

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. . 65 of 1998.

DATE OF DECISION 20-2-2001.

Dr.(Smt.) Anjali Chakraborty

PETITIONER(S)

S/Sri A.Roy, M.Chanda.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri B.K.Sharma, Railway standing counsel.


ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



V

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 65 of 1998.

Date of Order : This the 20th Day of February, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Dr.(Smt.) Anjali Chakraborty,
Wife of Shri P.K.Chakraborty,
Teacher Grade-I,
Netaji Vidyapith Railway H.S.School,
N.F.Railway, Maligaon, Guwahati-11. . . Applicant.

By Advocate S/Sri A.roy, M.Chanda.

- Versus -

1. Union of India,
through the General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. Chief personnel Officer,
N.F.Railway,
Maligaon, Guwahati-11.
4. Shri S.K.Biswas,
Ex.Dy.Chief Signal & Telecommunication
Engineer (Works), N.F.Railway,
Maligaon, Guwahati-11.

AND

Controlling Officer, Netaji Vidyapith
Railway H.S.School, N.F.Railway,
Maligaon, Guwahati-11. . . . Respondents.

By Advocate Shri B.K.Sharma, Railway standing counsel.

O R D E R

CHOWDHURY J.(V.C)

The legitimacy of the order dated 22.11.96 imposing the penalty of reduction to the lower time scale of pay is the subject matter for adjudication which has arisen in the following circumstances.

2. The applicant at the relevant time was holding the post of Assistant Teacher Sr.Grade-I. A disciplinary

proceeding was initiated under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1958. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry was proposed to be held was set out in the articles of charges and served on her. Statement of imputations of misconduct or misbehaviour in support of each articles of charges alongwith list of documents and list of witnesses were also delivered on the applicant. The applicant submitted her statement of defence in writing and Inquiry Officer was appointed. On completion of his enquiry the Inquiry Officer submitted his report holding that the Article 1 and Article 3 of the charge was partly sustained and Article 3(2) as not true. The disciplinary authority accepted the report of the Inquiry Officer and by impugned order imposed penalty of reduction to the immediate lower time scale of pay for a period of 18 months with cumulative effect. The applicant preferred an appeal and thereafter moved the Tribunal. The Tribunal in O.A.28/97 by its order dated 7.1.98 directed the respondents to dispose the appeal within the period prescribed. The appellate authority by its order dated 28.4.98 dismissed the appeal. Hence this application assailing the legality and validity of the departmental proceeding, questioning to the procedural lapses of the respondents in conducting the enquiry impeaching as well the propriety and correctness of the findings reached by the appellate authority.

2. The respondents contested the case by filing its written statement. The applicant also submitted rejoinder to the written statement. Mr A.Roy, learned senior counsel appearing for the applicant raised numerous issues. Mr Roy firstly submitted that the impugned departmental proceeding initiated by the Deputy Chief Signal & Telecommunication Engineer (DCSTE for short) was wholly unauthorised in as

much as the Controlling Officer was not the competent authority to initiate a departmental proceeding against a teacher of the grade of the applicant. According to Mr Roy under the Rules for time being in force proceeding could have been initiated by the Head of office and accordingly Mr Roy submitted that the Head of ^{office} ~~was~~ the Chief Personnel Officer and not the officer who initiated the proceeding. The learned counsel also assailed the proceeding on the ground of procedural ~~impropriety~~ ^{impropriety} and submitted that the same was conducted in violation of Disciplinary Rules and the principles of natural justice. The learned counsel challenging the findings of the disciplinary authority submitted that the findings were perverse and not based on any evidence. Mr B.K.Sharma, learned senior counsel appearing for the respondents countering the submission of Mr Roy submitted that the controlling officer is Deputy CSTE, Works, to conduct the proceeding. Mr Sharma for that purpose referred to the Rules for control and management of Railway Schools on the North East Frontier Railway. Mr Sharma further submitted that a disciplinary proceeding is/was not like that of a judicial enquiry. A disciplinary enquiry is to be conducted by providing opportunity to the charged officer to defend his case and in the instant case all the materials those were sought to be relied against the delinquent officer were furnished and enquiry was conducted in her presence and therefore the grievance of procedural impropriety was not sustainable. The learned counsel lastly submitted that the conclusion of the guilt against the delinquent officer was arrived by the Enquiry Officer on the basis of materials on record and evidence and therefore the allegations of perversity was also not sustainable.

