

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 7th day of Sept., 2005.

QUORUM : **HON. MR. A.K. BHATNAGAR, J.M.**
HON. MR. D. R. TIWARI, A.M.

O.A. NO. 1116 of 1995

Indrajit Das, Son of, Shri R.N. Das, Accounts Clerk
under Senior Divisional Accounts Officer, Northern
Railway, Allahabad.

.....Applicant.

Counsel for applicant : Sri S. Agrawal.

Versus

1. Union of India through Financial Advisor and
Chief Accounts Officer, Northern Railway, Baroda
House, New Delhi.
2. Senior Divisional Accounts Officer, Northern
Railway, Allahabad.
3. The Financial Advisor and Chief Accounts Officer,
Northern Railway, Baroda House, New Delhi.

.....Respondents.

Counsel for respondents : Sri P. Mathur, Sri A.K.Gaur.

O R D E R

BY HON. MR. D.R. TIWARI, A.M.

By this O.A. filed under Section 19 of the
A.T. Act, 1985 and amended during its pendency, the
applicant has prayed for the following reliefs :-

- "I) to quash the charge-sheet No.47/ADM/22/IV dated
23/26.5.1988 and declare it illegal.
- IA) to quash the removal order No.47/Adm/22-
IV/IJD/Pt.III dated 14.10.1999 and declare it
illegal.
- IB) to quash the order passed by F.A. & CAO as
communicated to the applicant vide respondent
No.2 letter dated 5.6.2000, Annexure-2B to Com.I.
- IC) to direct the respondents to produce the record
of the entire disciplinary proceedings and
thereby to quash the entire proceedings which is
wholly illegal and in violation of Article 311(2)

[Signature]

of the Constitution read with rule 9 of Railway Servant (Discipline and Appeal) Rules, 1968.

- ID) to add the respondent as respondent No.3.
- ii) to direct the respondents to promote the applicant as JAA in scale from the date when juniors to him have been promoted due to pendency of above disciplinary proceedings. The respondents may also be directed to regularize the suspension period of the applicant and treat it as duty for all purpose which has not been done so far due to the non-finalization of the charge-sheet.
- iii) to direct the respondents to give all pecuniary benefit of honorarium which is being denied because of pendency of the charge-sheet."

2. Shorn of details, the necessary factual matrix to decide the controversy is that the applicant, at the relevant time, was working as Accounts Clerk under the control of the respondents. While so working, he was served with a major charge-sheet by issue of memorandum dated 23/26.5.1988 (Annexure A-1) under Rule 9 of the Railway Servant (D&A) Rules, 1968. Annexure-I of the memorandum contained the main charges while Annexure-II gave the statement of imputation of misconduct in support of Article of Charges against the applicant. Annexure-III of the memorandum contained the list of relied upon documents whereas Annexure-IV included the list of witnesses by whom the Articles of Charges framed against the applicant were proposed to be sustained. To summarize the Article of Charge at Annexure-I of the memorandum contained a single charge that From August, 1986 to December, 1987, on 11 occasions, the applicant tampered the amount charged in the bills of Loco Foreman, Northern Railway causing a loss of Rs.2.90 lacs. This is intentional and for personal gains and is misappropriation. Thus, the applicant contravened the provisions of Rule 3(1)(i)(ii)(iii) of Railway Services Conduct Rules, 1966. Before the

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2

above charge-sheet was issued, the applicant was placed under suspension on 29.2.1988.

3. Since the relied upon documents were not supplied to the applicant, he requested for supply of copies thereof by a letter dated 22.8.1988 to the Divisional Accounts Officer (Annexure No.11 page 75). By his letter dated 22.8.1988, the Senior Divisional Accounts Officer rejected the request of the applicant (Annexure-12) mainly on the ground of the Railway Board's order vide letter dated 5.12.1985 which provides that only where it is possible, to furnish Photostat copies of the documents, the same are to be given to the employees. In the present case, it is not possible to do so in view of the number of documents and the nature of the same. The applicant, vide his letter dated 5.9.1988 (Annexure-13), again requested for supply of the relied upon documents and stated that the Railway Board letter is nothing but harassment and denial of reasonable opportunity. Meanwhile, by order dated 14.10.88 (Annexure-3), the disciplinary proceedings was kept in abeyance without any reason. Again by letter dated 8.6.1993 to the Inquiry Officer, the applicant requested for the relied upon documents and by another letter dated 24.6.93 to the Senior Divisional Accounts Officer for supply of relied upon documents (Annexures-14 and 15). Again by his letter dated 8.10.93 to the Inquiry Officer, he requested for supply of additional documents (Annexure-16). Finally on 15.9.93, the applicant was allowed inspection of relied upon

