

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA**

**LIBRARY**

O.A./351/1928/ 2018



**Coram :** Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. Tarun Shridhar, Administrative Member

Shri S. Koteswar Rao,  
Aged about 43 years,  
S/o late S. Chandraiah,  
Ex-HC 2069 (Driver),  
A&N Police Department,  
Andaman & Nicobar Islands,  
Port Blair.

..... Applicant.

**Versus**

1. The Union of India,  
Through the Secretary,  
Ministry of Home Affairs,  
Jaisalmer House, 26,  
Mansingh Road,  
New Delhi – 111 001.
2. The Lt. Governor,  
Raj Niwas, Kamraj Road,  
A & N Islands,  
Port Blair.
3. The Director General Police,  
Police Head Quarter,  
A&N Police, A&N Islands,  
Atlanta Point, Port Blair.
4. The Superintendent of Police (AP),  
Andaman & Nicobar Islands,  
South Andaman District,  
Port Blair.
5. The Deputy Superintendent of Police (HQ),  
A&N Police, A&N Islands,  
Atlanta Point, Port Blair.

..... Respondents.

For the applicant : Ms. A. Nag, Counsel  
For the respondents : Mr. K. Rao, Counsel

Date of Order : 21.4.2021

**ORDER**

Per : Bidisha Banerjee, Judicial Member

The applicant in his second journey to this Tribunal has sought for the following reliefs:

"8.a) An order / orders / quashing / setting aside the order dated 14.08.2018 passed by the respondent authorities whereby the respondent authorities rejected the appeal filed by the applicant.

b) An order / orders / quashing / setting aside the order dated 18.02.2016 passed by the disciplinary authority whereby the disciplinary authority dismissed the applicant from service and order dated 15.07.2016 passed by the appellate authority confirming the punishment imposed upon the applicant.

c) An order / orders / quashing / setting aside the order dated 18.02.2016 & 15.07.2016 passed by the disciplinary authority and appellate authority.

d) An order / orders / quashing / setting aside the Memorandum dated 25.02.2015 issued by the disciplinary authority to the applicant whereby disciplinary authority levied the charges upon him.

e) An order / orders / direction / directing the respondent authorities to reinstate the applicant into service with all monitorial and consequential benefits.

f) An order / orders / direction / directions directing the respondent authorities to act in accordance with law.

g) An Order to issue directing the respondents to produce the records of the case before this Hon'ble Tribunal so that conscientiable justice may be done.

h) Costs and incidentals of the application may be awarded to the applicant.

i) Such other or further order direction or directions, as your lordships deem fit and proper in the interest of justice."

2. The admitted facts:

The applicant Shri S. Koteswar Rao, Ex-HC (Driver)/ 2069 of A & N Police while posted at Police Line, Port Blair was arrested on 16/10/2014 in connection with Crime No. 272/2014 dated 22/09/2014, under Section 457/380 IPC of Police

Station, Aberdeen. He was produced before the Court of Chief Judicial Magistrate, Port Blair, from where, he was remanded to Judicial Custody.

Following his arrest he was placed under deemed suspension from the date of his arrest i.e. from 16/10/2014 vide Order Book No. 101 dated 21/10/2014.

A preliminary enquiry was ordered to be conducted by Shri. Michael Raj, Deputy Superintendent of Police (AP) vide Memorandum No. DE/PHQ/2014/401 dated 27/10/2014.

After collection of relevant documents and recording statements of witnesses, Preliminary Enquiry Report was submitted on 02/01/2015.

On the basis of the Preliminary Enquiry report, a Departmental Enquiry was initiated against the applicant vide Memorandum No. SP(AP)/DE-01/2015/65 dated 25/02/2015.

The gravamen of indictments were -

*"That HC(Dvr)/2069 S. Koteswar Rao (U/S) while posted at Police Line (AP) was involved in a case of theft of Government property at his place of posting i.e. Police Lines. He breached the trust reposed in him as a member of the uniformed force. He was later arrested in case vide Cr. No. 272/14 dated 22/09/2014 u/s 457/380 IPC registered at PS Aberdeen.*

*That such act of theft of Government property being a member of Police force, amounts grave misconduct, betrayal of trust and subversion of discipline on his part, which is in contravention of the mandatory provisions under rules 8.45, 8.46 and 8.47 of A & N Police Manual, 1963 which renders*

*him unfit and unbecoming a member of uniformed Police Force and makes him liable for punishment under rule 9.3 of said Manual."*

The Enquiry Officer Shri. Prabhakar Singh, Inspector (PMT) submitted his findings on 24/04/2015 by holding that the charge framed against the applicant herein could not be substantiated as the evidences collected during the Departmental Enquiry were insufficient.

