(18) Resultantly, with the above-said observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

A. Aggarwal

Before Rajiv Narain Raina, J.

SUBHASH PADAM —*Petitioner*

versus

STATE OF PUNJAB — *Respondents*

CWP No.6322 of 2012

February 18, 2015

Constitution of India, 1950 – Art. 311 – Punjab Civil Services (Punishment & Appeal) Rules, 1970 – Rls. 9 & 24 – Disciplinary proceedings – Dismissal – Proportionality of punishment - Dismissal protected by principles of uberrima fides – Quasi judicial orders are always open to correction either by the author on review or by a superior authority. However, officers do not enjoy blanket protection while passing quasi judicial orders – A mere error by an officer in making an order is not misconduct unless it is founded on oblique motive of making private profit from public office – Petitioner, a Tehsildar, was charge-sheeted for misusing his power and sanctioning mutation of provincial corpus land to a Church while land in revenue record stood in name of Provincial Government – However, there was no allegation of bribe or corrupt practice – There was also no repeated act proving incorrigibility, nor was there any financial loss caused to Government exchequer – Charges of commission of offences under the Indian Penal Code, 1860 and Prevention of Corruption Act, 1988 failed against him – It was found that proper enquiry on FIR was conducted, specific charge of corruption or bribe was not leveled in charge sheet – Held, that there could be at best carelessness or lack of good advice or foolhardiness or a blind dependence of other instances in other cities without due reflection - Petitioners past and subsequent work and conduct could not be vanquished so lightly – Therefore, severest punishment of dismissal being excessive, was set aside – Civil Writ Petition allowed.

Held, that the Court would also take cognizance of the inordinate length of the period between the submission of the inquiry report and the action taken thereon and if it involves a yawning gap of 8 years, as in this case, it is certainly a cause for concern, a supremely suspicious circumstance and this issue becomes extremely relevant and important and worthy of consideration by the court that an inquiry report submitted in 2003 was not acted upon for many years during which time the petitioner functioned as a Tehsildar and has out of the blue been viewed as a case against him for dismissal from service in 2012. The government apparently satisfied with his work as usual in between. Moreover, the charge laid against the petitioner for the same misconduct in disciplinary proceedings failed in the criminal trial from where the petitioner was discharged and thereby declared innocent of the crime alleged.

(Para 31)

Further, Held that the orders passed by Government servants which possess attributes of quasi judicial determinations are normally protected by principles of *uberrima fides* that is one of absolute good faith. Quasi judicial orders are always open to correction either by the author on review or by a superior authority exercising jurisdiction either suo motu, if rule permits, or in appeal etc.

(Para 32)

Further held, that neither in the present case is integrity in question nor is there any allegation of bribe or corrupt practice. There is also no repeated act proving incorrigibility, prior to or after the single event nor is there any financial loss caused to the Government exchequer. The action on the inquiry report has been initiated after a gap of nearly 9 years without following the principles of natural justice while the Supreme Court in *Mahadavan* has held that it is not in the public interest or the interest of the employees to proceed against them adversely at such a belated stage. The petitioner must have remained in reasonable belief for 9 years that the worst would not happen to him. Delay is not a factor which is irrelevant in the case in hand or deserves to by given a go bye and instead it should be factored into the ultimate decision on the judicial side in review of the impugned order. If not, then justice would not then be done or seem to be done.

(Para 41)

Further held, that the petitioner was discharged in the criminal case where he was made co-accused later on to face charges of commission of offences under the Indian Penal Code and the Prevention of Corruption Act which failed against him and I am inclined to think that this is a relevant fact in understanding the scope of proportionality and arbitrariness in this case, though by itself it may not be sufficient to dislodge the inquiry proceedings in the throes of its motions, and the weight to be attached to evidence which depend on their sustainability on preponderance of probabilities and its correct appraisal at two stages, one by the IO, the other at the hands of the disciplinary authority. When viewing this case on a preponderance of probabilities it appears more manifest and probable that the error was committed *bona fide* with no ill-motive or bad faith. There could be at the best carelessness or lack of good advice or foolhardiness or a blind dependence of other instances in other cities without due reflection. A mere error in making an order is not misconduct unless it is founded on oblique motive of making private profit from public office. Nevertheless, the corpus did not change hands and remains safe where it was in revenue record. To this I would add; in absence of a direct charge of corruption laid in the making of the mutation/sanction order and the registration of the sale deeds for which the process of reversal was initiated by the petitioner himself. Even if it is assumed that reopening of the revenue case was at the instance of the Deputy Commissioner, Gurdaspur even then it is not decisive on the quantum of punishment. This is for the reason that such a specific charge of corruption or bribe was not leveled in the charge-sheet and that the petitioner had set about reviewing his own order to dodge contemplated disciplinary proceedings or to blunt them in advance and save himself from the likelihood of being served with a charge-sheet in the future for major misconduct. It is thus not open to the writ court to make a fishing inquiry on this point or draw vacant inferences, other than from what is strictly found in the paper-book and no more. That is how the rules work. I would broadly agree with the submissions advanced before me on behalf of the petitioner which justify interference, the jist of which pricks the conscience of the Court in judicially ratifying and endorsing the view of the punishing authority, who failed to hear the petitioner and weigh the scales of justice evenly before making the order of dismissal. The petitioners past and subsequent work and conduct could not be vanquished so lightly and his spirit subjugated. Though it should not be said but I am compelled to remark that there are far worse people than the petitioner who earn pension from government.

