Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 563/2002
With
OA No. 128/2010

Reserved on: 01.06.2016
Pronounced on: 12.07.2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

OA No. 563/2002

Shri J.B. Gupta, Sr. Auditor A/c No.8312329
Last posted in LAO (CVD) Delhi Cantt
(Compulsorily retired as a measure of penalty)
R/o X/3368/6, Gali No.2,
Raghuvarpura No.2, Gandhi Nagar,
Delhi. ...Applicant

Versus

1. Union of India through Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Financial Advisor (Defence Services)
Govt. of India, Ministry of Defence,
(Finance Division), New Delhi.

3. The Controller General of Defence Accounts,
West Block – V, R.K. Puram, New Delhi.

4. The Principal Controller of Defence Accounts,
G-Block, New Delhi.

5. The Controller of Defence Accounts,
Western Command, Sector 9-C,
Chandigarh. ...Respondents

OA No.128/2010

Surender Singh s/o Sh. Dalbir Singh,
Senior Auditor, Group – C,
CDA (AF), R.K. Puram,
New Delhi-110 070.

Versus

1. The Secretary,
Ministry of Defence (Finance),
New Delhi – 110 001.

2. The CGDA
West Block V, R.K. Puram,
New Delhi – 110 066.

3. The PCDA Hqrs.,
Hutments, DHQ P.O.,
New Delhi-110 011. ...Respondents

Appearance: Shri E.J. Verghese, counsel for applicants.
Shri D.S. Mahendru & Dr. Ch. Shamsuddin Khan, counsel for respondents.

O R D E R

By Dr. B.K. Sinha, Member (A):

The instant two Original Applications bearing OA Nos.563/2002 and 128/2010, which involve identical matter, were heard together and, hence, are being disposed by this common order.

2. In OA No. 563/2002 (J.B. Gupta V/s. Union of India & Ors) the applicant is aggrieved with the order dated 14.02.2002 reducing the penalty of removal from service imposed by the disciplinary authority to that of penalty of compulsory retirement from service with a cut of 20% in pension for 5 years and 20% cut in gratuity otherwise admissible to him.

3. In OA No. 128/2010 (Surender Singh vs. Union of India & Ors.), the applicant is aggrieved with the order of the disciplinary authority dated 03.09.2008 vide which he has been imposed the penalty of compulsory retirement from service and also the order of the appellate authority dated

27.09.2008 upholding the punishment imposed by the disciplinary authority.

4. The applicants in both the OAs have prayed for the following relief(s):

Sl.No.	*OA No.563/2002*	*OA No.128/2010*
(i)	*That this Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order (A-1) passed by Respondent No.3 and direct the respondents to reinstate the applicant back in service with all the consequential benefits, continuity of service, increments, seniority and back salary.*	*Allow the application under Section 19 of the Administrative Tribunals Act 1985 with cost.*
(ii)	*That any adverse entry made in the service record of the applicant be expunged and quashed.*	*Quash and set aside impugned orders dated 03/09/2008 of the Disciplinary Authority and 02/07/2009 of the Appellate Authority of compulsory retirement.*
(iii)	*That the cost of the application be awarded in favour of the applicant and against the respondents.*	*Direct the respondents to reinstate the applicant with all consequential benefits.*
(iv)	*That any other relief deemed proper and efficacious in the facts and circumstances of the case be awarded in favour of the applicant and against the respondents.*	*Any other relief this Hon'ble Tribunal may feel deem fit and proper in the facts and circumstances of the case.*

Both these cases have a long and meandering history and several rounds of legal battles have been fought between the parties. For the sake of clarity, it is necessary to give a gist of the history of both the cases.

5. In OA No.563/2002, the applicant is a Senior Auditor (Group 'C', civilian employee) in Defence Accounts Department. In the month of October, 1997, it came to the

notice of the respondent authority that false and fraudulent claims were being admitted in the Miscellaneous Section of the respondents. The matter was, thereafter, referred to CBI for investigation, during the course of which the applicant along with others were found responsible for authorizing fraudulent payments and resultantly he was placed under suspension from 29.10.1997 to 07.04.1998. Thereafter, on 02.01.1998, a major penalty chargesheet was issued to the applicant in OA No.563/2002 and on similar allegations chargesheet dated 29.07.1999 was also issued to the applicant in OA No.128/2010 by A.C.D.A. (Admn.). The Articles of charge in both the OAs are being extracted hereunder:-

Articles of Charge	*OA No.563/2002*	*OA No.128/2010*
I	*That the said Shri J.B. Gupta, SA while functioning as Senior Auditor in 'M' Section during the period 15.11.96 to 29.10.97 failed to discharge his duties effectively as provided for in Defence Audit Code & Defence Accounts Department office Manual Part-II Vol-I which led to processing of payment against 10 fraudulent claims to Sh. Venkateswara Enterprises to the tune of Rs. 2.23 crores approx. Thus the said Shri J.B. Gupta, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant thereby violating the provisions of rules 3(1)(ii) and 3(1)(iii) of the CCS Conduct Rules,*	*That the said Shri Surendra Singh, SA while functioning as SA in 'M' section during the period 16.6.94 to 22.8.95 failed to discharge his duties effectively as provided for in Defence Audit Code & Defence Accounts Department Office Mannual Part-II Vol-I which led to processing of payment against 22 fraudulent claims to firms mentioned in Enclosure-I to the tune of Rs.19.47 lakhs approx. Thus the said Shri Surendra Singh, SA failed to maintain devotion to duty and conducted himself in a manner unbecoming of Govt. servant thereby violating the provisions of Rule 3(1)(ii) and 3(1)(iii) of CCS Conduct Rules 1964.*