3. The applicant was charged of exhibiting lack of integrity devotion to duty and conduct unbecoming of a Railway servant and thereby violating Rule 3(1)(i)(ii) & (iii) of Railway Service Conduct Rule 1966 and for that purpose the following article of charges were framed against the applicant.

"1. Smt Anjali Chakraborty has wilfully defaced the original entry against date of birth in her Service Book (opening page) and written a false date as First May, Nineteen hundred and forty two. Her actual date of birth is 01.10.1938 as evident from various other documents available to the administration. Thus, she has tried to deceive the organisation by way of extending her date of superannuation by 3 years and 7 months from the actual date.

2. Smt. Anjali Chakraborty wilfully avoided to declare her actual date of birth even when repeatedly asked during enquiry conducted by Vigilance Organisation, N.F. Railway till the end of protracted questioning on 18.1.94, when ultimately she admitted her actual date of birth as 01.10.38.

Thus, she has wilfully tried to mislead the enquiry proceedings.

3. Smt. Anjali Chakraborty in defiance to CPO/N.F. Railway's order, has imparted lecture in West Guwahati College of Education and accepted monthly remuneration of Rs.500/-.

Thus, by the above acts of Srimati Anjali Chakraborty, Asstt. Teacher Grade/I of Netaji Vidyapity Railway H.S. School, Pandu, exhibited lack of integrity devotion to duty and conduct unbecoming of a Railway Servant and thereby violated Rule 3(1)(i)(ii) & (iii) of Railway Service Conduct Rule 1966."

The applicant submitted the written statement of her defence. The authority decided to enquire the matter under the Rules. Part IV of the Railway Service (Discipline & Appeal) Rules 1968 provides the procedure for imposing penalty. Some of the relevant provision of the Rules are re-produced below :-

"Rule 2(c) 'disciplinary authority' means.

(i) in relation to the imposition of a penalty on a Railway servant, the authority competent, under these rules, to impose on him that penalty;

(d) 'head of the department' for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be head of the department in terms of clause (9) of Rule 2202 of Volume II of the Indian Railway Establishment Code;

Rule 9(1) No order imposing any of the penalties specified in clauses (v) to (ix) of rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

Rule 18. Orders against which appeal lies-

Subject to the provisions of Rule 17, a Railway servant may prefer an appeal against all or any of the following orders, namely:-

(ii) an order imposing any of the penalties specified in Rule 6 whether made by the disciplinary authority or by the appellate authority;

20. Period of limitation for appeals-

No appeal preferred under this part, shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against, is delivered to the appellant.

Provided that the appellate authority may, entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

Rule 22(2) Consideration of appeal-

(1)

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record, and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case; "

Rule 10 provides for taking action on the report of the Enquiry Officer. The rules also provided the penalties to be imposed for a Railway servant for good and sufficient reasons as indicated in Rule 6 of the Rules. The President may impose any of the penalties specified in Rule 6 on any Railway servant as provided in sub-rule 1 of Rule 7; without prejudice to the provision of the aforesaid rule any of the penalties specified in Rule 6 may also be imposed on a Railway servant by the authorities specified in the schedules. The rules as mentioned earlier also defined the disciplinary authority and the "Head of the department" for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority. Mr Roy, learned Sr.counsel for the applicant assailed the initiation of the proceeding by the Dy.CST/Works as the controlling officer on the ground that under the scheme of the disciplinary rules the controlling officer Dy.CST Works, could not have donned the role of Head of the department or disciplinary authority under any circumstances. The contention was seriously contested by Mr Sharma, learned Sr.counsel appearing for the respondents and for that purpose referred to the scheme of Article 311(1) of the Constitution of India and the decision of the Supreme Court rendered in Director General, ESI and another vs. T.Abdul Razak, reported in (1996) 4 SCC 708. There is no requirement under clause (1) of Article 311 for initiation of disciplinary proceeding by the appointing authority, what is required is that the order of dismissal, removal etc. is to be made by an authority, not subordinate to the appointing authority. The controversy is resolved by the Supreme Court in State of M.P. vs. Shardul Singh, reported in (1970) 1 SCC 108. The said position is consistently accepted by the Supreme Court in a number of