(Para 42)

Further held, that for the foregoing reasons recorded above, this petition is allowed. The order of dismissal from service dated 14/15th March 2012 is set aside with all consequential benefits since it is found on secondary review to be harsh, excessive, arbitrary and discriminatory and one which is irrational in its relationship with quantum of punishment and appears shockingly disproportionate to the misconduct and, therefore, the same deserves to be considerably scaled down from the severest punishment meted out, not just on the petitioner but indirectly on his innocent family who would have to live with the stigma of dismissal from service of their Head of the family for all times to come, but for the Court's intervention, they would stand doomed.

(Para 43)

Kanwaljit Singh, Sr. Advocate, with
Ajaivir Singh, Advocate, *for the petitioner.*

Anshul Gupta, AAG, Punjab.

RAJIV NARAIN RAINA, J.

(1) The petitioner was a Tehsildar serving in the Revenue Department of the State of Punjab. His case for promotion was under consideration in 2003 when he was served upon a charge-sheet dated February 28, 2003 for major misconduct committed in sanctioning mutation of land which was recorded in the ownership of the Provincial Government (Makbuja Deputy Commissioner) in favour of the Amritsar Diocese Trust Association, Amritsar. It is not disputed that the corpus land was with Church authorities for its management when the mutation was sanctioned in the presence of the notification dated March 23**,** 1948 issued by the Government of India with respect to corpus properties in favour of Churches located pan India for the Christian religious bodies to look after the building work and upkeep of the transferred properties but the ownership remained in the name of the Provincial Government through the Deputy Commissioner, Gurdaspur and, therefore, the mutation could not have been sanctioned.

(2) The notification dated March 23, 1948 issued by the Government of India and the Ministry of Defence, New Delhi was addressed to four High Ecclesiastical Persons on the subject of transfer of Churches, Church buildings etc. to Church authorities on winding up of the ecclesiastical affairs from the jurisdiction of the Central

Government w.e.f. April 01, 1948. Meaning thereby, neither the Union of India nor the State governments would interfere in religious affairs of minorities and the properties would remain within the management of the respective churches to look after them beneficially. The notification forbade Church properties throughout India to be administered at State expense which would no longer be maintained by Governments from their funds and revenue. The details of the Churches and the authorities to whom the properties will be transferred and other particulars are given in the notification, a copy of which has been placed as Annexure P-3 with the writ petition from running pages 40 to 56. It is noteworthy that throughout the text of the notification the word "transfer" has been used of the scheduled properties to Church authorities concerned but meant of management of corpus and not transfer of proprietary rights. It was also decided that those Churches and Church buildings situated in Cantonment lands, the sites of the buildings and the Church compounds, if when no longer required by Church authorities for the purposes for which they are intended, then corpus will revert to the Government concerned to be dealt with by it.

(3) The Church authorities were instructed to make arrangements for taking over subject matter corpus and concomitantly District Administrations were instructed to handover the Churches, compounds etc. to the representatives of the Church authorities on March 31, 1948 and to have nothing to do in terms of expenditure on them after April 01, 1948. With the notification, a schedule of rules was attached.

(4) The pith and substance of the charge levelled against the petitioner is that he sanctioned mutation No.1030 dated December 02, 2002 of provincial corpus land measuring 116 Kanal 9 Marlas situated at village Madhopur Cantonment, Tehsil Pathankot in favour of ADTA (Registered) Aglicon Church CIPBC C/o Chairman while the land in the revenue record stood in the name of the Provincial Government. By doing this act, he had committed irregularities and illegalities in changing the ownership while only maintenance rights were bestowed by the Government of India on Church authorities since they would no longer be looked after at State expense. The revenue record had held in good stead for 54 years when the mutation was sanctioned contrary to the provisions of the Limitation Act, 1963 when even ownership of State cannot be denied after 12 years. Still further, the petitioner was accused of registering sale deeds based on mutation of land measuring 72 kanals in favour of late Sh. Sandeep Singh son of Sh. Rajinder Singh etc. for a sale consideration of Rs.29.25 lacs on December 05,

2002 on the basis of General Power of Attorney whereas the market price of the land was 7 to 8 crores approximately thereby causing financial loss of Rs.47 lacs approximately on stamp duty to Government revenue in registering sale deeds at the lesser rate.

(5) It is recorded in the charge-sheet dated February 28, 2003 that after sanctioning of mutation and registration of sale deeds, the petitioner had reviewed his orders and put a note on the "Parat Sarkar" on January 06, 2003 that the notification of the Government of India dated March 23, 1948 is not applicable to the case and the mutation be reviewed. The petitioner was accused of mala fide intentions to record the remarks for reviewing the mutation of 'Parat Sarkar', when in the first place, the petitioner was a caretaker of land belonging to Provincial Government as a Tehsildar holding office. The petitioner was charged with misusing his power beyond his jurisdiction in sanctioning the mutation with mala fide intention which shows carelessness and mala fides in performance of duties and, therefore, his conduct was within the teeth of Rule 9 of the Punjab Civil Services (Punishment & Appeals) Rules, 1970 and had invited upon himself the wrath of the major punishment mentioned at Sr. No.5 of Rule 9, which entails dismissal from service.

(6) However, a reading of the charge-sheet would not disclose that the petitioner was accused of making private profit from public office or that he took bribe for sanctioning the mutation or indulged in any act of corruption even though Government was within its power to have alleged so but that would have changed the direction of the inquiry. It is also seen that the petitioner had sought to reverse his error on the noting file by ordering a review exercise before the charge-sheet was served. It is not the stand of the State that he did so in contemplation of anticipated disciplinary proceedings against him as there is no such allegation in the charge-sheet nor is there an averment in the written statement filed by the State in defence of the writ petition in challenge to the order of dismissal from service passed on 14/15th March 2012. The present proceedings arise out of an inquiry conducted into the memorandum of charges issued to the petitioner. A perusal of the inquiry report reveals that the petitioner has been charged with bad intention without particularising it as to what constitutes bad intention and from which one of his acts or series of acts an adverse inference can be drawn or whether they were only referring to a state of mind which can be based only on reasonable inferences drawn from proved facts.