Disagreeing with the findings of the Enquiry Officer, the Disciplinary Authority (Superintendent of Police/AP), after recording his own findings had issued a Memorandum of disagreement to the applicant with an opportunity to submit his written reply vide Memorandum No. SP(AP)/DE-01/2015/306 dated 31/07/2015.

The applicant submitted his written reply to the said Memorandum dated 31/07/2015 on 10/08/2015 stating therein that the principle of 'preponderance of probability' can only be applied, when the basic facts are proved. He also prayed for leniency citing dependency of his family members including his parents upon him.

The Disciplinary Authority issued a Show Cause Notice upon the applicant proposing the penalty of 'dismissal from service.'

The applicant submitted an application dated 29/09/2015 requesting therein to extend 10 days time for preparing and furnishing reply to the said SCN vide No. SP(AP)DE-01/2015/372 dated 15/09/2015 and submitted his written reply dated 15/09/2015 on 06/10/2015.

The Disciplinary Authority confirmed the proposed penalty of 'dismissal from service' vide Order Book No. 506 dated 18/02/2016.

The applicant challenged the said order dated 18/02/2016 by filing an appeal before the Appellate Authority ( Director General of Police, A & N Islands ) on 07/03/2016.

The Appellate Authority dismissed his appeal vide Order Book No. 2265 dated 15/07/2016.

Challenging the entire proceedings the applicant preferred an Original Application before this Tribunal being O.A. No. 351/0127/2016-(Shri S. Koteswar Rao -Vs- Union of India & others).

It was disposed of by this Tribunal on 22/06/2018 with the following observations/ directions:- (extracted with supplied emphasis for clarity).

*"Hence, we are of the considered view that the conclusions in the Disciplinary Proceedings are to be arrived at on the basis of adequate and objective evidence and no hearsay or confession. Consequently, we deem it fit and remand the matter back to the Appellate Authority in this regard who will arrive at a final decision by weighing the evidence accurately and objectively and directing the Disciplinary Authority appropriately in this regard.*

*The Appellate Authority should pass final orders within six weeks from the date of receipt of the copy of this order. In the interim period, as the applicant has already been dismissed from service, service benefits, if any, will rely on the final orders of the Appellate Authority."*

Consequently, the Appellate Authority (Director General of Police, A & N Islands) passed its final order upholding the order passed by the Disciplinary Authority on 14/08/2018.



Aggrieved over the same the applicant has preferred this O.A.

3. The main grounds of challenge inter alia:

(i) The Memorandum dated 25.02.2015 issued by the disciplinary authority to the applicant whereby disciplinary authority levied the charges upon him is bad both in law and facts.

(ii) The order dated 18.02.2016 passed by the disciplinary authority whereby the disciplinary authority dismissed the applicant from service and order dated 15.07.2016 passed by the appellate authority confirming the punishment imposed upon the applicant are bad both in law and facts.

(iii) The order of the Director General of Police is apparently unsustainable in the eye of law because the Learned Tribunal has already held that the evidence of Mithun Kirtonia cannot be relied upon.

(iv) The Director General of Police failed to consider that it is the prosecution who has to prove the case and not the delinquent.

(v) The Director General of Police wrongly held that PW-2 & PW-4 has deposed against the delinquent.

(vi) The Director General of Police believed the version of SI Mithun Kirtonia and M.A. Rasheed whereas neither of them deposed against the delinquent in respect of the alleged offence.

(vii) The Director General of Police failed to consider that Mithun Kirtonia deposed that delinquent has committed the theft and he relied upon the fact that delinquent admitted his guilt at the time of investigation; whereas no such statement of delinquent was placed before the authorities.

(viii) The disciplinary authority relied upon the alleged admission of the applicant before a Police personnel which is inadmissible in the eye of law.

