Reserved on 26.11.2020

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

(Concerned to Nainital Circuit Sitting)

Allahabad, this the **21** day of **January**, 2021

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 331/00426/2017

Vimal Kishore, aged about 57 years, S/o Late Gurudeen, R/o Village Baliganj, P.O. Baliganj, Mussoorie, District-Dehradun.

.....Applicant.

By Advocates – **Shri K.C. Sinha**
Shri Sunil.

V E R S U S

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

2. General Officer Commanding, Head Quarters, Uttar Bharat Area, Bareilly, U.P.

3. Commandant, Garhwal Rifles, Regimental Center, Landsdown Pauri, Garhwal, Uttarakhand.

.....Respondents.

By Advocates: **Shri T.C. Agarwal**
Shri Rajesh Sharma.

O R D E R

Delivered By Hon'ble Mr. Devendra Chaudhry, A.M. :

Both Members of this Division Bench have joined online through Virtual Conferencing facility.

2. Shri Sunil, learned counsel for the applicant is present in person in Court whereas S/Shri T.C. Agarwal, Rajesh Sharma, learned counsels for the respondents are present on line.

3. The instant OA has been filed to pray for quashing of the order dated 30.3.2005 (Annexure A-6) and order dated 31.03.2005 (Annexure A-6) through which the applicant was dismissed from service. It is also prayed to quash the order dated 07.04.2016 (Annexure-10) by which the appeal of applicant was rejected. The applicant has further prayed to direct the respondent No. 3 to grant all the benefit and privileges of continuity of service as if no such above orders have ever been passed against the applicant.

3.1 *Per* applicant, facts of the case, in brief, are that the applicant was appointed on 06.02.1984 as Sweeper to maintain the cleanliness in the Garhwal House-the official residence of respondent No. 3. In 2004, during a recruitment in the Army under the respondent No. 3, some irregularities were reported based on which vide order dt 03.11.2004, Respondent-2 issued directions to convene a court of inquiry for investigating some charges of a bogus recruitment racket at Lansdowne. The applicant was put under suspension by the respondent No. 3 on 19.11.2004 and a charge sheet was issued on the same date. Thereupon, respondent No. 3 issued a direction dated 30.03.2005 (Annexure -6) awarding the punishment of dismissal from service against the applicant. Against the aforesaid orders, the applicant filed an appeal, which was rejected by the respondents on 03.10.2005. Aggrieved, the applicant filed a Writ Petition No. 1877 (S/B) of 2005 before the Hon'ble High Court of Uttarakhand which was dismissed vide 29.08.2012, with

direction to approach the Tribunal. Thereafter, on 24.02.2013 the applicant filed O.A. No. 218 of 2013 before this Tribunal. The Tribunal quashed the appellate order dated 03.10.2005 and directed the Appellate Authority to decide the appeal and pass a well-reasoned order after hearing the applicant afresh. However, vide order dated 07.04.2016, the Appellate Authority rejected the appeal of applicant without taking into account any of the defence pleas made by the applicant regarding *inter alia* illegal pressure exerted on him to make confessional statements, improper recording of witnesses, refusal of a defence assistant of choice during the course of inquiry, etc. Therefore, since justice has not been given to him in the appellate hearing and the entire process of enquiry is vitiated as well against the due prescribed process, hence any punishment accorded to him is illegal and void. Therefore the impugned orders are liable to be quashed for which purpose the OA has been filed.

4. *Per contra* the respondents have in their Counter Reply denied all allegations of illegality and irregularity in the inquiry process as stated by the applicant. It is argued that in compliance with the order of this Tribunal dated 15.09.2015, the applicant was given fresh and detailed hearing and only thereafter the impugned order of the Appellate authority has been passed. That the initial dismissal order was also issued after following all due processes and there is no illegality in the same. In support of the compliance with the due process of inquiry including the appellate hearing process, the counter affidavit states detailed steps taken to conduct the whole process starting from 2004 when the stated recruitment racket came to light in which the applicant was involved leading to his dismissal. It is submitted

thus that in March 2004 a recruitment racket came to light as per reports to Commandant, GRRC, Lansdowne, wherein the involvement of the CE, Shri Bimal Kishor and three personnel, namely No. 2684132 Hav/Clk Pradeep K of BRO Lansdowne, No. 4072526F Hav/Clk Suresh Kumar of Records, the Garhwal Rifles, Lansdowne and No. 4081605 Rfn Dinesh Chandra Joshi of 6 Garh RIF came to light. During the preliminary investigations, confessional statements were submitted by Hav/Clk Pradeep K, Rfn Dinesh Chandra Joshi and CE, Shri Bimal Kishor, conservancy Safaiwala. That based on their confessional statements, a Staff Court of Inquiry was convened by Headquarters, Uttar Bharat Area (HQ UB Area) to investigate their alleged involvement in the recruiting racket.

4.1. That the Court of Inquiry was composed of IC 25984N Lt Col N Bohra, of HQ 9 (I) Mtn Bde Gp as the Presiding Officer and IC-5126L Maj Jaiveer Singh and SL-4594X Maj Anil Kandari, both of Uttaranchal Sub Area units as the members. During the inquiry statements of a total of 14 witnesses which included the statement of the CE, Sh. Bimal Kishore, and the three Army personnel allegedly involved in running the recruiting racket, all the civilian boys (prospective candidates for enrolment) who allegedly paid bribes for obtaining enrolment in the Army, besides those authorities of GRRC Lansdowne who carried out the preliminary investigations immediately after the reporting of the incident were recorded. The inquiry led to the conclusions that Hav/Clk Pradeep K of BRO Lansdowne, Hav/Clk Suresh Kumar of records the Garhwal Rifles, Rfn Dinesh Chandra Joshi of 6 Garh RIF and Shri Bimal Kishore, conservancy Safaiwala of GRRC, Lansdowne, are all guilty of active involvement and abetment of running a

recruitment racket in Lansdowne. As regards the involvement of No. 4127272X Shri Bimal Kishor, the Court was of the following opinion: -

> *"No. 4127272X Conservancy Safaiwala Bimal Kishore of GRRC, Lansdowne is guilty of demanding and accepting money from candidates assuring them that he will ensure the recruitment in the Army and running a bogus recruitment racket in Lansdowne."*

That based on the opinion of the court of inquiry the convening authority, Maj Gen BW Kelso GOC, UB area directed disciplinary action to be initiated against all the personnel.

4.2. Based on these directions, a Charge sheet was framed and served upon the CE, Shri Bimal Kishore, by the disciplinary authority Brig. G. Dawal, VSM, Commandant, GRRC vide GRRC letter dated 19th November 2004. The CE was also supplied with the copies of all the documents concerning the charge sheet as also the list of witness who had deposed against him in the staff court of inquiry. He was asked to submit his reply to the Charge Sheet within 10 days. That the applicant submitted his reply dated 28th Nov. 2004 in which he denied and pleaded "Not Guilty" of all the charges. Consequently, the disciplinary authority appointed IC 39998Y Col Jaswal, Trg Bn Cdr of GRRC Lansdowne as the Inquiry Officer to inquiry into the charges for which applicant had pleaded "Not Guilty". During the inquiry, the Prosecuting Officer (PO) produced a total of seven prosecution witnesses who were examined, their statements recorded where after PO examined them to establish charges and bring about relevant evidence. Opportunity was provided to the applicant and Disciplinary Authority (DA) to cross examine all the witnesses which was also duly recorded. The documentary evidence produced by the prosecution witness was also taken on record. All

the charges against the applicant were proved following which the impugned dismissal orders were issued. That the applicant submitted an appeal to HQ UB Area, Bareilly against his dismissal from service which was rejected vide order dated 3rd October, 2005. That following dismissal of the writ in the Hon High Court the applicant has approached this Tribunal.