	1964.	
II	*That during the aforesaid period and while functioning in the aforesaid office the said Shri J.B. Gupta, SA failed to detect that (i) the fraudulent claims have been floated against fake sanctions purported to have been issued by Ministry of Defence, that (ii) the contingent bills have not been preferred by officers of DCOS authorized to do so, and that (iii) the appropriate procurement procedure relevant to the value of the stores procured has not been followed. The said Shri J.B. Gupta, SA also failed to ensure that budget allotment was available for effecting the procurement. Thus the said Shri J.B. Gupta, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a government servant thereby violating the provisions of Rules 3(1)(ii) and 3(1) (iii) of the CCS Conduct Rules, 1964.*	*That during the aforesaid period while functioning in the aforesaid office the said Shri Surendra Singh, SA failed to detect that (i) the fraudulent claims have been floated against fake sanctions purported to have been issued by Ministry of Defence/DGOS that (ii) the contingent bills have not been preferred by officers of DGOS authorized to do so, and that (iii) the appropriate procurement procedure relevant to the value of the Store procured has not been followed. The said Shri Surendra Singh, SA also failed to ensure that budget allotment was available for effecting the procurement. Thus the said Shri Surendra Singh, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant, thereby violating the provisions of Rule 3(1)(ii) and 3(1)(iii) of CCS Conduct Rules 1964.*
III	*That during the period and while functioning in the aforesaid office, the said Shri J.B. Gupta, SA processed the payments of the 10 fraudulent claims to the tune of Rs. 2.23 crores approx. as Senior Auditor in ' M' Section, although the expenditure as per the fake sanctions was deliberate to the Revenue Head "Ordnance Store", contrary to the functions of the 'M' Section as prescribed in Chapter VIII of OM Part XII read in conjunction with Chapter VI of the Office Manual Part-II Vol-I and without even getting the bills of Sl. No.1 to 3 noted in Accounts Section as prescribed vide para 437 OM Part II Vol.I. Thus the said Shri J.B. Gupta failed to*	*That during the period and while functioning in the aforesaid office, the said Shri Surendra Singh, SA processed the payment of the 22 fraudulent claims to the tune of Rs.19.47 lakhs approx. as Senior Auditor in M Section, although the expenditure as per the fake sanctions was debitable to the Revene Head Ordnance Store, contrary to the functions of the M Section as prescribed in chapter VIII of OM Part XII read in conjunction with chapter VI of the Office Mannual Part-II Vol-I and without even getting the bills noted in Accounts Section as prescribed vide para 437 OM Part-II Vol-I. Thus the said Shri Surendra Singh, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant*

	maintain devotion to duty, conducted himself in a manner unbecoming of a government servant thereby violating the provisions of Rules 3(1)(ii) and 3(1) (iii) of the CCS Conduct Rules, 1964.	*thereby violating the provisions of Rule 3(1)(ii) and 3(1)(iii) of Central civil Service (Conduct) Rules 1964.*
IV	*That during the period and while functioning in the aforesaid office, the said Shri J.B. Gupta, SA processed payments against 10 fraudulent claims to the tune of Rs.2.23 crores appx. with undue haste without reasonable care and caution. The bills were authorized for payment either on the same day or the next day of the receipt of the claim. Although even the fake sanctions attached with the rake bills stipulated procurement by following the prescribed procurement procedure yet the payment was made without ensuring that the prescribed procurement procedure had been followed. Thus the said Shri J.B. Gupta, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a government servant thereby violating the provisions of Rules 3(1)(ii) and 3(1) (iii) of the CCS Conduct Rules, 1964.*	*That during the period and while functioning in the aforesaid office, the said Shri Surendra Singh, SA processed/payments against 22 fraudulent claims to the tune of Rs.19.47 lakhs approx. with undue haste and without reasonable care & caution. The bills were authorized for payment either on the same day or the next day of the receipt of the claims. Although even the fake sanctions attached with the fake bill stipulated procurement by following the prescribed procurement procedure yet the payment was made without ensuring that the prescribed procurement procedure had been followed. Thus the said Shri Surendra Singh, SA failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant thereby violating the provisions of Rule 3(1)(ii) and 3(1)(iii) of Central civil Service (Conduct) Rules 1964.*
V		*That during the period the said Shri Surendra Singh, SA while functioning in M section of this office during the period 16.6.94 to 22.8.95 processed 22 bills amounting to Rs.19.47 lakhs approximately. Though the concerned bills related to Store Contract Section, these were processed in M Section without obtaining orders of the appropriate authority and without following prescribed procedure. The above act of Shri Surendra Singh, SA resulted in fraudulent payment*

		to the tune of Rs.19.47 Lakhs approx. to the alleged suppliers and caused pecuniary loss to the Govt. The above act indicates complicity with the alleged suppliers and also exhibits failure on the part of Shri Surendra Singh, SA to maintain absolute integrity. Thus the said Shri Surendra Singh, SA failed to maintain absolute integrity and conducted in a manner unbecoming of a Govt. servant thereby violating the provisions of Rule 3(1)(ii) and 3(1)(iii) of Central Civil Service (Conduct) Rules 1964.

6. To cut the long matter short, it is sufficient to state that departmental enquires were held in respect of both the applicants and the enquiry officer found the following charges established and/or not established as per the following Table:-

Article No.	*OA No.563/2002*	*OA No.128/2010*
I	*Proved*	*Partially Proved*
II	*Proved*	*Partially Proved*
III	*Proved*	*Partially Proved*
IV	*Proved*	*Not Proved*
V		*Not Proved*

7. Upon conclusion of the departmental enquiry, punishment of removal from service awarded to the applicant J.B. Gupta by the disciplinary authority was notified through Pt. II O.O. No.529 dated 07.09.2009 against which he preferred an appeal before the appellate authority who modified the said punishment to compulsory retirement from service vide order dated 08.02.2000. In the case of

Surender Singh, the disciplinary authority imposed the punishment of compulsory retirement from service upon the applicant vide order dated 25.04.2003 and the appeal preferred by him against the said order was rejected by the appellate authority vide order dated 31.12.2003.

8. Aggrieved, the applicant J.B. Gupta filed OA No.488/2000 which was allowed by the Tribunal vide order dated 18.05.2001 by quashing and setting aside the orders dated 17.08.1999 and 08.02.2000 passed by disciplinary and appellate authorities with a direction to the respondents to reinstate the applicant in service. For the sake of greater clarity, the Tribunal's order is being reproduced hereunder:-

> *"6. In the circumstances, the OA is partly allowed and the impugned orders dated 8.2.2000, 17.8.1999 and 7.9.1999 are quashed and set aside and to take the applicant back in service. This case is remanded back to appellate authority with the direction to re-hear the appeal of applicant and also provide opportunity of personal hearing to the applicant. The respondents are further directed to pass necessary order in accordance with instructions and judicial pronouncements with regard to the intervening period on the subject within a period of three months from the date of receipt of a copy of this order. No costs."*

Thereafter, the applicant preferred CP No.385/2001 in OA No.488/2000 for implementation of the Tribunal's order in which the Tribunal directed the respondent to pass a fresh order in compliance of the judicial pronouncement in OA No.1264/2001; OA No.562/2002 to direct the respondents to release the applicant's pay and allowances; CP No.85/2003 in OA No.562/2002 regarding treatment of the

intervening period from 31.08.199 to 16.02.1999; OA No.563/2002 seeking quashing of the order dated 14.02.2002 of respondent no.3 regarding compulsory retirement and 20% cut in pension for five years and 20% cut in gratuity in compliance of the directions of the High Court of Delhi; RA No.5/2003 seeking review of the order in OA No.563/2002; OA No.1302/2004 for treating the period from 29.10.1997 to 07.04.1998; OA No.1853/2004 for setting the order passed by the PCDA(WC) Chandgiarh regarding encashment of leave standing at his credit. The applicant had also filed WP(C) No.1455/2004 against the order of the Tribunal quashing the order dated 29.11.2002 and 16.01.2013 passed in OA No.563/2003 and in RA No.53/2002. The Hon'ble High Court while disposing of the petition directed as under:-

> *"Under the circumstances, we dispose of the petition setting aside the order dated 16.01.2003 and as a consequence restore RA No.5/2003 before the Tribunal. Since long time has passed and in all probability, the members who would be now hearing the review application would not be the author of the original order, we direct that the petitioner would be permitted to advance oral arguments before the Bench, which considers RA No.5/2003. The proceedings before the Tribunal shall revive on the petitioner filing an application and enclosing therein a copy of this order. Needless to state the Tribunal would thereafter proceed to consider the issue as per law. No costs."*

9. In the case of Surender Singh, in the first round of litigation, the applicant filed OA No.1169/2004 challenging the orders dated 25.04.2003 and 31.12.2003 passed by disciplinary and appellate authorities imposing penalty of

compulsory retirement and rejecting his appeal, which was allowed vide order dated 21.07.2005 with liberty to the respondents to proceed further in the matter in accordance with law. Thereafter, the applicant Surender Singh filed OA No.128/2010 before this Tribunal which was heard and disposed of vide order dated 13.01.2012 in the following terms:-

> *"24. In the above facts and circumstances of the case, we do not find any reasons for us to deviate from the orders of the Tribunal in **T.P. Venugopalan's case** (supra) as upheld by the Hon'ble High Court of Delhi and the Apex Court and also orders of the Coordinate Bench of this Tribunal in **H.L. Gulati's case** (supra). We allow this O.A. Impugned orders are set aside. Applicant shall be reinstated in service forthwith with all consequential benefits. There shall be no order as to costs."*

10. The respondents moved the Hon'ble High Court of Delhi vide WP(C) No.3821/2012 against the Tribunal's order dated 13.01.2012, which was disposed of vide order dated 0.01.2013. The relevant portion of the judgment is being extracted hereunder:-

> *"3. The error committed by the Tribunal is to hold that the decision in H.L. Gulati's case was favourable to him, ignoring the fact that the favourable decision obtained by H.L. Gulati before the Tribunal was set aside by a Division Bench of this Court on August 31, 2010 allowing WP(C) No.13664/2009 UOI & Ors. v. H.L. Gulati. As regards the decision of the Tribunabl favcourable to T.P. Venugopal, the Tribunal ignored that in said case the indictment was upheld but hte penalty was set aside on the ground that Shri N.P. Venugopal has superannuated from service when penalty was levied and Rule 9 of CCS (Pension) Rules, 1972 make it a condition for levy of post retirement penalty that a finding of grave misconduct with respect to the wrong/misdemeanour alleged stood established.*
>
> *9. Respondent Sureinder Singh was still in service when the penalty was levied, as was H.L. Gulati.*

10. Thus, the issue pertaining to the penalty levied on Surender Singh had to be considered on the law applicable to a wrong committed while in service and penalty levied while in service.

