

LIBRARY

O.A.380/577/2015

AN APPLICATION :

Under Section 19 of the Administrative Tribunals Act, 1985.

BETWEEN

SRI AMITABHA KARMAKAR,
Son of Late Shasanka Shekhar Karmakar,
working as Sr. Engineering Assistant at the
Balurghat Doordarshan Kendra under the
Ministry of Information and Broadcasting,
Residing at C-2, TV Staff Quarters DDK , HPT,
Balurghat, PO Beltola Park, PS Balurghat,
District – Dakshin Dinajpur, PIN: 733103.

..... Petitioner/Applicant

-VS-

1. Union of India service through the Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,, New Delhi -110001.
- 2 Director General, Doordarshan, Mandi House,
Copernicus Marg, New Delhi – 110001.
3. Addl. Director General (Engg.), East Zone,
Akash Vani Bhawan,
Kolkata – 700 001.
4. Executive Engineer (Vigilance),
Mandi House, Doordarshan Bhawan
Copernicus Marg, New Delhi-110001.

5. Chief Executive Officer, Prashar Bharati,
Office of the Director General,
Doordarshan Bhawan, Mandi House, New Delhi-110001.
6. Deputy Director (Engineering),
East Zone, Akashvani Bhawan,
Eden Garden, Kolkata - 700 001.
7. SHRI APURBA SAHA,
Deputy Director (Engineering),
SPT, AIR, Chinsurah, Distt. Hooghly.

..... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/577/2015

18.12.2019
Date of order : 18.12.2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

AMITABHA KARMAKAR
VS.
UNION OF INDIA & OTHERS

For the applicant : Mr. B.R. Das, counsel

For the respondents : Mrs. R. Basu, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:-

"i) Rescind, recall, withdraw and/or modify/amend the order being Annexure-A1 insofar as it seeks to withhold the upgradations of the petitioner by way of MACP as per recommendations of the DPC held on 06.01.2014;

(ii) Rescind, recall, withdraw and/or quash the Order being Annexure-A7 insofar as it seeks to impose the penalty of withholding of one increment for a period of one year on the plea of the charge being "partly proved,"

(iii) Declare the petitioner to be clear from all the disciplinary and criminal proceedings initiated since 2005 for all intents and purpose.

(iii) Allow the petitioner first MACP in PB-2 in the same pay band 2 i.e. Rs. 9300-34,800/- to GP-Rs. 4800 w.e.f. 01.09.2008 and the 2nd MACP with GP Rs. 5400/- w.e.f. 10.11.2009 with all arrears in salary forthwith;

(iv) Certify that transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof concessionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iv), above.

(v) Pass such other order/orders and/or direction/directions as to your Lordships may seem fit and proper.

(vi) Costs."

2. The grievance of the applicant in a nutshell is as follows:

The applicant was initially appointed as Engineering Assistant in 1989 and was promoted to Sr. Engineering Assistant in 2000. While working at Doordarshan Kendra at Shantiniketan a JVC Mini DV camera was stolen from the Engineering Stores. One of applicant's cousins, Shri P.S.Karmakar, who was working as Video Assistant in the said DDK was using a look-alike camera of the same make. The applicant was subjected to vigilance investigation and a charge sheet was issued against him under Rule-14 of CCS(CCA) Rules, 1965 after 4 years on 16.02.2009.

The Inquiry authority relying on forensic reports came out with the findings that the camera used by said P.S. Karmakar was not the one stolen from the Department. It was a different one. However, the applicant, who was due to get upgradation by way of MACP in 2009 was deprived of the same owing to pendency of a vigilance case against him.

The plea of the applicant is that, pendency of vigilance case and police investigations since 2005 involving the same type of camera used by P.S. Karmakar, Video Assistant, had nothing to do with the applicant.

Further, the Inquiry authority in his report submitted on 05.11.2014 clearly observed that the camera produced by Shri A. Karmakar(applicant) and actually possessed by P.S. Karmakar was not the one lost by the department as authenticated by forensic report. A representation was preferred on 02.12.2014 to declare him fully

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exonerated, but as no final order was passed by the disciplinary authority, this O.A. had to be carried out by the applicant.