4.3 It is further submitted that the competent authority of department has conducted regular inquiry and provided opportunity to applicant to adduce evidence in his defence and there is no illegality or infirmity in conducting the departmental proceeding. It is further submitted that as per documentary proof, the applicant is 7th passed and he can read, write and understand Hindi language, and the Charge sheet and all relevant documents served on him are accordingly in Hindi language. That the applicant was given full opportunity to produce any oral/written documentary evidence he wishes to submit in the defence. That the applicant was at no time pressurized/threatened to write anything pertaining to the inquiry as alleged by him. That the Inquiry Officer after completing the inquiry proceeding submitted his report on 27.03.2005 (CR-I) stating inasmuch that:

> *"..In view of the above findings and analysis, the enquiry proceedings have a reasonable basis to conclude the following: -*
> *a) Charge I to V. CE proved guilty on account of these charges.*
> *b) Charge VI. Not proved and therefore CE discharged of the liability of this charge.*
> *c) Charge VII. CE proved guilty of receiving Rs.50,000/- for the enrolment of Sh Rajendra Prasad Joshi S/o Sh Gopal Datt Joshi instead of Rs.15,000/- mentioned in the original charge.*
> *d) Charge VIII. CE proved guilty on account of this charge.*

It is asserted that all the provisions to record the enquiry were complied duly by IO hence the allegations against the irregularities in the inquiry process

are baseless. During the inquiry proceedings the inquiry officer had each time informed the presenting officer, charged employee and defence assistant in writing about the adjournment and next assembling of inquiry and duly signed by all concerned through daily order sheets. During preliminary investigation confessional statement was submitted by the applicant, thereafter a staff court of inquiry was convened by Head Quarter Uttar Bharat Area based on the opinion of the court of inquiry the convening authority directed disciplinary action to be initiated against all the personnel who were found guilty of their respective illegal acts of commission. Based on the directions, a charge sheet was framed and served upon the applicant by the disciplinary authority vide letter dated 19 November 2004. The applicant was also supplied with the copy of all the documents based which he was charge sheeted as also the list of witness who have deposed against him in the staff court of inquiry. On denial of charges by the applicant the disciplinary authority appointed the Inquiry Officer to inquire into the charges for which the applicant pleaded “Not Guilty”. The applicant was provided the opportunity to select the defence assistant/ counsel of his choice. Defence Assistant of the applicant choice was made available during entire inquiry proceeding. Full and fair opportunity was provided to the applicant and defence assistant to cross examine all the witnesses which was also duly recorded. The documentary evidence produced by the prosecution witnesses was also taken on record, established the identity and correctness of the evidence produced by the applicant and then duly made part of the inquiry proceedings. Inquiry Officer heard the presenting officer, applicant and defence assistant with respect to all the issues connected with the enquiry and the recruitment racket case. Finally, on conclusion of recording

all prosecution witnesses, opportunity was given to the applicant and his defence assistant to produce any oral written, documentary evidence they wish to submit in the defence of applicant. He was also afforded opportunity to inform the inquiry officer, if he wishes to produce any defence witnesses in his defence. The applicant refused to produce anything in his defence, in writing duly endorsed by his defence assistant consequently the recording of the enquiry proceedings were closed and inquiry officer proceeds to record his findings and analysis of the enquiry proceedings. On completion of the inquiry report, it was carefully perused by the disciplinary authority. Based on the inquiry proceedings the disciplinary authority wherein, all the charges i.e. I to VIII (except charge No. VI) in the Charge Sheet have been proved beyond doubt against the applicant in the inquiry. Accordingly the competent authority has passed the direction vide letter/order No. 2370/BK/Q dated 30th March 2005 and ordered for dismissal of the applicant from service dated 31st March 2005.

4.4 Thus on the basis of above submissions by the respondents in their counter affidavit the key issue which falls for consideration concerns the compliance of the due process of inquiry including the appellate process concerning the appeal against dismissal.

5.0 In order to examine this, it is necessary to first of all recap the process steps in the conduct of a major disciplinary inquiry under Rule-14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'Disciplinary Rules'). The key steps in the inquiry process are accordingly extracted below:

1. *The charged official should be served with a charge-sheet together with a statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charge is proposed to be sustained.*

2. *On receipt of articles of charge, the Government servant shall be required to submit his written statement of defence or whether to be heard in person within 15 days which may be extended to further 15 days at a time up to a maximum of 45 days from the date of receipt of articles of charge.*

3. *Inquiry is a must to consider charges refuted by him. It must be conducted by the Disciplinary Authority or an Inquiry Officer appointed by it. It should also appoint a Presenting Officer to present the charges. It may use the Serving Officers as Inquiry Officer and Presenting Officer.*

4. *The delinquent official has a right: -*

   (a) to inspect documents referred to in the annexure to the charge sheet;

   (b) to engage any other serving or retired Government servant to assist him;

   (c) to engage a legal practitioner, if the Presenting Officer is a legal practitioner. In other cases, the Disciplinary Authority may permit such an engagement, having regard to the circumstances of the case.

5. *If at the inquiry the Government servant pleads guilty to any of the article of charge, the Inquiry Officer should record a finding of guilt in respect of those articles and hold inquiry only in respect of the remaining, if any.*

6. *Government side has the first priority to present the case and produce witnesses and evidence.*

7. *Delinquent official will be allowed to offer his defence witnesses and evidence.*

8. *Witnesses on both sides may be examined, cross-examined and re-examined.*

9. *The defendant may examine himself as a witness in his own behalf, if he so desires. If he has not done so, the Inquiry Officer may generally question him to enable him to properly explain the circumstances cited in the evidence against him.*

10. *Based on a reference from an inquiring authority, seeking the issuance of a notification by the Central Government/Competent Authority under Section 4*

of the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972, the Inquiry Officer is empowered to exercise powers of Civil Court for enforcement of attendance of witness and production of documents.

11. *The Inquiry Officer shall strictly follow the procedures laid down in Rule 14 (18) before closing the Inquiry. Rule 9 of CCS (Pension) Rules also states that the departmental proceedings initiated against a Government servant shall be continued and concluded by the same authority which commenced them.*

12. *Defence may be in writing or oral. Oral defence will be recorded, got signed and a copy supplied to the Presenting Officer.*

13. *Thereafter, Inquiry Officer will hear arguments on both sides or take written briefs from both. Presenting Officer's brief will be taken first, copy thereof supplied to the defendant and his reply brief obtained thereafter.*

14. *Once a regular hearing in a departmental proceeding is started, such hearing should, as far as practicable, be continued on a day-to-day basis, unless in the opinion of the Inquiry Officer, for the reasons to be recorded in writing, an adjournment is unavoidable in the interest of justice.*

15. *Entire proceedings should be recorded in writing, every page to be signed by the respective witness, the defendant and the Inquiry Officer, and copies furnished to the defendant and the Presenting Officer.*

16. *If the delinquent official does not attend, ex parte enquiry may be conducted, observing the procedure in full.*

17. *On completion, the Inquiry Officer will submit his report and his findings on each article of the charges to the Disciplinary Authority.*

18. *The report of the Inquiring Authority should be submitted within six months from the date of receipt of order of his appointment as Inquiring Authority.*

19. *He may seek extension of time by citing reasons in writing and may be allowed an additional time of six months, at a time.*

20. *Disciplinary Authority may accept or disagree (recording reasons for disagreement), record its own findings and make a final order.*

21. *If the Disciplinary Authority who initiated the case is competent to award only minor penalties, and if of the opinion that major penalty is to be imposed, it should send the entire records and findings without recording any opinion*

with regard to the imposition of the penalty to the competent Disciplinary Authority which will record its findings and pass orders as deemed fit.

22. *The Disciplinary Authority should forward a copy of the report of the Inquiring Authority together with its tentative reasons for disagreement, if any, with the findings to the Government servant giving him fifteen days time to take any representation/submission.*

23. *The representation, if any, submitted by the Government servant should be considered before passing final orders*

24. *Along with the final orders, the Government servant should be supplied with-*

    (i) a copy of the findings on each article of charge;

    (ii) a copy of the advice, if any, given by the UPSC.

    (iii) Where the Disciplinary Authority has not accepted the advice, a brief statement of reasons for such non-acceptance.

25. *Disciplinary Authority should take final decision on the enquiry report within 3 months.*

Apart from above, the general directions of the DoPT are that all Ministries/Departments should ensure that all major penalty proceedings against Government servants under their control are completed and final orders are passed by the concerned Disciplinary Authority within 18 months from the date of delivery of charge-sheet on the delinquent Government servant.

6.0 Thus, the key point to be ascertained is whether the respondents have followed the above steps concerning the inquiry process and also what undisputable evidence the applicant presents in support of his contention that the inquiry process is vitiated due to irregularity in process compliance,

undue pressure for recording confessional statements, non-provision of required defence assistant of choice and inadequate opportunity of hearing.

7. For this it would be well that we examine the submissions in the counter as to the compliance of the above steps and processes. A careful examination of the paras 3 to 24, paras 43 to 59 and paras 25 to 27 with respect to the re-hearing of the appeal in compliance of the order dated 15.09.2015 of this Tribunal reveals that the respondents have taken steps to follow the due process in respect of each of the above steps stated above concerning a proper process of a disciplinary inquiry.