(7) It is argued by Mr. Kanwaljit Singh, learned Senior counsel for the petitioner that corpus never changed hands on the basis of the mutation and the sale deeds, since at best an error of judgment may have been occurred in the reading of the GOI Notification, 1948. On further reflective consideration the petitioner had indeed taken appropriate steps suo motu to reverse what he had done, but nevertheless in accordance with law as thought by him from precedents from Amritsar, Kullu and Delhi and decisions were taken in good faith before the charge-sheet was issued. It is his further contention that there has never been any allegation of any private party or of the State that the petitioner had obtained any personal financial benefit by changing the mutation and appropriate steps were taken to reverse the decision within one month. Still further, the mutation has never been given effect to. Therefore, the property has not changed hands. The petitioner has not gained any advantage by the episode. It is noteworthy that such mutations have been sanctioned of Church managed properties at Amritsar, Delhi, Kullu and Kangra but the inquiry officer said that he was not concerned with looking into this aspect or to deal with the question of good faith while holding that the charge stood partly proved.

(8) Charge 1 was of a serious nature pertaining to mutation based on the notification dated March 23, 1948 which still holds the field which has neither been withdrawn nor revoked so far. But no financial or pecuniary loss was caused to Government in the transaction while the sale deeds were registered at the Collector rates prevalent at the time of the sale deed in the district. This aspect also not been considered by the inquiry officer. Intention is a matter inferential on facts proved leading to establishing guilt in all probability. According to Mr. Kanwaljit Singh, the learned senior counsel, there is no presence of damaging facts established on record even going by the domestic inquiry principles of a preponderance of probabilities that orders were passed with ill or bad intention for personal gain. An error of judgment done in good faith is not sufficient to support the extreme punishment of dismissal. If there was any carelessness or negligence in the performance of duties it did not invite severe punitive action. With this, the learned senior counsel drives his case into the realm of proportionality of punishment and contends that the petitioner did not deserve such harsh punishment as one of dismissal from service. In any case, as a Tehsildar looking to the orders passed by him, it was still the duty of the Patwari and the Kanungo to carry out the directions in the revenue record faithfully and to accordingly report, but the incident in

question did not lead to that boiling point as the corpus did not pass hands into private parties transferring rights in corpus property despite the orders passed sanctioning mutations and registering the sale deeds which bore no fruit to anyone.

(9) Still further, on the basis of the charges levelled against the petitioner, a criminal case was registered bearing FIR No.9 dated 11.01.2003 at Police Station Division 1, Pathankot under Sections 420, 468, 467, 471 and 120-B IPC read with Sections 12 and 13 of the Prevention of Corruption Act, 1988 relating to the same transactions. The petitioner was initially not involved as a co-accused in the case registered by the Deputy Commissioner, Gurdaspur. He was roped in at a later point in the course of investigations and found innocent of commission of crime.

(10) The learned Special Judge, Gurdaspur in his judgment held that while sanctioning mutations, a Tehsildar acts as a judge as he performs quasi judicial functions and, therefore, cannot be prosecuted under Sections 467, 468 and 471 of the IPC. The learned Special Judge found that initially the name of the petitioner did not find mention in the FIR and the same was brought to surface at a later stage. The Court found that there was no illegality committed by the petitioner and consequently he was discharged in the case by order dated August 31, 2010. There ended the criminal proceedings against the petitioner. He was declared innocent of the crime alleged.

(11) In the domestic inquiry, the petitioner was given an opportunity to reply to the inquiry report. He filed his reply on the lines as has been argued by his learned senior counsel. The inquiry report was submitted in November 2003 to the punishing authority. He had replied to the same on January 03, 2004. After a lapse of almost six years from the submission of the inquiry report, the petitioner says, that one fine morning he received a telephone call in December 2009 which he assumed was to offer an opportunity of hearing to him. There was suspended silence again following. Surprisingly, after nearly 9 years of the issuance of the charge-sheet and after a gap of more than 8 years of the inquiry, the impugned order dated 14/15th March 2012 was suddenly passed dismissing the petitioner from service without even granting him any opportunity of hearing or as to the fate of his defence in reply to the inquiry report and why it not found satisfactory. This is an additional reason that is pressed before this Court to set aside the dismissal order for violation of the rule of *audi alteram partem*. It is his case that the extreme punishment of dismissal has been handed down

without notice to him of the impending crisis he may have to face. No discussion is found in the dismissal order of the issues raised in reply to the inquiry report and this has probably been occasioned by long lapse of time and of the disciplinary authority losing a grip on facts and being swayed by the imputed "bad intention" of the petitioner in passing orders and in this background has taken the extremely arrogant step of dismissing the petitioner from service without due application of mind, swayed by time and tide and the power to use authority, the way one pleases.

(12) Learned senior counsel further submits that the protections afforded by the Supreme Court in ***Union of India & others*** *versus* ***Mohd. Ramzan Khan***[1]**,** in re. second show cause notice have not percolated to him and he has had no effective opportunity to explain his case that it is not one for dismissal from service which is much too excessively harsh and disproportionate to the alleged misconduct.

(13) Further still, Rule 24 of Part 7 of the PCS (P&A) Rules, 1970 requires the Government to consult the Punjab Public Service Commission and to obtain its advice in cases of dismissal from Government service. It is the say of the petitioner that his case was not forwarded to the Commission nor its advice sought or received before action was taken. Dismissal was caused without seeking or receiving any advice from the PPSC as the promotion of the petitioner as Tehsildar was itself based on the advice of the Commission. After a gap of nearly 9 years, without due regard to the entire service record of the petitioner, where there was no lapse, nor after the subject action of 2002/2003, resort was had to the extreme step of dismissal from service, without having to say that the life of the disputed mutation was 40 days. Not even *ex-post facto* sanction was taken from the Commission and the written statement is silent on this aspect.

