



Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6550 OF 2006

**SHABNOOR
AYUB
PATHAN**

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- 1. University of Pune,**
Ganeshkhind, Pune
by it's Registrar
- 2. The Vice Chancellor,**
University of Pune, Ganeshkhind,
Pune

... Petitioners

V/s.

Shashank Balkrishna Bangale,
Address : B1/12, Krishna Nagar Society,
S.No.1, Erandvana, Pune 411 030

... Respondent

Mr. Ram S. Apte, Senior Advocate i/by Mr. Rajendra
Anbhule for the petitioners.

Mr. Sanjay Kshirsagar for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 29, 2026.

PRONOUNCED ON : FEBRUARY 24, 2026

JUDGMENT:

1. By the present writ petition, the Petitioners have assailed the Judgment and Order dated 14 July 2006 passed by the learned Presiding Officer of the University and College Tribunal, whereby



the Tribunal set aside the order of compulsory retirement and directed reinstatement of the Respondent with full back wages.

2. The material facts giving rise to the present petition are that the Respondent was appointed as a Junior Engineer on 15/09/1995 in accordance with the provisions of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984, hereinafter referred to as the Standard Code. He assumed charge on 28 October 1995 and, upon satisfactory completion of the prescribed probationary period, was confirmed in service. During the course of his employment, certain complaints alleging serious misconduct were received against him. Considering the nature and gravity of the allegations, and upon receipt of an affidavit dated 30 August 2002 submitted by Shri Anjankumar Nanandkar, the Respondent was placed under suspension on 31 August 2002 under Rule 45 of the Standard Code pursuant to directions issued by Petitioner No.2. Subsequently, by order dated 26 September 2002, a Fact Finding Committee consisting of Dr. Shantishree Pandit as Chairperson and Prof. Dr. Sambhaji Pathare as Member was constituted to examine the complaints against the Respondent. The Committee conducted its inquiry and submitted its report to Petitioner No.2 on the same day. Upon consideration of the report, a charge-sheet dated 1 November 2002, accompanied by a statement of imputations, was issued to the Respondent containing three distinct charges.

3. The first charge alleged that the Respondent had furnished blank tender forms to contractors who were not duly registered



with the competent authorities, thereby contravening Rules 41(2), 41(3) and 42(a) read with Rules 42(c), 42(d) and 42(i) of the Standard Code. It was specifically alleged that in respect of works estimated at Rs.50 lakhs under Advertisement No.6 dated 18 March 2002, M/s. Everest Engineers, which was neither registered nor in possession of a valid solvency certificate, was supplied with a blank tender form. A similar allegation was made in relation to Advertisement No.22 dated 25 April 2002, under which M/s. Arihant Constructions, being ineligible, was also supplied with a blank tender form. The second charge pertained to the alleged improper opening of tender envelopes in violation of the prescribed procedure. Under the established norms, tender documents are required to be submitted in two sealed envelopes, the first containing documents relating to eligibility and the second containing the financial bid, with the second envelope to be opened only upon verification of eligibility. It was alleged that the Respondent, despite being aware that M/s. Everest Engineers and M/s. Arihant Constructions were ineligible, proceeded to open their financial bids and recorded their quoted rates in the comparative statement, thereby violating Rules 41 and 42 of the Standard Code. The third charge related to grave misconduct in the nature of acceptance of illegal gratification. It was alleged that in connection with Advertisement No.52 dated 20 October 2001 for construction of a building for University Management Science Phase II, the Respondent demanded and accepted Rs.5,000/- in cash and Rs.7,000/- towards car travel expenses from Shri Anjankumar Nanandkar for approval of his tender, in breach of



Rules 41(2), 41(3), 42(a), 42(c) and 42(r) of the Standard Code.