8. The denial by the applicant that (i) his statements during the inquiry are not made on free will and are (ii) under pressure or (iii) falsely procured,or (iv) the request for assistance personnel of choice was not provided but another thrust under pressure,are not substantiated by any independent documentary support to enable us to find any such irregularity / illegality by the respondents in the conduct of inquiry process. Mere allegation without any corroborative support except for the naked allegations cannot help the cause of the applicant. In none of the examinations or the cross examinations has the applicant alleged that any or all of the processes were being conducted in the above vitiated manner. In any case if such was the case, the applicant was at free will to not to participate in the process and take appropriate and even judicial recourse which he is doing now. **To say now, therefore, has all the elements of a cock and bull story. It cannot be the case that while the conduct of inquiry was underway, then the applicant-accused would not protest but would wait / had to wait for the**

opportunity to file an OA in the Tribunal or any other court for redressal of the said allegations.

9. Thus as regards the compliance to the due process of inquiry the counter states the following in the said numbered paras:

> *"3. That it is relevant to mention here that in March 2004 a Recruitment Racket came to light and was reported to Commandant, GRRC, Lansdowne, wherein the involvement of the CE, Shri Bimal Kishor and three personnel, namely No. 2684132 Hav/Clk Pradeep K of BRO Lansdowne, No. 4072526F Hav/Clk Suresh Kumar of Records, the Garhwal Rifles, Lansdowne and No. 4081605 Rfn Dinesh Chandra Joshi of 6 Garh RIF came to light. During the preliminary investigations, confessional statement were submitted by Hav/Clk Pradeep K, Rfn Dinesh Chandra Joshi and CE, Shri Bimal Kishor, conservancy Safaiwala.*
> *4. That based on their confessional statements a staff court of inquiry was convened by Headquarters, Uttar Bharat Area (HQ UB Area) to investigate the alleged involvement of above mentioned personnel in the recruiting racket and pin point the responsibility of the lapses of the blame worthy persons.*
> *5. That the court of inquiry was composed of IC 25984N Lt Col N Bohra, of HQ 9 (I) Mtn Bde Gp as the Presiding Officer and IC-5126L Maj Jaiveer Singh and SL-4594X Maj Anil Kandari, both of Uttaranchal Sub Area units as the members.*
> *6. That it is relevant to state here that the above staff court of inquiry recorded the statement of a total of 14 witnesses which included the statement of the CE, Sh. Bimal Kishore, and the three Army personnel allegedly involved in running the recruiting racket, all the civilian boys (prospective candidates for enrolment) who allegedly paid bribes for obtaining enrolment in the Army, besides those authorities of GRRC Lansdowne who carried out the preliminary investigations immediately after the reporting of the incident.*
> *7. That the staff court of inquiry concluded its proceedings by establishing certain findings, based on which, it opined that Hav/Clk Pradeep K of BRO Lansdowne, Hav/Clk Suresh Kumar of records the Garhwal Rifles, Rfn Dinesh Chandra Joshi of 6 Garh RIF and Shri Bimal Kishore, conservancy Safaiwala of GRRC, Lansdowne, are all guilty of active involvement and abetment of running a recruitment racket in Lansdowne. As regards the involvement of No. 4127272X Shri Bimal Kishor, the Court was of the following opinion: -*
> *"No. 4127272X Conservancy Safaiwala Bimal Kishore of GRRC, Lansdowne is quality of demanding and accepting money from candidates assuring them that he will ensure the recruitment in the Army and running a bogus recruitment racket in Lansdowne."*
>
> *8. That based on the opinion of the court of inquiry the convening authority, Maj Gen BW Kelso GOC, UB area directed disciplinary action to be initiated against all the personnel.*
> *9. That based on these directions, a Chargesheet was framed and served upon the CE, Shri Bimal Kishore, by the disciplinary authority Brig. G. Dawal, VSM, Commandant, GRRC vide GRRC letter dated 19th November 2004. The CE*

was also supplied with the copies of all the documents based which he was chargesheeted as also the list of witness who have deposed against him in the staff court of inquiry. He was asked to submit his reply to the Chargesheet within 10 days.

10. That the CE submitted his reply dated 28th Nov. 2004 in which he denied and pleaded "Not Guilty" account of all the charges. Consequently the disciplinary authority appointed IC 39998Y Col Jaswal, Trg Bn Cdr of GRRC Lansdowne as the inquiry officer to inquiry into the charges for which CE pleaded "Not Guilty".

14. That the PO produced a total of seven prosecution witnesses who were examined, their statements recorded where after PO examined them to establish charges and bring about relevant evidence. Opportunity was provided to the CE and DA to cross examine all the witnesses which was also duly recorded. The documentary evidence produced by the prosecution witness was also taken on record, established the identity and correctness of the evidence produced by CE and the duly made part of the enquiry proceeding.

19. That the applicant has submitted an appeal to HQ UB Area, Bareilly against his dismissal from service.

20. That thereafter the GOC UB Area, Bareilly rejected the appeal of applicant vide order dated 3rd October, 2005.

21. That thereafter No. 4127272X Safaiwala Vimal Kishore filed the writ petition No. 1877 (S/S) of 2005 against the Union of India. In the said writ petition the department had filed counter affidavit.

The above submissions make it abundantly clear that the correct inquiry process has been followed.

9.1 As regards the recording of witnesses and adequate opportunity to the applicant to state his side, the following paras are relevant and extracted from the counter as below:

"23. That it is relevant to mention here that the competent authority of department has conducted regular inquiry and provided opportunity to applicant to adduce evidence in his defence and there is no illegality or infirmity in conducting the departmental proceeding. The Inquiry Officer after completing the inquiry proceeding submitted his report on 27.03.2005. The finding of inquiry officer is quoted below: -

In view of the above findings and analysis, the enquiry proceedings have a reasonable basis to conclude the following: -

e) Charge I to V. CE proved guilty on account of these charges.

f) Charge VI. Not proved and therefore CE discharged of the liability of this charge.

g) Charge VII. CE proved guilty of receiving Rs.50,000/- for the enrolment of Sh Rajendra Prasad Joshi S/o Sh Gopal Datt Joshi instead of Rs.15,000/- mentioned in the original charge.

h) Charge VIII. CE proved guilty on account of this charge.

The copy of inquiry report dated 27.03.2005 is being filed herewith and marked as Annexure CR-1 to this counter reply.

25. That thereafter the applicant had filed Original Application No. 218 of 2013 before the Central Administrative Tribunal against the order of dismissal from service for the following reliefs: -

a) Issue a nature of certiorari quashing the impugned direction/orders dated 30.03.2005 (Annexure A-1), dated 31.03.2005 (Annexure A-2), and dated 03.10.2005 (Annexure A-3).

b) Issue a direction to the respondents to grant all the benefit and privileges of continuity of services as if no such orders of the applicant.

26. That the Central Administrative Tribunal, Allahabad after hearing counsel for the parties disposed of the said original application vide order dated 15.09.2015 with the direction to appellate authority to decide the appeal of applicant by passing reasoned and speaking order within a period of 4 months from the receipt of certified copy of order.

27. That thereafter the appellate authority passed the order on the appeal of applicant vide order dated 07.04.2016 whereby rejected the appeal of applicant by reasoned and speaking order. The appellate authority considered the entire material available on record as well as appeal of applicant and has rightly rejected the appeal of applicant. The copy of said order dated 07.04.2016 is already filed by the applicant with the original application.

37. That in reply to the contents of paragraphs 4.8 and 4.9 of the original application it is stated that as per his documentary proof the applicant was 7th passed and he can read, write and understand Hindi language, so the Charge sheet served to him in Hindi language with all relevant documents. On denial of charges the inquiry was insisted. The applicant was given full opportunity to produce any oral/written documentary evidence he wishes to submit in the defence. The applicant requested to produce anything in his defence in writing duly endorsed by defence assistant.