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5

documents but additional documents were not supplied vide order sheet dated 15.9.93 (CA-VI page 60). On 14.12.93, the Inquiry Officer vide order sheet directed that the permitted additional documents be supplied to the applicant. A copy of the order sheet was given to the applicant and the Presenting Officer and the same was sent to the Disciplinary Authority for information and further action (CA-VII page 62). Vide letter dated 3.2.94, the respondent No.2 informed the Inquiry Officer that the additional documents were not available except duty list of Section Officer (Annexure-XVII). However, the Inquiry Officer again advised the P.O. that he should produce the additional documents on the next sitting positively (Annexure XVIII). In this way, the applicant went on insisting for supply of additional documents and the inquiry was prolonged. It is about this time that O.A. No.1114/93 was allowed directing the respondents to complete the inquiry in six months failing which the suspension would seize. The respondents filed Misc. Application for extension of time and the Tribunal allowed six months further time w.e.f. 21.7.94 but suspension was revoked.

4. On 4.8.94, the Presenting Officer requested the Inquiry Officer to pend the case as the list of witnesses in charge sheet was not complete (Annexure-6). The Inquiry Officer accordingly, deferred the inquiry till further orders (Annexure-7). Applicant gave the list of defence witnesses on 12.7.96 and Inquiry Officer permitted three defence witnesses

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(Annexures 19 & 20). On 20.9.96, the Inquiry Officer examined the applicant. The statements of the prosecution witnesses No.1,3,4 and 7 were recorded on 3.5.94, 4.5.94 and 26.6.94 (CA-8, 10, 11 and 12). This was done by R.S. Choudhary, Inquiry Officer, who was changed and Shri Sita Ram was appointed as Inquiry Officer on 15.7.94. The inquiry report dated 27.3.97 was forwarded to the applicant vide letter dated 12.5.97 (Annexure-22). The applicant vide his letter dated 26.5.97 submitted a detailed representation to the Disciplinary Authority (Annexure-23) containing 20 typed pages.

5. On receipt of the representation from the applicant, the Disciplinary Authority imposed upon the applicant the penalty of removal from service and recovery of Rs.2.90 lacs from the applicant vide order dated 14.10.99 (Annexure-2A). The applicant went in appeal to the Appellate Authority and filed Memo of Appeal dated 29.11.99 and the same was rejected by the Appellate Authority vide order dated 15.6.2000 (Annexure-2B).

6. The above orders have been challenged on various grounds mentioned in para 5 of the O.A. mainly on the ground of the orders being violative of principles of natural justice and illegal, arbitrary and unjust. The completion of the inquiry has been inordinately delayed as the charge sheet given to the applicant on 23/26.3.88 and the inquiry report was finalized on 27.3.97 and this has caused mental agony

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and pecuniary loss to the applicant as the juniors to him have already been promoted. It has also been pleaded that despite the order of the Tribunal to complete the disciplinary proceedings within six months, the respondents have failed to take action with promptitude. Non-supply of the relied upon documents and the additional documents inspite of several written request has caused prejudice to the applicant. Though it is admitted that he was given opportunity for inspection of relied upon documents but was never given the copies of the relied upon documents. It has also been pleaded that order rejecting the appeal is wholly non-speaking like the order of punishment. The inquiry report given by the Inquiry Officer is arbitrary findings without considering the statement and examination of the witnesses and his findings is not only against the oral evidence but is also against the documents produced during the inquiry.