(ix) Section 25 and 26 of the evidence Act, 1872 was totally ignored by the authorities whereas the application of the said Act is not disputed.

(x) Neither the disciplinary authority nor the appellate authority considered that the applicant never admitted his guilt and Mithun Kirtonia's statement has no value in the eye of law.

(xi) The disciplinary authority and appellate authority wrongly applied the principle of preponderance of probabilities as in no probability it can be said that an illegal admission which was not proved can be relied upon by the authorities to dismiss the employee.

4. The Ld. Counsel for the applicant, at hearing would canvass the following glaring omissions of the proceedings:

(i) That the purported confession of the applicant was recorded by Dy S.P. M. Raj, who was never cited as a witness, hence not allowed to be cross examined at enquiry, which amounts to denial of a fair hearing.

(ii) The purported statement of Mithun Kirtonia was also recorded by the Dy S.P. but Mithun Kirtonia was never produced as a witness to be cross examined, which is a procedural flaw.

(iii) No articles were seized from the applicant, therefore there was no reason to suspect him.

(iv) The Sections 25 & 26 of Evidence Act envisage as under:

**"25. Confession to police officer not to be proved.** – No confession made to a police officer shall be proved as against a person accused of any offence.

It settled law that,



"Section 25 makes confessional statement of accused before police officers inadmissible as evidence which cannot be brought on record by prosecution to obtain conviction; *Ram Singh v. Central Bureau of Narcotics*, AIR 2011 SC 2490; (2011) 11 SCC 347; (2011) 6 SCALE 243; 2011 Cr LJ 3579."

**Under S. 26. Confession by accused while in custody of police not to be proved against him.** – No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate shall be proved as against such person."

5. In the earlier O.A., this Tribunal noted the following and held as under:

In the earlier round the Tribunal noted the Findings of the IO as under:

"During the course of inquiry all the listed documents and 05 witnesses (out of 06) have been examined and exhibited. Note the prosecution witness supports the charges framed against the Charge Officer HC (Dvr)/2069 S. Koteswar Rao (U/S) in the Memorandum No. SP(AP)/ DE 01/2015/65 dated 25<sup>th</sup> February, 2015 of the charges. In the FIR filed by the IO (PW02) did not mentioned the name of Charge Officer. During the course of the investigation, the IO (PW-02) recovered the missing / stolen cash box of Regimental funds of A&N Police from drain near the command room of Police Line and entire cash was found intact. During the Inquiry of the above refer case, IO (PW-02) did not recover anything incriminating articles/documents from the possession of the CO and also did not obtain the CFSL report. Any decision regarding the involvement of the charged officer at this stage in the charge of theft shall abide by the result of the CFSL report.

During an inquiry, no evidence could be gathered against the Charge Officer to prove his charges framed against him in the Memorandum No. SP(AP)/ DE-01/2015/65 dated 25<sup>th</sup> February, 2015."

It observed:

"Hence it is clear from the report of the enquiring authority that Mithun Kirtania, whose evidence was heavily relied upon in subsequent orders of Disciplinary and Appellate authorities, himself was relying on the evidence of PW1 SI Tamilarasan, who has denied the fact that he had first complained against the theft."

It further noted from the disagreement note of Disciplinary Authority the summarizing of his logic of disagreement on the following grounds:



"Furthermore, SI Mithun Kirtania, Investigation Officer PS Aberdeen (PW-2) had also adduced before the regular departmental enquiry that HC(Dvr)/2069 S. Koteswar Rao (Under Suspension) during interrogation the charged officer HC(Dvr)/2069 S. Koteswar Rao accepted his guilt, therefore he was arrested and remanded to judicial custody.

From above evidences on record, the charge framed against the Charged Officer has been substantially proved by applying the principles of "preponderance of probability".

And observed,

"The applicant replied to the Disciplinary Authority in which he had questioned the analogy of "preponderance of probability" as none of the material witnesses were able to depose convincingly against the charges against the applicant during the alleged incident of theft".