43. That the contents of Paragraphs 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24 and 4.25 of the original application as stated are incorrect hence not admitted and denied and in reply thereto it is stated that the applicant, the Rfn Dinesh Chandra Joshi and his candidates, did not stand the scrutiny of evidence and examination of Umesh and Sohan. As per these witnesses who gave witness on judicial stamp paper on behalf of applicant clearly confined that applicant was at no time pressurized/threatened to write the judicial stamp paper. The witnesses of Shri Umesh and Shri Sohan corroborates the fact that the applicant gave in writing to Rfn Dinesh Chandra Joshi and his candidates that he would return double their money, if applicant was unable to enrol the six boys. In the charge No. 7, applicant himself testifies that he had returned Rs.50,000/- to Shri Rajendra

Prasad, the amount he had received for his enrolment from Rfn Dinesh Chandra Joshi. The applicant had been working with Garhwal House (Comdt's Official residence) for over long 20 years and he had developed friendship to some Army personnel like Hav/Clk Suresh of GRRC. He used his friendship to get acquainted with Hav/Clk Pradeep K of BRO Lansdowne as per his own statement. During the enquiry it has been proved beyond doubt that he has taken money from prosecution witnesses. In December, 2003, the applicant gave in writing on judicial stamp paper that he will return the money to the five prospective candidates if he could not get them enrolled by 26-30 January 2004. On 30 January 2004 when Shri Dinesh Prasad Devrari and Rfn Dinesh Chandra Joshi wanted the applicant to return their money, applicant wrote another judicial stamp paper, duly witnessed by two witnesses Shri Umesh and Shri Sohan who were fellow Safaiwala of the applicant. This time again the applicant sought till 10th February 2004 to return their money. Based on the available documentary evidence and corroborative evidence it can be reasonable presumed that the applicant is lying about the amount and has obtained Rs.2,70,000/- from Shri Vinay Chandra for the enrolment of five to six boys brought by Shri Vinay Chandra thereby indulging in corruption. In March 2004 a Recruitment Racket came o light and was reported to Commandant, GRRC, Lansdowne, wherein the involvement of the CE, Shri Bimal Kishor and three personnel, namely No. 2684132 Hav/Clk Pradeep K of BRO Lansdowne, No. 4072526F Hav/Clk Suresh Kumar of Records, The Garhwal Rifles, Lansdowne and No. 4081605 Rfn Dinesh Chandra Joshi of 6 Garh RIF came to light. During the preliminary investigations, confessional statements were submitted by Hav/Clk Pradeep K, Rfn Dinesh Chandra Joshi and CE, Shri Bimal Kishor, conservancy Safaiwala.

45. That the contents of Paragraphs 4.27, 4.28, 4.29, 4.30, 4.31, 4.32, 4.33, 4.34, 4.35, 4.36, 4.37, 4.38, 4.39 and 4.40 of the original application as stated are incorrect hence not admitted and in reply thereto it is stated that the persons involved in the recruitment racket were also charge sheeted and punished. It is also stated that the applicant was rightly charged under CCS Rule 11 (IV) of 1965 as he is Defence Civilian Employee of GRRC Lansdowne. The applicant and Shri Vinay Chandra are known to each other for over 20 years. Shri Vinay Chandra paid a total Rs.2,70,000/- to the applicant for arranging enrolment of six boys. The applicant wrote a note on a plain paper on 25 Jan 2004 agreeing to return Rs.2,70,000/- to Shri Vinay Chandra by 5 March 2004. The applicant again wrote a judicial stamp paper on 27 January 2004 that he would return the sum of Rs.2,70,000/- to Shri Vinay Kumar by 5 March 2004. The applicant could not bring out any issue during his cross examination of Shri Vinay Chandra, which could be useful for his defence. On being examined by PO and IO, the applicant confirmed having received an amount of Rs.1,00,000/- from Shri Vinay Chandra into instalment of Rs.40,000/- and Rs.60,000/- for enrolment of five boys. The applicant insisted that he was forced by Shri Vinay Chandra to write an amount of Rs.2,70,000/- in a simple note and on agreement written on judicial stamp paper but could not produced any witness to support his stand. The applicant could not satisfactorily explain to the IO that why he wrote Rs.2,70,000/- on two separate occasions when he had taken only Rs.1,00,000/- as per his statement. It is also stated that all the provisions to record the enquiry were invoked by IO hence the allegation against the recording/enquiry officers are baseless. During the inquiry proceedings the inquiry officer had each time informed the presenting officer, charged employee and defence assistant in writing about the adjournment and next assembling of inquiry and duly signed by all concerned through daily order

sheets. During preliminary investigation confessional statement was submitted by the applicant, thereafter a staff court of inquiry was convened by Head Quarter Uttar Bharat Area based on the opinion of the court of inquiry the convening authority directed disciplinary action to be initiated against all the personnel who were found guilty of their respective illegal acts of commission. Based on the directions, a charge sheet was framed and served upon the applicant by the disciplinary authority vide letter dated 19 November 2004. The applicant was also supplied with the copy of all the documents based which he was charge sheeted as also the list of witness who have deposed against him in the staff court of inquiry. On denial of charges by the applicant the disciplinary authority appointed the Inquiry Officer to inquire into the charges for which the applicant pleaded "Not Guilty". The applicant was provided the opportunity to select the defence assistant/ counsel of his choice. Defence Assistant of the applicant choice was made available during entire inquiry proceeding. Full and fair opportunity was provided to the applicant and defence assistant to cross examine all the witnesses which was also duly recorded. The documentary evidence produced by the prosecution witnesses was also taken on record, established the identity and correctness of the evidence produced by the applicant and then duly made part of the inquiry proceedings. Inquiry Officer heard the presenting officer, applicant and defence assistant with respect to all the issues connected with the enquiry and the recruitment racket case. Finally on conclusion of recording all prosecution witnesses, opportunity was given to the applicant and his defence assistant to produce any oral written, documentary evidence they wish to submit in the defence of applicant. He was also afforded opportunity to inform the inquiry officer, if he wishes to produce any defence witnesses in his defence. The applicant refused to produce anything in his defence, in writing duly endorsed by his defence assistant consequently the recording of the enquiry proceedings were closed and inquiry officer proceeds to record his findings and analysis of the enquiry proceedings. On completion of the inquiry report, it was carefully perused by the disciplinary authority. Based on the inquiry proceedings the disciplinary authority passed the direction vide letter/order No. 2370/BK/Q dated 30th March 2005 and order for dismissal from service dated 31st March 2005.

46. That the contents of paragraphs 4.41 to 4.56 of the original application as stated are incorrect hence not admitted and in reply thereto it is stated that all the charges i.e. I to VIII (except charge No. VI) have been proved beyond doubt against the applicant in the inquiry.

***Charge I to V and VII** These are taken and being considered together for the sack of brevity and convinced since the persons mentioned in these charges have paid money to applicant through Rfn Dinesh Chandra Joshi.*

(a) Charge. That during the aforesaid period, No. 4127272X Safaiwala Bimal Kishore while functioning as Safaiwala at Garhwal Rifles Regimental Centre received Rs.55,000/- each from Shri Anusuya Prasad and Shri Devendra Prasad, both sons of Shri Baspa Nand Devrari, Rs.40,000/- from Shri Inderpal S/o Shri Khilap Singh, Rs.45,000/- each from Kedar Datt S/o Shri Bishan Datt and Kishan Chand S/o Shri Hari Datt and Rs.15,000/- from Shri Rajendra Prasad S/o Shri Gopal Datt Joshi for their enrolment in the Army, thereby indulging in corruption.

(b) ***Finding****.*

i) Applicant and Rfn Dinesh Chandra Joshi came in contact while serving in Garhwal House, the official residence of Comdt, GRRC Lansdowne.

ii) Rfn Dinesh Chandra Joshi introduced the six boys to the applicant who confirms knowing all of them personally and fairly well.

iii) Rfn Dinesh Chandra Joshi is most cases except to, collect the money from the boys who were prospective candidate for enrolment in Army and handed over to the applicant. In two instances, applicant collected Rs.10,000/- and Rs.40,000/- directly from Shri Inderpal and Shri Dinesh Prasad Devrari respectively.

iv) During the inquiry it has been established and confirmed by applicant that he had received a sum of Rs.2,85,000/- for the enrolment of Shri Anusuya Prasad, Shri Kedar Datt, Shri Inderpal, Shri Kishan Chand and Shri Rajendra Prasad.

v) Applicant's plea that he was pressurized and threatened into writing the affidavits by the Rfn Dinesh Chandra Joshi and his candidates did not stand the scrutiny of evidence and examination of Shri Umesh and Shri Sohan. As per these witnesses who gave witness on judicial stamp paper on behalf of applicant clearly confirmed that applicant was at no time pressurized and threatened to write the judicial stamp paper. The witnesses of Shri Umesh and Shri Sohan corrorborates the facts that applicant gave in writing to Rfn Dinesh Chandra Joshi and his candidates that he would return double their money, if applicant was unable to enrol the six boys.

vi) In charge No. 7, applicant himself testifies that he had return Rs.50,000/- to Shri Rajendra Prasad, the amount he had received for his enrolment from Rfn Dinesh Chandra Joshi.

vii) Exhibits C & D also established that the applicant had definite role in the recruitment racket.

(c) IO finds that there exists a reasonable nexus between the applicant Shri Bimal Kishore and Rfn Dinesh Chandra Joshi and it can be reasonably inferred from the evidence brought on record, examination of the witnesses and the applicant, the applicant had received Rs.55,000/- each for the enrolment of Shri Anusuya Prasad and Shri Devendra Prasad, Rs.40,000/- from Shri Inderpal, Rs.45,000/- each from Shri Kishan Chand and Shri Kedar Datt and Rs.50,000/- from Shri Rajendra Prasad and therefore indulged in corruption.

CHARGE VIII

(a) Charge. That during the aforesaid period and while functioning in the aforesaid office the No. 4127272X Safaiwala Bimal Kishore had received Rs.2,70,000/- from Shri Vinay Chandra S/o Shri Ramesh for enrolment in Army, thereby indulging in corruption.

*(b) **Finding**. With respect of charge No. VIII Smt. Jayeshwari Devi and Shri Vinay Chandra were examined. Both the witnesses were cross examined by the applicant. According to above examination and cross examination, IO made the following findings : -*

i) ***Smt****. Jayeshwari Devi's testimony cannot be fully relied upon, since most of her statements were based on the information given to her based upon what was told to her, by her son Shri Vinay Chandra. Applicant himself admits to have received a sum of Rs.1,00,000/- for the enrolment of five boys but he has given two notes in writing to Shri Vinay Chandra, PW7, that he would return.*

ii) *Rs.2,70,000/- to them on particular date. There is an infirmity.*

iii) *Applicant could not give any satisfactory reply as to why he gave two documents in writing to Shri Vinay Chandra that he would return his dues of Rs.2,70,000/- if he had received only Rs.1,00,000/- from Shri Vinay Chandra for the enrolment of six boys in the Army.*

(c) In this charge too, IO finds that there exists a very responsible chance to infer that an amount of Rs.2,70,000/- was received by applicant from Shri Vinay Chandra for the enrolment of five to six boys. Some reasons in support of this inference are follows: -

i) In the earlier cases, (Charge I to V and VII) the applicant had charged approximately Rs.45,000/- to Rs.55,000/-. Therefore, it seems quite valid that he would have charged almost the same amount from Shri Vinay Chandra, per individual.

ii) Applicant had given two notes to Shri Vinay Chandra on two separate occasions, but mentioned Rs.2,70,000/- each time, as due to be paid to Shri Vinay Chandra. Applicant has himself admitted receiving Rs.1,00,000/- from Shri Vinay Chandra for arranging enrolment of five to six boys.

(d) Based on the available documentary evidence and corroborative evidence, it can be reasonably presumed that charged employee is lying about the amount and has obtained Rs.2,70,000/- from Shri Vinay Chandra for the enrolment of five to six boys brought by Shri Vinay Chandra, thereby indulging in corruption.

Charge VI

a) Charge. That during the aforesaid period and while functioning in the aforesaid office, the said No. 4127272 Safaiwala Bimal Kishore had received Rs.55,000/- from Harsh Singh Rawat S/o Shri Jitar Singh Rawat for enrolment in the Army, thereby indulging in corruption.

b) ***Findings****: The PO could not produce any evidence or witness in support of this charge even after a considerable lapse of time. In view of this, the charge against the applicant is not proved. Hence, the applicant is discharged of the liability of the charge No. VI.*

47*. That the contents of paragraph 4.57 of the original application as stated are incorrect and hence not admitted and in reply thereto it is stated that after cross examination of witnesses and documentary/corroborative evidence during enquiry the following facts have been proved: -*

(a) Applicant and Rfn Dinesh Chandra Joshi came in contact while serving in Garhwal House, the official residence of Comdt GRRC Lansdowne.

(b) Rfn Dinesh Chandra Joshi introduced the six boys to the applicant who confirms knowing all of them personally and fairly well.

(c) Rfn Dinesh Chandra Joshi in most cases except two, collected the money from the boys who were prospective candidate for enrolment in Army and handed over to the applicant. In two instances, applicant collected Rs10,000/- and Rs.40,000/- directly from Shri Indrpal and Shri Dinesh Prasad Devrari respectively.

(d) During the inquiry it has been established and confirmed by applicant that he had received a sum of Rs.2,85,000/- for the enrolment of Shri Anusuya Prasad, Shri Kedar Datt, Shri Inderpal, Shri Kishan Chaand and Shri Rajendra Prasad. Applicant's plea that he was pressurized and threatened into writing the affidavits by Rfn Dinesh Chandra Joshi and his candidates did not stand the scrutiny of evidence and examination of Shri Umesh and Shri Sohan. As per these witnesses who gave witness on judicial stamp paper on behalf of applicant clearly confirmed that applicant was at no time pressurized and threatened to write the judicial stamp paper. The witnesses of Shri Umesh and Shri Sohan corroborates the facts that applicant gave in writing to Rfn Dinesh Chandra Joshi and his candidates that he would return double their money, if applicant was unable to enrol the six boys.

(e) IO finds that there exists a reasonable nexus between the applicant Shri Bimal Kishore and Rfn Dinesh Chandra Joshi and it can be reasonably inferred from the evidence brought on record, examination of the witnesses and the applicant, the applicant had received Rs.55,000/- each for the enrolment of Shri Anusuya Prasad and Shri Devendra Prasad, Rs.4,01,000/- from Shri Inderpal, Rs.45,000/- each from Shri Kishan Chand and Shri Kedar Datt and Rs.50,000 from Shri Rajendra Prasad and therefore indulged in corruption.

The competent authority has rightly imposed the punishment of dismissal from service against the applicant alleging that since charges have been proved.

48. That the contents of paragraphs 4.58 and 4.59 of the original application are matter of record hence need no comments.

The above submissions are testimony that there was no unethical pressure on the applicant for any confessional statements or there was any attempt to mislead the applicant in any manner with regards to the fair conduct of inquiry.

10. As against above, the applicant has submitted (para4.11 of OA) that he could not have access to the place of recruitment (Garhwal Rifles Recruitment Centre, Lansdowne) which was at a distance from the place of his work viz Garhwal House. This is not acceptable because the two locations are not in different towns and access by physically being able to be present after work hours is not very difficult.

10.1 A number of other grounds are submitted as is evident from the document below:

i'kd]
uEcj 4127272 ,Dl
foey fd"kkj lQkb okyk
Cykd u0 56 boV ykbu
TkhO vkj0 vkj0 lh0 yUlMkuA
Ikf'kr%& ekuuh; deKUMUV] egkn;]
TkhO vkj0 vkj0 lh0 yUlMkuA
Ekgkn;]
ikFkh dk fn; vkjki i= dk fuEu tokc nkf[ky fd;k tkrk gA
1& fd vkjki l[;k 1 xyr g ikFkh dk Lohdkj ugh g fd ikFkh fdlh vulHkk ilkn dk ugh tkurk g u ikFkh }kjk vulHkk ilkn l dkb jde yh g tk fd ccfu;kn gA

2& fd vkjki l[;k 2 xyr gku l Lohdkj ugh gA noUn ilkn }kjk e> dkb jde ugh nh xb u ejk mll dkb okLrk ugh gA

3& fd vkjki l[;k 3 xyr gku l Lohdkj ugh gA e bUniky dk ugh tkurk g] mld }kjk e> dkb Hkh ilk ugh fn;k x;k gA

4& fd vkjki l[;k 4 xyr gku l Lohdkj ugh gA e dnkj nRr dk ugh tkrk g] mld }kjk e> dkb ilk fn;k x;k gA

5& fd vkjki l[;k 5 xyr gku l Lohdkj ugh g e fd"ku pUn dk ugh tkruk g] u Eku mll dkb ilk fy;k gA

6& fd vkjki l[;k 6 xyr gku l Lohdkj ugh gA fd g'k jkor }kjk xyr o ekuh dh xb mld }kjk e> dkb ilk ugh fn;k x;k gA ifjf"k'V l xyr gku l Lohdkj ugh gA

7& fd vkjki i= l[;k 7 xyr gku l Lohdkj ugh g jktUn ilkn }kjk xyr oekuh dh xb g mld }kjk e> dkb ilk ugh fn;k x;k g o xyr vkjkik d lkFk ifjf"k'V n g tk fd xyr gku l Lohdkj ugh gA

