

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.169, 122, 154, 182, 184 and 197 of 2016
Cuttack this the 30th day of January, 2018

CORAM

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

IN O.A.No.169/2016

Sri Anirudha Pradhan, aged about 57 years, S/o. late Dolagobinda Pradhan, permanent resident of Vill-Dhanamandal, PO-San-Adhanga, P.S.Patkura, Dist-Kendrapara, presently working as Asst.Accounts Officer in the Office of A.G.(A&E), Odisha, Bhubaneswar

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

1. The Comptroller & Auditor General of India, Pocket-9, Deen Dayal Upadhaya Marg, new Delhi-110 124
2. The Accountant General (A&E), A.G.Square, Bhubaneswar, Dist-Khurda, Odisha, PIN-751 001
3. The Deputy Comptroller & Auditor General of India (Admn.)-cum-Appellate Authority, in the office of the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhaya Marg, New Delhi-110 124.

...Respondents

By the advocate(s)-Mr.J.K.Nayak

IN O.A.No.122/2016

Sri Dillip Kumar Rout, aged about 50 years, S/o. Prahallad Rout permanent resident of Vill/PO-Manpur, PS-Bhusan, Dist-Dhenkanal, presently working as Sr. Accounts Officer in the Office of A.G.(A&E), Odisha, Bhubaneswar

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

1. The Comptroller & Auditor General of India, Pocket-9, Deen Dayal Upadhaya Marg, new Delhi-110 124
2. The Accountant General (A&E), A.G.Square, Bhubaneswar, Dist-Khurda, Odisha, PIN-751 001.
3. The Dy.,Accountant General(Admn.) Office of the Accountant General(A&E) AG Square, Bhubaneswar, Dist-Khurda, Odisha, PIN-751 001.
4. The Deputy Comptroller & Auditor General of India (Admn.)-cum-Appellate Authority, in the office of the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhaya Marg, New Delhi-110 124.

...Respondents

By the Advocate(s)-Mr.S.K.Patra

IN O.A.No.154/2016

Sri Sankar Sahoo, aged about 55 years, S/o. late Sadhu Charan Sahu, permanent resident of Vill/PO-Nahantara, PS-Nimapara, Dist-Puri, presently working as Senior Accountant in the Office of A.G.(A&E), Odisha, Bhubaneswar

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

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...Respondents

By the Advocate(s)-Mr.S.K.Patra

IN O.A.No.182/2016

Sri Ashok Kumar Pattnaik, aged about 49 years, S/o. late Mayadhar Dalai, permanent resident of Vill-Chakradharpur, PO-Pardeepgarh, PS-Paradeep, Dist-Jagatsinghpur, presently working as Sr.Accountant in the Office of A.G.(A&E), Odisha, Bhubaneswar

14

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

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...Respondents

By the Advocate(s)-Mr.J.K.Nayak

IN O.A.No.184/2016

Sri Rajakishore Sahu, aged about 59 years,S/o. Udenath Sahu, permanent resident of Vill/PO-Ashram patna, PS/Dist-Jagatsinghpur, presently working as Asst.Accounts Officer, in the Office of A.G.(A&E), Odisha, Bhubaneswar

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

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3. The Deputy Comptroller & Auditor General of India (Admn.)-cum-Appellate Authority, in the office of the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhaya Marg, New Delhi-110 124.

...Respondents

By the Advocate(s)-Mr.J.K.Nayak



IN O.A.No.197/2016

Sri Kailash Chandra Panda, aged about 50 years, S/o. late Jagannath Panda, permanent resident of Vill-Raghunathpur, PO-R.K.Patna, PS/Dist-Kendrapara, presently working as Asst.Accounts Officer in the Office of A.G.(A&E), Odisha, Bhubaneswar

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

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...Respondents

By the Advocate(s)-Mr.S.K.Patra

ORDER

DR.MRUTYUNJAY SARANGL MEMBER(A):

Since the point to be decided arises out of similar facts and law, this common order is being passed which will govern all the cases mentioned above. As the leading case, facts in O.A.No.169 of 2016 are being dealt and discussed hereunder.

