CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/00069/2017

Date of CAV:18.09.2020

Date of Pronouncement:30.09.2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

K.C.Lakshman Rao S/o. Ratnam,
Aged 54 years,
Occ : Chief Ticket Inspector (Squad),
(Under the orders of removal from service),
O/o The Chief Ticket Inspector, South Central Railway,
Guntakal Division, Raichur R.S.,
R/o Plot No.16, Shanthi Estate, Near Bypass Aspari
Road, Adoni, Kurnool District, Andhra Pradesh-518301.

...Applicant

(By Advocate : Mr.KRKV Prasad)

Vs.

1. Union of India Rep by the General Manager, Rail Nilayam,
South Central Railway, Secunderabad.

2. The Senior Deputy General Manager (Vigilance),
Rail Nilayam, South Central Railway, Secunderabad.

3. The Divisional Railway Manager,
South Central Railway, Guntakal Division, Guntakal.

4. The Additional Divisional Railway Manager,
South Central Railway, Guntakal Division, Guntakal.

5. The Senior Divisional Commercial Manager,
South Central Railway, Guntakal Division, Guntakal.

6. H.L.Narasimha Prasad, Occ : Assistant Enquiry
Officer & Inquiry Officer, O/o The Senior
Deputy General Manager (Vigilance),
Rail Nilayam, South Central Railway, Secunderabad.

7. The Chief Commercial Manager (C&PS),
South Central Railway, Rail Nilayam, Secunderabad.

....Respondents

(By Advocate : Mr. S.M.Patnaik, SC for Railways)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA is filed challenging the removal of the applicant from service.

3. Brief facts as stated by the applicant are as hereunder:-

(a) that the applicant is the elder son of Ratnam alias K. Chinna Narasanna, who worked for the respondents' organisazation from 1965 onwards and while so working as Senior Gangman, in 1990 he was medically invalidated in the wake of which, the applicant was granted compassionate appointment as Loco Khalasi on 22.2.1991 and he rose to the rank of Loco Pilot. The Applicant, having been involved in an accident while on duty, was given alternative appointment as Chief Travelling Ticket Inspector by the 3rd respondent i.e. DRM Guntakal.

(b) The Applicant claims that Sri Ratnam's original name was K.Chinna Narasanna and on the eve of his marriage with Smt. Eramma he got baptized when his name was changed as Sri Ratnam. It was after such change of name that Sri Ratnam joined the respondents' organization and therefore, official records reflect this name. However, the school records of the applicant reflect the name as Sri Ratnam @ K. Chinna Narasanna.

(c) One Sri K. Narayana, claiming to be the son of Ratnam, lodged a complaint alleging that it was he, who was the actual son of Ratnam and that the applicant was, in fact, the son of his uncle Sri K. Narasaiah, (brother of Ratnam) who also worked in the Respondents' organization and the applicant in the wake of medical invalidation of Ratnam is alleged

to have fraudulently, masquerading as the son of Ratnam applied for and obtained the appointment on compassionate grounds. This resulted in an enquiry by the Welfare Inspector, who reported that the complaint was as a result of a family feud and that the School Headmaster of the concerned school stated that inadvertently the inconsistency occurred by making a suitable endorsement on the zerox copy of the certificate on 18-01-2014. The Vigilance Wing represented by the 2nd respondent having made further investigation, an inquiry was instituted by the 5th respondent, charge sheet issued on 09-06-2015 and proceedings continued. The Inquiry Officer rendered his finding holding that the charges were proved. The applicant was awarded the penalty of removal from service by the Disciplinary Authority on 09-01-2017. Applicant represented on 28.10.2016 to conduct further investigation and when it was not conceded to, a civil suit was filed in the competent court to declare him as the son of Sri Ratnam. Appeal made was rejected on 20/24.4.2017 and similar fate befell the revision petition on 16.9.2017.

4. The contentions of the applicant are that Sri Ratnam has declared the applicant as his son in the official records of the respondents' organization. It was on verifying the same that the respondents appointed the applicant on compassionate grounds and even promoted him to the grade of Chief Travelling Ticket Inspector. Ratnam was illiterate and was fixing L.T.I. wherever necessary. School records inconsistently indicated the father of the applicant as Ratnam and Chinna Narasanna but official records consistently show the applicant as son of Sri Ratnam. The report of

the Welfare inspector did not conclude that the applicant was not the son of the Sri Ratnam, whereas on the contrary brought out the new fact that the Sri Ratnam was earlier known as Sri K. Narasanna. The Vigilance Wing without conducting any scientific investigation or field investigation superficially relying on certain documents and on the statements of the family members of applicant, who bore a grudge against him has contemplated disciplinary action and sent a draft charge sheet to the disciplinary authority. I.O. appointed to conduct disciplinary inquiry was part of the vigilance organization and hence, is under obligation to prove the allegations levelled. P.O. was not appointed. Impugned order of removal was issued by an incompetent authority. In disciplinary proceedings, parentage which is a statutory presumption as per Section 112 of Indian Evidence Act cannot be decided in departmental proceedings. The charge sheet has twin issues namely that the applicant secured employment through fraudulent means and that the applicant was the son of late Sri K. Narasaiah. Both the issues were not proved in the inquiry. Documents appended to the charge sheet demonstrate that Sri K.C. Narsaiah and Sri Ratnam are one and the same. VII class admission register shows the father's name as Sri K.C.Narasanna and VIII class admission register indicates it as Sri Ratnam. T.C. dated 2.7.1977 shows the father's name as Ratnam whereas Study certificate dated 18.1.2014 mentions it as K.C.Narasanna. Present Head Master claims that the variation is due to oversight. Head Master's certificate referred to by the Welfare Inspector has not been produced before the Inquiry Officer. Other

records like the Identity card issued by the Election Commission, House Hold Card make it clear that the applicant is the son of Sri Ratnam. If respondents do not agree that the applicant is the son of Sri Ratnam then they have to at least prove that the brother of Sri Ratnam is Sri K.C. Narasaiah @ K.C. Narsanna. Guntakal Division has confirmed that one Sri K. Narsaiah has worked as Gangman and retired on 31.5.1993 and that no one by name K. C.Narsanna worked in the division. Therefore, the elder brother name of Sri K. Ratnam is not K.C. Narsaiah. Sri Ratnam has submitted a family declaration with his LTI, wherein the applicant and Sri K.Narayanna are shown as sons, Ms. Chinna Lakshmi & Ms. Bhagyamma as daughters, which was witnessed by 2 railway employees. In spite of these glaring facts in favour of the applicant, the findings of the I.O. are perverse. Sri Ratnam showed the applicant as his son in official records, but not his brother Sri Narsaiah while working for the respondents. Moreover, Ratnam imagining that he will get medically invalidated on a future date, has shown the name of the applicant as his son in official record for the sake of compassionate appointment, is absurd. Authors of certain exhibits were not examined during the inquiry. Sri Ratnam passed away in 1992 and Smt. Eramma on 30.10.2010 leaving no scope to state before the I.O. that the applicant is their son. Sri Ratnam had a daughter, Urukundamma and was shown as the sister of the applicant in the family declaration form. However, her date of birth was wrongly shown as 12.6.1980 by the clerk, instead of 28.11.1984, in one of the family declarations submitted. Ratnam's brother Narsaiah has also a daughter by

the same name and with the date of birth of 12.6.1980. Urukundamma, D/o. Sri Ratnam passed away in 2007 and the other Urukundamma, D/o. K. Narasaiah is alive and granted the family pension on the demise of K. Narasaiah. Therefore, the inference of the respondents that Urukundamma shown as sister of applicant is actually daughter of the Sri K.Narsaiah is incorrect. Complaint of the brother Sri K. Naryayana was not marked as an exhibit. In the absence of the compassionate appointment file, the allegation of wrong parentage cannot be proved. The P.W-2 Ms. Chinna Lakshmi, D/o. Sri Ratnam in the inquiry has stated that Ratnam had 4 children and not 5. Other daughters examined have deposed on similar lines and Ms. Bhagyamma refused to agree with the text of the applicant showing Ratnam and Eramma extending invitation to the marriage of the applicant. The complainant (PW–5) claims that he came to know about the appointment of applicant on compassionate grounds by fraudulent means, only 3 years back and that he took a loan from a bank wherein applicant was shown as brother as per local parlance. PW-5 claims that he has unknowingly signed Ex-D-6, the sale deed wherein the applicant and the PW-5 were shown as brothers, at the instance of the applicant. Further, PW-5 refused to comment on the fact that he was shown as brother of the applicant in the L.I.C. policy (D-7) as well in respect of the family member certificate (D-1) issued by the Tahsildar indicating applicant as Son of Sri Ratnam but disputed the contents of the wedding card (D-3) printed in 1993. PW-7, the Chief Vigilance Inspector has stated that the applicant has informed during investigation that there are 2

Urukundammas but refused to comment in respect of Ex.D-1 (family members certificate issued by Tahsildar) and Ex.D-10 (Death certificate of Urukundamma, D/o. Ratnam). PW-7 has maintained that since applicant did not produce the SSC certificate, it cannot be said that Ratnam and K.C. Narsanna are one and the same. LTI made in school and office records in respect of Sri Ratnam were not verified to confirm as to whether they belong to one and the same person. Siblings born after the applicant were examined who would not be aware of the birth of the applicant. In fact children of Sri Ratnam were not even aware that their father embraced Christianity. Appellate authority has not properly applied his mind to the facts of the case and his interpretation of the disciplinary authority is wrong. Revision authority rejected the revision petition on the ground of non submission of SSC certificate and asserted that it is the applicant who has to disprove the allegations, which is not permitted under law. Indeed, it is for the respondents to explain as to how they have granted compassionate appointment based on the same SSC certificate. Claiming that the file relating to compassionate appointment is not traceable goes against the respondents in regard to aspect of SSC certificate. Applicant came forward for DNA test whereas the others concerned refused. Respondents theory that K.C. Narasanna and Sri K. Narsaiah are one and the same and that Ratnam is a different individual is incorrect.