It noted the rationale in confirming the order of dismissal as under:

"Although few prosecution witnesses did not support the charges framed against the HC(Dvr)/2069 S. Koteswar Rao (U/S) yet it is evident from the testimony of (PW-4) ASI M.A. Rasheed, I/c Distict Special Team who has categorically adduced before the regular departmental enquiry that during the joint interrogation, the charged officer HC(Dvr)/2069 S. Koteswar Rao (U/S), accepted that due to absence on several occasions he was not getting the payment, so due to lack of financial assistance he had stolen the cash chest from Police Line after braking the main door of the office, but he could not take away the ash chest from the boundary of Police Line premises. Furthermore, Mr. Bipin Thomas (Habitual thief) also adduced before the joint interrogation that he knows the charge officer HC(Dvr)/2069 S. Koteswar Rao (U/S) and on the direction of the charged officer both of them had earlier stolen the HSD oil from the parked truck at Police Lines an earlier occasions which was sold out by the charged officer.

Further, SI Mithun Kirtania, Investigation Officer, PS Aberdeen (PW-2) had also adduced before the regular departmental enquiry that HC(Dvr)/2069 S. Koteswar Rao (U/S) during interrogation had accepted his guilt, after which he was arrested and remanded to judicial custody. From the evidence on record, the charge framed against the Charged Officer has been proved by applying the principles of preponderance of probability."

It referred to the following precedents:

"The Hon'ble Apex Court has laid down the parameters which the reviewing Court should keep in mind when the validity of the departmental proceedings are challenged and particularly in Narinder Mohan Arya -vs- United India Insurance Co. [(2006) 4 SCC 713], it has been laid down that suspicion or presumption cannot take the place of proof even in a domestic enquiry and that the Courts are entitled to interfere with the findings of the



fact of an authority in certain circumstances obviously keeping perversity in mind.

A Three Judge Bench of the Hon'ble Apex Court while passing its order in **Indian Oil Corporation Ltd. –vs- Ashok Kumar Arora [(1997) 3 SCC 72]** had laid down that the jurisdiction of Courts is very limited where it is found that domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, when findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee.

The Apex Court has at the same time has cautioned in **Union of India –vs- B.K. Srivastava [AIR 1998 SC 300]**, that distinction, however, has to be drawn between total absence of evidence and cases where there is some evidence and in **Union of India –vs- H.C. Goyal [AIR 1964 SC 364]**, it has been held that there must be material for imposing the punishment and suspicion cannot be allowed to take the place of proof.

In E.D. Smith –vs- Emperor confession is to be treated as inadmissible evidence under Sections 24, 25 and 26 of Indian Evidence Act and hence relying on such inadmissible evidence and to allow it to form the basis of preponderance does not provide procedural strength to the orders of Disciplinary as well as Appellate Authority.

And arrived at a conclusion as under:

" We deem it fit to remand the matter back to the Appellate Authority in this regard who will arrive at a final decision by weighing the evidence accurately and objectively and directing the Disciplinary Authority appropriately in this regard."

6. In purported compliance the DGP, as the Appellate authority, issued the following order:

**"AND WHEREAS, in pursuance of the above Judgement/ Order dated 22/06/2018 passed by the Hon'ble C.A.T, the undersigned being the Appellate Authority have perused the order passed by the Disciplinary Authority vide Order Book No. 506 dated 18/02/2016 and all other documentary evidences on record.**

**AND WHEREAS, I am of the opinion that the Disciplinary Authority had erred in taking into consideration the deposition made by one person namely Mr. Bipin Thomas before Interrogation Team as the said person has never been made a Prosecution Witness to enable the Appellant to cross examine him during the regular DE proceedings which amounts to violation of principle of natural justice.**



However, there is no reason to disbelieve the statements made by two police officers S.I Mithun Kirtania (PW-2) and ASI M.A Rasheed (PW-4) as they have also been cross examined by the appellant herein during the departmental enquiry in accordance with the principles of natural justice. Moreover, there is noting on record to establish that these police officers have any personal animosity with the appellant herein or any ground to harm him. Further, the appellant has not denied that his confessional statement was recorded by the I.O and has not made any complaint against these police officers that they have either coerced or offered any inducement to the appellant herein to confess the crime committed by him during the investigation of the criminal case.

The object and the standard of proof of criminal prosecution and the departmental action are entirely different. While in a criminal case, the charges have to be proved beyond reasonable doubt, in a D.E the standard of proof is based on preponderance of probability. The Disciplinary Authority did not commit any error while relying upon the statements made by S.I Mithun Kirtania (PW-2) and ASI M.A Rasheed (PW-4).

The appellant herein being the protector of law, had been involved in an act of theft, which is grave misconduct and unbecoming of a member of a disciplined police force. Such an act undermines the faith of the public in the law enforcement machinery. Taking any lenient view would send a wrong message to other members of the police force and also be detrimental to the larger public interest.

Therefore, in view of the above, I find no reason to interfere with the order passed by the Disciplinary Authority. Accordingly, the Appeal preferred by Shri S. Koteshwar Rao, Ex-HC (Dvr)/2069 also stands rejected."

7. We would note that this Tribunal had earlier observed as follows:

"It is clear from the report of the enquiring authority that Mithun Kirtania, whose evidence was heavily relied upon in subsequent orders of Disciplinary and Appellate authorities, himself was relying on the evidence of PW1 SI Tamilarasan, who has denied the fact that he had first complained against the theft"

8. We would further note the following statements recorded during the enquiry:

"(i) PW- 02 SI Mithun Kirtania, PS Aberdeen

Earlier statement recorded by the PEO marks exhibit S – 11 has been read over to him which he wants to be relied upon. The matrix of his statement in



the preliminary Inquiry, *inter alia*, that on receiving the written complaint about the theft of the regimental fund he along with the burglary squad inspected the scene of the incident. On search the team recovered a Hacksaw blade and a cheque book from the nearby bush. ON further search they found the cash box in a drain nearby the Command room. It is the same place where Police trucks are parked. On further investigation it was revealed that HC (Dvr)/2069, Shri. Koteswar was the main suspect as he was the driver of the A.P. Unit truck at the Police line. On 16/10/2014 when Koteswar Rao was deeply questioned he admitted that the said theft was done by him since he was going through very harsh financial condition. He admitted that on 20/9/2014 after consuming alcohol from a bar he cut the lock of the Regimental office door with a Hacksaw blade. He found the Almirah door open and took the cash box with him. He tried to cut open the cash box but he failed. So he left the cash box in the drain of the Command Room and went away.

**Cross Examination by the DA of the CO.**

Q 01- Whether you were the IO of the Criminal case instituted?

Ans- Yes

Q 02- The cash box was searched after falling of the police personal of the Police Line during the course of your investigation in terms of the direction of the higher police officer, is it correct?

Ans- It is Correct.

Q 03- The Statement recorded on 02/01/2015 by whom?

Ans- The statement was recorded by one PC on the narration of Dy. SP M. Raj.

Q 04- During the course of your investigation did you seize any alleged theft articles or any other articles connected with the alleged theft from the possession of the charge officer?

Ans. No.

Q 05- Whether before arresting the charge officer did you obtain CFSL report?

Ans- No

x

x

x

Q 12- The exhibits S-4, S-5, S-6 and S-7 the seizure memos do not speak about the article seized at the instant of the Co?

Ans- Yes it is correct that there was no mention that article seized at the instance of CO.

x

x

x

Q 14- Is it correct that the FIR was lodged of suspicion?

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Ans- No the FIR was lodged on the report of the complaint filed by the complainant.

Q 15- Who is the complainant in the case?

Ans- SI Tamilarasan was the complainant.

Q 16- Whether the exhibit S-2 shown to you was the complaint?

Ans- Yes.

While deposition of Tamilarasan is as under:

(ii) Statement of PW-1 SI Tamilarasan

Earlier statement recorded by the PEO mark exhibit S – 3 has been read over which he wants to be relied upon. The matrix of his statement in the preliminary Inquiry inter alia, that the Regimental Fund which was under his custody had an amount of Rs 65225.33. On 20/9/2014 (Saturday) before he went to his uncle's house located in Dugnabad he had locked the iron chest and kept the iron chest in the Almirah and also locked the Almirah form outside. When he came back to duty on 22/09/2014 he found the Almirah lock was broken and the iron chest was missing from the Almirah. He immediately informed the same to the people present in the J.D room and also informed the matter to the Dy. SP and the R.I. Later that day as per the instruction received he filed a written complaint in SHO Aberdeen. He later on came to knew that HC (Dvr), Shri. Koteswar was taken in to custody regarding the theft incident and was sent to judicial custody at Pathrapur Jail.

Cross Examination by the DA and CO.