2. Applicant has challenged the disciplinary action taken against him and has prayed for the following reliefs:

- i) To admit the O.A.
- ii) To quash the charge Memo dtd. 09.05.2014(Annex.A/1).
- iii) To quash the order dated 24.07.2015(Annex.A/12) passed by the Disciplinary Authority (Resp.No.2).

- 18
- iv) To quash the communication letter dtd. 03.02.2016 and order of the appellate Authority dtd. 25.01.2016 (Annexure-A/14 Series).
 - v) To direct the Respondents to extend the consequential benefit to the applicant.
 - vi) To pass any other order/orders as deem fit and proper for the ends of justice.

3. The applicant had also prayed for interim relief by way of stay of the operation of the order dated 24.7.2015(A/12) passed by Respondent No.2. Records show that on 5.4.2016, the Respondents were directed not to take any further action in pursuance of the order dated 4.7.2015.

4. Records show that M.A.No.367 of 2016 was filed on 21.6.2016 praying for vacation of interim relief. However, no order was passed for vacating the interim relief.

5. The brief facts of the case, as they appear from the O.A. are as follows:

The applicant works as Assistant Accounts Officer in the office of the Accountant General (A&E), Odisha. A Memorandum of Charge dated 09.05.2014(A/1) was issued against him by the Pr. Accountant General (A&E) & Disciplinary Authority which reads as follows:

"That Shri Anirudha Pradhan, Asst. Accounts Officer posted in Fund-12 Section situated in the 2nd floor in the office of the Pr. Accountant General (A&E), Odisha, Bhubaneswar on 5.03.2014 at about 4.30 p.m., entered the chamber of DAG(Funds) along with 6 to 8 staff members and started questioning him using intemperate language shouting against DAG(Funds) on the issue of his visiting fund section intermittently. This unruly, unprovoked and disrespectful behavior of Shri Pradhan, without ascertaining the real fact, against a senior of the Department was against office decorum and disturbed the peace of the office.

19
Thus, Shri Pradhan acted in a manner unbecoming of a Govt. servant, which amounted to misconduct, violating Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964".

Shri J.J.Patra, retired District Judge was entrusted with the task of inquiring into the incident. The I.O. after going into the evidence in detail and examination of witnesses had come to the conclusion that "the departmental proceedings against the charged officer must fail and he is entitled to be exonerated from the charges". The I.O. submitted a further report on 12.6.2015 separately in which he had held that the charge against Shri Uttam Ch.Sahu, charged officer must also fail and he is entitled for being exonerated. The Disciplinary Authority, however disagreed with the findings of the I.O. on the ground that there were procedural defects in the IO's report.

Dissenting views dated 29.6.2015 of the Disciplinary Authority were communicated to the applicant who submitted his representation to the Disciplinary Authority on 14.7.2015. Points raised in the representation were taken into consideration by the Disciplinary Authority and after examining the Charge Memo, the dissenting views and the representation of the applicant, the Disciplinary Authority came to the conclusion that the applicant along with other applicants in other O.As had acted in a manner unbecoming of a Government servant which amounted to misconduct violating Rule-(1)(ii) and (iii) of CCS(Conduct) Rules 1964. The Disciplinary

Authority, in exercise of power conferred under Rule-12 of the CCS(CC) Rules, 1965, imposed the penalty of withholding of one increment for two years without cumulative effect as specified in clause (iv) of Rule 11 of CCS(CCA) Rules, 1965.

The applicant filed an appeal against this order to the Appellate Authority. He took the plea that the Retired District Judge who had been appointed as I.O. had held 26 sittings in common proceedings and the Disciplinary Authority has acted in a biased manner, the order of punishment is a non-speaking order and the Disciplinary Authority has failed to give reason for awarding the punishment. Nowhere she has brought on record the reasoning and evidence. The alleged action of entering into the officer's chamber with permission and participating in a discussion with him is not misconduct on the part of a Government servant.