5. Respondents in the reply statement asseverated as under:-

(a) The applicant has misled the court stating that no petition/appeal has been filed before any court, whereas he has filed OS No.14 of 2017 before Principal Jr. Civil Judge, Adoni against Sri K. Narayana.

(b) On receipt of a complaint from Sri K. Narayana, S/o. K.Ratnam, alleging that the applicant has secured appointment in the respondents organization on compassionate grounds by claiming that he is the son of Sri Ratnam, inquiry was made to ascertain the truth and during the enquiry, it was found that the applicant was the son of Sri K.C. Narasaiah alias K.C. Narasanna and Sri Ratnam had a son by name Sri K. Narayana and 3 daughters namely Smt. Chittemma, Smt. Bhagyamma and Smt. Chinna Lakshmi. In school records from class I to Class X, the applicant's father's name was shown as K.C. Narasaiah alias K.C. Narasanna whereas in the Transfer Certificate it is changed and shown as Sri Ratnam.

(c) Initiation of Disciplinary proceedings became ineluctable and hence, the applicant was subjected to regular inquiry and after due and proper inquiry conducted by the Inquiry Officer, wherein the applicant fully participated, the findings were given against the applicant and thus, the competent authority awarded the penalty of removal from service on 9.1.2017, which was confirmed by the appellate authority and the revision authority on 20.4.2017 & 16.9.2017 respectively.

(d) To explain further, the grandfather of the applicant had 4 sons two among whom were Sri K.Ratnam and Sri K.Narasanna. While Sri K. Ratnam had one son by name Sri K. Narayana and 3 daughters, Sri K. Narasanna

had a son, who is the applicant and 2 daughters Lakshmi and Urukundamma. In the following documents produced by the applicant, applicant's father's name has been reflected as Sri K.C. Narasanna:-

i. The admission form submitted to N.M.M High School, Adoni for admission to VI standard on 10.7.1972 shows that the father of the applicant is Sri Narsanna (Annexure R-5);

ii. similarly the T.C issued by Head Master, St. Anthony High School, Adoni where the applicant studied from class VII to Class X shows the father's name as Sri K.C. Narsanna.

iii. Even the SSC marks memo issued to the applicant (Page 47 of the OA), the father's name is indicated as K.C Narsanna but the same was not produced claiming that it was lost due to a theft in applicant's house. No FIR copy was produced to evidence that the SSC certificate was lost nor did the applicant obtained the duplicate SSC certificate and submitted.

(e) All the above documents were posterior to the marriage of Ratnam when he is said to have got baptized, at which time, his name was changed from Narasanna to Ratnam. If the name had so changed, there was no question of the erstwhile name figuring in the documents posterior to 1965.

(f) In addition, Income certificate by the Dy. Tahsildar, Adoni on 10.7.1972 issued to the applicant shows the name of his father as Sri K. Narsanna (Annexure R-6). Similarly, T.C. issued by the Head Master, Nehru Memorial High School, Adoni shows the father's name as K. Chinna Narasanna. As per SSC records, in the hall ticket bearing number 095503

issued to the applicant, name of applicant's father was indicated as K. C. Narsanna. It is indeed enigmatic as to how, all of a sudden, at the time of issue of TC after completion of X class how and why the name was changed from K.C. Narasanna to Ratnam. Nowhere in the document issued by the present Head Master was it mentioned about the alteration of father's name with the consent of parents based on a representation/ affidavit and that it was not traceable. The certificate referred to by the applicant is a duplicate of the TC bearing the number 689491 wherein the name of parent or guardian is written as Ratnam which was issued on 2.7.1977 at the time of leaving X class.

(g) The contention of the applicant that Sri K. Narsanna and Sri Ratnam are one and the same is incorrect since the applicant, while working as Diesel Assistant, has shown the names of his 2 biological sisters as Ms. Lakshmi & Ms. Urukundamma in the declaration form for obtaining privilege passes and PTO. Ms Laksmi & Ms Urukundamma are the daughters of Sri K.C. Narsaiah alias K.C. Narasanna who worked for the respondents organization at Guntakal (R-3).

(h) The 3 daughters of Sri Ratnam have deposed that the applicant is not the son of Sri Ratnam and that he is actually the son of K. Narsanna alias Narsaiah.

(i) As regards the appointing authority for the applicant whose substantive post is Goods driver, a J.A. grade officer is the appointing authority. On being medically de-categorised in Goods Driver post, the applicant was fitted in the alternative post of Chief Travelling Ticket Inspector and that he was not appointed to this post by the 3rd respondent

(DRM). The annexure (A-15) enclosed by the applicant is only a note submitted with the approval of the DRM i.e. 3rd respondent to post medically de-categorised employees to different departments. If the applicant were to be the only candidate who was medically de-categorised employee, then the file would have been submitted to the Head of the Commercial Department i.e. the 5th respondent Sr. DCM. Moreover, the 3rd respondent has only approved the report of the screening committee formed to assess the suitability of medically de-categorised employees for absorption in alternative posts and hence, he cannot be construed to be the appointing authority of the applicant.

(j) As to the allegation against the Inquiry Officer, the Inquiry officer working under control of 2nd respondent ie Sr. D.G.M. (Vigilance) has not prejudiced the cause of the applicant since ample opportunities were given during the inquiry to prove his innocence. Inquiry Officer is an independent officer and the I.O report was given to the applicant and the penalty imposed was only duly following the prescribed procedure, including supplying a copy of the inquiry report to which the applicant submitted his reply and it was only after considering the reply submitted, that the penalty was imposed which was confirmed by the appellate and revision authorities.

(k) Appointing the P.O. is not mandatory and at no stage of the inquiry any bias petition was moved against the I.O. The appointing and disciplinary authority in respect of the applicant is a J.A. grade officer.

(l) The issue for which the applicant is charged is not for parentage but for seeking employment through fraudulent means. Hence, Section 112 of the Indian Evidence Act is not relevant.

(m) During the inquiry the applicant neither refuted nor cross examined the prosecution witnesses when they deposed that the applicant is the son of their father's brother Sri Narasanna. Inquiry has established that Sri Ratnam and Sri Narasanna are two separate individuals. No documentary evidence has been submitted to confirm that the Sri Ratnam and Sri Narasanna were one and the same.

(n) While furnishing the details of family for the purpose of family pension, Sri K.Narsaiah has shown his wife and Lakshmi and Urukundamma his two unmarried daughters for the purpose of family pension. The name of the applicant who was already employed has thus not figured in declaration form submitted by Sri K. Narasanna for family pension and thus, it was to the daughter Urukundamma that family pension was sanctioned.

(o) The refusal of the PWs to undergo DNA test is their prerogative and respondents have nothing to say on the same.

(p) The reason as to why the complainant did not apply for compassionate appointment at the material point of time was that he (PW-5) was pursuing intermediate course at the time of his father demitting office. Ex.D-5 to D-8 are documents after the applicant has got into service and therefore they do show Sri Ratnam as his father. Ex.D-9 is questionable since it contains lot of discrepancies.

(q) Departmental inquiries are quasi judicial in nature and scientific investigation cannot be made by the department.

(r) The applicant has not agreed to be examined as witness in his case and desired to submit his defence in 30 days time. The applicant has not produced any elderly person as witness to prove that he is the son of Sri Ratnam.

(s) The appellate authority is the Addl. DRM and the revision authority is the Head of the Department namely Chief Commercial Manager who, in fact, gave personal hearing before deciding the review petition.

The applicant on 23.9.2020 submitted written submissions appending judgments of the superior judicial fora as well as those of this Tribunal in support of his contentions. Similarly, respondents have submitted written brief along with the Schedule of Powers and the judgments of the Hon'ble Supreme Court on the 23.9.2020.

6. We heard both the counsel and perused the pleadings on record. Written briefs submitted by the parties are reiteration of their respective contentions contained in the pleadings.