Q 02- Whether you made any complaint including exhibit S – 2 against the charge officer?

Ans- No I did not make any complaint against the CO.

(iii) Statement of PW-4 ASI M.A Rasheed

Earlier statement by the PEO mark exhibit S – 12 has been read over to him which he once to be relied upon. The matrix of his statement in the preliminary Inquiry inter alia, that in his presence the charge officer alleged to have been admitted that he broke the Almirah and robbed the cash box since he was going through tough financial condition. On the basis of the statement of Shri. Koteswar Rao he was arrested by IO Shri. Mithun Kirtania.

Cross Examination by the DA of the CO.

Q 02- Who was the investigating officer in the instant case?

Ans- IO is SI Mithun Kirtania.

Q 03- Who is the competent authority to interrogate the suspect person in accordance to the rule?

Ans- IO

Q 04- Who interrogated Bipin Thomas in this case?

Ans- I along with the IO.

Q 05- Under what authority of law you interrogated Bipin Thomas when SI Mithun Kirtania was the IO. Is there any provision either in CRPC or in the Police manual. Please explain?

Ans- On the day I was assisting IO Mithun Kirtania. On the basis of a order issued by the SP (DA) I can interrogate any person indulge in wrong doing. In addition to that on the verbal direction of Dy. SP (SA) and SHO I can assist/interrogate all IO in any cases.

Q 06- Is there any provision under CRPC, IPC and evidence act or in the Police Manual to interrogate any person suspect in case other than the IO?

Ans- Yes But I do not remember the sections know.

X

X

X

Q 08- Whether any articles seized from the possession of the CO in the instant case?

Ans- No I do not remember either IO have seized or not.

Q 09- Who called Bipin Thomas at the Police Station?

Ans- I do not remember."

9. It is discernible from the statements that other than what was recorded at investigation no incriminating statement during enquiry or cross examination came to the fore that would exemplify with clarity on the crime committed by the applicant.

The observation of this Tribunal that the conclusions in the Disciplinary Proceeding are to be arrived at on the basis of "adequate and objective evidence" "and not on hearsay or confession" has been carefully brushed aside while issuing the impugned order.

In absence of any insinuating statements of the CO during enquiry which could be termed as confession, apart from the recording of a purported

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confession at the behest of some interested official which was inadmissible in evidence, there was nothing to prove during enquiry that the delinquent was guilty of theft.

10. The law on the subject:

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

"22.... xxx There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides."

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

Supreme Court held:

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

**In Narinder Mohan Arya vs. United India Insurance Co. Ltd.** [(2006) 4 SCC

713] it was held that:-

"26. xxx Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. xxx in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [State of Assam and Anr. v. Mahendra Kumar Das and Ors. [(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [Khem Chand v. Union of India and Ors. (1958) SCR 1080] and State of Uttar Pradesh v. Om Prakash Gupta (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [K.L. Tripathi v. State of Bank of India and Ors. (1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. [Sawai Singh v. State of Rajasthan (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which

was not the subject matter of the charges is wholly illegal. [Export Inspection Council of India v. Kalyan Kumar Mitra[1987 (2) Cal. LI 344.] (6)] Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [Central Bank of India Ltd. v. Prakash Chand Jain (1969) 1 SCR 735 and Kuldeep Singh v. Commissioner of Police(1999) 2 SCC 10.]



Yet again in **M.V. Bijlani vs. Union of India &Ors. (2006) 5 SCC 88**, Hon'ble

Apex Court held:

"25.....xxx Enquiry Officer performs a quasi-judicial function; who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

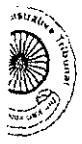
**In Roop Singh Negi vs. Punjab National Bank and Others** reported in (2009)2 Supreme Court Cases-570 the Hon'ble Supreme Court observed as under:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. xxx The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

**In B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749**, the Hon'ble Apex Court on the scope of judicial review has held as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. xxx Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence."

11. Having considered the factual inconsistencies of statement and their flawed appreciation by the authorities, the procedural flaws etc. in the aforesaid legal backdrop the penalty and appellate orders are quashed with liberty to the respondents to issue appropriate orders in accordance with law.



  
**(Tarun Shridhar)**  
**Administrative Member**

  
**(Bidisha Banerjee)**  
**Judicial Member**

drh