During pendency of the case the Disciplinary Authority came out with an order dated 26.05.2015 imposing a minor penalty of withholding of an increment for one year while admitting that charge of theft of camera against the applicant was not proved.

3. The gravamen of indictments against the applicant as in the charge memo dated 16.02.2009 (Annexure-A/2) are as under:-

Annexure-II

Statement of Imputation of misconduct in support of Article of Charge framed against Shri A. Karmaker, the then SEA, DDK, Shantiniketan (Now SEA, HPT, Balunghat).

DDK, Shantiniketan received one JVC Camera of Model No-GY-DV 301 No 15730002 Mini DV Camera from the office of CE(EZ). As per Acquisition Form of Reference No. 3570/TV dated 3.3.2004, item No. 2 the Camera was received by Shri S.N. Sinha AE, DDK, Shantiniketan. The entry in Stores Received Book (SRB) entry No 2 at page 15 shows that it was entered in the Store of the Kendra by Shri A. Karmaker, SEA, DDK, Shantiniketan in the week ending 5.3.2004.

The said Camera alongwith accessories was found missing on 9.3.2005. It was found stolen/missing from the Engineering Store, by Shri Kalyan Datta & Shri A.K. Banik, AE of the Kendra during a Stock verification exercise. Subsequently, vigorous search was made to locate the Camera.

The Camera was stolen from the container/box of the Engineering Store whenever the theft occurred without breaking the door lock of the Store. It was clear that some insider/officials of DDK, Shantiniketan were involved in the theft.

Subsequently, it was traced that one Shri Partha Sarathi Karmaker brother of Shri A. Karmaker, SEA, DDK, Shantiniketan enrolled himself as Video Assistant w.e.f Jan 2005 at the Kendra used this type of Camera for his casual work. To Check about the Camera all the Casual Video Asstt's (Who works with Camera) were asked to get their Cameras and paper verified from the Kendra. All the Video Assistant's except Shri P.S. Karmaker submitted their cameras with papers within two days. Shri P.S. Karmaker failed to produce his camera and papers. After prolonged persuasion he submitted an application dated 11.6.2005 which was vague in nature. Shri P.S. Karmaker was asked by the Kendra to explain why he failed to produce the Camera and papers. In his submissions dated 9.6.2005, he stated that the camera, which he was using was taken on loan. Since, it was found defective, the same was returned by him.

Since the Camera was not produced by Shri P.S. Karmaker, and the explanation was found not convincing, the Kendra informed the Bolpur Police about the developments of the case so that they could retrieve the Camera.

The Police told Shri P.S. Karmakar to deposit the Camera within 3 days as a result of Police action. Shri A. Karmakar, SEA, went to the Kendra to meet Shri K Datta, SE, DDK, Shantiniketan. He told Shri Datta that he would deposit the Camera. On 30.6.2005, at about 2150 hrs, he deposited the Camera with the Police Station, Bolpur, Birbhum. The serial No. of the original Camera was tampered by doing embossing on it.

When the Camera was stolen, Shri A. Karmakar was functioning as SEA, DDK, Shantiniketan. He had entered in the Stores Received Book (SRB) the said Camera. Whereas Shri A. Karmakar had admitted of knowing the operation of the Camera, but he had stated that he did not know the size of the Camera. His statement is thus contradictory. The action of Shri Karmakar in depositing the Camera with the Police authorities after the incident of theft shows his complicity in the case. If he had no role in the theft, he would not have deposited the Camera with the Police authorities. Shri Karmakar is thus responsible for the theft of the Camera.

Being SEA of the Kendra he is expected to perform his duties in a proper manner. It is incumbent on his part to ensure safety of the costly equipments of the Kendra. However, he grossly failed to perform his duties in proper manner by stealing the Camera from the Engineering Stores of the DDK, Shantiniketan. The Camera was later given to his brother Shri P.S. Karmakar, Video Assistant (Casual) for use in narrow-casting Programme of the Kendra.