11. All issues pertaining to indictment and proportionality of the punishment which have been raised by Surinder Singh in the OA filed by him would be decided by the Tribunal on remand.

12. Impugned decision is set aside and OA No.128/2010 is restored.

13. Parties shall appear before the Registrar of the Tribunal on February 05, 2013, on which date the OA would be formally revived and placed before an appropriate Bench for consideration."

This is how the present OA is there before us.

11. The arguments in both the cases are practically identical. The respondents have filed their counter affidavit to which the applicants have also filed their rejoinder and subsequently written notes of arguments wherein they have submitted that no misconduct is proved on part of the applicants to warrant penalty of compulsory retirement. There could have been errors of judgments on part of the applicants but it will no way construe misconduct. The applicant has relied upon the following decisions:-

"(i) *T.P. Venugopal Vs. Union of India & Ors.* [OA No.110/2005 decided on 10.04.2006];

(ii) *Decision of the Special Court of CBI dated 08.07.2005;*

(iii) *Decision of Hon'ble High Court in Union of India & Ors. Vs. T.P. Venugopal* [WP(C) No.12759-61 of 2006 decided on 06.11.2007];

(iv) *Decision of Hon'ble Supreme Court in G.M. Tank Vs. State of Gujarat & Anr.* [CA No.2582 of 2006 decided on 10.05.2006];

(v) *Decision of Hon'ble Supreme Court in Union of India & Ors. Vs. J. Ahmed;*

(vi) *Decision of Hon'ble Supreme Court in Inspector Premchand Vs. Union of India & Ors. dated 05.04.2007;*

(vii) *T.P. Venugopal Vs. Union of India & Ors.* [OA No.1354/2002];

(viii) *Ram Prasad Meena Vs. Union of India & Ors.* [OA No.312/2002...]';

(ix) *Basti Ram Vs. Union of India & Ors.* [1996 (3) SLJ 308].

We accept the notes of arguments filed by the applicants as summary of their submissions.

12. The respondents have also filed counter affidavit in OA No.563/2002 rebutting the averments made in the OA and principally adopting the following points:-

(i) The respondents have completely denied the charges of arbitrariness and procedural lapse stating that disciplinary proceedings had been conducted in a fair and impartial manner strictly in accordance with law and CCS (CCA) Rules, 1965 and fully complied with the rules of natural justice;

(ii) The action taken by the respondents is their prerogative based on material and in accordance with the CCS (CCA) Rules, 1965;

(iii) The Hon'ble High Court of Delhi vide order dated 13.09.2001 had taken note of the infirmity in the orders passed by the Tribunal on 18.05.2001 in OA No.488/2000 and had stayed the directions for reinstatement of the applicant. In other words, the

Hon'ble High Court is duly cognizant of the nuances of the case;

(iv) It is well established that it is the disciplinary authority which is empowered to impose the punishment which cannot be interfered by Tribunals/courts. In this regard, the respondents have relied upon the decision of Hon'ble Supreme Court in *R. S. Saini Vs. State of Punjab & Ors.* [1999 (2) SC (SLJ) 212 wherein it has been held as under:-

> *"If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the courts in writ proceedings."*

This judgment is supported by several other decisions of the Hon'ble Supreme Court e.g. *State of Andhra Pradesh & Ors. Vs. Sree Rama Rao* [AIR 1963 (SC) 1723]; *State of Orissa & Ors. Vs. Bidya Bhishan Mahapatra* [AIR 1963 (SC) 779]; *State of UP vs. Nand Kishore Shukla* [AIR 1996 (SC) 1561] etc.

(v) Regarding charges of incompetent authority passing the order, the respondents have submitted that the order dated 17.08.1999 had been passed by the then Principal CDA in capacity of CDA HQ in view of the fact that Chief/Principal CDA had been posted

against the post of CDA HQ with the sanction of the competent authority;

(vi) Denying that the appellate authority has considered the appeal against the void order of the disciplinary authority as it had not been provided by Rule 11 of CCS (CCA) Rules, 1965 stating that the authority competent to impose penalty of compulsory retirement is competent to grant pension or gratuity or both as admissible on the date of applicant's compulsory retirement. Rule 22 (7)(1) of CCS (CCA) Rules empowers the appellate authority to confirm, enhance, revise or set aside the penalty imposed by the disciplinary authority.

(vii) Denying that the charge had not been proved as three of the witnesses namely M.S. Divya Parsad, Brig. D.S. Manjrekar and M.K. Bhardwaj had not been put to cross-examination, the respondents submit that they were not listed witnesses and, hence, the question of their cross-examination did not arise;

(viii) The respondents have also strongly rebutted the arguments that unless the bills are proved to be fake and fraudulent by the court of law of the competent jurisdiction, they cannot be presumed to be so. As

the charges against the applicant JB Gupta had been that he had failed to detect such fraudulent claims in audit and processed them for payment.