7. I. Respondents made a preliminary objection stating that the applicant has moved the Civil Court in regard to parentage but mentioned that no case is pending in any other court and hence, the OA is liable to be dismissed. Applicant did mention in the pleadings that he has approached the civil Court since relief sought was not forthcoming, without

mentioning the date of filing the said case. Respondents prayed for dismissal of the case without taking proper care to furnish the preliminary details like case number, date of filing of the case. Respondents need to be careful in filing the reply affidavits since dates decide destiny. However, the case having traversed the legal journey to the superior judicial fora in the past wherein it was directed to decide the case on merits, it would be proper and befitting to deal with the case in all its entirety for rendering justice as is expected of this Tribunal. Therefore, we set aside the preliminary objection and move forward to analyze the dispute as it should be by having a look at the charge which is the basis for the emergence of the case.

II. The charge sheet reads as under:-

> *Article-I*
>
> *That the said Sri K.C. Lakshmana Rao, CTTI/RC had committed a serious misconduct/misbehaviour in that he entered Railway Service on 25.2.1991 on Compassionate Grounds in a fraudulent manner as elder son of late Ratnam, ex Gangman under PWI/BG/GTL with the full knowledge that he was actually son of one late K.C.Narasaiah alias K.C. Narasanna, ex Gangman under, PWI/BG/GTL who happened to be the brother of late Ratnam.*
>
> *Shri K.C.Lakshmana Rao, CTTI/RC thus failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant in violation of Rule 3 (1) (i) and 3 (1) (iii) of Railway Services (Conduct) Rules, 1966."*

The inquiry officer has taken into consideration 20 prosecution documents annexed to the charge sheet and duly brought them on record by marking them as exhibits P-1 to P-20 and 14 defence documents introduced by the applicant during the course of the inquiry were also taken on record by marking them as exhibits D-1 to D-14. Seven prosecution witnesses were examined. Reasonable opportunities were given to the applicant to defend his case. After taking the defence brief into consideration the inquiry

report running into 39 pages touching on all the relevant aspects of the issue, was submitted. The concluding para of the report is as under:

> *" It is therefore, after considering the overall evidence on record as discussed above, the evidence on record substantiate the article of charge against CE that he entered into Railway Service on 25.2.1991 on compassionate grounds in a fraudulent manner as elder son of Ratnam, Ex. Gangaman/PWI/BG/GTL with full knowledge that he was actually son of one late K.C.Narsanna alias K. Narasaiah, Ex Gangaman, PWI/BG/GTL who was brother of Ratnam and thereby CE failed to maintain absolute integrity and acted in a manner of unbecoming of a Railway Servant and violated provisions of Rule 3(1) (i) & 3 (1) (iii) of the Railway Services (Conduct) Rules, 1966. Thus, the Article I of charge framed against CE stands* ***established****.*
>
> *Xxxxx*
>
> *Findings: The Article of Charge: Proved (As discussed above)"*

III. Now, the sequence of events as per the records: On receipt of a complaint against the applicant from Sri K. Narayana in regard to securing compassionate appointment in a fraudulent manner, explanation of the applicant was called, investigation taken up and based on the outcome, charge sheet was issued on 9.6.2015 and after a detailed inquiry, as ordained under RS (DA) Rules, 1968 was conducted, wherein relevant records introduced by either side were brought on record and after examination/cross examination of the witnesses in 9 sittings covering a period of more than 1 year from the date of appointment of Inquiry Officer, with the applicant assisted by a defence assistant and after taking his defence on record, the Inquiry report was submitted. The applicant was thus heard at length and given ample opportunities to defend himself in the way he could.

IV. In regard to the judicial review of the disciplinary process the Tribunal has a very narrow bandwidth to interfere. The judicial authority can neither re-appreciate the evidence nor could it sit in appeal on a decision taken by the respondents based on disciplinary inquiry when the

procedure prescribed is duly followed and adequate opportunities given to the delinquent to defend his case. Judicial review is to ensure that the applicant receives fair treatment and not to ensure that the conclusion which the competent authority reaches is necessarily correct as per the view of the Tribunal. The core aspects of concern is to determine whether the inquiry was held by a competent office/officer, rules of natural justice were complied with, findings are based on some evidence, authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding to fact or conclusion. Again, Technical rules of Evidence Act nor of proof of fact or evidence as defined therein, do not apply to disciplinary proceedings. Records furnished reflect that there has been full compliance of the procedure prescribed for holding a departmental inquiry. No legal flaw could be discerned from the records of disciplinary proceedings in the decision making process adopted by the respondents. True to speak, the I.O. after gathering adequate evidence has answered the pertinent questions relating to the dispute in his report.

Under discussion of evidence at page 33 of the report, the I.O demonstrated that the CE father's name was altered as Ratnam in the school record by recording as under:

> *" Therefore, the oral evidence of PW-1 and PW-7 and documentary evidence on Ex P-1 to P-9 establishes that the admission of the CE in primary education and upper primary education i.e. for classes 1st to 5th and for 6th at P.S Elementary School, Sadapuram and NMMH school, Adoni respectively and for classes 7th to 10th at St. Anthony's Aided High School, Adoni was undertaken by Sri K.C.Narsanna. But the basic records of school ie father's name in admission register was altered as Ratnam from K.C.Narsanna leading to issue of transfer certificate with father's name as 'Ratnam' relying on the details available in misrepresented unauthenticated admission register without verifying the details in the SSC certificate/records and other records available at their end i.e. school authorities of St. Anthony's High School , Adoni or without ascertaining as to whether the due procedure for change of name in the school records was followed or not. "*

V. Now coming to the aspect of statutory rules, the applicant claims that Presenting Officer has not been appointed and hence, the I.O. has doubled up as Presenting Officer thereby compromising the very essence of inquiry process. Railway Servants (D&A) Rules, 1968 are statutory in nature, which govern the entire gambit of disciplinary process. In the said Rules, Rule 9 (a) & (c) stipulates as under:

> *"(9) (a) (i) On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.*
>
> *Xxxx*
>
> *(c) Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a railway or any other Government servant to be known as Presenting Officer to present on its behalf the case in support of the articles of charge."*

As can be seen from the above rule, appointment of a Presenting Officer is the discretion of the disciplinary authority to appoint a Presenting Officer. Moreover, in the instant case, applicant has not filed any bias petition before, during and after the inquiry against the I.O. Being a Railway servant with 26 years of service, he could have asked for appointment of a P.O at the time of the inquiry. Only after the penalty was imposed he has come up with this pleading. In fact, the applicant thanked the Inquiry officer, for conduct of a fair and exhaustive inquiry, as per record of proceedings dated 15.7.2016 as under:

> *"While thanking you for conduct of a fair and exhaustive inquiry, I would like to assure you that i will keep my defence brief, truly brief and to the point and hope that it would receive its due consideration in the process of arriving at a judicious conclusion of the inquiry proceedings."*

Therefore, in view of the above it cannot be said that the inquiry in any way affected adversely in the absence of a Presenting Officer. The above submission also makes it vivid that the Inquiry officer has donned the role of an independent adjudicator and he did not enact the role of presenting officer to the disadvantage of the applicant. The mere fact that the Presenting officer was not appointed, the inquiry cannot be set aside and also there is no legal compulsion to appoint a presenting officer. In the case on hand, applicant has admitted that the I.O has conducted the inquiry in a fair manner. In support of the above remarks, we rely on the judgment of the Hon'ble Supreme Court of India in ***Union of India vs Ram Lakhan Sharma,*** decided on 2 July, 2018, in Civil Appeal No. 2608 of 2012 as under:

> *"28. Justice M. Rama Jois of the Karnataka High Court had occasion to consider the above aspect in Bharath Electronics Ltd. vs. K. Kasi, ILR 1987 Karnataka 366. In the above case the order of domestic inquiry was challenged before the Labour and Industrial Tribunal. The grounds taken were, that inquiry is vitiated since Presenting Officer was not appointed and further Inquiry Officer played the role of prosecutor. This Court held that there is no legal compulsion that Presenting Officer should be appointed but if the Inquiry Officer plays the role of Presenting Officer, the inquiry would be invalid. Following was held in paragraphs 8 and 9:*
>
> > *"8. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry See: Gopalakrishna Reddy v. State of Karnataka (ILR 1980 Kar 575)."*

Therefore, in view of the legal principle stated supra and the Rule 9 of RS (D&A) Rules, 1968 referred to above, the contention that not appointing a Presenting Officer has compromised the inquiry process is untenable.