4. The Respondent submitted his written statement of defence on 16 January 2003 denying the charges in their entirety. Thereafter, by order dated 4 March 2003, a one-man Enquiry Committee comprising Prof. S.B. Bonde was appointed to conduct a regular departmental inquiry. The Enquiry Officer afforded adequate opportunity to both parties to lead oral and documentary evidence. On behalf of the Petitioners, Shri Shivaji Mane, Overseer of Petitioner No.1 University, was examined in support of Charge Nos.1 and 2, and Shri Nanandkar was examined in support of Charge No.3. The Respondent also examined witnesses in defence. Upon conclusion of the inquiry, the Enquiry Officer submitted his report dated 29 January 2005 holding that all three charges were proved and recommended imposition of a major penalty under Rule 43(b)(iii) of the Standard Code, namely compulsory retirement.

5. Acting upon the findings of the Enquiry Officer, and after issuing a show cause notice dated 17 March 2005 calling upon the Respondent to submit his representation against the proposed punishment, Petitioner No.2, being the competent Disciplinary Authority, passed an order dated 20 April 2005 imposing the penalty of compulsory retirement with effect from 20 July 2005 under Rule 43(1)(b)(iii) read with Rule 51(2) of the Standard Code. It is noted that though time was granted to the Respondent to submit his representation, the same was not availed of.



6. Aggrieved by the said order, the Respondent preferred Appeal No.116 of 2005 before the University and College Tribunal at Pune. In the appeal, it was contended that Petitioner No.2 lacked competence to impose the punishment, that the findings recorded by the Enquiry Officer were perverse and unsupported by evidence, that the Public Works Department rules were inapplicable, and that the punishment was disproportionate to the alleged misconduct. The Petitioners resisted the appeal by filing a written statement contending that the inquiry was conducted strictly in accordance with the provisions of the Standard Code and in compliance with the principles of natural justice.

7. By Judgment and Order dated 14 July 2006, the learned Presiding Officer of the University and College Tribunal allowed the appeal, set aside the order of compulsory retirement and directed reinstatement of the Respondent with full back wages. An application for stay of the said Judgment was rejected, though execution thereof was deferred for a period of two months. Being aggrieved and dissatisfied with the said Judgment and Order dated 14 July 2006, the Petitioners have invoked the writ jurisdiction of this Court by filing the present petition.

8. Mr. Apte, learned Senior Advocate appearing for the Petitioners, submitted that the impugned Judgment and Order passed by the learned Presiding Officer of the University and College Tribunal is contrary to the settled principles governing disciplinary proceedings and is unsustainable in law. It was contended that the Tribunal exceeded its jurisdiction in re-appreciating the sufficiency of evidence recorded in the



departmental enquiry. According to him, once the Enquiry Officer has returned a finding that the charges stand proved on the basis of some evidence, the scope of judicial scrutiny is limited, and the only question that may arise is whether the punishment imposed is grossly disproportionate. He further submitted that the Respondent had neither pleaded in the memorandum of appeal nor stated on affidavit before the Tribunal that he remained unemployed after termination. In the absence of such pleadings and proof, the grant of full back wages was unwarranted. It was further submitted that the learned Presiding Officer failed to appreciate that the Respondent had actively assisted Mr. R.T. Pandit, a co-delinquent, in issuing blank tender forms to contractors who were not eligible under the prescribed norms. The material on record demonstrated that the Respondent was directly involved in processing and facilitating issuance of tender forms despite the contractors not fulfilling eligibility criteria under the Maharashtra Public Works Department Manual. Such conduct, it was contended, squarely amounts to misconduct under Rules 41(2) and 41(3) read with Rule 42(a), (c), (d) and (i) of the Standard Code. The Tribunal, according to the Petitioners, erred in ignoring the Respondent's active participation in the irregularities. Learned Senior Counsel further contended that the Tribunal failed to apply the well settled principle that a subordinate employee is not obliged to carry out manifestly illegal instructions of a superior. Even if the Respondent acted on directions of his superior officers, he cannot escape liability for acts which are ex facie contrary to statutory provisions and prescribed procedures. The finding that obedience to superior



instructions absolves the Respondent from misconduct is, according to the Petitioners, contrary to established principles of service law and unsupported by the record.