(14) Lastly, it is argued that Article 311 of the Constitution of India guarantees to public servant a reasonable opportunity of hearing which has been denied to him. The petitioner's length of service and his previous record have not been taken into account while dismissing him from service. The law protects public servants of acts done in good faith while discharging official duties. The petitioner acted in favour of the Government and as a caretaker of the corpus in taking appropriate and timely steps to reverse his own decision and to review his actions, which itself speak of expression of good faith when the charge is not

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[1] (1991) 1 SCC 588

that the petitioner buckled down under contemplated disciplinary proceedings against him or he had prior notice of the same in the offing and, therefore, the review exercise was done in bad faith to protect himself against disciplinary action or to exculpate himself from the commission of misconduct or crime. This, to repeat, was not the charge laid. And no amount of reading of the contents of the charge-sheet can be of help in recognizing such a charge in it which by its nature, if imputed, would have been serious if laid. Besides, mitigating factors are pressed such as that the petitioner had rendered 22 years of service in the Department and had not much of service left to his credit since he was due to retire on 31.10.2013.

(15) In his address while summing up the case, Mr. Kanwaljit Singh says that for the foregoing reasons the charge-sheet, the inquiry report and the impugned order would not hold water as they have not been passed or made in accordance with law and the provisions of the Punishment & Appeal Rules, 1970 relied upon as its basis in the impugned order itself. In the main he relies on a selection of judgments such as these:

(16) The case ***Smt. Kailash Sharma*** *versus* ***State of Punjab***[2] pertains to a decision handed down by G.S.Singhvi, J., when his Lordship headed the Division Bench of this Court based on the doctrine of proportionality while removing an employee from service when there was no allegation regarding integrity during the long and otherwise unblemished service career of 22 years of the petitioner then removal from service was held not justified, which to the extent of past service supports the case of the petitioner, and the punishment of removal was substituted with that of compulsory retirement and the employee was held entitled to her retiral benefits. However, this was a case of absence from duty by a JBT teacher without sanctioned leave and her insistence on joining duty except in a particular school which led to the removal. The Court took into consideration past service record and its omission from consideration by the punishing authority as a circumstance which vitiated the impugned order of removal due to non-application of mind. Right to pension and its deprivation was factored with arbitrariness and proportionality on the cornerstone of the conscience of the Court. Only in its broad extent is the case relevant to the present one in the context of exclusion from pension and from past record from consideration as an acceptable ground of challenge.

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[2] 2004 (2) SLR 50

(17) In ***State of Punjab*** *versus* ***Jagtar Singh***[3] the case was to the effect that the punishment must be commensurate to rules, to wit, the Punjab Police Rules, 1934 [Rl. 16.2] and the order of removal for absence from duty cannot be arbitrary or illegal. I do not think this case is of much help.

(18) In ***Jagdish Singh*** *versus* ***Punjab Engineering College & Ors.***[4] *the* Supreme Court, in the case of disproportionate punishment, reduced it to stoppage of two increments with cumulative effect when the aggrieved person was found possessing a good track record then the punishment of dismissal was oppressive. It was also held that the High Court and the Tribunal can interfere with the decision of the disciplinary authority only if they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate. This was again a case of absence from duty arising from the labour court and would, to my mind, be of no direct help to the petitioner whose case is based on different parameters and separate legal principles in granting relief.

(19) On the other hand, Mr. Anshul Gupta, learned AAG, Punjab has supported the stand of the State in the written statement and contends that the action of the respondents is legal and valid. The charge was serious in nature. Bad intention is a state of mind where straightforward evidence may not reach the file to establish the bundle of facts and each of them independently. All that was required in domestic proceedings was to establish a probability but not to establish a case beyond a reasonable shadow of doubt. If the petitioner was discharged of commission of offences including under the provisions of the Prevention of Corruption Act, 1988 the standards of strict proof required there were inapplicable to the standards of a departmental inquiry conducted under rules. He explains the inert and inordinate delay of seven and eight years will not rule the roost as no limitations are provided in the rules for concluding an inquiry and the inquiry and the punishment order cannot be set aside on this ground alone.

(20) To sum up the State's defence of action taken, it is revealed from the line of thinking was in the following steps: [1] The transfer of corpus to ADTA was without authority and the sanction of mutation allowed by the petitioner was against the law and the rules and passed without issuing notice to the owner, that is, the State Government

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[3] 2000(3) RSJ 688
[4] (2009) 7 SCC 301

before the sanction of the said mutation was accorded; [2] the letter dated March 23, 1948 has been misinterpreted by the petitioner in order to camouflage his illegal conduct as a public servant as there is no provision in this letter which authorises transfer of corpus to ADTA; [3] the petitioner has been dismissed after following due procedure laid down in the rules for having "grossly abused his official position" {which are not the very words used in the charge-sheet dated February 28, 2003, and which to the mind of this court have been grossly exaggerated in the written statement in para.3 of the preliminary objections}; [4] the corpus transfer to ADTA (acting through Bishop) was further sold by ADTA to private persons at very cheap rates on the basis of power of attorney and the "sale proceeds of land were misappropriated in connivance with the petitioner"- {I fail to find these last words specifically mentioned in the charge-sheet dated February 28, 2003 where there is no allegation of money passing or changing hands to make it a corrupt deal};[5] the State further says in its written statement that it is not necessary to prove the receipt of pecuniary advantage and is inferential when on the face of it abuse of official position by the petitioner is writ large from his unlawful conduct as explained in the earlier part of the written statement. This misconduct itself speaks of mala fides on the part of the petitioner; [6] The petitioner has himself admitted that the change of ownership by way of mutation was set aside by the Collector and the land was restored to the ownership of the Provincial Government in the revenue record; [7] it is then said that after sanctioning mutation on December 02, 2002 in favour of ADTA ostensibly on the basis of the 1948 notification which when was brought to the notice of the Deputy Commissioner, the petitioner referred the matter to the Sub Divisional Magistrate, Pathankot with the recommendation to review the mutation sanctioned by him wrongly and for this reason he has abused of his official position; [8] the restoration of corpus to its rightful owner did not absolve the petitioner of his gross misconduct and therefore the punishment order is legal and valid in the eyes of law.