VI. Allied contention in respect of conduct of disciplinary proceeding is that the inquiry officer failed to conduct general

examination of the applicant as per Rule 9 (21) of RS (D&A) Rules, 1968, which is extracted here under:

> *"(21) The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."*

On 15.6.2016, the last day of hearing the record of proceedings indicate as under:

> *"In response to the question as to whether CE would like to submit his defence orally or in writing, CE preferred to submit his defence brief in writing, no defence witnesses were proposed for examination from his side and CE chosen not be a witness in his own case.*
>
> *General Examination of CE on the evidence recorded in the oral inquiry has been conducted for which CE stated that he would submit his defence brief within 30 days. The request for CE has been accepted to submit his defence brief within 30 days. Inquiry is completed in the above case."*

Therefore, though given an opportunity, the applicant chose not to get himself examined. Hence, the contention that the Rule 21 of 1968 Rules has been violated is not maintainable. When an opportunity was given to the applicant to get himself examined and if he does not avail of the same, then it would mean that he has nothing much to state by self examination. Giving him another opportunity would, thus, not arise. Moreover, complaining at this stage that he has not been given reasonable opportunity to defend himself is incorrect. To state so, we echo the observations of the Hon'ble Apex Court in the following judgments:

a. *State Bank Of India vs Atindra Nath Bhatacharyya on 25 July, 2019 in CIVIL APPEAL NO. 5842 OF 2019 (Arising out of SLP (Civil) No. 16640 of2017) as under,*

> *"7) Learned counsel for the appellant relied upon the judgment of this Court in Bank of India v. Apurba Kumar Saha (1994) 2 SCC 615 to contend that the Bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceedings of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself."*

> *(c) - Union of India and others vs G. Annadurai CA 2829 of 2009 decided on April 27, 2009.*
>
> *Ample opportunities have been given in order to enable to effectively participate in the proceedings; Failure to avail the opportunity by the charged officer would not mean that principles of natural justice have been violated.*

Hence, in the context of the above legal principle laid down, contention of the applicant that Rule 9 (21) of 1968 Rules has been violated is to be summarily dismissed. Applicant cited the judgment of the Hon'ble Apex Court in Moni Shankar v U.O.I in C.A 1729/2008 [(2008) 3 SCC 484] to support his contention. The Apex Court in that case explained the purpose of complying with Rule 9(21) of the Railway Rules. The Apex Court has stated as under:-

> ***"28.*** *The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied the said opportunity."*

In the present case, as to the compliance of this mandatory rule, the order sheet dated 15-06-2016 reflected the business that was transacted on the last day of inquiry, as extracted above. Thus, on the evidences recorded in the oral inquiry the applicant volunteered to submit his defence brief within 30 days. This means that the applicant has fully understood the purpose of the above rule and he has volunteered to furnish his defence brief and he was not prejudiced by the IO not asking the questions. In this regard, a three Judges Bench of the Apex Court, in the case of Sunil Kumar Banerjee vs State of W.B. (1980) 3 SCC 304::1980 AIR 1170 has clearly held as under:-

> *"It is, however true that the appellant was not questioned by the Enquiry Officer under Rule 8(19) which provided as follows:*
>
> > *"The enquiring authority may, after the member of the services closes his case and shall if the member of the service has not examined himself generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him."*
>
> *It may be noticed straightway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1973. It is now well established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide, K.C. Mathew v. State of Travancore-Cochin; Bibhuti Bhusan Das Gupta v. State of W.B. We are similarly of the view that failure to comply with the requirements of Rule 8(19) of the 1969 Rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice."*

The above rule is in parimateria with Rule 9(21) of the Railway Servants (D & A) Rules. Hence, when no prejudice has been caused to the applicant on the alleged failure to comply with the requirement of Rule 9(21), it cannot be said that the inquiry is vitiated.

VII. Relating to the Inquiry Officer, one another objection raised is that the I.O is working in the enquiry wing which is under the control of the 2nd respondent. Applicant asserts that as the vigilance wing has investigated the issue the I.O would be administratively biased to ensure that the allegations are proved. This objection is liable to be summarily rejected, for, vide Rule 9(2) of the Rules provides for the very disciplinary authority itself to conduct the inquiry. The spirit is that when an authority sits as an inquiry authority, it functions dispassionately without any pre-determined view and the exact findings as per the documentary and oral evidences alone are rendered in the inquiry. Thus, alleging that the IO being one belonging to the vigilance wing would act with bias is a mere illusion. Again, there is no rule stating that those working for the enquiry

wing should not be appointed as inquiry officer. On the contrary the enquiry wing officers are well trained to conduct the inquiry in a fair manner. In fact, the applicant has himself acknowledged that the inquiry was conducted in a fair and exhaustive manner. Consequently, it is seen, that the applicant has not moved any bias application against the I.O. Having participated in the inquiry willingly and thereafter, when the entire the process is completed with the imposition of penalty, claiming that the I.O is from a particular wing is beyond the realm of reason.

VIII. It is also evident that there was no prejudice caused to the applicant by the conduct of the inquiry during different phases till its culmination. Preliminary inquiry was conducted by the Welfare Inspector and thereafter, investigation was done by the vigilance wing. Explanation was called and thereafter charge sheet was issued. Principles of Natural Justice were followed in conducting the inquiry. Witnesses were examined/cross examined and after the submission of the defence brief, the Inquiry report was prepared. Applicant claimed that the Inquiry was conducted in a fair manner. The applicant has availed the remedies of appealing to the appellate authority and revision petition to the revision authority. The latter also gave a personal hearing before rejecting the revision petition. Hence, as is seen, there are multiple checks and balances to ensure that there is transparency and fairness in dealing with disciplinary issues like the one in the present case. Hence in the absence of any prejudice caused to the applicant due to the inquiry proceeding and thereafter too, it cannot be said that the inquiry proceedings have been

vitiated by appointing an I.O from a wing which is claimed to be controlled by the 2nd respondent. What we said above is in tandem with the observation of the Hon'ble Apex Court in Sanjay Kumar Singh -vs- Union of India & Ors. reported in (2011)14 SCC 692 paragraphs 16-20 where in it was held that:

> *In the absence of any prejudice caused to the petitioner the inquiry proceeding cannot be said to be vitiated. In the instant case the departmental inquiry proceeded strictly on the basis of the charges mentioned in the charge sheet and there has been no violation of the principles of natural justice. The list of documents and the list of witnesses were forwarded to the petitioner along with the charge sheet. The depositions of the witnesses were also forwarded to the petitioner. The petitioner was not prejudiced in any manner whatsoever.*

IX. Shifting focus from the aspect of the disciplinary inquiry applicant has pleaded that he was appointed by the DRM in the alternative post of Chief Travelling Ticket Inspector on medical invalidation and therefore, he cannot be removed by the Sr Divisional Commercial Manager who is a subordinate to DRM. To examine this aspect a reference to Article 311 of the Constitution is necessary, which is extracted here under:

> *'311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.*
>
> *(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*
>
> *[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:*
>
> *{Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*
>
> *Provided further that this clause shall not apply-*
>
> *(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

As per Article 311(1) of the Constitution of India, applicant cannot be dismissed by an authority subordinate to that by which he was appointed and in sub-clause (b) of Article 311(2), it is mentioned as 'the authority empowered to dismiss or remove a person', which implies that the person who has authority to appoint is the proper authority to dismiss or remove a Government servant. Clause 311 (2) (b) is of relevance to the instant case which when interpreted would mean an authority who is empowered to dismiss or remove a person has to be necessarily the appointing authority. Need for the DRM to approve the appointment of the applicant arose since, the applicant on medical ground was to be relocated and there are many departments, such as commercial, personnel etc., in which the applicant could have been appointed. Being the Head of the Division, the DRM chooses one particular department and once appointed therein, it is that particular departmental Head who has to function as the appointing authority. A parallel could be drawn in this regard that for sports quota where invariably it is only Group C or erstwhile Group D appointments are made, it is the approval of the General Manager that is required for appointment. However, once appointed to a post in a particular Department, thereafter, it cannot be that it is the GM who is the

authority competent to dismiss or remove the individual so appointed under sports quota. The appointing authority cannot be the same throughout the career of a person. It varies from cadre to cadre and thus, if an individual is appointed in Group C post by the appointing authority of that group C, on his promotion to Group B, the appointing authority also correspondingly changes and it is that authority competent to appoint any one in a Group B post that could remove that Group B officer after due inquiry. In the instant case the applicant claimed to be appointed by the DRM, but the Sr.DCM who is subordinate to DRM has issued orders of removal. The Sr. D.C.M is the appointing authority in respect of Group C posts of that department and from the point of view of the status as appointing authority in commercial department, there cannot be a distinction between DRM and Sr. DCM, as both enjoy the power of appointment. The initial appointing authority for Group C post is a J.A grade officer as per entry at sl. 5 part II of schedule of powers of S.C.R at page no 10 F (Est) appended as AGR (-I). The Sr. D.C.M is a J.A. grade officer which is not under dispute. Hence, after the applicant has joined as Chief Travelling Ticket Inspector, which is a Group C post, the Sr. D.C.M, being vested with the power to order removal from service of Group C employees by virtue of being a appointing authority as per schedule of powers, has exercised such power, which is in congruence with Article 311(2)(b) of the Constitution. Hence, we cannot find fault with the decision of the respondents to remove the applicant from service for reasons elaborated supra.