7. The respondents, on the other hand, have resisted the O.A. and have filed a detailed Counter Affidavit. They have submitted that the applicant was involved in misappropriation of Govt. fund for which a criminal case was filed with the CBI, Lucknow under Sections 120B/420/467/468/471 IPC and Section 5(2) read with Section 5(1)(D) of the Prevention of Corruption Act and after the inquiry, a charge sheet had been filed by the CBI before the Hon'ble Tribunal of Special Judge, Anti-Corruption, West, Lucknow. The applicant was arrested but was subsequently released

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on bail. Since he was involved in misappropriation of the Govt. fund, the action under Section 9 of the Railway Servants (D&A) Rules was initiated and a major penalty charge sheet was issued. However, in view of the provisions contained in C.V.C. Manual, the proceedings were kept in abeyance, which resulted in delay in finalization of the disciplinary proceedings. It has also been submitted that delay in supply of relied upon documents was because the records had been seized by the CBI. In so far as the question of supply of additional document is concerned, it has not been shown that non-supply of these documents has caused any prejudice to the applicant. They have further argued that a proper inquiry was held in which the applicant had participated, a copy of which was made available to him and he has filed a representation thereof. After taking into account the inquiry report, the representation of the applicant and other materials on record, the Disciplinary Authority imposed upon him the penalty of removal from service together with recovery of the misappropriated amount. On appeal, the Appellate Authority has confirmed the punishment and every action has been taken in accordance with the rules prescribed. Thus, the O.A. is devoid of merit and be dismissed.

8. During the course of the argument, learned counsel for applicant Shri S. Agrawal has challenged the charge sheet, the inquiry report, the punishment order and the appellate order. The first contention of the counsel is that relevant documents were not

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furnished to the applicant as such, the applicant has been denied reasonable opportunity to defend his case in an effective manner. For this purpose, he has drawn our attention to Annexure Nos.CA-3 to CA-7. The papers mentioned at CA-3 to CA-7 are the ordersheet of various dates of the inquiry proceedings which consistently indicates and contend the order of the Inquiry Officer with a copy to the Disciplinary Authority for supply of relevant documents, has not been complied with by the Competent Authority. His next limb of argument relates to supply of additional documents which was requested by the applicant and it includes as many as 9 documents. The Disciplinary Authority informed that documents were not available except Item 4. The counsel has submitted that no reasons whatsoever have been given by the Disciplinary Authority except that the documents were not available. He has further submitted that Item 2 of the additional documents, required by the applicant, was statements of PW-1, PW-3, PW-4, PW-5, PW-6 etc. On this ground alone, the O.A. deserves to be allowed as non-furnishing of these documents has prejudicially affected the applicant. It is not the case of the respondents that these documents were not relevant and even the Inquiry Officer has recorded the fact of complaint of denial of additional documents in his report. Thirdly, he has submitted that the punishment order as well as the appellate order is non-speaking. Lastly, he has argued that it is a case of no evidence and as such, it can be treated as perverse as no prudent man can reach the conclusion as has been done

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by the Inquiry Officer while finalizing the inquiry report. The action of the Disciplinary Authority on the basis of this inquiry report which is based on no evidence either oral or documentary cannot be sustained in law. In order to support the contentions mentioned above, the reliance has been placed on the following judgments of the Apex Court and the coordinate Benches of this Tribunal.

- i) *Kashi Nath Dikshita Vs. Union of India*, AIR 1986 SC 2118.
- ii) *State of U.P. Vs. Shatrughan Lal*, 1998(6) SCC 651.
- iii) *R.B. Lal Vs. Union of India*, 2001(1) ATJ 14.
- iv) *Chandrasen Kondiba Bansode Vs. Union of India*, 2001(3) ATJ 394.
- v) *Kuldeep Singh Vs. Commissioner of Police*, (1999) 2 SCC 10.
- vi) *Ram Chander Vs. Union of India*, AIR 1986 SC 1173.
- vii) *R.P. Bhatt Vs. Union of India*, AIR 1986 SC 1040.
- viii) *Ramanathan Vs. Chief Judicial Magistrate*, 2001(3) ESC 503.
- ix) *Arun Kumar Swain Vs. Union of India*, 2001(3) ATJ 131.
- x) *Union of India Vs. H.C. Goel*, AIR 1964 SC 364.