(ix) The respondents have also denied that citing codes and manuals in the Articles of charge while they were not listed in the list of documents vitiate the enquiry, the respondents submit that such codes and manuals are freely available and the conclusion of the enquiry officer is with reference to the appropriate codal provisions;

(x) The respondents have strongly submitted that the averments of the applicant are unsubstantiated by facts and they do nothing to detract from the value of the enquiry which continues to be good.

13. In the case of Surender Singh, similar arguments have been advanced and, therefore, we need not repeat the same. However, the difference is that he has failed to submit his written statement of defence within the prescribed time and the enquiry officer in his report found the Articles of charge No. I, II & III as partial proved and IV & V as not proved. The respondents have completely denied the contention that the role of the applicant was only to see whether the expenditure did not exceed the budgeted amount and not the propriety of the expenditure. The respondents, therefore, submit that

this shows that the applicant is not prepared to accept his responsibility and is shirking the same. Since the sanctions were fake and also the prescribed audit procedure was not followed leading to fraudulent payment, the complicity on part of the applicant is well proved. Also denying the finding of the enquiry officer that the charge has not been proved convincingly, the respondents submit that the degree of proof required in disciplinary proceedings is much lesser and rest on the theory of probability. The respondents further submit that Special Judge of CBI vide order dated 08.07.2005 found the sanctioned bills forged and observed that the applicants may have been negligent in their duty or it may not have been possible for them to make proper compare son with naked eye, but it definitely does not show any conspiracy in passing the bills. The Court also found the case of T.P. Venugopal, Ex-Sr. AO not relevant to the situation as no findings were recorded in the disciplinary proceedings. Further, as all documents were not produced by the applicant before the enquiry officer they cannot be held as conclusive evidence.

14. We have gone through the pleadings of rival parties in both the cases, documents adduced and decisions cited. We have also patiently heard the arguments so advanced by the learned counsel for both the parties in the OAs. Despite the bulky and long history of litigation between the parties and

involved nature of arguments, the issues germane to our determination in these cases are limited which reads thus:-

(1) *Whether there has been an infringement of the rules of natural justice?*

(2) *Whether any of the procedures prescribed under Rule 14 of the CCS (CCA) Rules, 1965 have been violated leading to vitiation of the entire proceedings?*

(3) *Whether it is a case of 'no evidence'?*

(4) *Whether acquittal in criminal case should lead dropping of departmental proceedings?*

(5) *What relief, if any, could be granted to both or either of the applicants?*

15. Insofar as the first of the issues is concerned, the rule of natural justice forms the cornerstone of jurisprudence but it is still a developing law. However, the same is firm enough to form a measuring yardstick for all the actions of the State. The allegation of the applicant is that he was not given/shown copies of the documents at the first instance and was also not permitted to cross-examine three of the witnesses named above. We have also noted that the respondents have completely denied these allegations and submitted that they have been scrupulous in following the rules of natural justice. From the report of the enquiry

officer in the case of applicant JB Gupta submitted on 05.10.1998, we find that the enquiry officer has taken care of details of both the documents that have been submitted or not submitted on account of their unavailability. In para 1.2 of his report, the enquiry officer holds as under:-

> *"1.2 Documents marked at Sl.No.8 i.e. the workbook for the period 15/11/96 to 31/1/97 was stated to be not traceable. The PO states that the workbook was in the custody of the CO and the CO does not remember to whom the workbook was handed over. Document at sl.no.13 about distribution of work was already seen by the CO. The copy was not placed on record since the CO could have taken extracts. Similarly, document at sl. No.14 i.e. the manual was seen by the CO. Document No.15 i.e. the relevant Government letter for the procurement procedure was also shown to the CO. Regarding document No.19 i.e. the Specimen Signature Register of M Section, PO states that the CO could not specifically point out the current Registrar of his period and the CO could not specify as to whom he has handed over the required register. Document No.21, 22, 23 and bill at Sl. No.2 of No.26 were not available. Two documents requested for by the CO i.e. the case file regarding the suspension of the CO and copies of advice, if any, obtained from CBI/UPSC/CVC were not permitted. Defence Accounts Department Office Manual Part I, Revised Edition 1979 was taken on record and marked as CD-I. Manuals referred to in the Memo of charges were also taken as court documents."*

16. It is evident from the enquiry report that the enquiry officer has examined the evidentiary value of all witnesses and arrived at the conclusion that all the charges have been proved. In this regard, it is also relevant to extract from findings contained in para 5.38 and 6.2, which read as under:-

> *"5.38 The preceding paras explain that S-16 which is seen everyday by the CO brings to terms manipulations, insertions, interpolation of fraudulent claims by brazen insertions, wrong totalling to facilitate manipulative insertions. All these cannot be acts indicative of devotion to duty. It is complete*

failure to maintain devotion to duty on the part of the CO. Hence, the Article of Charge IV is PROVED.

6.2 The charges under Article I, II, III & IV that Sh. J.B. Gupta failed to maintain devotion to duty and had conducted himself in a manner unbecoming of a Government servant thereby violating the provisions of Rules 3(1)(ii) and 3(1) (iii) of CCS (Conduct) Rules, 1964 is proved."