X. A similar case fell for consideration by the full bench of the Hon'ble Bihar High Court, in **State of Bihar and ors v Manoj Madhup and anr** in appeal number 833 of 2014 in Letters Patent Appeal No. 833/2014 in Civil Writ Jurisdiction Case No 11307 of 2011 decided on 29.1.2020, wherein after referring to various Hon'ble Apex Court verdicts, it was held as under:

"4. The same has been challenged in the present appeal and this Court in the Division Bench, taking note of Rule 653, 656 and 825 of the Bihar Police Manual, 1978 and placing reliance on the judgment of Honble Supreme Court in the case of FCI Vs. Sole Lal reported in AIR (2006) SC 264 , doubted the correctness of the order of the learned Single Judge and has referred the matter to the Larger Bench for consideration on following questions of law:-

'(i) Whether, if the appointing authority in terms of the Rule is Deputy Inspector General of Police but the letter of appointment is issued by the office of the Inspector General of Police, then whether the order passed by the Deputy Inspector General of Police can be said to be valid?

(ii) Whether the expression appointing authority and the authority which appointed a candidate have different connotation in law, therefore, the Deputy Inspector General of Police cannot pass an order of punishment?

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9. The seminal question involved for consideration in the present case is as to whether the Deputy Inspector General of police, who was the appointing authority but, the appointment was made by the Inspector General of Police, could have passed the order of dismissal against the petitioner.

10. In nutshell, the issue is as to whether in case the authority who has appointed is higher in rank than the appointing authority who could have appointed the petitioner, the appointing authority i.e. the Deputy Inspector General of Police, in the present case, in exercise of his power, could dismiss the respondent no.1 from his services and as to whether the same would be in- consonance with Article 311 of the Constitution of India r/w Clause 825 of the Bihar Police Manual, as in both the provisions, it exposits that no civil servant will be dismissed or removed by an authority subordinate to the one which has appointed. Reliance has been placed on the provision of Rule 2(f)(iii) which defines the appointing authority as it mentions as to who has appointed the Government servant to such service, grade or post, as the case may be. So, emphasis has been given as to who has actually appointed the civil servant and further has been placed reliance on 2(j), which defines, the Disciplinary Authority to mean the Appointing Authority or any Authority authorized by it who shall be competent under these Rules to impose on a government servant any of the penalties specified in Rule 14 and reliance has also been placed on Rule 18 which says that a disciplinary authority would take an action on receipt of the enquiry report.

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11. To understand the spectrum of dispute and to resolve the same, this Court will have to examine Article 311 of the Constitution of India as well as different provisions of Bihar Police Manual and connected statutory provisions, xxx

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27. Again in the case of Krishna Kumar Vs. Divisional Assistant Electrical reported in 1979 AIR SC 1912 : 1979 SCR (1) 50 , the petitioner Krishna Kumar was appointed as a Train Lighting Inspector by the Chief Electrical Engineer but, was removed by the Divisional Assistant Engineer. The argument was made by the Railway that the Divisional Assistant Engineer was also delegated with power to make appointment and, as such, he has rightly exercised the power

and accordingly took decision to remove the petitioner. It has been held that it has to be determined with reference to the state of affairs existing on the date of appointment and, it is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding the post, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of Divisional Assistant Electrical Engineer in regard to making appointment to the post held by civil servant, cannot confer the power to remove him.

28. It is relevant to quote relevant portion of the order which reads as follows:-

> *'4. Article 311(1) of the Constitution provides that no person who is a member of a civil service of the Union or an all- India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The simple question for determination is whether, as alleged by the appellant, he was removed from service by an authority subordinate to that which had appointed him. The relevant facts are but these and these only: The appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer and was removed from service under an order passed by the Divisional Assistant Electrical Engineer, Central Railway, Nagpur. The narrow question, therefore, for consideration is whether the Divisional Assistant Electrical Engineer is subordinate in rank to the Chief Electrical Engineer. None of the affidavits filed by Shri Sarathy, who passed the order of removal says that the post of Divisional Assistant Electrical Engineer is equivalent to that of the Chief Electrical Engineer in the official hierarchy. That the former is not higher in rank than the latter is self-evident. In the circumstances, it seems clear that the appellant was removed from service by an authority which is subordinate in rank to that by which he was appointed.*
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> *5. In defence of the legality of the order of removal, counsel for the respondents relies on para 2 of Respondent 1's affidavit, dated January 7, 1978, wherein he has stated that the power to make Appointments to the post of the Train Lighting Inspector was delegated to certain other officers including the Divisional Assistant Electrical Engineer. It is urged that since the Divisional Assistant Electrical Engineer has been given the power to make appointments to the post of the Train Lighting Inspector, he would have the power to remove any person from that post. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorisation made in favour of Respondent 1 in regard to making appointments to the post held by the appellant cannot confer upon Respondent 1 the power to remove him. On the date of the appellant's appointment as a Train Lighting Inspector, Respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him.*
>
> *6. Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer, in other words, does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated to him.*
>
> *7. Since the appellant was appointed by the Chief Electrical Engineer and has been removed from service by an order passed by Respondent 1 who, at any rate, was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment, it must be held that Respondent 1 had no power to remove the appellant from service. The order of removal is in patent violation of the provisions of Article 311(1) of the Constitution.'*
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> *xxxx*

46. In the case of S.R. Chaudhuri Vs. State of Punjab and Ors. reported in (2001) 7 SCC 126 , the Honble Apex Court has held that the constitutional provision are required to be understood and interpreted with object oriented approach. A constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debate in the constituent assembly plays important

element in arriving at the true import of meaning of particular word used in particular place of constitution. Xxx

> *'33. Constitutional provisions are required to be understood and interpreted with an object oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicates that non-member's inclusion in the cabinet was considered to be a 'privilege' that extends only for six months', during which period the member must get elected otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the 'privilege' to extend "only" for six months.'*

47. Constitutional guarantee under Article 311(1) was available to the person holding the post. Different letters of the Constituent Assembly indicates that the authority who is competent to appoint would only be entitled to pass an order of dismissal or removal or to take a disciplinary action. In the present case, the Deputy Inspector General of police was the appointing authority, he was empowered to appoint but, in spite of that, the Inspector General of Police had appointed the private respondent. Now in that context, it has been argued and it has been tried to be persuaded that under Rule 825 of the Bihar Police Manual, the Deputy General of Police was actually empowered and has/had the authority to appoint Sub-Inspector, as such, he has the authority to take disciplinary action against the Sub-Inspector of Police. The Madras High Court has dealt with this issue, has held that the disciplinary action of removal/reduction in rank/dismissal can be taken only by the authority who has appointed. But, the question in the present case is that the Deputy Inspector General was capable to appoint Sub-Inspector and is also capable to take disciplinary action against him at the time of appointment, however, in the present case, the Inspector General of Police, who is higher in rank, had appointed the private respondent no.1, hence whether it can be construed that in terms of Rule 825 of the Bihar Police Manual, the Inspector General of Police is the only authority may be higher to the appointing authority, who is legally authorized to take disciplinary action of dismissal/removal/reduction in rank against the Sub-Inspector of Police.

48. Looking to the entire scheme/mechanism, the intention and upon harmonizing different proviso of Article 311 of the Constitution of India, the same should be interpreted in such a manner so as to find out the true import of the proviso. Article 311(1) of the Constitution of India, stipulates that Government servant can not be dismissed by an authority subordinate to that by which he was appointed and sub-clause (b) of Article 311(2), wherein it has been mentioned 'the authority empowered to dismiss or remove a person', may grammatically be not the same and identical but, the tenor and intention of the framer of legislature, considering the discussion in the Constituent Assembly as well as the objection raised by the Home Department by various letters during the course of framing of the Constitution, itself reflects that the person who has authority to appoint is the proper authority to dismiss a Government servant. In such a situation, the word authority subordinate to that by which he was appointed in my view will mean that the authority who has power to appoint will also include the power to dismiss, otherwise, it will lead to an absurd situation in view of sub-clause (b) of Article 311(2) which uses the phrase 'the authority empowered to dismiss or remove'.

49. After harmonizing both the provisions, in my view, the true import will be that the authority, who has an authority to appoint a Government servant, will also have the authority to dismiss, remove or reduce in rank.

50. In that view of the matter, the reference is replied in the terms that the Deputy Inspector General of Police, who was/is the appointing authority, is also vested with the right to dismiss, terminate and reduce in rank and the expression appointing authority and the authority which appointed would mean and construe the same, inasmuch as, the appointing authority, who has been conferred with the power to appoint will also have the authority to dismiss, remove or reduce in rank.