9. In order to prove that the findings of the Inquiry Officer is biased, perverse and based on no written or oral evidence, the learned Counsel has made us travel through the entire inquiry report. He has taken great pains to point out as to how the Inquiry Officer has used certain documents which did not even form part of the charge memo. He has drawn our attention to page 115 of the O.A. where ex.1, ex.D-1, EX-C-1 and C-2 have been relied upon by the Inquiry Officer and these documents were not at all referred in the charge sheet. Consequently, they were not supplied to the applicant. He has also drawn our attention to the statements of the PWs, which were obtained during the preliminary inquiry. Despite the

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request from the charged officer, these statements were not made available. In order to show this, he has successfully read out to us the following exhibits, which refer to the statements of the PWs in the inquiry report :-

- a) **Ex. D-24 Page 119, Statement of PW-2.**
- b) **Ex. D-17 Page 120, Statement of PW-3.**
- c) **Ex. D-14 Page 121, Statement of PW-4.**
- d) **Ex. D-05 Page 124, Statement of PW-6.**
- e) **Ex. D-15 Page 126, Statement of PW-7.**
- f) **Ex. D-06 Page 127, Statement of PW-8.**

He has further drawn our attention regarding the evidence of PW-1 wherein the details given by him have been ignored. He also pointed out that during the inquiry, PW-2 stated about 08 salary bills whereas PW-3 mentioned about salary bills of 10/86 and 8/86. He has also mentioned that PW-4 referred to only salary bill of 8/86. He has also referred to some other evidences of other PWs like PW-5, who talked of correction only and PW-6 talked about the duty of the charged officer to check internally the salary bills, who put up to Supervisor and A.O. for signature. He had tried to prove that all the 11 salary bills, passed by the applicant do not appear to have been stated by all the PWs and it is not understandable as to how, in view of the conflicting evidences, the Inquiry Officer has stated at page 129 as under :-

"The C.O. passed all the bills for 11 months mentioned in Memorandum of charge-sheet in which the amount was enhanced/inflated to the tune of Rs.2.90 lacs....."

From the inquiry report and the evidences of the PWs, he has strenuously argued that none of the PWs appear to have stated that he has seen the C.O. keeping money in his pocket after disbursing the salary amount to

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the payee. He has drawn our attention to the statement of PW-7 that the excess amount must have been taken out from the total cash received by the C.O. when he might have gone out for few minutes to meet the natural call. The counsel for the applicant has, thus emphasized that on the basis of such inquiry report, the conclusion drawn by the Inquiry Officer that the charge has been proved, is a little bit strange.

10. The learned counsel Shri A.K. Gaur and Shri P. Mathur appeared for the respondents and Shri A.K. Gaur dealt with the legal issues involved in this case whereas Shri P. Mathur dealt with the factual aspect involved in this case. The respondents also produced the relevant original records in order to prove their points. We have perused the original records also. Shri Prashant Mathur submitted that the applicant was suspended on 29.2.1988 and charge sheet was issued to him by memo dated 23/26.5.88 and his suspension was revoked on 2.8.98. Even before the suspension, the CBI was informed about the involvement of the applicant in misappropriation of Govt. fund and CBI raided on 27.4.88, 12.5.89 and finally on 26.9.89. All the necessary documents were seized by the CBI and a regular case was registered by the CBI which is still being tried by Special Judge of the CBI. He submitted that the involvement of the applicant in misappropriation of Railway funds and other irregularities are still pending in the criminal court of the CBI. As is well settled that criminal

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proceedings and the disciplinary proceedings can go simultaneously, it was decided to proceed with the departmental proceeding in this case.

Counsel for the respondents contended and refuted each and every claim/contention made by the counsel for the applicant. Counsel for the respondents refuted the claim of the applicant's counsel that it was a case of no evidence. It was submitted that the settled legal position in relation to disciplinary proceeding is that the Courts and Tribunals are not to reappreciate or reappraise the evidence in the disciplinary proceeding. If some legal evidence is available, the finding of the inquiry report cannot be questioned and the Courts and Tribunals are not supposed to substitute its finding for that of the Inquiry Officer/Disciplinary Authority. Courts and Tribunals are not an Appellate Forum over the decision of the administrative authority in whose domain the power legally belongs to. Counsel for the respondents also hotly contested the argument of the applicant's counsel that non-supply of relevant document have resulted in a grave prejudice and which is against the principles of natural justice. It was further argued that the applicant has to prove the relevancy of each and every document, demanded by him particularly when some documents are demanded which do not form part of the charge sheet, the applicant has to show the relevancy of such additional documents. Non-supply of every document has to be tested on the touch stone of the theory of prejudice. The applicant has to show