(21) There is further an additional issue which deserves consideration of this Court. It appears that the Patwari and Kanungo made statements before the inquiry officer that they were impressed upon by the petitioner to enter the mutation wrongly. This is a charge which could have serious impact on the proceedings but was not levelled in the imputations of misconduct. This Court has, therefore, carefully read and re-read the charge-sheet at Annexure P-1 but find such a charge was not mentioned in the charge-sheet for the petitioner

to answer before the regular inquiry was ordered and thus the petitioner lost his valuable right to defend himself properly and effectively in the inquiry that followed. It is not the case that such a charge or imputation of misconduct could not have been levelled but that was not done, and if done, then alone evidence could be rightly be let in by production of the lower rank officials to make their depositions. These depositions it appears were made by the Patwari and Kanungo to exculpate themselves from their participation in the episode. In so doing, the petitioner was not put to notice in the beginning in the charge-sheet that he would be expected to meet out such a case in reply to the charge-sheet and, therefore, the evidence of these witnesses cannot strictly be read against the petitioner as they are beyond the scope of the charge-sheet and, therefore, this Court is not swayed by what the Patwari and Kanungo alone say that they were pressurized by the petitioner in doing acts and things contrary to law. They were not innocent bystanders. In the circumstances, it is not enough for the State to have contended, even though it has not, that if both the witnesses were cross-examined by the petitioner then it had turned their statements into usable evidence against the petitioner and that would be seen as sufficient compliance of the principles of natural justice and the protection that law affords that no man can be taken by surprise in an inquiry in any known system of law including the law of departmental inquiries, was clearly violated. It is settled position in law that no evidence can be led on what is not pleaded or is put in issue. For these reasons, I would not read too much from what has been stated in para.8 of the written statement in this respect. In his defence set up in the replication filed to the written statement to para.8, the petitioner has categorically stated that the lower rung officials were consulted by him before changing of mutation. It means that they could have differed in opinion. It has been explained that as a matter of office routine, the files moves from the office of Patwari, Kanungo and then come to the office of the Tehsildar. There is not an iota of evidence on record to suggest that this decision making process was not followed by the petitioner. He has reiterated in the same paragraph that there were earlier instances in different parts of the country covered by the notification of 1948 where mutations were sanctioned and that it was reasonable to believe that a Tehsildar could do so in his jurisdiction. In any case, he had reversed his error of judgment within a month of the complaint. The petitioner has affirmed that against the order of the Special Judge, Gurdaspur, no appeal or revision was filed and the order has attained finality which discharged

the petitioner from the criminal case, which removes much of the sub-stratum of the domestic charge.

(22) It may be noted tht in departmental inquiry cases the writ Court is required to examine all the circumstances leading to orders of major punishment. The Court has to address itself in the first instance to the procedure adopted in arriving at findings after a departmental trial into the charges. The charges levelled against a person may be either summary or in detail depending on the nature of the charge or charges laid but one thing appears certain that disciplinary proceedings cannot go beyond the charges framed and the imputations of misconduct, where such are tagged with the charge memo or part of the chargesheet papers duly served on a delinquent. Trite it is to say that evidence can be led only in support of the charges levelled which are made known to the delinquent in the beginning so that he has an opportunity to defend himself on each and every allegation or imputation of misconduct. Evidence can be led to fill in gaps but which are in the nature descriptive of the pith and substance of the charges or illustrate them so that the truth is found but where a specific charge is not laid, which amounts by itself to a misconduct, then no evidence can be led, as that would be like starting a fresh trial on a new ground. It is for this reason that I have already rejected the presence of the prosecution witnesses, the Patwari and the Kanungo in the witness box in the inquiry forum and their allegations levelled against the petitioner are not the Gospel truth because the statements made by them against the petitioner amount independently to imputation of misconduct which could only be entertained in a separate charge-sheet or by an additional charge issued separately and merged with the main chargesheet before the trial starts and framed after calling for defence reply and considering the same if it be fit to be gone into as a supplementary charge. This is possible before appointing an inquiry officer to look into that charge as well. This was not done. Therefore, the ground cannot be traversed to the disadvantage of the petitioner by producing 'abettors' to the transaction as witnesses for the prosecution.

(23) To return to the main line of reasoning of what the court is required to do in departmental proceedings, the next stage is to examine whether the procedure laid down in rules was scrupulously followed in the conduct of the inquiry. If procedure was under-stepped or circumvented then to see if such a failure has resulted in a failure of justice and for this the test of prejudice is to be applied. If no prejudice is caused then court may not interfere. If it was perceptively caused,

then to set it right from where the fault occurred. If prejudice is caused as explained in ***State Bank of Patiala & Ors*** *versus* ***S.K.Sharma*** [5] then it would be appropriate to remit the matter to the inquiry officer to re-do the proceedings from where the fault occurred, removing the offensive part, following the principles in ***Managing Director ECIL*** *versus* ***B. Karunakar***[6] The doctrine of prejudice demands an answer from the court while judging the question of guilt and in this to keep in mind that the court must act with a broad vision and look to the substance and not the technicalities of the cause and for this vantage point. For this judicial view one may visit ***State*** *versus* ***N. S. Ganeshwaran***[7] the virtue of substance and not technicalities while testing prejudice and injustice. If the inquiry is found neither fair nor proper then the court may set aside the inquiry itself and leave the disciplinary authority to act in accordance with rules depending on the facts of the case and what it demands in venturing to do justice in a cause.