The punishment imposed by the Disciplinary Authority was upheld by the Deputy Comptroller & Auditor General (Respondent No.3) as the Appellate Authority vide order dated 25.01.2016. The said order of the Appellate Authority was communicated to the applicant in a Memorandum dated 03.02.2016 by the office of Respondent No.2. In the present O.A. the applicant has challenged the Memorandum of Charge dated 09.05.2014, the orders of the Disciplinary Authority and the Appellate Authority dated 24.07.2015 and 25.01.2016, and the communication dated 03.02.2016.

21

6. The applicant has based his prayer on the following grounds:

- i) The entire proceeding is void abinitio since a person cannot become a judge of his own cause. The DAG(Admn.) himself was a party to the dispute and could not have issued the show cause notice against the applicant.
- ii) The action of the applicant was a part of ventilating grievance on behalf of the Association which is one of its legitimate activities. Since he acted in the capacity of an officer for common interest of the Members of the Association, it cannot be the subject matter of disciplinary proceedings. Action can be taken only against the Union.
- iii) The authorities have relied upon the fact finding inquiry report submitted by the DAG(Admn.) and the report of the Welfare Officer. However, while preparing the report and causing any such inquiry, the applicant has never been called upon to participate.
- i) When the applicant and others entered the DAG(Funds)'s chamber, two more officials were present with him and they were not called as witnesses.
- iv) The disagreement Memo issued by the Disciplinary Authority is illogical and illegal.
- v) The order of the Disciplinary Authority is not in consonance with the service rules. There is no recording of the findings on the charge based on any evidence available on record. One of the officials in the Group Shri Uttam Ch.Sahu was awarded lesser punishment whereas the applicant has been given a harsher punishment.
- vi) The Appellate Authority has not applied his mind and taken into consideration the records before confirming the order of the Disciplinary Authority.
- vii) The respondents have failed to grasp the full meaning of misconduct while proceeding against the applicant departmentally and imposing punishment on him.

7. The Respondents in their counter-reply filed on 21.6.2016 have contested the claim of the applicant and have submitted that Respondent No.2 after recording her points of

disagreement with the I.O. and on the basis of charges as proved has passed the order of punishment which was confirmed by Respondent No.3. The Respondents have clarified that in respect of Shri Uttam Charan Sahoo, he had been awarded a major penalty for his misconduct by the DAG(Admn.), as the Disciplinary Authority, Respondent No.2 as the Appellate Authority had modified the punishment taking into account the serious health condition of his son. Respondents have reiterated that the applicant along with others had used intemperate language in the Chamber of the DAG(Funds) and created a lot of noise and commotion in and around the room. This amounted to misconduct and violation of conduct rules. Neither a meeting was pre-planned nor pre-fixed by the administration with any of the Unions nor any permission was given by the Administration to any of the Unions to hold the meeting with the DAG (Funds) nor there was any specific agenda for discussion. On the date of occurrence of the incident some Association Members gathered in front of the DAG'S Chamber and having entered inside started questioning him using intemperate language. This warranted the presence of Sr.Officers including In-charge DAG(Admn.) to control the situation. In the complaint lodged by DAG(Funds), he stated that the Association Members were so aggressive that he would have become a victim of their attack had the Group Officers, Welfare Officer and B.O/Admn. not

23

entered in his room. The Respondents have challenged the contention of the applicant that one can not be the judge of his own cause. It is their contention that the Principal A.G. who has issued the Memorandum of Charge in the capacity of Disciplinary Authority was not a complainant about the incident that occurred in the D.A.G.'s room. The I.O. did not specifically state whether the charges were proved or not proved and therefore, the D.A. requested the I.O. on 12.6.2015 to give his definite conclusion. However, the I.O. submitted his further inquiry report on 12.6.2015 without any change in his earlier conclusion in the inquiry report. The I.O. did not specifically state whether the charges were proved or not proved. Moreover, the two officers who were present in the chamber when the applicant with the group entered the DAG(Funds)' Room had already left the room and therefore, the two Branch Officers were not examined as witnesses. There is no instruction by Government of India that proceedings cannot be initiated against office bearers or members of the recognized Service Associations for violation of the provisions of CCS(Conduct) Rules, 1964. The Respondents have cited the judgment of the Hon'ble Supreme Court in A.N. D'silva vs. Union of India (AIR 1962 SC 1130) in which it has been held that the inquiry report submitted by the I.O. is not binding on the Disciplinary Authority and he can differ with the I.O. The disciplinary action against the applicant has been conducted as

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24
per rules and therefore, the punishment imposed by the Disciplinary Authority as upheld by the Appellate Authority is in order.

8. The applicant in his rejoinder filed on 11.11.2016 has reiterated his earlier stand that the Disciplinary Authority has acted in a biased manner and her action is illegal. The authority who issued the Charge Memo is not the competent authority to do so. The show cause notice was issued by the DAG(Admn.), who is not the Disciplinary Authority. The nomination of I.O. was just an eyewash and the action of the Disciplinary Authority is pre-determined.

9. The applicant had also filed M.A.No.475 of 2017 on 8.9.2017 enclosing the copies of representations dated 23.12.2016 and 28.7.2017 and the reply given by the respondents on 26.5.2017 and 11.8.2017. In the said representations applicant had prayed for granting him promotion with effect from 1.12.2016. In the reply, the respondents have informed him that his promotion will be considered after the completion of the penalty.

10. We have heard the arguments of the learned counsels from both the sides on 5.1.2018 and have perused the case law cited by them. The issue involved for adjudication in the present O.A. is whether the disciplinary proceedings and the punishment imposed on the applicant are legally sustainable.

11. The charges against the applicant have been framed under Rule-14 of CCS(CCA) Rules. The punishment however, has been imposed under Rule-11 which amounts to a minor

penalty. The procedure for conduct of disciplinary proceedings under Rule-14 has been prescribed in the CCS(CCA) Rules. Rule-15 which deals with the action to be taken on the Inquiry Officers' report makes it clear that it is not mandatory on the part of the Disciplinary Authority to accept the report of the Inquiry Officer. Rule-15 of the Rules reads as follows:

"15. Action on the inquiry report:

- (1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons in the recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.
- (2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with the own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.
- (2-A). The Disciplinary Authority shall consider the representation, if any, submitted by the government servant and record its findings before proceeding further in the matter as prescribed in sub-rule(3) and (4)..
- (3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses(i) to (iv) of Rule

24
11 should be imposed on the government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the government servant.

- (4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clause(v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant".

12. In the present case, while disagreeing with the findings of the I.O., the Disciplinary Authority has observed as follows:

- "(i) As per charge sheet, Sri Anirudha Pradhan, AAO posted in Fund-12 Section, in 2nd floor, in the office of the Pr. Accountant General (A&E), Odisha, Bhubaenswar, was supposed to be in his section and performing his duty during office hours. However, on 05.03.2014 at about 4.15 PM when DAG(Funds) returned to his chamber after solving intra-net

27
problems in Fund-10 section, Shri Pradhan entered the chamber of DAG(Fund) at about 4.30 PM along with 6 to 8 members and started shouting in intemperate language, shouting loudly, questioning the authority of DAG(Funds) to visit the section intermittently.

- ii) Against the commission of such act by the Charged Officer, the evidence in record furnished by the S.W-1 Shri G.S.Suryawanshi, DAG(Funds) is that "around 4.30 PM Association Members (Mr.Sankar Sahoo, Dlip Rout, Uttam Sahoo, K.C.Panda, Anirudha Pradhan, whom I know and 6 to 8 others) entered my room and started questioning me using intemperate language about the incident instead of ascertaining the real fact. They created lot of noise and commotion in and around my room".
- (a) In the evidence of S.W.2, Shri R.N.Ghadai, Sr.A.O.(Admn.), he has stated that Shri Anirudha Pradhan, AAO along with other 8 officials was shouting inside the chamber of DAG.
- (b) In the examination in chief in course of Inquiry, W.W.3, Shri Shivraj Dhuppe has stated that "on reaching inside the chamber of Shri Suryawanshi, I noticed around 10 staff members were shouting at DAG(Fund). I then instructed AO(Admn.) Shri R.N.Ghadai to note down the names of the staff members who were shouting inside the DAG(Chamber)". As evident from the noting of Shri Ghadai SW-2, Shri Pradhan was inside the chamber of DAG(Funds).
- © In the evidence of SW 5, Shri G.J.Das, Welfare Officer, has stated that ;when he entered the chamber of DAG(Fund), he found that some of the office bearers of AAO Association and Odisha Accounts Association were accusing DAG(Fund) for the review of attendance done by him and questioning his power to do so. During

28

his presence everybody was talking in loud voice and were accusing DAG(Fund) for his action.