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convincingly that such non-furnishing of the document has caused prejudice to his case and in what manner. On the question of furnishing of the statements of the PWs obtained during the preliminary inquiry is also covered by the theory of prejudice evolved by the Apex Court in some recent cases. The contention of the applicant's counsel about the punishment order and the appellate order being of non-speaking and sketchy was also refuted with the argument that in disciplinary proceeding what is required is the action of the administration taken in accordance with the rules prescribed under Railway Servant (D&A) Rules, 1968. It was submitted that in the instant case a valid charge sheet was issued and in accordance with the rules, the inquiry was held in which the applicant participated and has submitted the representation on the report of the Inquiry Officer and the Disciplinary Authority after taking into account the report of the Inquiry Officer, the representation of the applicant and other relevant documents on record decided to impose the penalty of removal from service as well as recovery of the excess amount unpaid by the applicant. The quantum of punishment, submitted the counsel, cannot be questioned by the Court and Tribunals, is a settled legal position. With regard to the appellate order being non-speaking, the counsel has argued that the order of affirmance need not be speaking order and this position of law is equally settled. In support of the above contention, the reliance has been placed on the following judgments of the Hon'ble Supreme Court and Coordinate Benches :-

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- i) *Bank of India and others Vs. Degala Suryanarayana*
JT 1999(4) SC 489.
- ii) *Food Corpn. Of India Vs. Padmakumar Bhuvan,*
1999 SCC (L&S) 620.
- iii) *State of Punjab and others Vs. Dr. Harbhajan Singh*
Greasy - 1999 SCC (L&S) 1248.
- iv) *Registrar of Cooperative Societies, Madras and Another*
Vs. FX. Fernando, 1994 SCC (L&S) 756.
- v) *High Court of Judicature at Bombay (Through its*
Registrar) Vs. Shashikant S Patil & Another,
(2000) 1 SCC 416.
- vi) *State of UP vs. Harender Arora & others,*
2001(6) SCC 392.
- vii) *State of Tamilnadu Vs. Thiru K.V. Perumal & others,*
AIR 1996 SC 2474.

11. We have heard and considered the rival submissions of the counsel of parties at a great length. We have perused the original records as well as the pleadings of the parties very minutely. The assistance of the Officers from the Railway was also taken who were competent and knowledgeable enough to explain the intricacies of the accounting system.

12. From what has been discussed above, the few issues which are of fundamental importance required detailed examination and final adjudication:-

- (i) The first issue relates to non supply of preliminary report and statements of the witnesses obtained during the course of preliminary inquiry. Whether non supply of preliminary inquiry report and the statement of witnesses do cause prejudice to the applicant.

- (A) The counsel for the applicant has emphatically argued that non supply of

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these documents have disabled the applicant to effectively fight the case during the inquiry proceedings as well as later-on when he was required to make submissions on the inquiry report. For this purpose, learned counsel for the applicant has placed reliance on the following judgments:-

- (a) *State of U.P. Vs. Shatrughan Lal (supra)*.
- (b) *Kashi Nath Dikshita Vs. Union of India and others (supra)*
- (c) *R.B Lal Vs. Union of India (Supra)*.
- (d) *Chandrasen Koniba Bansode Vs. Union of India (supra)*.

It appears appropriate to quote *Shatrughan Lal (Supra)* on this issue which is very relevant:-

"6. Preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the chargesheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita Vs. Union of India* wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence".

- (B) The learned counsel for the respondents, on the other hand, has hotly contested the above submission of the applicant's counsel and have submitted that in every case the non-supply of document whether it is relevant or not is not necessary. To

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support his contention, the reliance has been placed on the judgment of the Apex Court on the following cases: -

- (i) State of U.P. Vs. Harendra Arora and others (Supra) and
- (ii) State of Tamilnadu Vs. Thiru K. V. Perumal and others (supra).