(24) Where the inquiry officer returns findings and proves guilt on one or more of the charges and submits his report to the disciplinary authority, the disciplinary authority has to afford an opportunity to the delinquent to reply to the inquiry report to enable him to defend himself and still prove his innocence, post inquiry, by being given a chance to challenge the findings arrived at by the inquiry officer. Only then the stage is set for disciplinary authority to consider the case further for punishment, when justified. He may either accept or reject the findings recorded at the inquiry. If he rejects them he can only do so by putting a dissent or disagreement note by recording his tentative view in writing why he does not agree with the findings of the Inquiry Officer in which case he has to give an opportunity to the delinquent to answer the dissent. This can be done only after inviting reply to the inquiry report and not otherwise. If the disciplinary authority is of the view that a case for punishment is made out, he can propose the punishment and serve it on the delinquent, either independently or in his dissent note, and then alone he may pass the order of punishment for which no second show cause notice is necessary after the 42nd Amendment to the Constitution, amending Article 311 of the Constitution as fully explained in ***Mohd. Ramzan Khan***, (*supra*) upholding the amendment and explaining the effect. Then, if punishment is inflicted, the

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[5] AIR 1996 SC 1669:(1996) 3 SCC 364

[6] 1994 SCC Supp. (2) 391.

[7] (2013) 3 SCC 594

delinquent would have a right of statutory appeal against the order to an authority superior to the punishing authority in case rules provide. It is not the defence of the State that there was a statutory remedy available which was not availed of and therefore the writ lies directly against the impugned order as has been done by the petitioner. After that comes the stage of judicial review of administrative action, if challenge is laid to the order of punishment.

(25) Against an order of punishment passed after holding regular inquiry, there is no gainsaying, the Court does not sit in primary review or in appeal over the punishment order but has only to examine the case on principles of secondary review as explained in ***Om Kumar & Others*** *versus* ***Union of India***[8]***,*** the Supreme Court laying down the principle:-

> "...When an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Art. 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court. . ."
>
> Then again;
>
> "The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary."

(26) The horizon of judicial review was succinctly put in the House of Lords ruling in ***Council of Civil Service Union*** *versus* ***Minister for Civil Service***[9]***,*** where Lord Diplock summed up the grounds on which administrative action was open to judicial review by a Writ Court. Lord Diplock's off-quoted passage dealing with the scope of judicial review of an administrative action may be gainfully extracted:-

> "Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the ground on which administrative action is subject

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[8] (2001) 2 SCC 386
[9] (1985 AC 374)

> to control by judicial review. The first ground I would call *`illegality'*, the second *`irrationality'* and the third *`procedural impropriety'*. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of `proportionality'.

(27) If any action taken by an authority is contrary to law, improper, irrational or otherwise unreasonable, a court competent to do so can interfere with the same while exercising its power of judicial review.

(28) In this secondary review jurisdiction two questions have to be examined. One, whether the proceedings leading up to the impugned order and the impugned order itself suffers from any arbitrariness since arbitrariness is one limb of Article 14. If the order is arbitrary, irrational or as no reasonable person of ordinary intelligence would pass, the Court can quash the order and end the matter and leave it to the respondent-State to deal with the judicial order. The second question which deserves to be examined is in a case where either arbitrariness or non-arbitrariness is found vitiating the decision. If it is arbitrary, then to address itself on the question of proportionality and whether the punishment chosen by primary authority and imposed is shockingly disproportionate or excessive to the charge levelled against a delinquent and at the same time to the quantum and if it is commensurate to one in the range of punishments and whether the choice disturbs the conscience of the Court as one which should not have been inflicted and to act accordingly. The best possible golden median is to fit the misconduct to the punishment and the punishment to the misconduct, which is far from being an easy job and much of the dilemma centres around choices in the scale of punishment which fits the bill. This is a judicial power exercised by the writ Court on principles which include the one which is most vital i.e the Wednesbury principles of measuring arbitrariness, which doctrine is assimilated in the Indian law as part of Article 14 of the Constitution of India by judicial introduction of the English law principle as a ready reckoner of the factotum, acting as a general servant of the law but not its master.

(29) In ***Union of India*** *versus* ***R.K. Sharma***[10] the Supreme Court laid down the principles of interference in such matters pointing out that the court cannot while exercising power under Art. 32/226 interfere

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[10] AIR 2001 SC 3053: (2001) 5 SLR 731

with the punishment orders because the court considers it to be disproportionate by observing:

> "It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review. Merely on compassionate grounds a court should not interfere". The court thus interferes when the quantum of punishment is "shockingly disproportionate", or it shocks the conscience of the court.