subsequent cases including the case of T. Abdul Razak (supra). In the facts situation we are not inclined to accept the contention of Mr Roy and accordingly the same is rejected. As regards the contention of Mr Roy about the procedural impropriety Mr Roy is in a firmer footing. We have already indicated the contentions of the procedure for imposing penalty under Rule 9 of the Rules. The respondents authority brought the allegation against the applicant and for that purpose Articles of Charges were framed and served. Those charges were only allegations and allegations were required to be established by facts. In the disciplinary proceeding no witnesses were examined nor any documents proved. As per the articles of charge the applicant was charged for wilfully defacing of the original entry against the date of birth in her service Book and charge were for writing false date of birth as 1.5.1947. The Enquiry Officer referred to the seniority list dated 4.4.61. The document ^{question was} ~~line/c~~ not proved, a xerox copy was relied by the enquiry officer. The service record was also not made available. The Enquiry Officer relied on a statement that was said to be made by the applicant on 11.1.94. The Enquiry Officer also referred to the Medical Certificate No.326 dated 23.8.67 stated to be issued by DMO/N.F.Railway, Maligaon at the time of appointment as Asstt. Teacher. That documents ^{were} ~~was~~ neither a listed document, nor the said document ^{was} ~~was~~ furnished to her or produced, the Enquiry Officer referring to an alleged statement made on 18.1.94 held that she signed on the Medical Certificate in reply to the question put by the Enquiry Officer on 5.1.96. The Enquiry Officer relied on documents which were not furnished to the applicant despite her asking nor the same were produced. Annexure-B listed the documents on 4.12.95

which included the service book, enquiry proceeding and report by Vigilance branch and the connected records. The Enquiry Officer however held that article of charge was partly sustained as regards the charge No.3, the Enquiry Officer found the charge partly true. The allegation was that the charged officer in defiance of CPO/N.F.Railway's order had imparted lecture in West Guwahati College of Education and accepted monthly remuneration of Rs.500/-. In her defence application she submitted that she sought for permission from CPO for imparting lecture which was rejected. She did not thereafter impart lecture. She also denied that she took any remuneration and she only paid conveyance allowance. The Enquiry Officer though held that the charge was partly proved no reasonings as such was given. The Enquiry Officer himself found that by imparting lecture she did not commit any wrong as per Establishment Code. He however, found that she accepted the charge that she violated the CPO's order in reply to his question No.19. At the first instance there was no charge for her defiance of the order of the CPO. The applicant by her application dated 12.8.92 asked for permission to enable her to render honourary service in local B.Ed College by communication dated 4.9.92. She was informed that the authority declined to accord her permission. The above communication perse did not tantamount to any defiance or insubordination in the absence of anything more. It is a case in which the charged officer did not admit any of the charges. Enquiry Officer appointed to hold an enquiry. No enquiry was in fact held save and except the conclusion that charges were partly proved. No reasonings were also assigned. The materials on record did not indicate that the applicant ever accepted her date of birth as 1.10.38,

it was for the disciplinary authority to prove and establish the same at any rate charge No.1 was other than the declaration of her age, the charge was that of wilfully defacing of the original entry in the service book. As was spoken up, no witnesses on behalf of the department was examined. The enquiry officer only interrogated the charged officer. Some illustrations are reproduced below to ascertain the pattern of enquiry proceeding of the preliminary D.A.R Enquiry dated 23.1.95.