But the IO in his report without examining the evidences given by SW-1, SW-2, SW-3 and SW5 that the Association Members had shouted in the chamber of DAG(Fund) has come to conclusion that "the charged officers went to the chamber of DAG(Fund) in their capacity of office bearers of two unions, after obtaining his permission, regarding the frequent visit of DAG(Fund) to the Fund Sections, which hampered the working condition The use of high tone while placing the matter before DAG(Fund) by the charged officer fall short of misconduct as it is happened by the charged offices spontaneously without intending to hurt him (DAG). But it was the case that when there was a commotion outside the chamber of DAG(Fund), raising objection regarding frequent visit of DAG(Fund) to the fund Sections, the charged offices being union leaders entered the chamber of DAG(Fund) with verbal permission and protested to him at loud voice. It cannot be concluded that the charged offices had no any intention to intimidate DAG(Fund). In Para-15 of the report, I.O. has stated that SW2 R.N.Ghadai and SW-5, G.J.Das had stated that the charged officers were speaking in loud voice only with a view to over reach each other and that they be heard by the DAG(Fund)". The above inference drawn by the IO using the word "only" against the evidence of SW-5 is not at all correct as the said word "only" did not find place in the evidence of SW-5. Further, the SW-2 Shri R.N.Ghadai has nowhere stated in his evidence that the charged officers were speaking in loud voice only with a view to over reach each other. Hence, this part of conclusion drawn by the IO is not free from bias, as the above evidences were not taken into consideration".

13. From the facts of the present case it is clear that the applicant along with a group had entered into the chamber of the DAG(Funds). The applicant does not deny this. Two

29

contradictory positions are being indicated by the applicant and his group vis-à-vis the DAG(Funds). Some witnesses have stated that there was considerable commotion in the chamber of DAG(Funds) and the Office Bearers of the Association were shouting and according to other witnesses intemperate language was being used. The applicant and his group-mates on the other hand, submit that there was a "discussion" with the DAG(Funds) relating to his frequent visits to the Section to check the work done by the staff. Whatever may be the cause of commotion or the background for "discussion" as claimed by the applicant and his group, the evidence recorded by the witnesses clearly points out to misconduct on the part of the applicant and his group. The IO's findings have been properly and justifiably controverted by the D.A. in a detailed and reasoned order. The Inquiry Officers' report also suffers from a major flaw inasmuch he has recommended to close all the cases whereas the I.O. in a quasi judicial capacity was expected to only come to a conclusion whether the charges have been proved or not proved. Any recommendation for further course of action or the quantum of punishment to be imposed is not legally permissible. The Disciplinary Authority has acted in a legal and correct manner by pointing out to this deficiency in the IO's report. It is appears that on receipt of the Inquiry Report the IO was asked by the Disciplinary Authority to specifically state whether the charges were proved or not. But

30
again, he reiterated his earlier recommendations in his report sent on 22.6.2015. We therefore, find that on this ground also the disagreement of the D.A with the IO's report is legally sustainable.

14. The Hon'ble Supreme Court in a number of cases has emphatically defined the scope of judicial interference in a disciplinary matter. In **Surender Kumar vs. Union of India (2010) 1 SCC 158**, the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

In **Hombe Gowda Educational Trust vs. State of Karnataka (2006) 1 SCC**, the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

In **Coal India Ltd. vs. Mukul Kumar Choudhury (2009) 15 SCC 620**, the Hon'ble Apex Court made the following observations.

"13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and that power of judicial review is not directed against the decision, but is confined to the decision-making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the inquiry officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference".

3/ In **Bank of India vs. Degala Suryanarayana (1999) 5**

SCC 762, the Hon'ble Apex Court had laid down an important principle:

"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 the fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or where a finding is not 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".

In **M.V.Bijlani vs. Union of India (2006) 5 SCC 88**, the

Hon'ble Supreme Court established a similar position:

"25 ...Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing 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".

32
Similarly, in **B.C.Chaturvedi vs. Union of India (1995) 6**

SCC 749, the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceedings as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act or of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mold the relief so as to make it appropriate to the facts of each case.

In **Union of India vs. G.Ganayutham (1997) 7 SCC 463**

the Hon'ble Supreme Court has held:

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"To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters has not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test"

"...Disciplinary Authority's order should be speaking if he does not agree with the findings of the Inquiry Authority. National Fertilizers Ltd. P.K.Khanna (2005) 7 SCC 597

The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with the finding of the enquiry officer. Appellate Authority's order must reflect that it was passed with full application of mind and should give reasons for the decision". Ram Chander vs. Union of India (1986) 3 SCC 103).

15. We have also gone through the decisions cited by the Respondents in the **High Court of Judicature at Bombay, through its Registrar vs. Shashikant S.Patil & Anr. reported in 1999 (9) Supreme 42** in which it has been held by the Hon'ble Supreme Court that findings of inquiry officer are only his opinion on materials and they are not binding on disciplinary authority. It is not necessary that disciplinary authority should discuss materials in detail and contest the conclusion of inquiry officer.

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In **Nirmala J.Jhala vs. State of Gujarat & another** reported in AIR 2013 SC 1513, the Hon'ble Supreme Court had laid down that the preliminary enquiry is useful only to take a prima facie view as to whether there can be some substance in the allegation made against an employee which may warrant a regular inquiry.

16. We have taken into account the case laws cited by the respondents and accept their view that the findings of the IO are not binding on the disciplinary authority and that there is no bias in the Disciplinary Authority's action in taking the entire facts into account and following the legal provisions in passing of the order. We also do not find any irregularity in the action of the Disciplinary Authority in so far as disagreement with the report of the IO is concerned. The Disciplinary Authority has made elaborate recording of the reasons for disagreement as well as the circumstances which she found to be relevant to establish the charges framed against the applicant. We also find that the Disciplinary Authority's order is quite reasoned and detailed. We do not agree with the applicant's contention that there is no application of mind on her part. Similarly, the Appellate Authority has also analyzed in detail the legal points and passed an order which is reasoned as well as detailed. We are convinced that there has been a due application of mind while passing the order and therefore, we do not find any illegality in the order passed by the Appellate

35
Authority. The Appellate Authority after considering the grounds of appeal has rejected it after coming to the conclusion that the Disciplinary Authority has taken into consideration all aspects of the case and recorded detailed reasons for rejecting the finding of the I.O. Therefore, the allegations that the Disciplinary Authority has passed the impugned penalty order without application of mind and without specifically indicating which action of the applicant was an unbecoming conduct are baseless and untenable.

17. We have examined the facts and points of law raised in the other OAs, viz., O.A.Nos. 122, 154, 182, 184 and 197 of 2016. All the applicants were in the same group which entered the room of DAG(Funds) and created commotion, using loud and intemperate language. The Disciplinary Authority has acted within the framework of law and imposed the punishment on them after recording detailed reasons for his disagreement ^{with} ~~in~~ the report of the Inquiring Authority and after due consideration of their defence statements. The Appellate Authority has upheld the orders of the Disciplinary Authority in all the cases. Considering the facts of the case and viewed in the context of judicial pronouncements, we find that in all the O.As there is no scope for interference in the orders of the Disciplinary Authority as well as the Appellate Authority, since there is no procedural impropriety or illegality in the orders passed. In view of the above, we do not find any merit in the

36
O.As. They are accordingly dismissed. The stay granted by this Tribunal in the individual OAs is vacated. Misc. Applications filed in all the above mentioned OAs stand closed. No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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