17. In this regard, we also note that the Hon'ble Supreme Court in *Canara Bank & Others Vs.Debasis Dass & Ors.* [2003 (4) SCC 557] deeply delved into the question of natural justice and also dealt with the question of useless formalities. For the sake of better clarity, relevant portion of the same reads as under:-

"12. Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, "useless formality theory" can be pressed into service.

13. Natural justice is another name for commonsense justice, rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense in liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi- judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, 1963 (143) ER 414 the principle was thus stated:

> *"Even God did not pass a sentence upon Adam, before he was called upon to make his defence.*
>
> *"Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".*
>
> *Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.*

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

17. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Summer (then Hamilton, LJ.) in Ray v. Local Government Board, (1914) 1 KB 160 at p.199:83 LJKB 86 described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Sanckman, 1943 AC 627: (1948) 2 All ER 337 Lord Wright observed that it

was not desirable to attempt 'to force it into any Procrustean bed' and mentioned that one essential requirement was that the tribunal should be impartial and have no personal interest in the controversy, and further that it should give 'a full and fair opportunity' to every party of being heard."

18. In *State Bank of Patiala Vs. S.K. Sharma* [JT 1996 (3) SC 722], the Hon'ble Supreme Court has summarised the conditions under which the rules of natural justice are to be exercised. The relevant portion of the decision reads as under:-

"32. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) :

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to

have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice

(rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and not adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

19. We have examined the allegations with the touchstone of natural justice and find that the same remain unsubstantiated. This issue is accordingly answered against the applicants and in favour of the respondents.

20. Insofar as issue no.2 is concerned, we have already taken note of the arguments of rival parties and hence they need not be repeated for the sake of brevity. Rule 11 of the CCS (CCA) Rules provides for minor and major penalties.

The major penalties are five in number and have been listed as below:-

> *"Major penalties*
>
> *(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;*
>
> *(vi) reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government Servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions, regarding conditions of restoration to the grade or post or service from which the Government Servant was reduced and his seniority and pay on such restoration to that grade, post or service;*
>
> *(vii) compulsory retirement;*
>
> *(viii) removal from service which shall not be a disqualification for future employment under the Government;*
>
> *(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government:*
>
> > *Provided that, in every case, in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :*
> >
> > *Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed."*

Rule 14 of the Rules *ibid* provides procedure for imposing major penalties. In this regard, Rule (i) is explicit, which reads as under:-

> *"14. Procedure for imposing major penalties*

> *(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act."*

21. We are also to note down the scope of intervention in departmental enquires. In the case of *Union of India and Another versus B.C. Chaturvedi* [(1995) 6 SCC 749], Hon'ble Supreme Court held that the Tribunal was not empowered to appreciate the evidence. Relevant portion of the judgment reads as under:-

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

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

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

From the above, certain principles emerge, which are –

(i) The courts do not sit over the order of punishment imposed by the disciplinary authority/ appellate authority;

(ii) The courts are not to appreciate or re-appreciate the evidence during the course of departmental enquiry;

(iii) The courts are only permitted to go into the fact as to whether the procedures prescribed in the Rules have been observed or not;

(iv) The courts cannot be directed that a judgment should have been written in a particular manner based upon the facts adduced in the case;

(v) The courts can go into the issues of mala fide and in case it is found established, the entire departmental proceedings get vitiated;

(vi) The courts can also see whether the enquiry was conducted against some rules or the procedures prescribed have been violated so as to vitiate the departmental proceedings;

(vii) The courts can also see whether there is a case of no evidence. This, however, is not a fresh appreciation of evidence.

Accordingly, we have already discussed the allegations, which mainly relate to procedural violation. We find from perusal of the report that the respondents have been scrupulous in observing the procedures which have been followed in due steps. We have already noted some relevant points in relation to issue no.1 and the same may not be repeated here. However, what we seek to manifest is that whether any question posed by the applicants has been replied satisfactorily or not. Moreover, in view of the findings of the Hon'ble High Court in respect of two of the leading cases relied upon by the applicants, referred to above, the applicants' case falls flat as the applicants have not been truthful in their averments before the Tribunal and their cases are consequently weekend on this account. Accordingly, this issue is decided against the applicant.

22. Insofar as the third of the issues is concerned, the basic argument of the applicants is that no evidence has been adduced against them and further that there may be error of judgment but cannot be considered to be misconduct till fraud is proved before the competent court of criminal jurisdiction. Therefore, the departmental proceedings against the applicants do not sustain in light of this basic contention.