Shri A. Karmakar has thus failed to maintain absolute integrity and his conduct is unbecoming of a Prasar Bharati employee thereby violating Rule 3(1) and (iii) of CCS (Conduct) Rules, 1964.

A bare perusal of the indictments would show that the applicant A. Karmakar was directly charged with the act of stealing a camera from DDK, Shantiniketan, while serving SEA. The camera was a JVC Camera of Model No.-GY-DV 301 ES No.15730002-Mini DV Camera. He was also charged with passing it on to his brother P.S. Karmakar, Video Assistant(Casual).

4. It is evident from the indictments that the theft of camera as mentioned in the charge sheet supra, was duly reported to Birbhum P.S. and a G.R. Case No. 99/05 in reference to Bolpur P.S. Case No. 32/2005 dated 10.03.2005, was started under Section 379 of IPC against the applicant.

The FSL report of 25.01.2006 (Annexure-A/6) records the following:-

"Description of articles contained in parcel.

The packet marked 'A' contained one video Camera of JVC Professional brand bearing printed serial number 15720999 in a square slot on its body."

"RESULT OF EXAMINATION

Exhibits are destroyed after six months if not requisitioned for return earlier through proper channel

On microscopic and ultra violet examination the serial number of the Camera was not found to be tampered with.

In the criminal case the applicant was not found guilty of theft of Camera No.15730002.

5. We discern that the Inquiry Officer in his report concluded as under:

"Finding on each article of charge

"Hence one camera of SL.No.JVC GY DV 301 SER No.15720999 was under possession of Shri A. Karmakar without having any relevant papers, on the other hand almost at the same span of time when one camera of SI.No.JVC GY DV 301 E 15730002 found missing from DDK, Santiniketan. Moreover, as per forensic report Serial number of the camera missing from DDK Santiniketan differs from that under possession of Shri A. Karmakar. Incidentally, the make and model numbers of both cameras are same.

So act of Shri A. Karmakar is not beyond doubt for this case."

The Inquiry Officer failed to conclude that the applicant (A. Karmakar) committed theft of the camera bearing No.15730002 and therefore, failed to conclude that it was passed on to P.S. Karmakar.

6. The Disciplinary Authority on 26.05.2015 observed as under(extracted with added emphasis for clarity): -

"WHEREAS, a Major Penalty Proceedings were initiated against Shri Amitabha Karmakar, the then Senior Engineering Assistant, DDK, Shantiniketan under Rule 14 of the CCS(CCA) Rules 1965 vide Prasar Bharati's

Memorandum No.C-13019/2/2005-Vig. dated 16.2.2009 on the following article of charge:

ARTICLE

That Shri Amitabha Karmakar, while functioning as Senior Engineering Assistant, at DDK Shantiniketan during the year 2005 stole one JVC mini DV Camera GY-DV 301E S.No.15730002 along with accessories costing Rs.1.6 lakhs from the Engineering Stores of the Kendra. The theft was noticed by the Kendra on 9.3.2005 at about 15.00 Hrs. while conducting physical verification. He gave the Camera to his cousin brother Shri P.S. Karmakar, Video Assistant, DDK, Shantiniketan for his use. Subsequently, when Police approached, Shri Amitabha Karmakar deposited the Camera with Balpur Police, West Bengal.

By the above act, Shri Amitabha Karmakar, SEA has failed to maintain absolute integrity and acted in the manner of unbecoming of a Government Servant thereby violating Rule 3(1)(i) and 3(1)(iii) of CCS(CCA) Rules, 1964.

WHEREAS, Shri A. Karmakar vide his representation dated 12.3.2009 denied the charge framed against him, vide charge sheet dated 16.2.2009.

WHEREAS, on denial of charge by the charged officer, Shri Apurba Saha, Asstt. Station Engineer, (ASE) (later promoted as Dy. Dir (Engg.), AIR, Siliguri was appointed as Inquiring Authority and Shri Anil Sarkar, Asstt. Engineer, AIR Siliguri as the Presenting Officer vide orders dated 6.3.2012 to conduct Departmental Inquiry into the charge framed against Shri A. Karmakar. Later it was clarified that the name of the Presenting Officer may be read as Amit Kumar Sarkar vide order No.C-13019/2/2005-Vig. dated 21.6.2013.

WHEREAS, Shri Apurba Saha, Dy. Dir (E), AIR Siliguri & the Inquiry Authority vide his letter dated 29.8.2014 submitted Inquiry Report stating that "One camera of Sl. No. JVC GY DV 301 S.No.15720999 was under possession of Shri Amitabha Karmakar without having any relevant papers, on the other hand almost at the same span of time when one camera of Sl.No.JVC GY DV-301 E 15730002 found missing from DDK, Shantiniketan. Shri Amitabha Karmakar deposited this Camera bearing Sl.No.JVC GY DV 15720999 to the Bolpur police. As per forensic report Sl. No. of the camera missing from DDK, Shantiniketan differs from that under possession of Shri Amitabha Karmakar. Incidentally the make and model No. of both cameras are same. So act of Shri A. Karmakar is not beyond doubt for this case." It is also observed that no relevant papers related to Camera were available with Shri Amitabha Karmakar.

WHEREAS, the Disciplinary Authority has examined the Inquiry Report taking into consideration all the facts/relevant record and accepted the findings of the Inquiry Authority. Disciplinary Authority has tentatively taken a view that single Article of Charge is partly proved due to the following reasons:-

(a) Shri Amitabha Karmakar, SEA deposited a camera (of same brand & model but different Sl. No. without related documents, with the police and reasons for doing so given by him on page 2 of his brief were not convincing.

(b) His cousin brother, Shri P.S. Karmakar, was the only video assistant who did not deposit his camera when asked to do so for investigation purposes when the theft was discovered.

WHEREAS, a copy of Inquiry report along with tentative view of Disciplinary Authority to impose one of the penalties under Rule 11 of CCS(CCA) Rules were provided to Shri Amitabha Karmakar vide Memorandum No.C-13019/2/2005-Vig. dated 5.11.2014 for his representation under Rule 15 of CCS(CCA) Rules, 1965.

WHEREAS, Shri Amitabha Karmakar submitted his representation vide his letter dated 2.12.2014 in which he has stated that Shri P.S. Karmakar, his cousin (Video Asstt./Stringer) was not called by the IO to give evidence. He has further stated that IO failed to issue notice to witness No.6 to verify state document No.14. He has also mentioned that the entire report of the GR Case No.99/2005 was not taken into record.

WHEREAS, representation dated 2.12.2014 has been examined by the Disciplinary Authority and it has been observed that Shri P.S. Karmakar was not one of the listed state witnesses, in case the charged officer wanted him to be a witness, he could have requested the IO for producing Shri P.S. Karmakar as a defence witness. It is further observed that witness No.6 was the concerned Police Officer and document No.14 was a state document which was considered by the IO in his report. Further IO has considered report of GR in case no.99/2005. The Disciplinary Authority, however, based on evidence has come to the conclusion that charge of theft of camera is not proved against Shri Amitabha Karmakar. However, the involvement/action of the CO in the case was to the extent of (i) depositing a camera with the police, when he was not required to and when his cousin (Shri P.S. Karmakar, Video Assistant/Stringer) failed to produce his own camera for investigation purposes; (ii) the camera deposited with the police was without any papers.

AND WHEREAS the undersigned being the Disciplinary Authority, after taking careful consideration of relevant records, facts and circumstances and keeping in view the representation of Shri Amitabha Karmakar, notwithstanding the points of defence made by the CO, have come to the conclusion that the accountability of the Charged Officer (as stated in the Charge Memo) is PARTLY PROVED, as his actions, during investigation into a stolen camera, of depositing a camera with the police without the requisite papers, when he was not expected to do so, is not beyond doubt. Therefore, the charge being PARTLY PROVED, the ends of justice would be met, if the minor penalty of "withholding of one increment of pay for a period of one year" is imposed on Shri Karmakar in terms of Rule 11 of CCS(CCA) Rules.