"The proceedings of the above enquiry started on date (4.12.95) at CME's Office in which the defendant, Smt. Anjali Chakraborty, Asstt. Teacher/N.V.H.S. School, Maligaon, was present along with her Defence Counsel, Shri Shyamal Choudhury, Ex.OS/DRM(W)/APDJ.

At the very outset, the defendant was asked whether she accepted the charges/allegations framed against her to which the defendant, Smt. Chakraborty totally denied the charges/allegations in view of the circumstances as already explained in her written statement of defence dated 6.3.95 submitted to D.A.

Asked whether she has already inspected the listed documents vide Annexure III of the memorandum of charge to which the defendant stated that she had inspected all the documents (excepting item No.2 of Article 1) in question. The xerox copy from the xerox copy available in the case in regard to the item No.2 was handed over to the defendant at the time of enquiry on date. As regards the authentication/genuineness of the cited documents, the defence did not raise any objection against the cited documents excepting item No.2 of Annexure III of the memorandum of charges. She wanted to inspect the original document in this regard."

"The adjourned sitting started again on 5.12.95 at 11.00 hrs. at CME's Office, Maligaon.

At the outset as desired by E.O on 4.12.95, the defendant submitted a list of documents to be provided to her for defending her case. The E.O. agreed to examine the list and provide if it has got relevance."

"The adjourned sitting started again at 14.30 hrs. on 4.1.96 at CME's Office. Defendant wanted some document and submitted a list on 5.12.95 which was examined by E.O. and agreed to provide

the Sl.No.2 of the list i.e. Vig. enquiry report as per para.6, page 39 of D&AR 1968 Brochure. Other documents are neither relevant nor required at this stage. However, E.O.agreed to consider in due course at the time of discussion.

Examination of Smt.Anjali Chakraborty,Asstt. Teacher by E.O.

Q.No.1 What is your name ?

Ans. Smt. Anjali Chakraborty (Bhattacharjee before marriage).

Q.No.2 What is your date of birth ?

Ans. 1st May, 1942.

Q.No. 3 Did you serve the Railways prior to this service as Asst.Teacher ?

Ans. Yes, I served as a Junior Clerk in the Claims Office, Pandu, till my resignation in June/July 1962.

Q.no.4. Did you receive any Provident Fund money for the past service ? If yes, then how and where ?

Ans. I applied for the payment to be made in cash in presence of Headmaster, Netaji Vidyapith.

Q.No.5 The seniority list published vide CTS/PNO's No.E/255/111/113(T) dated 4.4.61 and a copy was endorsed to the staff concerned. As per extent rule and also the note (3) you should have represented if you had any complain. But you did not do so. That means you have accepted the date of birth as 1.10.38 as mentioned against your name at Sl.No.30. Offer your comment on that please.

Ans. No such seniority list was endorsed to me as I was working as a Clerk of the Claims Office. It may please be seen that in this list (xerox copy) no endorsement was also made to the CCS/Claims."

"As such there was no question of myself receiving a copy of the same, This list was not received by me and it is not accepted that my date of birth is 1.10.38 for all intent,content and purpose of the rule my date of birth is 1st May,1942."

Q.No.7 Did you declare your D.O.B. as 1.10.38 in the service application form for appointment as Clerk(G) Commercial Deptt ?

Ans. No. It can be verified from the concerned from itself.

Q.No.8 It is seen that you have submitted one true copy of certificate from Amingaon H.E. School mention your D.O.B as 1.5.42. Can you show the original certificate ?

Ans. Already I have submitted the original copy of this certificate to the School

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authorities, which has not been returned to me. However, I am submit a xerox copy along with a fresh certificate from Headmaster, Amingaon High School dated 31.3.76.

At this stage E.O. verified the fresh certificate dated 31.3.76 mentioning her D.O.B. as 1.5.42. The Xerox copy has been kept as DD-5 after verification.