23. In this regard, we have already noted the arguments advanced by the respondents and also that if any of the appropriate procedures was not followed, it was for the Army Headquarters to follow the same and not the Defence Accounts Department. It has been conclusively proved in the enquiry carried out into the charges preferred against both the applicants that fraudulent claims which were supported with fake sanctions had been processed for payment by them. They have even failed to detect such defects in audit before making the payment when the procedures were shown to have been made without following the laid procedures. In this regard, the answer has been provided in para 3.4 of the enquiry report, which reads as under:-

> *"3.4 Regarding Charge II, PO states that it becomes clear from S-12, S-13 and S-14 that the claims were fraudulent and floated against fake sanctions and that the CO failed to detect the same. A close scrutiny of the fake sanctions would have revealed that the sanctions were not on the pattern or in consonance with the genuine sanctions accorded by the Ministry of Defence. The signed in ink copies of the fake sanctions*

has been endorsed to CDA Hqrs. And to DCDA Incharge Pay & Accounts Office which was disbanded in 1981. S-13 and S-14 prove that the contingent bills were not preferred by an officer of DGOS authorised to do so. It also proves that the signature of the officer preferring the contingent bills was forged but, not deducted as forged by the CO who was required to verify the specimen signatures. The procurement agency was shown as I&BC Cell of DGOS which was not store holding unit. Sr. AO had raised some objections on S-4 which could have resulted in unearthing the forgery but, this chance was frittered away by CO. Instead of approaching the Unit for clarification on the objections, S-11 reveals that the CO interacted with the dealer who happened to be a cheat. S-1 to S-10 would reveal that proper prescribed procedure for procurement was not adhered to. The supply orders did not contain any standard clauses like payment terms, liquidated damages, inspections, etc. CO should have realised that heavy purchases required proper advertisement, capacity verification, technical evaluation and procurement through Tender Purchase Committee. It should have sounded extraordinary that the same firm was awarded the order in the 10 cases as per entries recorded at page 253 of Non-Recurring Charges Register. On S-4, Sr. AO raised a query regarding non-availability of the minutes of TPC Meeting which was subsequently settled without obtaining the minutes of the TPC Meeting from the Unit. This shows that CO cleared S-4 and other bills despite the non-fulfilment of the condition regarding the minutes of the TPC Meeting and without ensuring that the prescribed procurement procedure was followed. The CO was interacting with a dealer for getting the documents which should have been got from the Unit. The CO did not check up whether budget allotment was available since the bills do not bear any such certificate from the Accounts Section thereby proving the charge."

The enquiry report further finds in para 5.20 and 5.21, which are being extracted hereunder:-

"5.20 S-2 which is an order for supply of single colour offset printing machine for Rs.9,85,000/- does not even venture to mention any technical details or specifications of any kind. Similarly, S-3 for Rs.18,50,000/-; S-4 for Rs. 23,75,500/- was for video projection equipment including stereo speakers, giant screen unilateral codes, slide projection , power supply unit. Not a whisper of technical specifications, not a mention of inspection is made, neither the call for quotations from 3 firms nor the quotations nor the supply order nor the minutes of Quotation Opening Committee mention anything of technical specifications

of any other standard clauses of procurement. In fact S-4 minutes even states "DIR DDGOS (I&BC)" probably knowing that the fraudulent bills will be passed with such enthusiasm and speed that responsible officers would not apply their mind on such 'minor' lapses.

5.21 S-5 on KINTREX 2000 multijoint Isokinetic Testing system for Rs.34,70,000/-, S-6 for special radiation equipment for Rs. 22,98,000/-, which as the letter states is for SIGINT but the bills states it for office use which incidentally was not audited by CO very conveniently, S-7 for Rs.14,90,000/- which again is for special radiation equipment for SIGNIT and which again mentions it for office use, S-8 for Rs. 38,70,000/- captioned 'Special Electronic equipment for SIGNIT" does not mention anything in call or supply orders other than some numbers. If no technical specifications are mentioned then only model numbers are mentioned, it is but common sense that proprietary certificate is to be called for. S-9 and S-10 repeat the same trend. Neither the supply orders nor the call letters had any specifications whether standard or routine or just anything. In view of the preceding paras the Article of Charge II stands PROVED."

24. Insofar as the argument qua 'no evidence' and 'no misconduct' is concerned, the term 'misconduct' has not been defined anywhere in the CCS (Conduct) Rules. However, Rule 3 of the Conduct Rules provides the requirement that the Government expects from its servants. It is listed as under:-

"3. General

(1) Every Government servant shall at all times,

(i) maintain absolute integrity;
(ii) maintain devotion to duty; and
(iii) do nothing which is unbecoming of a Government servant."

It is also an undisputed fact that the action of the applicants have resulted a huge loss of the State exchequer running into crores of rupees. It is also true that the enquiry officer has found the applicants not making the audit as provided

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under the various provisions of the Audit Manual and colluding with others in a criminal conspiracy to defraud the Government.

25. In Rules 3-A, 3-B and 3-C of the Conduct Rules, it has been additionally provided qua the conduct to be expected from the Government servant, which are being extracted as under:-

> *"3-A. Promptness and Courtesy*
>
> *No Government servant shall*
>
> *(a) after Rule 3, the following rules shall act in a discourteous manner;*
>
> *(b) in his official dealings with the public or otherwise adopt dilatory tactics or wilfully cause delays in disposal of the work assigned to him.*
>
> *3-B. Observance of Government's policies*
>
> *Every Government servant shall, at all times:*
>
> *(i) act in accordance with the Government's policies regarding age of marriage, preservation of environment, protection of wildlife and cultural heritage;*
>
> *(ii) observe the Government's policies regarding prevention of crime against women.]*
>
> *3-C. Prohibition of sexual harassment of working women.*
>
> *(1) No Government servant shall indulge in any act of sexual harassment of any women at her work place.*
>
> *(2) Every Government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any women at such work place.*
>
> *Explanation.*
>
> *For the purpose of this rule, "sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise, as*
>
> *(a) physical contact and advances;*
>
> *(b) demand or request for sexual favours;*
>
> *(c) sexually coloured remarks.*
>
> *(d) showing any poinography; or*

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(e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.]"