It has been argued emphatically that the applicant has to show that non-furnishing of the document has prejudiced his case and the document was relevant. For this purpose, the following extract from the case of Thiru K.V. Perumal (supra) is reproduced below:-

"4.....Now remains only the third ground viz., the non-furnishing of the documents asked for by the respondent. The Tribunal seems to be under the impression that the enquiry officer/disciplinary authority is bound to supply each and every document that may be asked for by the delinquent officer/employee. It is wrong there. Their duty is only to supply relevant documents and not each and every document asked for by the delinquent officer/employee. In this case the respondent had asked for certain documents. The Registrar, to whom the request was made, called upon him to specify the relevance of each and every document asked for by him. It is not brought to our notice that the respondent did so. The Tribunal too has not gone into the question nor has it expressed any opinion whether the documents asked for were indeed relevant and whether their non-supply has prejudiced the respondent's case. The test to be applied in this behalf has been set out by this Court in State Bank of Patiala Vs. S.K. Sharma, 1996 (3) Scale 2002: (1996 AIR SCW 1740). It was the duty of the respondents to point out how each and every document was relevant to the charges or to the enquiry being held against him and whether and how their non-supply has prejudiced his case".

- (C) The above decision of the Apex Court in the case of Perumal (supra) instead of assisting the respondents it has come in aid of the applicant. It is not the case

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of the respondents that the documents were not relevant as the Enquiry officer has been asking during the enquiry proceeding that permitted relevant documents be supplied to the applicant. It is on record that the enquiry officer has written to the Disciplinary Authority and asked the Presenting Officer for making available the permitted documents. Respondents have simply informed that the documents were not available. They have not given any reasons about the relevancy of these documents. There is no whisper that the documents requested were irrelevant. However, during the course of the argument, counsel for the respondents have submitted a Statement of Relevancy of additional document demanded by the applicant during the course of examination which has been duly signed by Senior Divisional Accounts Officer, Northern Railway, Allahabad. To show irrelevancy at this belated stage is not sustainable in law. We are aware that the Apex Court in the Case of Mohinder Singh Vs. Chief Election Commissioner-AIR 1978, SC 851 has ruled as under.

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned in the order and cannot be supplemented by fresh reason in the shape of affidavits or otherwise, and order in the beginning may, by the times it come to the court on account of challenge, gets

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validated by additional grounds later brought out".

If one has regard to the above ruling of the Apex Court one is bound to come to the conclusion that the documents submitted during the course of argument cannot be taken into cognizance, as such the argument of the counsel for the respondents fail and the applicant succeeds on this ground.

(ii) The second issue which falls for consideration is whether, in the facts and circumstances of the case, is it a case of no evidence or perverse and based on no evidence ?.

(A) The counsel for the applicant has submitted that it is a case of no evidence and he has placed reliance on the following judgments:

- (i) *Union of India Vs. H.C Goel (supra) and*
- (ii) *Kuldeep Singh Vs. Commissioner of Police (supra).*

The Hon'ble Supreme Court in the case of Kuldeep Singh (supra) has ruled as under:

"8. The findings recorded in a domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence"

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(B) The counsel for the respondents has refuted the above claim of the applicant's counsel and he has placed on the following judgments:-

- (i) *Bank of India Vs. Dagala Suryanarayana (Supra)*
- (ii) *Food Corporation of India Vs. Padmakumar Bhuvan (supra)*

He has drawn attention on para 11 of the judgment of Dagala Suryanarayana (supra) which is as under:-

"11. 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 malafides or perversity ie. Where there is no evidence to support a finding of 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 an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority. The same has to be sustained".

(C) From the above rival submissions, we are of the view that the counsel for the respondents succeeds on this score as it is the settled legal position that if some evidence is available, it is for the Disciplinary Authority to take a decision with regard to the quantum of

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punishment. Mr. A.K. Gaur, it appears, has some force in his statement that what is required is some evidence in Disciplinary Proceedings to punish the delinquent official and as such the decision of the Disciplinary Authority cannot be faulted as a case of no evidence hence we are of the considered view that the applicant fails on this ground and the respondents succeed.