8& fd vkjki l[;k 8 xyr gku l Lohdkj ugh g fou; pUn }kjk xyr oekuh dh xb g mld }kjk ikFkh dk dkb ilk ugh fn;k x;k gA

vfrfjDr dFku%&

9& fd vly dFku ;g g fd ikFkh l fou; dekj }kjk [kkyh LVkEi iij e gLrk{kj djok; g o ;g rF; bl ckr l Li'V gk tkrk g fd vkjki l[;k 8 d erkfcd fou; pUn i= je"k dHkh Hkh Qkt e Hkrh gku gr ijh{kk e bl nkjku ugh vk;k o 2]70]000@& l fou; pUn u dgk l fn; g tcfd fou; pUn u gh ikFkh l tku ifgpku dh otg l [kkyh

LgVkEi iij e gLrk{kj o tcjnLrh djok; fd ejk edku oj jgk g o yku d fy; xokgh gr gLrk{kj ek= ejh ifgpku gr dju g blh otg l eu gLrk{kj fd; gA

10& fd fou; pUn tc dHkh Hkrh gku ugh vk;k rk mll il yu dk ;k mld }kjk il D;k fn; tku FkA bll Li'V g fd fou; dekj }kjk gh ikFkh d f[kykQ >Bh lkth"k jph xb gA

11& fd mDr dkb Hkh LVkEi ikFkh }kjk ugh [kjhnk x;k g ftll Li'V g fd ikFkh d f[kykQ >Bh lkftLk jph xb g LVkEi dh [kjhn l gh Li'V gk tk;xk] fd LVkEi e of.kr 0;fDr dnkj mrr] noUn ilkn] vulHkk ilkn] fd"ku pUn bUniky flg d dkb gLrk{kj ,iyhd"ku oh0 ij ugh g u mud }kjk LVkEi [kjhnk x;k g o u ikFkh }kjk LVkEi dh [kjhn dh xb gA ftll Li'V g fd ikFkh d f[kykQ ;g lkft"k LVkEi [kjhnu oky 0;fDr }kjk dh xb gA

12& fd LVkEi v] o] l] rhuk e fdlh Hkh rjg ikFkh dk dkb lEcU/k ugh g fd LVkEi v ij Hkh fdlh dh dkb jde ugh fy[kh g u ;g ckr dgh fy[kh g fd ikFkh }kjk dkb jde luk e Hkrh dju gr yh xb g tk fd :VlEo dh fyf[kr g og Hkh ikFkh }kjk ugh fy[kh xb gA mDr LVkEi dh fy[kr fdlh Hkh rjg o/kkfud ugh g tk bll Li'V gkrk g fd LVkEi v e fy[kk g fd ;fn ilk okil ugh d:xk rk e o xokg l tk gdnku g bll Li'V g fd mDr rhuk LVkEi ikFkh d f[kykQ g fd mDr rhuk LVkEi ikFkh d f[kykQ Qth r;kj fd; x; gA

13& fd ;fn mDr vkjki l[;k 1 l 8 rd d fdlh 0;fDr }kjk dkb ilk ikFkh dk fn;k gkrk rk mld ikl LVkEi d jde o fdl gr fn;k g ;k Li'V :lk l j"khn gkrh yfdu fdlh Hkh LVkEi e fdlh 0;fDr dh jde dk mYy[k u gku l o c o l LVkEi ij mDr 0;lfDr;k d gLrk{kj u gku l ikFkh d f[kykQ vkjki fujLr dju ;kX; gA

14& fd ikFkh ij yxk; x; vkjki Li'V u gku l o vkjki l[;k 1 yxk;r 8 e dc o fdl frfFk o le; dk fooj.k u gku l fujLr fd; tku ;kX; gA

15& fd ifjf"k'V n e Hkh ikFkh dk dkb jde nu ckor ugh fy[kk g o ikFkh dk cotg Qlku d fy;k uke fy[kk g tcfd ikFkh jktUn flg dk ugh igpkurk gA

16& fd ifjf"k'V n e Li'V fy[k g fd jkbQy eu fnu"k pUn tk"kh }kjk ilk fy;k x;k o viuh "kknh e [kp fd;k x;k gA

17& fd ej }kjk g'k jkor l dkb ilk ugh fy;k x;k g u dkb dky yVj ml fn;k x;k ikFkh d f[kykQ xyr oekuh dh xb gA

18& fd ikFkh dk fou; pUn i= Jh je"k }kjk jft"ku Qlk;k x;k g fou; pUn }kjk viu Hkou dk fuek.k fd;k o 2]27]000@& :0 nu okor fy[kk g tcfd mDr jde dgk l fou; pUn d ikl vkb D;k ukdjh og djrk g o t cog [kn Hkrh d fy; dHkh Hkh vih;j ugh gvk bl fLFkfr e mldh fjikV o Qth LVkEi d vk/kkj ij dkb vkjki iFke n'V;k Hkh lkfcr ugh gkrk gA

19& fd ikFkh 0;fDrxr :ll tkp dk; e mifLFkr jguk pkgrk gA

vrh egkn; l fuonu g fd mDr Li'Vhdj.k d e/;utj ikFkh dk fuyEcj vkn"k nuked 19&11&04 fujLr dj dk; ij cgky dju dh dik dh tk;A

fnukd 28&11&2004

ikFkh

foey fd"kkj

uEcj 4127272

lQkb okyk

10.2 We need to examine them for what they are worth. Thus, it is submitted (para4.13 of OA) that the imputation of charges (Prapatra-II) component of the charge sheet was not as per proforma as it is a repetition of the said Prapatra-I. This is also not correct because as per Rule-14(3)(i) and 14(3)(ii) of the disciplinary rules, there is no bar on the same ie similar material being contained in the Articles of Charge and Statement of imputations. That as regards the submission that Prapatra-III concerning the list of documents only the list of Schedules was given and no documents were given per se, does not hold water at this stage, because the applicant should have asked for the same if they were not supplied and there is no evidence submitted by way of record regarding demand for the same. More importantly an examination of the letter dated 18.05.2005 (page 123 of OA: Anenxure-4) reveals that it is not seeking these schedules and is incidentally written in English though signed by the applicant in Hindi name and is seeking copies of order sheets etc. Therefore, now after full completion of the inquiry including the appellate stage, the applicant turn-around and start pointing out gap for removal of which there was ample prior opportunity as per felt need. There is not a single letter or paper to show that any further documents were asked for by the applicant. So, the denial at this stage is without any corroborative proof and a one-sided after-thought.

10.3 It is further submitted in para4.14 that the list of witnesses did not have complete addresses of the witnesses which prevented the applicant to be able to verify the said witnesses. This point is also not acceptable because the said witnesses were examined during the course of enquiry and there is

nothing on record to show that the applicant was prejudiced during such examinations / cross examinations of the witnesses which were admittedly face to face and so there was no handicap on account of the said lack of addresses.

10.4 The applicant had opportunity to examine/cross examine the said witnesses during the course of inquiry and so the allegation becomes infructuous and facile. The charge sheet is in Hindi language and the applicant is class 7th pass as per respondents while the applicant states that he is illiterate. This statement of the applicant is uncorroborated and he has not challenged the educational status by any matching document.

10.5 In para 4.17 of OA it is alleged that one Vinay Kumar got his signatures on a blank piece of paper (also stated in Annexure-3, para-9 – letter dated 28.11.2004). In this connection, it is not made clear by the applicant as to why did he sign on blank piece of paper. Therefore, how can the same be accepted by a mere statement in the OA. Similar allegations of the respondents having got signatures of the applicant on blank paper on some loan pretext is again not corroborated except for a mere statement in the OA. Therefore, this cannot be held forth.

10.6 It is further alleged that defence assistant of choice was not provided and in proof of same a document letter is filed as Annexure-7 (page 107 of OA) in which names of four officers are stated, namely: Majors Deepchand and D Arjuna, Lt Col SK Nanda and one Supply OC (exact name not specified).

For clarity the concerned letter is reproduced below for ready reference:

lok e]

Jheku ekuuh; dekUMV lkgc

Xk<oky jkbQY l jfteUVy

lUVj yUlh Mku ¼x<oky½

ikMh x<oky ¼mRrjkUpy½

d }kjkh& DokVj ekLVj lkgc

fo'k;& foHkkx d ikIrkd l[;k 23701031B.K.D;@fnlEcj 2004 l lEcfU/kr ikFkuk i= vxlj

egkn;% lfou; fuonu bl idkj l g fd vkid ikUrkd l[;k 23701031B.K.D;@fnlEcj 2004 d lUnHk e ikFkh dh ikFkuk bl idkj l g] fd ikFkh dk tk fMikVeUV dh vkj l fMQUl nu dh lfo/kk idku dh tk jgh g rk ikFkh dk fuEu vQlj nu dh dik dh tk; vxj fuEu 0;fDr viuh jtkeUnh l ejk d dk fMQgUl ugh djuk pkgr g rk e>g ckgj l fMQUl yku dh btktr feyuh pkfg, o lkFk gh lkFk e> ej fMQUl dk dl dk gkftj dju o le>ku gr 5 fnu dk Vkbe Hkh nu dh vuefr inku dj ¼/kU;okn½

fuEu 0;fDr;k ek e viuk fMQUl djuk pkgrk gA

1& llykb vk lh ikFkh foEky fd"kkj

2& etj nhi pUnerh foey fd"kkj

3& etj Mh- vtuk lQkb okyk

4& y-duy ,l- d- uUnk lUVj

flQkfj"k dh tkrh g flQkfj"k ugh dh tkrh

It is not clear as to why these high-ranking officials denied to assist applicant in the conduct of the disciplinary proceedings and there is no consent or concurrence from their side to appear on behalf of applicant or assist him in the said disciplinary proceedings. Therefore, the contention of the applicant cannot be corroborated as to non-supply of the requested persons for assisting him as defence assistant in the course of inquiry. If the applicant was truly confident and needy of the said officer (or any one of them) then there should have been something to show that any one of them is ready or for that matter the respondents have refused to make them available for the said assistance to the applicant.

10.7 Similarly, there is no corroborative evidence to the claim of the applicant with regards to having no knowledge as to what has been recorded and written on the stamp papers recording evidence of the applicant and there is nothing to show that the stamp papers are forged or fraudulent as alleged by the applicant (para 4.17 of OA and Annexure-3).It is inconceivable that the entire army machinery starting from the Major General (Appellate Authority) and down to the Disciplinary Authority, anofficer of the rank of Brigadier (Commandant Garhwal Rifles Regimental Centre) would band together against a lowly paid employee such as the applicant and a few other army personnel of equally bottom ranks to save their faces. There is no other inquiry which would corroborate the need for such defensive course of action by such responsible officers of the Indian Army. The army personnel have also been court-martialled separately as per law. Hence also there is no single-minded bias against the applicant being a civilian employee.

11.0 In any case, the defining feature of any disciplinary proceeding under CCS (CCA) Rules 1965 is that the courts are not required to go into evidence appreciation and the rules of appreciation of evidence / corroboration of evidence are more towards establishing a preponderance of an offence rather than a beyond doubt proof as required in a criminal proceeding. Further that it is no longer *res integara* as to the terms of interference by the courts in any disciplinary proceedings. Here also there is a galaxy of citations of the Hon Apex Court which caution against unjusticiable interference in the disciplinary proceedings. We would do well to examine some of them.

11.1 Thus in the matter of **Major U.R. Bhatt v Union of India, AIR 1962 SC 1344, p. 1347,** it has been held that the enquiry officer is not bound by the strict rules of the law of evidence and when the appellant declined to take part in the proceedings and failed to remain present, it was open to the Enquiry Officer to proceed on the materials which were placed before him.

11.2 Similarly in State of Orissa and another v Murlidhar Jena, AIR 1963 SC 404 it has been held that Enquiry held by the Tribunal is not governed by the strict and technical rules of the Evidence Act, Rule 7 (2) of the relevant rules provides that in conducting the enquiry the Tribunal shall be guided by rules of equity and natural justice and shall not be bound by formal rules relating to procedure and evidence.

11.3 Then again in **the matter of Union of India v Sardar Bahadur, 1972 SLR 355, p.360** it has been held that the in a disciplinary proceedings is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. Again in the matter of **K.L. Shinde v State of Mysore, 1976 (2) SLR 102, p.105,** it has been held that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required.

11.4 Then again in the matter of **State of Haryana v Rattan Singh, 1977 (1) SLR 750, p.751** the Hon Apex Court has held that –

> *"..it is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunal must be careful in evaluating such material and should not glibly swallow what is strict speaking not relevant under the Indian Evidence Act…"*

11.5 The Hon Apex court in the matter of **Nand Kishore Prasad v State of Bihar, 1978 (2) SLR 46, p.50 has unequivocally held that –**

> ***"..if** the disciplinary enquiry has been conducted fairly without bias or predilection, in accordance with the relevant disciplinary rules and the constitutional provisions, the order passed by such authority cannot be interfered with in proceedings under article 226 of the Constitution, merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial..".*

11.6 Then again in the matter of **Naresh Govind Vaze v Government of Maharashtra, 2007(13) Scale 671 it was held that** it is now a well-settled principle of law that the Enquiry Officer appointed to enquire into the charges levelled against a delinquent Officer is neither a court nor the provisions of Evidence Act are applicable.

11.7 Similarly it has been held in **Vijay Kumar Nigam (Dead) Through Lrs. v State of M.P., 1997 SCC (L&S) 489, at p.490** that the evidence recorded in the departmental enquiry *stricto sensu* is not evidence as per the provisions of the Evidence Act, 1872.

11.8 We have the case of **Workmen of Balmadies Estates v Management Balmadies Estates, 2008 (3) SCC 264** in which the Hon Apex Court has held that –

> *"..the assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a Civil Court could do when a lis is brought before it. The Indian Evidence Act, 1872 is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. In a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility. Confessional evidence and circumstantial evidence, despite lack of any direct evidence, is sufficient to hold the delinquent guilty of misconduct and to justify the order of termination that had been passed.*

11.9 We also have the matter of **Usha Breco Mazdoor Sangh vs Management of Usha Breco Ltd., 2008 (3) SCC 52 in which it is held that-**

> ***"…****before a departmental proceeding, the standard of proof is not that the misconduct must be proved beyond all reasonable doubt but the standard of proof is as to whether the test of pre-ponderance of probability has been met. The approach of the Labour Court appeared to be that the standard of proof on the Management was very high. When both the parties had adduced evidence, the Labour Court should have borne in mind that the onus of proof loses all its significance for all practical purpose.*

11.10 Similarly it has been held that in the matter of **K.L. Shinde v State of Mysore, 1976 SLJ 468, p. 471 that**

> ***"…****neither the High Court nor the Supreme Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which the Supreme Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof if required.*

11.11 In the matter of**Secretary to Govt. Home Deptt v Srivaikundathan, 1998 (9) SCC 553**matter concerned Tamil Nadu Administrative Tribunal which had apparently re-examined the entire evidence which was led before the Enquiry Officer and had come to the conclusion that the enquiry officer erred in holding the respondent guilty without examining the exact role of the respondent in respect of the escape of the prisoner. It was thereupon held that-

> *"…theTribunal was not sitting in appeal over the findings of the Enquiry Officer, nor was the Tribunal required to examine the nature of the evidence which was led as if it were a criminal trial. Unless the findings were perverse, or unless it was found that there was no evidence whatsoever before the Enquiry Officer, the*

Tribunal could not have set aside the findings of the Enquiry Officer merely by expressing dissatisfaction with the evidence which was led. In the present case, there was clear evidence pointing to the guilt of the two employees who had not merely allowed the prisoner who was entrusted to their custody to escape, but had also lodged a false complaint in that connection. The Tribunal was not justified in setting aside the findings of the Enquiry Officer and remitting the matter as it did.

11.12 In a petition **Bhagat Ram v State of Himachal Pradesh, 1983 (1) SLR 626, p. 633, 634** under article 226 it was held by the Hon Apex Court that the High Court does not function as a court of appeal over the finding of disciplinary authority. In the matter of **Government of Tamil Nadu v A. Rajapandian, 1994 (5) SLR 745, pp. 746, 748** the Hon Apex Court held that

"We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in re-appreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority.