Rule 3-C of the Rules *ibid* provides of sexual harassment of women at workplace. It is well established that if any of these clauses is violated the same would lead to misconduct of his own accord.

26. In the instant case, the enquiry officer in his report cited some instances which establish that the applicants have failed to discharge their duties by not following the audit procedure and by conniving with others in causing loss to the Government. Therefore, we are of the view that the misconduct is well established.

27. Insofar as the evidence is concerned, we have inferred elsewhere that the enquiry conducted is a detailed one in which the evidentiary value of the documents adduced and that of the witnesses have been deeply examined in respect of Articles of charge. Therefore, in absence of a very specific averment, it would not be possible for us to repeat the entire contents of the enquiry report. However, we find that the evidence has been fully discussed. For instance, in the case of JB Gupta, the evidence adduced as gleaned from the statement of witnesses has been meticulously discussed. We would like to give one sample of the same which reads as under:-

"5.10 Reference is again made to D-1and D-18, which is the basis for the verification of specific signatures. S-1 to S-10 if seen with D-1 and D-18 which the CO says

and claims that he had verified would reveal that even the fake specific signature i.e. D-1 and D-18 was not checked properly by the CO. D-1 and D-18 identifies two officers DDG OS (I&BC) and DDOS (I&BC). It is seen that in S-1, S-2, S-3, S-4, S-5, S-6, S-7, S-8, S-9 and S-10 the signatures of DDGOS (I&BC) is different from that appearing in the fake specimen signature i.e. D-1 and D-18 which was used by the CO to check the signature. S-1 to S-10 shows that the bills have been forwarded by DDGOS I&BC whereas the signature appearing on the bills S-1 to S-10 is that of DDOS (I&BC). Some kind of a rubber stamp has been imposed on the forwarding letter and on the details of the expenditure. S-1 shows that there are 2 DDGOS (&BC, one for receiving payments and another for counter signing the bills. The letter is typed in the name of DDGOS(I&BC) and there is the rubber stamp which is impressed on it but, DDGOS which is typed very neatly comes out distinctively. In S-11 it may be seen that Sl. No.2 of D-1 and D-18 apparently have signed on the bill styling himself as DDGOS I&BC. Just below that is the signature of DDGOS I&BC. Same designation is there but, there are two different signatures and of course, both are fake. Of course even a casual glance could have easily revealed that there is something fishy because the rubber stamp was attempted to be impressed on the typed out designation. The typed out designation and the rubber stamp differ. In all the fraudulent bills the same pattern continues. While the letter calling for quotations and forwarding the bill identifies Sl.No.1/b of D-1 and D-18 as DDGOS I&BC, actually as per 1/b of D-1 and D-18 the designation should be DDGOS I&BC. How did the CO accept a different signature even with reference to D-1 and D-18. This becomes very clear in all the fraudulent bills and conclusively proves that the CO did not verify the specific signature at all. The CO had made a specific endorsement that he had carried out verification of the specimen signature. By all these acts, the CO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Government servant hence the Article of Charge I, therefore, is PROVED."

28 There is plenty of evidence that has been forthcoming and that evidence had withstood the requirement of rules. Therefore, it is incorrect on part of the applicants to state that no misconduct is made out and that it is a case of 'no evidence'. This issue is accordingly decided in favour of the respondents.

29. Insofar as the issue no.4 is concerned, it is well admitted that requirement of degree of proof in criminal cases is different from that of departmental proceedings. In criminal cases, the observation is for infringement of some of the laws of land for which punishment is provided and the acquisitions are required to be proved beyond the point of reasonable doubt. In disciplinary proceedings, the prosecution is for infringement of departmental liability or rules or for doing or not doing something which have been provided as misconduct under the Conduct Rules *ibid.* Thus, omission to act against the rules and the expectations or the responsibilities enjoyed is also a departmental liability. Hence, we find that the respondents have rightly acted in conducting the disciplinary proceedings irrespective of the outcome in the criminal case which shall not in any case material effect the outcome of departmental proceedings. Hence, this issue is decided against the applicant and in favour of the respondents.

30. In conclusion we can only say that having discussed the cases threadbare, we find that the respondents have been punctilious in their observance of the principles of natural justice and also the provision of rule 14 of the CCS (CCA) Rules, 1965 and, therefore, no blame can be laid at their shoulders. We also find that there is sufficient evidence against the applicants and, as such, no new

evidence is to be dug out. We further find that acquittal in criminal case does not affect the fate of departmental proceedings unless some decision has been taken under Rule 19 of the Rules.

31. In the facts and circumstances of the case, we decline to interfere with the decisions of the respondents on the above grounds. We can only say that today probity in public life and integrity in government services has become a prime concern in the Nation as a whole. Corruption continues to be the biggest issue in today's India. Therefore, the applicants deserve no sympathy and they should cheerfully bear whatever has come in their way. We are conscious of the indefatigable capacity of the applicants to litigate but a wrong should not be declared right merely because somebody can afford to fight litigation for the same.

32. With the above observations, both the OAs stand dismissed with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(Justice M.S. Sullar)
Member (J)

/AhujA/