(iii) The issue which requires solution is with regard to the fact whether the orders of the Disciplinary Authority as well as that of the appellate authority have been passed in accordance with the Rules prescribed in this regard.

(A) The learned counsel for the applicant has submitted that the order of the Disciplinary Authority based on enquiry report is suffering from the vice of non-application of mind and is against the principles of natural justice. He has submitted that the enquiry report is vitiated mainly because of the non supply of the relevant records which is of primary importance in the Disciplinary Proceeding. He has further attacked the order of the Appellate Authority which is cryptic and without application of mind. In support of this argument, he has relied

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on the judgment of the Apex Court in the case of Ram Chander Vs. Union of India (supra).

(B) Counsel for the respondents has contested the claim of the applicant's counsel and has argued that both the orders were passed in accordance with the Rules and they are perfectly legal. It has been submitted that much reliance cannot be placed on report of Enquiry Officer as the Disciplinary Authority does not decide only on the basis of the enquiry report and other facts alongwith evidence available on records are taken into consideration. Reliance has been placed on the judgment of the Supreme Court in the case of High Court of Judicature at Bombay Vs. Shashikant S. Patil (supra) to contend that if there is some legal evidence on which findings can be based then adequacy or even desirability of that evidence is not a matter to be canvassed before the court or the Tribunal as such, it has been submitted by the Counsel for the respondents that the impugned orders are perfectly legal and should be sustained.

(C) If one has a glimpse of the arguments of the counsel of the parties, it would not take time to state that the argument of the counsel for the respondents is very

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feeble and there is no dispute about the settled legal position that the impugned orders are quasi-judicial orders and they should be a reasoned, self contained and speaking orders. The Hon'ble Apex Court has emphasized in a numerous judgment that judicial orders should be a reasoned and speaking orders. It has also been ruled that when the order is subject to appeal then it is all the more necessary to pass a reasoned order so that the appellate authority can apply his mind and the delinquent official may know the reasons for such order. Hon'ble Supreme Court in the case of Mahavir Prasad Vs. State of U.P. (A.I.R. 1970, S.C 1302) observed that recording of reason in support of a decision by a quasi judicial authority is obligatory as it ensures that decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. Necessity to record reasons is greater if the order is subject to appeal. The order of Disciplinary Authority does not disclose any reason except following the stereo-typed format and it cannot be, by any stretch of imagination, treated as a reasoned order (1-2A). The appellate order which finds place at Annexure A-2B of the O.A. is equally cryptic. Insofar as the

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question of passing a reasoned order is concerned, the Apex Court in the case of Ram Chander Vs. Union of India (Supra) has ruled as under:-

"5. To say the least, this is just a mechanical reproduction of the phraseology of R.22 (2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not...."

From the above it is clear that rule of law postulates reasons for quasi judicial orders, to recapitulates the words of Constitution Bench in S.G. Jaisinghani case A.I.R. 1967 S.C 1427:

"Rule of law beings that the decisions should be made by the application of known principles and rules as such decision should be predictable and the citizen nowhere is if the decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with a rule of law...."

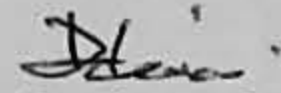
In view of the above position of law, we are of the considered view that the impugned orders have proceeded not on reason, not on fact, not on predictable principle but on undisclosed, undisguised discretion of the disciplinary as well as the appellate Authority, such orders cannot be upheld.

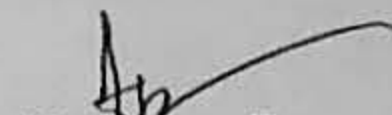
13. In view of the facts and circumstances mentioned above and the discussion made, the O.A succeeds on merit and is allowed. The impugned disciplinary order dated 14.10.1999 and the appellate order dated 5.6.2000 are quashed and set aside with a liberty to

D. S. J.

respondents to initiate the Disciplinary Proceedings from the stage of furnishing of requisite documents in accordance with the law and relevant rules prescribed in this regard within a period of three months from the date of receipt of a copy of this order.

14. The O.A. is disposed of in terms of the order and direction contained in preceding para. Cost easy.


Member-A


Member-J

Manish/-