NOW THEREFORE, it is ordered that one increment of the pay of Shri Amitabha Karmakar, SEA, DDK, Shantiniketan (now posted at Doordarshan(HPT), Balurghat shall be withheld for a period of one year."

Therefore, evidently and irrefutably the charge of 'theft' was not proved against the applicant, neither by leading evidence in criminal

case nor by way of preponderance of probabilities in departmental proceedings.

7. The Ld. Counsels were heard and materials on record were perused threadbare.

8. Even without reappreciating evidence, from a bare perusal of the enquiry report, the penalty order etc, we discern the following legal lacunae in the conduct of the proceedings:

(i) The charge sheet irrefutably and indubitably indicted that the applicant was charged of stealing the camera bearing no. GY-DV 301E S.No.15730002, that "Shri Amitabha Karmakar, while functioning as Senior Engineering Assistant, at DDK Shantiniketan during the year 2005 stole one JVC mini DV Camera GY-DV 301E S.No.15730002 along with accessories costing Rs.1.6 lakhs from the Engineering Stores of the Kendra."

The Enquiry Officer failed to conclude that the applicant himself had stolen the camera from Engineering Stores.

While punishment was imposed due to the reason that "accountability of the Charged Officer. (as stated in the Charge Memo) is PARTLY PROVED, as his actions, during investigation into a stolen camera, of depositing a camera with the police without the requisite papers, when he was not expected to do so, is not beyond doubt. Therefore, the charge being PARTLY PROVED" which certainly was not the charge levelled against the applicant. Hence the Enquiry Officer as well as the Disciplinary Authority clearly travelled beyond the charge.

(ii) The Disciplinary Authority himself clandestinely accepted that the Bolpur PS case was started and it revealed that the camera stolen and camera found in possession of Karmakar brothers were of same brand and model but of different Sl. No. and observed in no uncertain terms that charge of theft was not proved, yet found the charge "partially" proved. Therefore a clear case of no evidence was deliberately turned to a case of some evidence to penalise the applicant.

9. In **Union of India vs. H.C. Goel [(1964) 4 SCR 718]**, it was held:

"22.....The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent."

In **Moni Shankar v. Union of India and Anr. [(2008) 3 SCC 484]**,

the Hon'ble Supreme Court held:

"17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

In Narinder Mohan Arya vs. United India Insurance Co. Ltd. [(2006)4 SCC 713] it was held that:-

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [State of Assam and Anr. v. Mahendra Kumar Das and Ors. [(1970) 1 SCC 709]] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [Khem Chand v. Union of India and Ors. (1958 SCR 1080) and State of Uttar Pradesh v. Om Prakash Gupta (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [K.L. Tripathi v. State of Bank of India and Ors. (1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. [Sawai Singh v. State of Rajasthan (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [Export Inspection Council of India v. Kalyan Kumar Mitra [1987 (2) Cal. LJ 344.] (6)] Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [Central Bank of India Ltd. v. Prakash Chand Jain (1969) 1 SCR 735 and Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10]."

Yet again in M.V. Bijlani vs. Union of India & Ors. (2006) 5 SCC

88, Hon'ble Apex Court held:-

"25.....Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

In **Roop Singh Negi vs. Punjab National Bank and Others**

reported in (2009)2 Supreme Court Cases-570 the Hon'ble Supreme Court observed as under:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

In **B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749,**

the Hon'ble Apex Court on the scope of judicial review has held as under:

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

Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has further observed as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a Competent Authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case."

10. The theft of camera from DDK, Shantiniketan is a fact and the charge against the applicant is of stealing the camera. The act of stealing by the applicant has not been proved in either of the proceedings, as discussed supra.

Having failed to note any specific recording of conclusion/finding of fact by the inquiring authority or the disciplinary authority that the applicant 'stole' the camera or committed 'theft' or he facilitated theft or was directly responsible for the theft as the camera was in his possession, the conclusion that the charge was 'partially proved' is one of no evidence. Hence, in the aforesaid backdrop the penalty order is quashed with the liberty to the Disciplinary Authority to act in accordance with law.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member