(30) In the present case, it cannot be said that there was any arbitrariness in the stages and motions of the inquiry proceedings leading up to the inquiry report where the petitioner had full opportunity to defend himself [except for the introduction of the Patwari and the Kanungo to appear as witnesses for the prosecution to persecute the petitioner as discussed above]. An inquiry may have been conducted strictly in accordance with the procedural rules but that does not mean it is immune from judicial review in its end product. The presence of the Patwari and Kanungo may amount to an inherent procedural and substantive flaw since both appeared as prosecution witnesses without advance notice to the petitioner in the charge docket to have had the fair and proper opportunity to explain in writing in response of the charge sheet in the first instance to dispel doubts, if any. It is another matter whether they had any business to be there as witnesses in the first place against the petitioner and not in the dock and then from this angle to view what might be the evidentiary worth of their testimony to nail down the petitioner. That is a matter of judicial review and whether there is sufficient basis for not going blindly by their testimonies deposing they were pressurized by the petitioner to act in a particular fashion despite absence of such direct charge laid when they together were party to the sanction of mutation. The question really is to put the delinquent on advance notice of what he may expect to be on guard so that he can act accordingly in his defence at the appropriate time and not to defeat him by surprise by production of two witnesses against him. This is to solve a tough problem so easily. Opportunity of cross-examination alone is not sufficient gaurd of due process by deceitfully extending the boundaries of the chargesheet beyond the forbidden zones clearly marked by the language, text and context of the imputations of misconduct therein. The presence of the said two witnesses in the box is cause for judicial anxiety whether the petitioner was fairly dealt with. Here sprout the seeds of the conscience of the court and break ground. The conscience of the court becomes the invisible jury.

(31) More importantly, the Court would also take cognizance of the inordinate length of the period between the submission of the inquiry report and the action taken thereon and if it involves a yawning gap of 8 years, as in this case, it is certainly a cause for concern, a supremely suspicious circumstance and this issue becomes extremely relevant and important and worthy of consideration by the court that an inquiry report submitted in 2003 was not acted upon for many years during which time the petitioner functioned as a Tehsildar and has out of the blue been viewed as a case against him for dismissal from service in 2012. The government apparently satisfied with his work as usual in between. Moreover, the charge laid against the petitioner for the same misconduct in disciplinary proceedings failed in the criminal trial from where the petitioner was discharged and thereby declared innocent of the crime alleged.

(32) What is more important I think in this case is to examine whether the dismissal order is proportionate to the gravity of the charge while sitting in secondary review of administrative action where the first reaction should be one not to interfere. The substance of the charge was after all a bad intention, a mala fide intention, an irregularity committed and carelessness attributed in performance of official duties and those three collection of words/expressions should be underlined for a proper understanding of the question of quantum of punishment and whether it was "shockingly disproportionate" to the gravamen of the articles of charges, assuming for a moment they, or one of them, was adequately proved on the evidence and in their probabilities. But it cannot be said on facts presented that no misconduct was committed at all. No, I would not venture that far afield. Yet, did it merit the severest punishment of dismissal from service or did it deserve something less is what disturbs the court in search for an answer. The orders passed by Government servants which possess attributes of quasi judicial determinations are normally protected by principles of *uberrima fides* that is one of absolute good faith. Quasi judicial orders are always open to correction either by the author on review or by a superior authority exercising jurisdiction either suo motu, if rule permits, or in appeal etc.

(33) There is, however, no blanket protection officers enjoy while passing quasi judicial orders. When can disciplinary proceedings be instituted in relation to acts and things done by way of commission or omission of what law requires to be done in exercise of quasi judicial functions was explained by the Supreme Court in

Union of India *versus.* ***K.K. Dhawan***[11] [refd. below as Judgment No 1]. It was laid down, while following earlier dicta of the final Court, that disciplinary proceedings could be initiated against the government servant even with regard to exercise of quasi-judicial powers provided that:-

> "(i) The act or omission is such as to reflect on the reputation of the government servant for his integrity or good faith or devotion to duty, or
>
> (ii) there is prima facie material manifesting recklessness or misconduct in the discharge of the official duty, or
>
> (iii) the officer had failed to act honestly or in good faith or had omitted to observe the prescribed conditions which are essential for the exercise of statutory power."

(34) The said case pertains to where the ITO had given undue favour to an assessee. It was held that the government can take action. The charge was of not maintaining integrity. Besides, there was imputation of serious misconduct or misbehaviour. The CAT had decided in favour of the officer. The Supreme Court held in Para No. 29 that disciplinary action can be taken in the following cases:-

(a) Officer has acted in a manner which would reflect on his reputation for integrity or good faith or devotion to duty;
(b) Recklessness or misconduct in the discharge of his duties
(c) Unbecoming of a government servant;
(d) Acting negligently and omitting the prescribed condition essential for exercise of the statutory powers;
(e) Undue favour given to a party;
(f) Action actuated by corrupt motive, bribe may be small;

(35) It is the contention that none of the above conditions are applicable to the petitioner who has not acted recklessly or mis-conducted himself in a manner which justifies the extreme punishment. There is no corrupt motive or allegation of bribe. He has not even gone beyond his powers or granted any favour to any party. At best he misjudged. Most of his based on interpretation of instructions regarding which the petitioner has cited earlier precedents involving church properties transferred by the subject notification and mutations were entered for properties at Amritsar, Kullu and Delhi.

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[11] (1993) 2 SCC 56 [pg. 58]

(36) Insofar as quasi judicial determinations are concerned in their relation to disciplinary proceedings the Supre Court has guided us in numerous in numerous binding precedents such as:

(37) In ***Union of India*** *versus* ***Upendra Singh***[12] the Supreme Court had occasion to deal with a case where an Assistant Commissioner of Income Tax acted in an illegal and improper manner without examining the incriminating documents and evidence and without passing any order. It was said that he gave illegal and improper directions to the assessing officers which were in violation of Rule 3(1)(i) and Rule 3(1) (ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. The said case pertains to correctness of the charges and at an interlocutory stage which is clear from para No. 4 of the judgment. The charges were challenged when the Court had held that the tribunal has no jurisdiction to go into the correctness and truth of the charges as that was the function of the disciplinary authority. In para No. 13 the same principles were reiterated as in Judgment No. 1. Some other of them are:

(38) See ***Government of Tamil Nadu*** *versus* ***K.N. Ramamurthy***[13] *t*his was also a case of a Deputy Commissioner, Tax Officer imputed with allegations of not safeguarding government revenue besides failing to analyse the facts, check the accounts and making final assessment. It was a case where loss was caused to the government exchequer. In para No. 10 of the judgment the same principles have been reiterated as in *Mahadavan*.

