issues, which could not be possible unless the earlier order of the Tribunal was deemed to stand set aside.

68. The Division Bench, in its judgment, categorically observed that the matter was remanded to the Tribunal "for re-evaluation and further deliberation in the light of all relevant legal and factual consideration". Such exercise was directed to be done within four months from the date of the Division Bench's judgment.

69. Hence, there cannot be any manner of doubt that the Division Bench remanded the matter in its entirety, thereby setting aside the earlier judgment of the Tribunal. After the order of remand, there is no question of the previous order, impugned in the challenge before the Division Bench, surviving.

70. The respondent, in fact, participated in the subsequent proceeding after remand and advanced arguments before the Tribunal and obtained the advantage of the subsequent judgment of the Tribunal, against which the present appeal has been preferred by the authorities. After such exercise, it does not lie in the mouth of the respondent that the earlier decision of the Tribunal still stands and operates as *res judicata.* Thus, such objection of the respondent is hereby turned down.

Conclusion

71. In the light of the above findings, this Court comes to the conclusion that the learned Tribunal patently erred in law and without jurisdiction in setting aside the punishment order dated May 16, 2018 issued by the Chief Secretary in his capacity as a Disciplinary Authority

and the appellate order dated August 07, 2018 on legally untenable grounds, despite having affirmed the findings of the authorities on merits.

72. Accordingly, WP.CT/18/2026 is partially allowed on contest, thereby setting aside the impugned judgment dated February 18, 2026 passed by the Central Administrative Tribunal, Kolkata Bench, Kolkata in OA 351/1053/2018 and affirming the order of dismissal of the respondent dated May 16, 2018 passed by the Chief Secretary (Disciplinary Authority) as well as the appellate order affirming the same dated August 07, 2018.

73. There will be no orders as to costs.

74. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

I agree

(SMITA DAS DE, J.)