9. It was also urged that the learned Presiding Officer committed a serious error in attributing sole responsibility to one Mr. Satote for issuance of blank tender forms to ineligible contractors. The documentary evidence, including endorsements and remarks made by the Respondent on the request letters of the contractors, clearly indicates his knowledge and participation. The finding that the Respondent had no role in the process is, therefore, contrary to the material available on record. The Petitioners further submitted that the Tribunal failed to consider the admitted position that the Respondent opened both envelopes of the tender documents submitted by M/s. Arihant Constructions and M/s. Everest Engineers and thereafter prepared the comparative statements at Exhibits 21, 26 and 28. The prescribed procedure mandates that the eligibility envelope be opened first and that the financial bid be opened only after eligibility is confirmed. Opening both envelopes of ineligible contractors and incorporating their rates in the comparative statement constitutes a clear breach of the procedure adopted by the University in accordance with State Government norms. It was also contended that the learned Presiding Officer ignored the Resolution dated 18 February 2002 passed by the Building and Works Committee of Petitioner No.1 University, whereby strict adherence to the P.W.D. Rules regarding opening of tenders was mandated. The Respondent was aware of the said Resolution. Despite such



knowledge, he opened the tender documents contrary to the prescribed norms. The finding recorded by the Tribunal, according to the Petitioners, is therefore perverse and contrary to the documentary evidence. The Petitioners further argued that the Tribunal erred in observing that the Respondent did not possess decision-making authority in respect of Charge Nos.1 and 2. Even if he did not have final authority, his participation in issuing blank tender forms to ineligible contractors and opening their financial bids was itself contrary to rules. Misconduct does not depend upon final approval authority but upon participation in acts in breach of established procedure. The admitted deviation from prescribed norms, according to the Petitioners, constitutes misconduct irrespective of the ultimate sanctioning authority.

10. It was further submitted that the Respondent had committed breach of Rules 197 and 206 of the Maharashtra Public Works Manual while facilitating issuance of blank tender forms to contractors lacking valid registration and solvency certificates. The record clearly shows that the contractors did not fulfil mandatory conditions, yet tender forms were issued with the Respondent's knowledge and involvement.

11. The learned Senior Counsel also contended that the Tribunal erred in holding that issuance of tender forms and opening of tender documents did not form part of the Respondent's duties. The Duty Chart produced at Exhibit C-12 in the enquiry proceedings demonstrates that, as Junior Engineer, it was his responsibility to issue tender forms to eligible contractors and to open tender documents in accordance with prescribed procedure.



The finding of the Tribunal in this regard is inconsistent with the documentary record.

12. In respect of Charge No.3, it was submitted that the Tribunal failed to properly appreciate the evidence led before the Enquiry Officer. The testimony of Shri Nanandkar categorically stated that the Respondent accepted Rs.5,000/- in cash and further demanded and obtained Rs.7,000/- towards travel expenses. This evidence was supported by the transcript of the recorded telephonic conversation. The Enquiry Officer, after evaluating oral and documentary evidence, recorded a finding of guilt. The Tribunal, by re-appreciating evidence as if exercising appellate jurisdiction over the enquiry findings, exceeded the limits of its authority. Lastly, it was contended that the Respondent, being a Junior Engineer entrusted with technical and procedural responsibilities, was expected to be fully conversant with the P.W.D. Manual provisions governing tender procedure, which were expressly adopted by the University through Resolution dated 18 February 2002. His failure to adhere to such procedure cannot be excused.

13. Per contra, Mr. Kshirsagar, learned Advocate for Respondent No.1, submitted that under Rule 46(16) of the Standard Code, it is mandatory for the Disciplinary Authority to record specific findings on each charge. According to him, the Enquiry Officer failed to properly evaluate the evidence and recorded findings of guilt without adequate analysis of the material placed on record. It was further submitted that Rule 47 of the Standard Code obligates the Disciplinary Authority to independently consider the enquiry record and record its own findings. In the present case, the



Disciplinary Authority mechanically concurred with the Enquiry Officer without independent application of mind. It was also contended that reliance was placed upon the report of the earlier Fact Finding Committee, which had been prepared without notice to the Respondent and without affording him an opportunity of hearing, thereby causing prejudice and vitiating the enquiry.