(39) Cf. ***Union of India and others*** *versus* ***Duli Chand***[14] this is a case of inflicting punishment of stoppage of two annual increments with cumulative effect where the employee was found negligently allowing claims for refunds to an applicant on three different occasions in taxation cases, where it was held to be a case of gross negligence in performance of duties. At para No. 5 the same principles were reiterated as in *Mahadavan.*

(40) Cf. ***P.V. Mahadevan*** *versus* ***M.D., Tamil Nadu Housing Board***[15] this was a case of challenge to the chargesheet issued after 10 years of alleged irregularity which came to light in an audit report after 4-5 years of the incident. The Supreme Court quashed the charge memo

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[12] 1994 (3) SCC 357
[13] (1997) 7 SCC 101
[14] (2006) 5 SCC 680
[15] 2005(6) SCC 636

by reasoning in para. 15 onwards of the judgment, that a case was made out in support of interference. In para. 18, while allowing the petition and quashing the charge memo it was held as under:-

> "18. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department tin the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.
>
> We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs."

(41) In view of the above judgments, neither in the present case is integrity in question nor is there any allegation of bribe or corrupt practice. There is also no repeated act proving incorrigibility, prior to or after the single event nor is there any financial loss caused to the government exchequer. The action on the inquiry report has been initiated after a gap of nearly 9 years without following the principles of natural justice while the Supreme Court in *Mahadavan* has held that it is not in the public interest or the interest of the employees to proceed against them adversely at such a belated stage. The petitioner must have remained in reasonable belief for 9 years that the worst would not happen to him. Delay is not a factor which is irrelevant in the case in hand or deserves to by given a go bye and instead it should be factored into the ultimate decision on the judicial side in review of the impugned order. If not, then justice would not then be done or seem to be done.

(42) Having heard the rival contentions of the respective parties through their learned Senior counsel and the learned Law Officer appearing for the State of Punjab, it is the considered view of this Court that the punishment of dismissal in this case is far too harsh, excessive and oppresive and rather disproportionate to the charges laid or partly proved against the delinquent petitioner, for the variety of reasons recorded above. The petitioner was discharged in the criminal case where he was made co-accused later on to face charges of commission of offences under the Indian Penal Code and the Prevention of Corruption Act which failed against him and I am inclined to think that this is a relevant fact in understanding the scope of proportionality and arbitrariness in this case, though by itself it may not be sufficient to dislodge the inquiry proceedings in the throes of its motions, and the weight to be attached to evidence which depend on their sustainability on preponderance of probabilities and its correct appraisal at two stages, one by the IO, the other at the hands of the disciplinary authority. When viewing this case on a preponderance of probabilities it appears more manifest and probable that the error was committed bona fide with no ill-motive or bad faith. There could be at the best carelessness or lack of good advice or foolhardiness or a blind dependence of other instances in other cities without due reflection. A mere error in making an order is not misconduct unless it is founded on oblique motive of making private profit from public office. Nevertheless, the corpus did not change hands and remains safe where it was in revenue record. To this I would add; in absence of a direct charge of corruption laid in the making of the mutation/ sanction order and the registration of the sale deeds for which the process of reversal was initiated by the petitioner himself. Even if it is assumed that reopening of the revenue case was at the instance of the Deputy Commissioner, Gurdaspur even then it is not decisive on the quantum of punishment. This is for the reason that such a specific charge of corruption or bribe was not levelled in the charge-sheet and that the petitioner had set about reviewing his own order to dodge contemplated disciplinary proceedings or to blunt them in advance and save himself from the likelihood of being served with a charge-sheet in the future for major misconduct. It is thus not open to the writ court to make a fishing inquiry on this point or draw vacant inferences, other than from what is strictly found in the paper-book and no more. That is how the rules work. I would broadly agree with the submissions advanced before me on behalf of the petitioner which justify interference, the jist of which pricks the conscience of the Court in judicially ratifying and endorsing

the view of the punishing authority, who failed to hear the petitioner and weigh the scales of justice evenly before making the order of dismissal. The petitioners past and subsequent work and conduct could not be vanquished so lightly and his spirit subjugated. Though it should not be said but I am compelled to remark that there are far worse people than the petitioner who earn pension from government.

(43) For the foregoing reasons recorded above, this petition is allowed. The order of dismissal from service dated 14/15th March 2012 is set aside with all consequential benefits since it is found on secondary review to be harsh, excessive, arbitrary and discriminatory and one which is irrational in its relationship with quantum of punishment and appears shockingly disproportionate to the misconduct and, therefore, the same deserves to be considerably scaled down from the severest punishment meted out, not just on the petitioner but indirectly on his innocent family who would have to live with the stigma of dismissal from service of their Head of the family for all times to come, but for the Court's intervention, they would stand doomed.

(44) This order will, however, not preclude the disciplinary authority from re-examining the case on the question of quantum of punishment other than its severest form i.e. dismissal from service and would be free to pass appropriate orders in accordance with law which leave sufficient room for pension etc. This exercise is ordered to be completed within 2 months from the date of receipt of a certified copy of the order. Hearing would be offered to the petitioner dispassionately and impersonally and needless to say, without any rancour.

(45) However, since this court has accepted the view that dismissal is not justified in the facts and circumstances of the case as reasoned above, the petitioner would in the meantime be released provisional pension, with arrears thereof, commutation of pension, in case it is sought, DCRG, and arrears of salary etc., becoming payable on final decision in the matter by the State Government in terms of this order.

J.S. Mehndiratta