On telescoping the legal principle laid down by the full bench of Hon'ble Bihar High Court to the case on hand, the Sr. DCM as appointing authority is legitimately empowered to remove the applicant from the service of the respondent's organization. Therefore, the contention that the DRM is the appointing authority, as claimed by the applicant, will not hold good to seek annulment of the order of removal. Besides, the respondents submitted that the DRM has only approved the note (Annexure A-15) for allocating different employees medically de-categorized and such note approval cannot be construed as issue of an appointment order. They have submitted two judgments of the Hon'ble Apex Court, as under, which make it clear that mere approval of a note in respect of medical de-categorization of employees to be allotted to different departments would not mean that the DRM is the appointing authority. The relevant portions are here under extracted.

a. *Supreme Court of India in Ikramuddin Ahmed Borah vs Superintendent Of Police, Darrang & Ors on 27 September, 1988- 1988 AIR 2245, 1988 SCR Supl. (3) 323-*

Two submissions have been made by learned counsel for the appellant:

(i) The appellant having been appointed as Sub-Inspector of Police by the Inspector General of Police, the order of his dismissal by the Superintendent of Police, Darrang, was illegal being in contravention of article 311(1) of the Constitution.

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Having heard learned counsel for the parties, we find it difficult to agree with any of the submissions referred to above, In support of his first submission, learned counsel for the appellant placed reliance on a Memo dated 7th July, 1967 from the office of the Inspector- General of Police which According to him was the letter of appointment whereby the appellant was appointed as a Sub-Inspector of Police. According to learned counsel for the appellant this being so the order of dismissal having been passed by the Superintendent of Police,

Darrang, who was admittedly "an PG NO 327 authority subordinate to that by which the appellant was appointed", was on the face of it illegal. With regard to this submission, we are of the opinion that the said Memo cannot be treated as the letter of appointment of the appellant

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The appellant having been appointed by Principal Police Training College Dergaon, Assam, and having been dismissed by the Superintendent of Police, Darrang, who was a coordinate authority, the submission made by the learned counsel for the appellant that the order of dismissal was illegal having been passed by an authority sub-ordinate to that by which he was appointed. obviously therefore has no substance.

b. *Hon'ble Supreme court in Smt. Kanta Devi vs Union Of India And Anr on 12 March, 2003 in Appeal (Civil) No. 2313 of 2003 (Arising out of SLP(C) No. 4117 of 2002)*

A bare reading of the provisions show that while for the purpose of appointment, the approval of the DIG or the IG, as the case may be, is required to be obtained, that does not make the IG, the appointing authority.

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While considering an almost identical provision, this Court held that even when prior recommendation is necessary, it does not make the recommending/approving authority the appointing authority. (See State of Assam v. Kripanath Sarma and Ors. AIR 1967 SC 459). In that case, the question was whether the Deputy Inspector of Schools in his capacity as the Assistant Secretary of the State Board, could terminate the service of the concerned employees in view of Section 14(3)(iii) of the Assam Elementary Education Act (No.30) of 1962 read with Section 18 of the Assam General Clauses Act (No.II) of 1915. It was held that as the Assistant Secretary did not have complete power to appoint teachers, he can do so on the advice of the Advisory Board. Even assuming that recommendation of the Committee is necessary before appointment is made by the Assistant Secretary, the fact still remains that it is not the committee which appoints and the appointing authority is the Assistant Secretary."

The above judgments add further force to the argument that the DRM for having approved the note would not become the appointing authority. Thereby, putting the controversy in regard to appointing authority, to rest.

XI. Going further, the applicant has pleaded that parentage is a presumed fact as per Section 112 of Indian Evidence Act and such a statutory presumption cannot be decided in a departmental proceedings.

There are two aspects in the issue raised by the applicant. One is parentage and the other is Evidence Act. In the instant case, the core aspect is that the applicant has been charged for securing employment by fraudulent means through questionable documents. The fraudulent method adopted has been the subject of disciplinary misconduct. About parentage, the applicant stated that he has approached the competent court. The inquiry report has held the charge as proved. Now coming to Evidence act, technical rules of Evidence Act nor proof of fact or evidence as defined therein, do not apply to disciplinary proceedings. We are supported by the observation of the Hon'ble Supreme Court in the High Court of Judicature at Bombay through its Registrar v Shri Udaysingh and ors in AIR 1997 Supreme Court 2286. on 9 April, 1997, in affirming what we have said, as under:

> *As regards the nature of the judicial review, it is not necessary to trace the entire case law. A Bench of three Judge of this Court has considered its scope in recent judgment in B.C. Chaturvedi vs. Union of India & ors. [(1995) 6 SCC 749] in which the entire case law was summed up in paragraphs 12, 14 and 15 thus:*
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> *"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 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 office 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 to 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 in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceeding 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 findings and mould the relief so as to make it appropriate to the facts of each case."*

In addition, respondents in tune with the letter and spirit of the above verdict, have followed the statutory rules, abided by the Principles of Natural Justice in conducting the inquiry and came to a conclusion based on evidence brought out during inquiry. The above verdict does also support our views expressed in paras supra. The appeal and the revision petition made were rejected by the competent authorities after duly considering them, the way they should be. There is no scope for the Tribunal to interfere by re-appreciating evidence to grant relief sought by the applicant since we found no perceptible flaw in the decision making process of the respondents in arriving at the decision of removal. The decision of removal arrived at based on rules and law is the prerogative of the respondents and the Tribunal has no jurisdiction over the same.

XII. We rely on the following judgments of the Hon'ble Supreme court , to further buttress on what we have held in different paras supra.

a) Surender Kumar v. Union of India, (2010) 1 SCC 158, at page 160 :

In fact the only scope in such cases is to examine the manner in which the departmental enquiry is conducted.

In the instant case the inquiry was fair and elaborate in the own words of the applicant and we also found it to be conforming to different yardsticks like following statutory rules, adhering to Principles of Natural Justice etc as discussed above.

b) Govt. of A.P. v. Mohd. Nasrullah Khan, (2006) 2 SCC 373 would be very much appropriate:

"12. We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In Union of India v. Parma Nand, 1989 (2) SCC 177, K. Jagannatha Shetty, J., speaking for the Bench, observed at SCC p.189, para 27 as under:

> *"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."*

The observation is clear and candid that the Tribunal has no role to play as an appellate authority. Interference in disciplinary inquiry is permissible only if the inquiry findings are perverse and arbitrary. We do not find the findings perverse since the I.O has dealt at length the issues raised and came to a justifiable conclusion based on evidence let in. Appellate authority and the revision authority have exercised the authority vested in them by making relevant aspects into consideration. For eg. the revision authority has rightly pointed out that the applicant has not submitted the SSC certificate which is critical to the case. The respondents have the power to impose the penalty in question for proven misconduct and the Tribunal cannot substitute the penalty when it has been lawfully imposed.

> *d. H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, wherein it has been held by the Apex Court as under:-*
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> *"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."*

By respectfully abiding by the above decision of the Hon'ble Apex Court we venture not to correct the decision of imposing the penalty of removal

since we did not find any lacuna, either based on rules or on law, in regard to the decision making process to arrive at the decision referred to.

e) HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP- 15228-2014 Date of Decision : August 10, 2018 in The Pepsu Road Transport Corporation and others Versus Presiding Officer, Industrial Tribunal, Ludhiana and another. ....

" 7. The scope of interference in such like disciplinary matters by the Courts is to a limited extent especially when the domestic enquiry has been conducted and due opportunity has been given to the delinquent official. Certainly, the Court can look into the points whether the enquiry was conducted in fair manner and principles of natural justice were followed, but in the given set of facts, the petitioner has not been able to establish that in fact, he had not been given due opportunity before the Enquiry Officer or that he was not heard during the departmental proceedings and the plea taken by the petitioner is just an after-thought. Courts are not supposed to perform the duties of appellate authority to scan the evidence, but the role of the Courts is limited to the extent that the Court is to see whether domestic enquiry was conducted in a fair manner and due opportunity was given to the delinquent official. Such a view was taken by Hon`ble Supreme Court in Union of India and others V. P. Gunasekaran, 2015(2) SCC 610, where the Hon`ble Apex Court observed as under:-

> *"13. 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. I 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; e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; g. the disciplinary authority had erroneously failed to admit the admissible and material evidence; h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; i. the finding of fact is based on no evidence. Under Article 226/227 of the Constitution of India, the High Court shall not(i). re-appreciate the evidence; (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii). go into the adequacy of the evidence; (iv). go into the reliability of the evidence; (v). interfere, if there be some legal evidence on which findings can be based. (vi). correct the error of fact however grave it may appear to be; (vii). go into the proportionality of punishment unless it shocks its conscience."*

8. In the present case, the departmental proceedings having been conducted by the Enquiry Officer wherein the workman was given due opportunity to defend the same, but he chose to remain away from the said proceedings and on that account, he cannot take the plea that no proper enquiry was conducted in his case. The Tribunal has pronounced the award without taking into consideration the material available on the file and as such, the impugned award is set-aside.

The above observations squarely apply to the case of the applicant and Tribunal has only abided by the cardinal principles as laid down by the

Hon`ble Supreme Court in Union of India and others Vs P. Gunasekaran, cited supra.

e) The cardinal principles referred to, also find mention in different verdicts of the Hon'ble Apex court over the years, as presented hereunder. Our endeavour was to respectfully adhere to them as per the verdict of the Hon'ble Apex Court in S.I. Rooplal v. Lt. Governor through Chief Secretary, Delhi in Appeal (civil) 5363-64 of 1997, dt. 14.12.1999:

> *Union of India vs Upendra Singh, (1994) 3 SCC 357. Also see Transport Commissioner vs A. Radhakrishnamoorthy (1995) 1 SCC 332, B.C. Chaturvedi vs Union of India (1995) 6 SCC 749, Apparel Export Promotion Council vs A.K. Chopra (1999) 1 SCC 759 Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar, (2003) 4 SCC 364, Lalit Popli v. Canara Bank, (2003) 3 SCC 583, Indian Rly. Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579 Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain, (2005) 10 SCC 84, V. Ramana v. A.P. SRTC (2005) 7 338, State of Rajasthan v. Mohd. Ayub Naz, (2006) 1 SCC 589 , Ram Saran v. IG of Police, CRPF,(2006) 2 SCC 541, State of U.P. v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276, Union of India v. K.G. Soni, (2006) 6 SCC 794, at page 798, Union of India v. Dwarka Prasad Tiwari, (2006) 10 SCC 388, Govt. of India v. George Philip, (2006) 13 SCC 1, and Ramvir Singh v. Union of India, (2009) 3 SCC 97,)*

XIII. The applicant has been repeatedly pleading by referring to various documents like property document submitted to Karnataka bank for loan, LIC nomination, 2 ladies having the names Urukundamma, discrepancy in date of birth, death certificate, Transfer certificates etc and the respondents came with a set of documents contesting the very same facts made by the applicant. After detailed consideration of the documents and on examination/ cross examination of witness the I.O has arrived at a considered conclusion after evaluating the evidence presented. Nevertheless, applicant prayed for re-appreciating the evidence. The Tribunal cannot indulge in an exercise of re-appreciating evidence as held by the Hon'ble Apex Court in The State Of Bihar vs

Phulpari Kumari on 6 December, 2019 in Civil Appeal No. 8782 of 2019 (Arising out of SLP (C) No.21197 of 2019), as under:

> *6. The criminal trial against the Respondent is still pending consideration by a competent criminal Court. The order of dismissal from service of the Respondent was pursuant to a departmental inquiry held against her. The Inquiry Officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the Respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in reappreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the Respondent. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer.*

The case on hand is not a case of no evidence nor is it of the nature of sufficiency of evidence. The case has endured the test of preponderance of probabilities as was brought out in the elaborate Inquiry report. Hence any interference by the Tribunal will be infringement of the above observation of the Hon'ble Apex court and therefore we desist.

XIV. Moreover, we found that the applicant was trying to find fault with the respondents for claiming that the file concerning his compassionate appointment was not traceable. As is clear from the contours of the case the respondents have appointed the applicant based on the documents which were produced therein. Therefore, the file would not have been of great help to unravel the truth. It is only when Sri K.Narayana made a complaint alleging that the applicant is not the son of Sri Ratnam who retired on medical invalidation, the entire issue of veracity of documents submitted, has cropped up leading to investigation, disciplinary proceedings and finally resulting in removal. Probably even the respondents may have made a mistake in not properly verifying the

documents before granting the compassionate appointment. The authority has every power to right its own wrong.

XV. Further, one of the basic document which is of general acceptance to figure out the father's name and the date of birth is the SSC certificate. When asked to produce the same, applicant claimed that it is not traceable due to a theft that occurred at his house. Usually, when such an important document is lost FIR is filed as per legal procedure prescribed. Applicant has not filed any FIR about loss of his SSC certificate. Moreover, no efforts were made to obtain a duplicate certificate, which is not too complex an affair to be attempted. Therefore, it is not understood as to why the applicant has not produced the SSC certificate knowing pretty well that it is a crucial document which would be of great assistance to him to confront the respondents with the truth. Non submission of the certificate would naturally raise a doubt that there is something more than what meets the eye. Adverse inference could easily be drawn against the applicant for his failure to produce the authenticated copy of the SSC certificate. An answer to this question is given by I.O. in his report at page140 of the material papers, para 4 (C) while confirming that K.Ratnam and K.C.Narsanna were separate individuals by deducing as under:

> *"In view of the discussion at (a) above, it is established that there was alteration in the father's name of CE as per the school records after appearance to the SSC examination held during March, 1977. It was also recorded by School authorities in EX P-8 that the CE was admitted for SSC examinations as son of K.C. Narasanna and even as per their records SSC certificate was issued with father's name as K.C. Narasanna whereas in the school admission register records only father's name was changed as Ratnam without any authority or signature which has led to issuance of TC with father's name as Ratnam. "*

The above explains the reluctance of the applicant in not producing the vital document of SSC certificate. Being a basic document one would preserve the SSC certificate for reference in the future and therefore, every effort is usually made to obtain the duplicate when the original is lost. The solution to the dispute was in the SSC certificate but the applicant choose not to produce it and hence, it is the mistake of the applicant.

It is the mistake of the applicant in not producing such a crucial document. He cannot, therefore,encash the same to further a cause for which he is legally disentitled. While observing, as we did, we rely on the judgment of the Hon'ble Supreme Court in A.K.Lakshmipathy (D) & Ors v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287, as under:

> *"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."*

XVI. Applicant wanted DNA test to be done to confirm parentage and though he was willing, sisters of the complainant were unwilling. Besides, he has stressed, time and again, that the inquiry was not done in a scientific manner. The question of scientific evidence would come when the documentary evidence is not adequate to prove the charge. The inquiry officer has examined nearly 34 documents presented by either side and on evaluating the same, he has come to a reasoned conclusion. The 7 prosecution witnesses were cross examined by the applicant. It is surprising that the applicant has not come up with a single defence witness to confirm that he was the son of Mr. Ratnam. If he were to be the

son of Mr. Ratnam then there would be many relatives/ neighbors' who would have easily come forward to stand by him. It is not explained as to why he has not made such a simple effort, which usually is done in the cases of nature on hand. When even a simple SSC certificate which would indicate the original father of the applicant could not be produced by the applicant, it is just tall talk of the applicant to ask for DNA test. Moreover, applicant cannot force others to undergo DNA tests for his sake and use such refusal as a ploy to assert that he has been wronged. It is well settled in law, as has been stated in different verdicts of the Hon'ble Apex cited supra, departmental proceedings are quasi judicial in nature. Such proceedings are based on preponderance of probabilities and does not require strict proof of evidence beyond doubt, as required in a criminal case. Based on preponderance of probability the I.O has proved that the applicant misrepresented to secure the compassionate appointment. A reading of para 4(D) at page 36 of the report would make things clear as under:

"xxxxx

Also PW-7 answered in Q.No 137, alleging that the CE was appointed on compassionate grounds on misrepresentation as ward of Ratnam and presently working as CTI. Therefore, the admitted and undisputed true fact remains that the CE was considered for appointment to a Group D post as Loco Khalasi following the medical unfitness and voluntary retirement of Sri Ratnam on 1.3.90. For the sake of argument assuming that Ratnam and K.C.Narasanna @ K. Narasaiah were one and the same, as contended by CE in his defence, the CE would not be entitled for appointment o compassionate grounds as son of K.C. Narasanna @ K. Narasaiah since Sri K.Narasaiah was retired on superannuation where as Ratnam retired voluntarily consequent to medical unfitness. In as much as the scheme of appointment on compassionate grounds was available only to employees who were medically unfit and considered unsuitable for retention in further service , the voluntary retirement tendered by sri Ratnam having been accepted on his medical unfitness has made way for the appointment of CE, therefore the CE's appointment on compassionate grounds could have been made on the fact considering him as ward of Ratnam only. "

I.O categorically concludes that the applicant committed a fraudulent act by recording at page 38 of the report in para 4 (E) as under:

"Thus the oral evidence of PW-5 to Q.No 73, 87, 89, 96 and 124 and oral evidence of other witnesses as discussed above, documentary evidence at Ex P-1 to P-9 and contrast explanations of CE in EX P -18 & 19 have established that CE's appointment as ward of Ratnam was on misrepresentation of fact by producing incorrect school certificates based on altered admission details of school admission register though he was aware of the fact as per the basic school records he was actually recognized as son or Sri K. C. Narasanna @ K. Narasaiah"

Any order of the Court or order of Administrative Authority obtained by fraud should not be allowed to stand as fraud unravels everything. Fraud avoids all judicial acts ecclesiastical or temporal. We take support of the Hon'ble Apex Court in Meghamala & Ors v G. Narasimha Reddy [(2010) 8 SCC 383] has observed at para 28, as under, for stating what we stated:

" Fraud/Misrepresentation :

28. It is settled proposition in law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. Fraud avoids all judicial acts ecclesiastical or temporal. (vide S.P. Chengalvaraya Naidu (dead) by L.Rs v Jagannath (dead) by L.Rs & ors AIR 1994 SC 853). In Lazaurs Estate v Besalya 1956 All. E.R 349, the court observed without equivocation that " No judgment of a Court , no order of Minster can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

Therefore, in the background of the above observation, the appointment obtained based on misrepresentation should not be allowed to stand, to uphold justice.

Reverting to the issue perse, the applicant, instead of producing documents what he can, like the SSC certificate, is expecting others to do what they need not like getting DNA tests done, in order to amplify the dispute, which we feel is unreasonable to say the least. If the applicant was sincere about the DNA test, there was also a way of approaching the community elders to help him resolve the issue by impressing upon one of the children of Mr Ratnam to get the DNA test to save his job. Such community counselling is not unknown to Indian culture. Even in respect of LTI verification of Ratnam and others, the applicant could have asked for it when the inquiry was on. Not availing the opportunity then and

raising it now is impermissible under law as was brought out in the above paras. It is said that where there is a will there is a way. It is easy to blame others but what would be better in a given circumstance is to introspect as to what one can do to prove his point of view. Truth has to come out in its Christine form, whatever may the hurdles, one day or the other. Concentrating on peripheral aspects leaving the core aspects is what has been seen in the approach of the applicant to the case on hand. The onus was upon the applicant to show that he was prejudiced due to the action of the respondents. Respondents did not act straight away to penalise the applicant. They have started with the Welfare Inspector commencing the preliminary inquiry, vigilance investigation, calling for explanation, issue of charge sheet, conducting inquiry fairly, seeking defence brief, providing a copy of the I.O report and thereafter imposing the penalty after obtaining the applicant's reply. Remedies of appeal, revision petition, personal hearing were also availed and the final outcome was removal from service. Therefore, in view of going through the laid down process being followed by the respondents, the applicant could not demonstrate any prejudice caused to him due to the action of the respondents. We say so based on the observation of the Hon'ble Apex Court in Union of India &Ors. -vs-Alok Kumar reported in (2010) 5 SCC 349 wherein it was held that:

> *The onus is upon the employee to show that he was prejudiced due to any action or inaction on the part of the respondent. In the instant case there has been no violation of the principles of natural justice. No prejudice was caused to the petitioner. Accordingly, interference with the order of penalty is not called for.*
>
> Resultantly, the present writ petition filed by the Management is allowed and the impugned award dated 30.1.2014 passed by learned Tribunal is set-aside.

Before, we part, we reiterate though repetitive, but given the intrinsic significance of the issue, that, in disciplinary cases the scope to re-examine evidence is very limited and only if there is no evidence, can the disciplinary case be set aside and it is well settled that sufficiency of evidence is not in the realm of judicial review. In departmental cases, the preponderance of probabilities plays the vital role but not the strict proof of evidence beyond doubt, as has been elaborately and in no uncertain terms laid down by the Hon'ble Apex Court in The State Of Bihar vs Phulpari Kumari on 6 December, 2019 in Civil Appeal No. 8782 of 2019 (Arising out of SLP (C) No.21197 of 2019), as under:

> *4. The Respondent was dismissed from service by an order dated 10.12.2014. She challenged the order of dismissal by filing a Writ Petition in the High Court, which was allowed by a judgment dated 12.12.2017. A learned Single Judge of the High Court disbelieved the version of the complainant as neither the complainant nor his wife were examined in the disciplinary proceedings. The learned Single Judge concluded that the charge of demand and acceptance of the illegal gratification by the Respondent was not proved.*
>
> *5. The Division Bench of the High Court affirmed the judgment of the learned Single Judge in the Writ Petition and dismissed the Appeal filed by the Appellant. The Division Bench proceeded to examine the evidence and held that the charge of demand and acceptance of illegal gratification was not proved. The submission of the Respondent that she was falsely implicated in a trap case was accepted by the Division Bench.*
>
> *6. The criminal trial against the Respondent is still pending consideration by a competent criminal Court. The order of dismissal from service of the Respondent was pursuant to a departmental inquiry held against her. The Inquiry Officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the Respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in re-appreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the Respondent. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer.*
>
> *7. In view of the above, the judgment of the High Court is set aside and the order of dismissal of the Respondent is upheld. The Appeal is accordingly allowed."*

The Ld. Counsel for the applicant has ushered in as many pleadings as he could with all the force he can, but law is law and it prevails to uncover the

truth. The law laid down by the Hon'ble Apex court as cited supra, makes it forcefully evident that the applicant has no case, when assessed through the prism made up of the golden rules spoken of in the silver lines of the verdict. When we write these lines we are reminded of a Kenyan Proverb which says that, "man uses force when afraid of reasoning". We found force in the arguments submitted, but the required reasoning was missing. Reasoning is the heart beat of life and without reasoning, the essence of Buddhi, as is reasoned out in Indian Philosophy, life full Siva becomes the life less Sheva. Life to lifelessness is the name of the game of life. So to, is the case on hand.

XVII. Yet, we wanted to give every opportunity to the Ld. Applicant Counsel to breathe life into the case within the parameters of law and rules and therefore, directed him to present material if he has further to defend his case. Respondents were also given a similar opportunity. They did avail of the same and presented written briefs backed by judgments of the judicial fora. Respondents have submitted judgments which have been dealt in the previous paras. The applicant counsel has submitted a series of judgments, which we have gone through in detail and our views in regard to their applicability to the case are, scribed hereunder:

a. Hon'ble Apex court in Moni Shankar v U.O.I and anr Civil Appeal No.1729 of 2018 in respect of the need to follow sub rule 21 of rule 9 of RS(D&A) rules 1968 (Para 20, 21& 28).

In this regard, it is seen that the applicant has submitted that he did not want to get examined, as was recorded by the I.O on the last date of hearing. Therefore, there is no infringement of the cited judgment. Again, his own volunteering to submit defence brief confirms that he is not prejudiced in any manner and thus, non following of Rule 9(21) of the Railway Rules is not fatal to the proceeding.

b. Hon'ble Apex Court in Mathura Prasad v U.O.I and ors in C.A no 4634 of 2006 in respect of judicial review (Para 19). As was pointed out above the respondents have followed the statutory rules, abided by the principles of natural justice, took evidence into consideration and decided the issue by proper application of mind. In respect of judicial review the judgments later to 2006 have been cited above, where in the specific grounds for judicial review were pointed out and the same were borne in mind in arriving at the conclusion in the instant case , as expounded in paras supra.

c. Hon'ble High Court for the State of Telangana and the State of A.P in W.P No 26790 of 2015 in respect of not appointing a Presenting Officer. In this regard the observation of the Hon'ble Apex Court has been referred to in paras supra, wherein it is observed that there is no legal compulsion to appoint a Presenting officer provided the I.O does not don the role of a presenting officer. Besides, the I.O can be anyone who is subordinate to the appointing authority. The applicant admitted that the I.O was fair which implies

that the I.O conducted the proceedings as an independent adjudicator. Hence the judgment cited may not be of assistance to the applicant.

d. We have gone through the observations made in OAs 809/2009 & 961/2009. In OA 809/2009 the finding was that the I.O acted like a presenting officer and was thus unfair but in the present case it is not so. Applicant admitted that the I.O was fair. In 961/2009 opportunity was not given to the applicant to cross examine the witnesses and documents were not supplied. In contrast the applicant herein has cross examined all the witness and was supplied the documents required. Hence the facts and circumstances are different.

e. Hon'ble Apex Court in Ramkanya Bhai v Bharatram in CA 7018 of 2009. This judgment which deals with divorce petition is irrelevant since the issue dealt in the instant case is about seeking employment through fraudulent means.

f. Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad in W.P No. 29401 of 2010. Even this verdict is not relevant since it essentially deals with registered adoption deed and the issue arose because of an anonymous complaint. In the present case Sri K.Narayana has complained that the applicant obtained compassionate appointment through fraudulent means and Sri K. Narayana participated in the inquiry along with his sisters to tender

evidence against the applicant. The facts and circumstances are different to be of any help to the applicant.

g. Hon'ble High Court of Delhi in U.O.I and ors v Jagdish Prasad is in regard to the appointing authority. In the present case, the issue of appointing authority has been dealt at length based on the full bench judgment of the Hon'ble High Court of Bihar. Besides, Hon'ble Supreme Court judgments in Ikramuddin Ahmed and Kantadevi supra have clinched the issue in favour of the respondents and therefore the Hon'ble Delhi High Court judgment would not be helpful to the applicant.

h. Coming to OA 1257 of 2013, the appellate authority has admitted technical deficiencies raised by the applicant therein and the OA was disposed by remitting matter to the respondents to conduct denova proceedings. In the case on hand it is not so. Both the appellate authority and the revision authority have confirmed the penalty. Hence the OA cited is of no relevance.

XVIII. In view of the aforesaid circumstances, the applicant having miserably failed to prove his case, viewed from any angle in terms of rules and law, the OA being devoid of any merit merits only dismissal, which we accordingly hold. The OA is dismissed with no order as to costs.

(B.V. SUDHAKAR) ***(ASHISH KALIA)***
ADMN.MEMBER ***JUDL. MEMBER***

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