14. Learned Counsel further submitted that the Respondent had acted strictly in accordance with directions of his superior officers and had no independent discretion in issuance of tender forms or opening of tenders. He had filed a detailed written statement of defence and led evidence to establish his innocence. However, according to the Respondent, both the Enquiry Officer and the Disciplinary Authority failed to consider his explanation and defence evidence in proper perspective. It was also contended that though the management relied upon audio recordings, detailed transcripts were not furnished to the Respondent, thereby denying him a fair opportunity of defence. It was argued that the enquiry proceedings were conducted in violation of principles of natural justice, as relevant documents and audio recordings were either not supplied or not duly proved in accordance with law. The procedure adopted, according to the Respondent, was unfair and contrary to the Standard Code. It was further submitted that no financial loss or prejudice was caused to the Petitioners in relation to the tenders, and therefore the penalty of compulsory retirement was excessive and unsustainable.

15. Learned Counsel for the Respondent, while answering the contentions of the Petitioners, reiterated that the consistent



defence of the Respondent has been that he discharged only ministerial functions under directions of superior officers and did not exercise any independent discretion so as to attract misconduct under Rules 41(2), 41(3) and Rule 42(a), (c), (d) and (i) of the Standard Code.

16. In response to Charge No.1, it was submitted that the Respondent neither recommended nor decided issuance of tender forms to M/s. Everest Engineers or M/s. Arihant Constructions. The Executive Engineer had issued specific directions to supply the forms. Shri Satote, Draftsman, prepared the challans and handed them to the contractors for deposit of requisite amounts. Upon production of bank challans, Shri Satote issued the tender forms. The Respondent, it was contended, had no authority to decide eligibility or issuance of forms and therefore no violation of the cited rules can be attributed to him. It was further submitted that the endorsements on the scrutiny sheets merely indicate routine scrutiny of documents submitted with applications. The final decision to issue tender forms was recorded by the Executive Engineer. The Respondent lacked independent decision-making power. It was also contended that there exists discrepancy between the charge sheet and the statement of imputations. Further, the tenders were accepted by the competent University Committee, work orders were issued, works were completed, bills were paid and audits concluded without objection, thereby indicating absence of illegality or prejudice. It was argued that the contractors submitted requisite documents along with their applications, which were scrutinised in routine by the Respondent.



Thereafter, the Executive Engineer passed orders directing issuance of tender forms. The Respondent's role was limited to scrutiny and endorsement, while the ultimate decision was taken by superior authority.

17. With regard to Charge No.2, it was submitted that the Respondent merely assisted the Executive Engineer in the physical act of opening tender envelopes. The process was conducted in the presence of the Executive Engineer, participating contractors, Assistant Auditor and Finance Officer. The rates were declared and recorded in their presence. The comparative chart was forwarded for technical scrutiny to the Architect, and thereafter placed before higher authorities for approval and negotiation. The Respondent was not a member of any decision-making committee. Except for opening envelopes under instructions, he had no role in the decision-making process. It was also contended that no financial loss or prejudice was caused to the Petitioners.

18. In reply to Charge No.3, it was submitted that the cited rules are not attracted. M/s. New Mahavir Construction had quoted rates lower than the estimated cost and was the lowest bidder at that stage. The tenders were forwarded to the Architect for scrutiny and verification. The Architect personally visited the contractor's site and submitted his recommendation. Based on such recommendation, the Building Committee resolved to conduct negotiations through a committee comprising senior officers. The Respondent was not part of this committee and had no role in awarding the contract. It was further submitted that ultimately M/s. Suyog Constructions quoted lower rates than M/s.



New Mahavir Construction and the work order was issued accordingly. The entire decision making process occurred at higher administrative levels, and the Respondent had no authority in awarding the contract. It was pointed out that M/s. New Mahavir Construction had filed Regular Civil Suit No.91 of 2002 challenging the work order and that interim relief was refused. Thereafter, grievances were raised by the said contractor. In this background, it was contended that the allegations against the Respondent were motivated. It was also submitted that the audio recording relied upon was not supplied to the Respondent and cannot be relied upon. The Architect admitted having visited the contractor's site and not the Respondent, thereby negating any allegation of undue favour. On these grounds, dismissal of the petition was sought.

REASONS AND ANALYSIS:

Scope of intervention.

19. A departmental enquiry is not a criminal trial. It is an internal fact finding exercise undertaken by the employer to examine whether the conduct of an employee amounts to misconduct under the service rules. The Enquiry Officer hears the witnesses, observes their demeanour, examines the documents, and then records findings. He is the primary authority to appreciate the evidence. The Court, in exercise of writ jurisdiction, does not sit as a court of appeal over such findings.

20. It is necessary to bear in mind the limits of judicial review. The Court is concerned with the decision-making process, not with



the decision itself. If the enquiry is conducted in accordance with the prescribed rules, if the employee is given adequate opportunity to defend himself, and if there is some material on record which reasonably supports the conclusions, the Court will not reweigh the evidence. Even if another view is possible on the same material, that by itself is not a ground to interfere. Interference becomes permissible only in limited situations. For example, if the enquiry is conducted in breach of principles of natural justice, or if mandatory procedural safeguards are ignored, or if the findings are so unreasonable that no prudent person could have arrived at them, then the Court can step in. Likewise, if the findings are based on no evidence at all, or are wholly perverse, the Court may exercise its supervisory jurisdiction. However, sufficiency or adequacy of evidence is not within the domain of judicial review.

21. In the present case, the Tribunal undertook a detailed reappraisal of the oral and documentary evidence as if it were hearing a first appeal on facts. It substituted its own assessment of credibility and weight of evidence in place of that of the Enquiry Officer. Such an approach travels beyond the permissible limits. Once the Enquiry Officer's conclusions are supported by relevant material on record, the Tribunal ought to have confined itself to examining whether the enquiry suffered from legal infirmity or whether the punishment was shockingly disproportionate.

22. The settled principle is clear. Findings of fact recorded in a properly conducted departmental enquiry are not to be disturbed lightly. Judicial interference is the exception and not the rule. The Tribunal's reasoning must therefore be tested on this touchstone. If



it has crossed the boundary between judicial review and appellate re-appreciation, its order cannot be sustained.

Procedural fairness.

23. The Respondent has raised a serious objection that the enquiry stood vitiated for breach of principles of natural justice. According to him, the Fact Finding Committee submitted its report without issuing notice to him. He further contends that the Enquiry Officer and the Disciplinary Authority merely acted on that earlier report without independent application of mind. He also asserts that certain audio recordings, or at least their detailed transcripts, were not furnished to him, thereby depriving him of an effective opportunity to defend himself.

24. These objections must be examined carefully, because fairness in procedure is the foundation of any disciplinary action. If the procedure itself is flawed, the findings cannot stand. At the same time, every irregularity does not automatically invalidate the enquiry. The Court must see whether the alleged defect has caused real prejudice.

25. The record shows that after the preliminary fact finding stage, a regular departmental enquiry was instituted. A charge sheet was served. The Respondent filed his written statement of defence. A one man Enquiry Officer was appointed. Witnesses on behalf of the management were examined in his presence. The Respondent was given opportunity to cross examine them. He also examined defence witnesses and produced documents in support of his case. The proceedings were not summary in nature. They



were conducted over a period of time. The material on record does not suggest that he was denied access to relevant documents which formed the basis of the charges.

26. The argument regarding the earlier Fact Finding Committee cannot carry the matter much further. A fact finding report at the preliminary stage is meant to enable the employer to decide whether a formal enquiry should be initiated. It is not, by itself, a finding of guilt. Even if that report was prepared without notice to the Respondent, what is material is whether the subsequent regular enquiry afforded him full opportunity. A properly conducted departmental enquiry cures the defect, if any, at the preliminary stage. There is nothing to show that the Enquiry Officer blindly relied upon the earlier report without examining the evidence independently.

27. The grievance regarding audio recordings must also be assessed in terms of prejudice. If reliance is placed on recorded conversations, fairness demands that the employee should have access to the material relied upon. However, the Respondent must demonstrate that non supply of transcripts prevented him from effectively cross examining witnesses or presenting his defence. A mere assertion that transcripts were not supplied is not enough. The record does not indicate that the Respondent made a formal grievance during the enquiry that he was unable to proceed without the transcripts. Nor is there material to show that he sought adjournment on that ground and was refused. In the absence of such material, it cannot be presumed that prejudice was caused.