The Administrative Tribunal reached different conclusions from the inquiring authority on its own evaluation of the evidence. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. It is not necessary for us to go into the merits of appreciation of evidence by the two authorities because we are of the view that the Administrative Tribunal had no jurisdiction to sit as an appellate authority over the findings of the inquiring authority…"

12.0 The scope of judicial review has been further delineated in another set of citations of the Hon Apex Court.

12.1 Thus in the matter of **Kuldeep Singh v Commissioner of Police, 1999 (3) SLJ 111, at pp. 113, 114**it has been held that

"..It is no doubt true that the High Court under Article 226 or the Supreme court under article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. Normally the High Court and the Supreme Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

12.2 In the matter of**Yoginath B Bagde v State of Maharashtra, 1999 (7) SCC731 it has been held that -**

"..*Although the Court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstances can the Court interfere. It was observed that the power of judicial review available to a High Court as also to the Supreme Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were such as could not have been reached by an ordinary prudent man or the findings were perverse.*

12.3 Then again in the matter of **Sub-Divisional Officer, Konch v Maharaj Singh, 2003 (9) SCC 191** concerning anEnquiry report and Judicial review thereof by of reappreciation of evidence, it was held that –

"… a *bare perusal of the order makes it crystal clear that the High Court in exercise of its jurisdiction under article 226 has reappreciated the entire evidence, gone into the question of burden of proof and onus of proof and ultimately did not agree with the conclusion arrived at by the enquiring officer, which conclusion was upheld by the disciplinary authority as well as the U.P. Public Service Tribunal. The jurisdiction of the High Court under article 226 is a supervisory one and not an appellate one, and as such the court would not be justified in*

reappreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority. In the aforesaid premises, the High Court exceeded its jurisdiction under article 226 in interfering with the findings arrived at by the enquiring authority by reappreciation of the evidence adduced before the said enquiring authority. The impugned order of the High Court set aside…"

12.4 Then again in the matter of **State of Andhra Pradesh v S. Sree Ram Rao, AIR 1963 SC 1723, p.1726, 1727** it has been held quite unequivocally that the-

***"…**HighCourt is not constituted in a proceeding under article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence, may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant consideration or where the conclusion on the very face of it is no wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceedings for a writ under article 226 of the Constitution…"*

12.5 Similarly **inState of Orissa v Muralidhar, AIR 1963 SC 404, p.405** it has been held that

"..in proceedings under articles 226 and 227 the High Court cannot sit in appeal over the findings recorded by a competent tribunal in departmental enquiry. So logically this Tribunal is also barred from intervention in such findings as has been made out in the instant OA…"

Then again in the matter of **State of Madras v G. Sundaram, AIR 1965 SC 1103, p. 1105 it has been held by the Hon Apex Court that –it is stated that –**

> ***"..****It is well settled now that a High Court in the exercise of its jurisdiction under article 226 of the Constitution, cannot sit in appeal over the finding of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence…*"

12.6 Again, in the matter of **State of Madras v G. Sundaram, AIR 1965 SC 1103 P. 1105 it was held that –**

> ***"..****the High Court was not competent to consider the question whether the evidence before the Tribunal and the Government was insufficient or unreliable to establish the charge against the respondent. It could have considered only the fact whether there was any evidence at all, which, if believed by the Tribunal, would establish the charge against the respondent. Adequacy of that evidence to sustain the charge is not a question before the High Court when exercising its jurisdiction under article 226 of the Constitution.*

Similarly in the matter of **Kshirode Behari Chakravarty v Union of India, 1970 SLR 321, p. 323 it has been held that –**

"..*If the enquiry is not vitiated on the ground of any procedural irregularity the Court is not concerned to decide whether the evidence justified the order…"*

In **Union of India v Sardar Bahadur, 1972 SLR 355, p. 360, i**t was held that-

> *"..Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the office is guilty, it is not the function of the High Court exercising its jurisdiction under article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.*

In B.C. Chaturvedi v Union of India and others, 1995 SCC (L&S) 80 it is held that-

> *"..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…"*

In **State of Tamil Nadu v Thiru K.V. Perumal, 1996 (4) SLR 603, at p.604**it is held that-

"…*It is not the province of the Tribunal to go into the truth or otherwise of the charges and the Tribunal is not an appellate authority over the departmental authorities…"*

12.7 Similarly in**State of T.N. v S. Subramaniam, (1996) 7 SCC 509, at pp. 511-512, B.C. Chaturvedi v Union of India, (1995) 6 SCC 749, Referred to State of T.N. v T.V. Venugopalan, (1994) 6 SCC 302; Union of India v Upendra Singh, (1994) 3 SCC 357; Govt. of T.N. v A. Rajapandian, (1995) 1 SCC 216 it has been held that -**

> *"…The Tribunal is not a court of appeal. The power of judicial review of the High Court under article 226 of the Constitution of India was taken away by the power under article 323-A and invested the same in the Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and come to its own conclusion on the proof of the charge. The only consideration the*

Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

12.8 In the matter of **Indian Oil Corporation Ltd. v Ashok Kumar Arora, 1997 SCC (L&S) 636, at p.641; State of A.P. v S. Sree Rama Rao, (1964) 3 SCR 25; State of A.P. v Chitra Venkata Rao, (1975) 2 SCC 557; Corpn. of the City of Nagpur v Ramchandra, (1981) 2 SCC 714 and Nelson Motis v Union of India, (1992) 4 SCC 711,** it was held that -

***"..**The High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited, for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee.*

Similarly, in the matter of **Rae Bareli Kshetriya Gramin Bank v Bhola Nath Singh, 1997 (3) SCC 657**it was held that -

***"..**The Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a Court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority.*

HELD: Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained.

13. Another key issue in the instant case could be of the extent of punishment, viz termination in the matter inquired into. On this the Hon

Apex Court has held that Courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering. That in every case of imposing a punishment of removal or dismissal from service, a High Court can modify such punishment merely saying that it is shockingly disproportionate. Normally, the punishment imposed by disciplinary authority should not be disturbed by High Court or Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to the maintained, and the department/establishment in which the concerned delinquent person works.

14. The power of judicial review of the High Court under article 226 of the Constitution of India was taken away by the power under article 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate (authority) on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary

proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

High Court of Judicature at Bombay through its Registrar v Udaysingh, 1997 (5) Supreme 123: AIR 1997 SC 2286, B.C. Chaturvedi v Union of India, 1995 (6) SCC 749, State of Tamil Nadu v T.V. Venugopalan, JT 1994 (5) SC 337, Union of India v Upendra Singh, JT 1994 (1) SC 658 and Government of Tamil Nadu v A. Rajapandian, JT 1994 (7) SC 492

15. Thus, it may be seen that Disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt and the Tribunal would err if it goes into appreciating the evidence beyond a rational limit as set out in the citations above. Inter alia it is also clear that the strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that

the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of *mala fides* or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like as appellate and so the Courts have very little jurisdiction if the findings of the enquiry officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of the natural justice. In the instant matter we find as discussed above enough evidence to support the contention of the Enquiry Officer in the Enquiry Report. Therefore there cannot be any case for interference by this Tribunal in the said findings.

16. Another angle that we have examined is the one of **bias as contented by the applicant. On the issue of bias**, there are a number of citations of the Hon Apex Court.

16.1 Thus, in the matter of **S. Parthasarathi v State of Andhra Pradesh, 1974 (1) SLR 427, p.432**it has been held that –

> *"..there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision..."*

16.2 In the matter of **A.K. Kraipak v Union of India, 1969 SLR 445, p.452**it has been held that

> ***"..****A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias the courts have to take into consideration human probabilities and ordinary course of human conduct…"*

Similarly, in the matter of **Kamini Kumar Das Choudhury v State of West Bengal, 1972 Lab. IC 1270, pp. 1274** it has been held that

> *"..The questions whether there was bias, ill-will, mala fides, or a due opportunity to be heard or to produce evidence given in the course of departmental proceedings, are so largely questions of fact that it is difficult to decide them merely on conflicting assertions made by affidavits given by the two sides.*
>
> *In the instant case the Writ Petition could have been dismissed on the ground that it is not the practice of courts to decide such disputed questions of fact in proceedings under article 226 of the Constitution. Other proceedings are more appropriate for a just and proper decision of such questions…"*

In the matter of **S. Parthasarthi v State of Andhra Pradesh, 1974 (1) SLR 427, P. 431, and** Ranjit Thakur v Union of India, 1989(1) SLJ 109, p. 114it has been held that surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision.

Thus, on the issue of bias as contented by the applicant, we have to understand that the test of real likelihood of bias is whether a reasonable

person, in possession of relevant information, would have thought that bias was likely. There is no undisputed evidence presented by the applicant to this effect. Therefore we find it difficult to agree to the view of the applicant that such officers ranging from the Major General to the Brigadier, the Lt Colonel were all biased to crush him on flimsy made up grounds.

17. In conclusion therefore after a reasonably in-depth examination over 40 pages of the plea of the applicant that there has been injustice against him in the said inquiry and punishment thereof, we are not able to convince ourselves of any contention of injustice. As Aristotle has said – " Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all". We in our lengthy discourse have tried to do justice. Therefore, the plea for quashing of the inquiry and the consequential punishment is not sustainable as per foregoing discussions and is liable to fail and fails. The OA is liable to be dismissed and is dismissed.

18. No costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/M.M/