Q.No.9 You have replied to Q.No.7 of 10.1.74 while questioning at Vigilance Office that you could not recollect, there might have some calculation error which was rectified at the time of submission of application. Why you did not give your initial ?

Ans. The service application form was filled up and it was corrected to give the date of birth in full and this form was submitted to the controlling officer and duly counter-signing by him along with the same form age proof certificate was enclosed. My original certificate was also verified with other testimonials by the interviewing officials during viva voce test and no body advised me to initial the same as they found that the same is correct as per certificate."

"The sitting continued from 4.1.96 and started on 5.1.96 at 10.00 hrs. at CME's Office.

Q.No.10 Do you accept that the overwriting of D.O.B. on the concerned column of the service application form for appointment of Asst. Teacher done by you ?

Ans. R Yes, prior to submission of the application.

Q.No.11 Please verify the signature on the medical certificate issued for appointment, by the DMO/MLG vide their No.326 dt.22.8.67 and state whether this is yours or not ?

Ans. Signature is mine, but the contents therein are not written by me.

Q.No.12 Since you are a very qualified person, it is presumed that you would sign in the papers after a careful reading. In this case before signature did you go through the contents of the same ?

Ans. I did not go through the contents since I took it only as a fit certificate for entering in the Railway service.

Q.No.13 At the time of submitting application for service you have submitted an attested true copy of the school certificate containing the DOB attested by the then Headmaster Shri A.K.Mitra on 10.8.64. But at the time of Vigilance Enquiry in reply to Q.No.2 dtd. 10.1.94, you replied that the original certificate was destroyed in a communal riot in the year 1960. How you could manage as attested copy signed in 1964 ?

Ans. In fact, the original certificate dated 18.1.57 was destroyed in 1960. Again I had to collect the certified true copy of which was given by the AMJ School authority. This certificate along with the attested copy signed by Shri A.K.Mitra, the then Headmaster of Netaji Vidyapith was submitted to the school authority of Netaji Vidyapith which was not returned to me. For my personal record for other educational works I collected another copy of certificate from the Amingaon School authority who instead of giving certified copy issued a fresh for their convenience in 1976, copy of which has been submitted to the E.O. on 4.1.96.

Q.No.14 Please examine the opening page of Service book of Smt Anjali Chakraborty and state whether the format was filled up by your own hand writing.

Ans. Format was filled up by me and against date of birth some body wrote something marking SN 217. I was called by the Headmaster to write my date of birth in my own handwriting which I did and went back to classes. This was also got countersigned by the controlling officer by the Head Master for their column."

Q.No.15 The service book was opened in Feb/66. The correction was made in 1975. The Birth certificate (at SN.217) was submitted in 12/66 and the age 28 yrs. 10 months 20 days was written in the medical memo on 23.8.67. Why so much difference occurred? Offer your remarks.

Ans. The service book and the record in question was in the custody of Railway authority as such I can not be held responsible. Moreover, in the meantime, 20 years have elapsed. I cannot also recollect the circumstances clearly. It may so happen that date of birth against the column of date of birth was written in figure and it was got written in ~~xxx~~ words. But I am sure that I did not made any 'blooming' etc. as it is now seen. Moreover, it may please be seen that seniority list of teachers published in the year 1976 and 1979 show the date of birth correctly as 1.5.42 (xerox copy submitted)

Q.No.16 It has been alleged that you have wilfully tried to mislead the enquiry proceedings by avoiding to declare your actual date of birth and after predicted questioning on 18.1.94 ultimately you admitted the actual D.O.B as 1.10.38 in reply to question No.16 of 18.1.94. Please offer your comment.