28. The Disciplinary Authority issued a show cause notice after receipt of the enquiry report. Time was granted to submit representation against the proposed punishment. The Respondent was thus afforded a further opportunity before final decision was taken. The order of punishment does not disclose mechanical adoption of the enquiry report. It refers to the findings and imposes penalty within the framework of the service rules.

29. Natural justice requires notice, opportunity and fair consideration. It does not require perfection. On the material placed before this Court, it cannot be said that the Respondent was denied a reasonable opportunity to defend himself or to challenge the evidence. There is no convincing demonstration of procedural unfairness which has resulted in miscarriage of justice. The plea of violation of principles of natural justice, therefore, cannot be accepted.

Charge No.1: Issuance of blank tender forms.

30. Charge No.1 concerns the alleged issuance of blank tender forms to contractors who did not fulfil the basic eligibility requirements. The allegation is not technical in nature. It strikes at the root of the tender process. Registration and solvency certificate are not empty formalities. They exist to ensure that only competent and financially sound contractors enter the bidding process.

31. The material placed before the Enquiry Officer included scrutiny sheets and internal endorsements. These documents carried remarks and notings attributed to the Respondent. They



were not stray references. They formed part of the file movement relating to the tender applications of M/s. Everest Engineers and M/s. Arihant Constructions. The record further shows that these contractors did not possess valid registration and solvency certificates at the relevant time. The Duty Chart marked as Exhibit C-12 assumes importance. It specifically assigns to the Junior Engineer the responsibility of issuing tender forms and opening tender documents in accordance with prescribed procedure. This was not an informal arrangement. It was part of the defined duties attached to the post. In addition, the Resolution dated 18 February 2002 passed by the Building and Works Committee adopted the P.W.D. rules for tender procedure. Those rules clearly require verification of registration and solvency before issuance of tender forms. The Respondent, being a technical officer, cannot claim ignorance of these requirements.

32. The Enquiry Officer examined the sequence of events. Applications were received. Scrutiny was undertaken. Endorsements were made. Tender forms were thereafter issued. The finding recorded is that the Respondent was not a passive spectator. His notings and participation in processing the applications facilitated issuance of forms despite non-compliance with mandatory conditions.

33. The defence taken by the Respondent is that the Executive Engineer had directed issuance of forms and that Shri Satote physically handed over the forms after preparation of challans. This explanation does not answer the core issue. Physical delivery of the form is not the decisive factor. What matters is whether the



Respondent, who was entrusted with scrutiny and issuance functions, processed and cleared applications which did not meet eligibility norms. The documentary endorsements indicate that he did.

34. In service law, obedience to superior orders is not an absolute defence, especially when the act is plainly contrary to prescribed rules. If a rule requires verification of eligibility before issuance of a tender form, a subordinate officer cannot simply say that he acted under instructions and thereby escape responsibility. Orders from superior does not dilute statutory compliance.

35. The Enquiry Officer considered the documents and oral evidence and concluded that the Respondent participated in issuing tender forms to ineligible contractors. This finding is supported by tangible material. It is not based on conjecture. It is also not a case of no evidence.

36. The Tribunal, while reversing this finding, effectively reassessed the same documents and drew a different inference. That approach amounts to re-appreciation of evidence, which falls outside the limited scope of interference in disciplinary matters. When two views are possible, the view taken by the Enquiry Officer, if supported by evidence, cannot be replaced merely because another view appears plausible.

37. On the material available, the finding on Charge No.1 is grounded in evidence and in a logical reading of the record. There is no perversity or patent illegality in the conclusion reached by the Enquiry Officer. This Court, therefore, finds no justification to



disturb the said finding.

Charge No.2:Opening of envelopes and preparation of comparative statements.

38. Charge No.2 relates to the manner in which the tender envelopes were opened, and the comparative statements were prepared. The two envelope system is designed to ensure fairness and transparency. First, the eligibility documents are examined. Only if the contractor satisfies the required conditions does the financial bid come into consideration. This sequence prevents unqualified bidders from entering into financial comparison.

39. The record of the enquiry makes it clear that in the case of the two contractors in question, both envelopes were opened. The comparative statements marked at Exhibits 21, 26 and 28 contain the rates quoted by those contractors. These entries could not have appeared unless the financial envelopes were opened. During the enquiry, the Respondent did not dispute that he opened both envelopes. His explanation was that he acted under instructions of the Executive Engineer and that he merely assisted in the physical act of opening.

40. This defence needs careful scrutiny. The responsibility in such matters does not end with the act of tearing open an envelope. The process includes recording the rates and incorporating them into the comparative chart. The comparative statement is an official document. It reflects consideration of financial bids. If an officer entrusted with opening and recording bids includes rates of contractors who were not eligible, he



participates in the breach of procedure. It is also relevant that the Duty Chart assigned to the Junior Engineer the function of opening tender documents in accordance with prescribed norms. Therefore, the Respondent cannot describe himself as a mere bystander. Even if the Executive Engineer was present, the Respondent's own role was defined and not accidental. The presence of other officers during the opening does not dilute individual responsibility. Collective presence does not convert a wrongful act into a lawful one. If the procedure mandates that financial envelopes shall not be opened unless eligibility is established, opening them contrary to that mandate remains a violation, regardless of who else stood in the room.

41. The Enquiry Officer had before him oral evidence of witnesses who described the process, along with documentary proof in the form of comparative statements and file notings. On this basis, he concluded that the Respondent breached the prescribed tender procedure. The conclusion is supported by material on record.

42. The Tribunal, however, placed emphasis on the Respondent's lack of final decision making authority. That approach misses the point. Misconduct in service law is not confined to final approval or award of contract. It includes participation in acts which are contrary to binding procedure. Opening financial bids of ineligible contractors and recording their rates has consequences for the legality of the tender process.



43. In these circumstances, the finding on Charge No.2 cannot be termed perverse or unsupported by evidence. The Tribunal, by reassessing the role of the Respondent and drawing a different inference from the same material, stepped into the arena of factual re-appreciation. Such interference was not justified within the limited scope of review in disciplinary matters.

Charge No.3: acceptance of gratification.

44. Charge No.3 concerns an allegation of demand and acceptance of money. Such an accusation strikes at the integrity of public administration. The charge, therefore, required careful scrutiny.

45. Before the Enquiry Officer, Shri Nanandkar entered the witness box and deposed that the Respondent demanded Rs.5,000/- in cash and further sought Rs.7,000/- towards travel expenses for himself and his family. This was not a vague statement. It was specific as to amount and context. The Enquiry Officer had the advantage of observing the demeanor of the witness and testing the consistency of his version through cross examination. In addition to oral testimony, the contents of that conversation were considered by the Enquiry Officer. When oral evidence and recorded material converge on the same allegation, the evidentiary weight increases. The Enquiry Officer assessed both forms of evidence and concluded that the charge was proved.

46. The Respondent's defence proceeds on two lines. First, he contends that the Architect visited the contractor's site, and that the decision to award the contract rested with a higher level



committee. Therefore, according to him, he had no authority to influence the outcome. Second, he alleges that the recording or its full transcript was not supplied to him.

47. As regards the first contention, it confuses two separate issues. The question is not who ultimately awarded the contract. The charge is that the Respondent demanded and accepted money in connection with the tender process. Even if the final decision lay with a committee, an employee may still seek to misuse his position at an intermediate stage. Influence does not always mean final authority. It can also mean facilitating approvals, clearing files, or creating a favourable environment. Therefore, the existence of a higher decision-making body does not automatically disprove the allegation.

48. On the second contention, the record does not establish that non supply of the transcript resulted in real prejudice. The Respondent was aware of the allegation. The witness was examined before the Enquiry Officer. Cross-examination was conducted. The Enquiry Officer considered the transcript along with other evidence. Unless it is shown that the Respondent was denied an opportunity to challenge the contents or authenticity of the recording, the mere assertion of non supply is insufficient to vitiate the finding.

49. It must also be remembered that the standard of proof in a departmental enquiry is not that of a criminal trial. The test is preponderance of probability. If, on the material placed before him, the Enquiry Officer found the testimony credible and supported by



recorded conversation, the Court will not re-evaluate the credibility unless the finding is wholly unreasonable.

50. The Tribunal, while reversing the finding, entered into a fresh appreciation of the witness's credibility and the probative value of the recorded conversation. In doing so, it assumed a role akin to an appellate authority on facts. That approach does not align with the limited scope of review in disciplinary matters.

51. On the record as it stands, there was direct oral evidence and supporting material before the Enquiry Officer. The conclusion that the Respondent accepted gratification cannot be said to be based on no evidence or to be perverse. The finding on Charge No.3 is therefore supported by the record and does not warrant interference.

On the question of punishment.

52. On the question of punishment, the Court must keep in mind certain basic principles. In service matters, once misconduct is proved in a fair enquiry, it is primarily for the Disciplinary Authority to decide what penalty is appropriate. The authority is expected to consider the gravity of the charge, the position held by the employee, the impact of the misconduct on the institution, and the overall circumstances. The Court does not normally substitute its own view on punishment unless the penalty shocks the conscience or is wholly arbitrary.

53. In the present case, the Enquiry Officer, after recording findings on all three charges, recommended a major penalty. The Disciplinary Authority did not act mechanically. A show cause



notice was issued to the Respondent, giving him an opportunity to explain why the proposed punishment should not be imposed. Time was granted. Only thereafter was the order of compulsory retirement passed. The procedure required by the rules was followed. The Tribunal interfered on the ground that the penalty was disproportionate and proceeded to direct reinstatement with full back wages. Such an order carries serious consequences. Reinstatement wipes out the disciplinary action. Grant of full back wages assumes that the removal was unjustified and that the employee suffered loss solely because of wrongful action by the employer.

54. It is settled that back wages do not follow automatically upon reinstatement. The employee must plead and establish that he was not gainfully employed during the period of removal. This ensures that compensation is granted on a factual foundation. In the present case, the Respondent did not make a clear pleading before the Tribunal that he remained unemployed after the order of compulsory retirement. No material was placed to show absence of alternative income. In the absence of such foundation, the direction for full back wages was unsustainable.

55. Even otherwise, the nature of misconduct proved in the enquiry cannot be ignored. The findings relate to breach of mandatory tender procedure and acceptance of gratification. They concern integrity and fairness in public dealings. A Junior Engineer entrusted with technical and procedural responsibilities is expected to maintain strict adherence to rules. When misconduct involves elements touching upon corruption and procedural manipulation,



the employer is justified in taking a serious view.

56. Compulsory retirement is one of the major penalties contemplated under the service rules. It does not carry stigma in the same manner as dismissal or removal. It allows the employee to retain certain service benefits while bringing the employment to an end in public interest. Viewed in this light, the penalty cannot be described as shockingly disproportionate to the charges proved.

57. The Tribunal, in interfering with the penalty, did not record reasons showing that the punishment was outrageously excessive or that relevant factors were ignored by the Disciplinary Authority. It substituted its own sense of what would be appropriate. That approach does not accord with the limited scope of review over punishment in disciplinary matters.

58. In these circumstances, the order imposing compulsory retirement falls within the range of penalties permissible under the rules and is supported by the gravity of misconduct established in the enquiry. The Tribunal's interference with the punishment, and its direction for reinstatement with full back wages, cannot therefore be sustained.

CONCLUSION AND ORDER.

59. The Tribunal exceeded its jurisdiction by reappraising the evidence adduced in the departmental enquiry. The Enquiry Officer's findings on all three charges are supported by oral testimony and documentary material. The procedural contentions of the Respondent do not disclose any substantial prejudice that would vitiate the enquiry. The award of full back wages was not



supported by pleadings or proof and was unsustainable in law.

60. For these reasons the writ petition succeeds.

(i) The impugned Judgment and Order dated 14 July 2006 passed by the University and College Tribunal is set aside.

(ii) The order of compulsory retirement dated 20 April 2005 passed by Petitioner No.2 is reinstated. The Respondent shall not be entitled to back wages.

(iii) No order as to costs.

(iv) Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)