Ans. I have never accepted that my D.O.B. is 1.10.38. In fact in the vigilance branch, the VI concern dictated certain question and also give instruction as to what answer I should write. Whenever, I said something in contrary

he got annoyed and threatened of dire consequences. Under the ~~x~~ circumstances and just to co-operate with the administration, I wrote that administration can fix up any date as D.O.B. from the official record available vide my letter dtd. 20.9.93 (PD-6 of Art.I) and also in my ~~xxxxxxxxxx~~ 20.9.93 reply against Q.No.16 of 18.1.94. Both the statements were given out of sorrow and anguish due to being grilled after serving the Railways for more than 30 years and also having D.O.B. certificate issued by Head Master, Amingaon High School, which the administration could not prove to be incorrect. This proves that I entirely co-operated with the Railway administration. But I cannot accept any wrong allegation of charge which question my dignity and integrity.

Q.No.17 Did you apply for permission for rendering honorary service by imparting lecture in 'History' in West Guwahati B.Ed. College at Pandu ?

Ans. Yes.

Q.No.18 Have you drawn any remuneration from the institution ?

Ans. No. Only conveyance allowance were given."

Q.No.19 Did ~~xx~~ the administration permit ~~x~~ you to render the honorary service as desired ?

Ans. No. CPO regretted but also did not ask me to discontinue forthwith. Since permission was not accorded I stopped imparting education as soon as the course was over. In this connection contents of DD-1 may please be perused.

Q.No.20 Do you accept that you have ~~xxx~~ violated the CPO's order by ignoring his regret letter ?

Ans. No. Because vide Estt. Code Vol.I para 15 Explanation Clause 2, page 154 concerning service conduct rules 1966, I need not obtain permission for the honorary work of social & Literacy nature of work. As such, my application made to CPO tentamounts to a letter informing him of my intention of undertaking of such honorary and social work. However, since CPO did not agree to give permission, I stopped going to the College as soon as the session was over."

The Enquiry Officer, as eluded submitted its report holding that the Charged Officer defaced the original entry against date of birth in her service book (opening page) and corrected the date of birth as 1.5.1942 unauthorisedly. The Enquiry

Officer held that the charge No.2 was not proved. As regards the charge No.3 the Enquiry Officer held the charged Officer by imparting lecture did not commit any wrong but the charge of violation of the CPO's order was proved. A major punishment was imposed by the respondents without holding an enquiry as per law and without proving and establishing even prima facie by preponderance of the probability with some materials.


4. The Enquiry Officer did not assign any reason for its conclusion. The Enquiry Officer had given go bye to the procedural propriety and acted in flagrant violation of the principle of natural justice. Evidence Act, it is true, is not applicable in a disciplinary proceeding as was argued by Mr B.K. Sharma, the learned senior counsel representing the Railways. The evidence of the witnesses are not required to be recorded in the mode prescribed in the Evidence Act. But then the domestic enquiry is required to be conducted in a just fair and reasonable manner. The domestic body, while holding a domestic enquiry cannot act upon materials/evidence which is non-existent. Fact or facts disputed is not to be acted upon in the absence of some semblance of proof. No materials are to be counted upon without providing an opportunity to the affected party to rebut or counter. As was held by the Supreme Court in *N/S Bareilly Electricity Supply Company Ltd. vs. The Workmen & Ors.* reported in AIR 1972 SC 330(339) :


"But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that naturally

arises is, is it a genuine document what are its contents and are the statements contained therein true. When the Appellant produced the balance sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact."

A primary aim of legal policy is to do justice. The principle of natural justice is of universal application and founded on the basic principles of justice. The procedure adopted by the Enquiry Officer cannot be held to be fair and just. The disciplinary authority after recording its finding passed the impugned order. From the order it is not discernible that the disciplinary authority applied its mind as was required under the law. The explanation and defence of the applicant was also seemingly not considered. The applicant filed appeal raising the issue of violation of natural justice as well as perversity of the findings. The appellate authority also did not consider to those issues. On consideration of all the aspects of the matter we are of the opinion that the impugned order of penalty imposed by the respondent No.4 on the basis of the report of the Enquiry Officer vide letter No.E/252/57/425(W)/D&A/Con dated 22.11.96 and the appellate order dated 28.4.1998 cannot be sustained and accordingly those are set aside and quashed.

The application is allowed to the extent indicated. Considering the facts and circumstances, there shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN