

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A.NO.1276 OF 2013**

New Delhi, this the 21<sup>st</sup> day of September, 2017

**CORAM:**

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHIR RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

Rajendra Mehto,  
s/o Shri Prayag Mehto,  
House No.E-371, Gali No.76,  
Mahavir Enclave, Part III,  
New Delhi 110059 ..... Applicant

(By Advocate: Shri A.K.Bhakta with Shri H.P.Chakravorty)

Vs.

Union of India through  
Secretary to the Govt. of India,  
Ministry of External Affairs,  
South Block,  
New Delhi 110001 ..... Respondent

(By Advocate: Shri B.L.Wanchoo)

.....

**ORDER**

**Per RAJ VIR SHARMA, MEMBER(J):**

**Brief Facts:** The applicant was initially appointed as a Peon against the vacancy reserved for Scheduled Tribe in the Ministry of External Affairs on 26.11.1982. He was subsequently promoted to the post of LDC and thereafter to the post of UDC. While the applicant was serving as UDC, the Disciplinary Authority (DA) issued to him a charge memo dated 10.5.2007(Annexure A/1) proposing to hold an

inquiry against him under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as CCS (CCA) Rules). There were two articles of charges against him. Article I of the charges was that the applicant had secured employment in the Ministry of External Affairs, Government of India, on the basis of a fake Scheduled Tribe community certificate. Article II of the charges was that the applicant, in his response dated 8.11.2006 to the Vigilance Unit's memorandum No.Q/Vig./842/15/06 dated 30.10.2006, misrepresented that he belonged to Kharia community, and that the Scheduled Tribe community certificate No.309 dated 5.6.1979 was genuine. In response to the charge memo, the applicant submitted written statement of his defence on 17.5.2007(Annexure A/4) denying the charges. After analysing the evidence adduced by the prosecution and defence during the enquiry, the IO submitted his report dated 18.6.2008 finding that the charges were proved against the applicant. On a copy of the enquiry report being supplied to him by the DA, the applicant submitted his representation dated 23.7.2008 against the findings of the IO. After considering the enquiry report and the applicant's representation thereon and other materials available on record of enquiry, the DA held the applicant guilty of securing appointment in the Ministry of External Affairs on the basis of a fake ST community certificate and, accordingly, imposed on applicant the penalty of removal from

service, vide order dated 26.9.2008. Being aggrieved thereby, the applicant made an appeal dated 23.12.2008. After considering the points raised by the appeal and materials available on record of enquiry, the Appellate Authority (AA), vide order dated 9.4.2009, upheld the DA's order dated 26.9.2008 (ibid) and rejected the applicant's appeal. The revision petition dated 4.5.2009 filed by the applicant against the orders passed by the DA and AA was also rejected by the Revisionary Authority (RA), vide its order dated 3.1.2011. Being aggrieved by the orders passed by the DA, AA and RA, the applicant has filed the present O.A. seeking the following reliefs:``

- õ(i) Quash and set aside the Charge Memo No.Q/Vig/842/15/16 dt.10<sup>th</sup> May, 2007; the report of the Inquiry Officer issued vide No.Q/Vig/842/15/16 dt.18.06.2008; the orders of Suspension issued by the respondents vide their order No.Q/Vig/842/15/16 dt.04.07.2008; the Orders of the Disciplinary Authority vide Respondent's No.Q/Vig/842/15/16 dt.26.09.2008 removing the applicant from service; the orders rejecting the appeal preferred by the applicant by the Appellate Authority vide Respondent's No.Q/Vig/842/15/16 dt.09.04.2009 and the decision of the Reviewing Authority rejecting Review Petition preferred by the applicant vide Respondent's No.Q/Vig/842/15/06 dt.3.01.2011;
- (ii) direct the respondents to reinstate the applicant forthwith with continuity in service; and with all consequential benefits;
- (iii) direct the respondents not to invoke the provisions of Discipline Rules to take action against the applicant till a decision of the Government of Bihar as directed by the Hon'ble High Court of Patna is forthcoming since the circumstances of the case are such that unless the State Government of Bihar which is presently examining/implementing the directions of the Hon'ble

High Court of Judicature of Patna contained in their Judgment/Order dt.20.04.2010 in CWJC NO.12334 of 2009 comes out with its decision and until the caste certificate produced by the applicant is cancelled by the Competent Authority as per the law laid down by the Honøble Apex Court in Madhuri Patilø case (Madhuri Patil Vs. Commissioner, Tribal Development [1994] 6 SCC 241 = 1994 SCC (L&S) 1349 = (1994) 28 ATC 259];

- (iv) Award costs
  - (v) Pass any other order or orders as may be deemed just and proper in the facts and circumstances of the case;
- Prayed accordingly.ö

2. Resisting the OA, the respondent has filed a counter reply, wherein it has been contended, *inter alia*, that there is sufficient evidence to prove the charges against the applicant. The IO, DA, AA and RA, while negating the pleas/contentions raised by the applicant, have all recorded the findings in fair manner. The procedure established by law has been duly followed. There is, thus, no infirmity in the orders passed by the authorities.

3. The applicant has filed a rejoinder reply refuting the stand taken by the respondent.

4. We have carefully perused the records, and have heard Mr. H.P.Chakravorty, the learned counsel appearing for the applicant, and Mr.B.L.Wanchoo, the learned counsel appearing for the respondent.

5. Mr.H.P.Chakravorty, the learned counsel appearing for the applicant, submitted that the documents on the basis of which the IO, DA, AA and RA have held the charges as proved against the applicant were not proved by witnesses and hence there was no legally admissible evidence available on record of enquiry to prove the charges against the applicant.

The impugned orders have been passed by the DA, AA and RA without considering the pleas of the applicant in their proper perspective and without assigning reasons and, therefore, they are unsustainable. When the ST community certificate, on the basis of which the applicant secured the appointment, has not been cancelled by the competent authority after following the prescribed procedure, the findings recorded by the IO, DA, AA and RA that the said certificate is a fake/forged one are unsustainable. In view of the order dated 20.4.2010 passed by the Honøble High Court of Judicature at Patna in CWJC No.12334 of 2009 (**Akhil Bhartiya Kharia-Nonia Vikas Mahasangh and others**), the initiation of the departmental proceeding is bad and illegal. Consequently, the impugned enquiry report submitted by the IO and the orders passed by the DA, AA and RA stand vitiated and liable to be quashed. To buttress his contentions, Mr.H.P.Chakravorty, relied on and produced before us copies of the order dated 8.2.2012 passed by the Full Bench of the Tribunal in O.A.Nos.107 and 127 of 2008 and OA No.229 of 2009 (**S.Sundar Raju Vs. Union of India and others**), the decision of the Honøble Supreme Court reported as (2009) 2 SCC 570 (**Roop Singh Negi Vs. Punjab National Bank and others**), the excerpts from **Swamy's-Reservation and Concessions in Government Services**; and the decisions of the Tribunal in OA No.1368 of 2012, decided on 11.10.2012 (**Suresh Prasad Vs. Secretary, Department of Personnel & Training, and others**) and in OA No.1816 of 2012, decided on 18.3.2013 (**Vijay Kumar Vs. Union of India and others**). Mr.H.P.Chakravorty also

relied on and produced before us a copy of the judgment dated 30.3.2017 passed by the learned CMM, Tis Hazari, Delhi, in RC No.4(S)/2006, PS CBI/SCR-III/ND, u/ss.420 & 471 IPC (**CBI Vs. Suresh Prasad**). The accusation against the accused-Suresh Prasad was that he had knowingly submitted a forged ST community (Kharia) certificate in his name and, on the basis thereof, had succeeded in procuring the job of LDC in CBI against the reserved ST category. After analysing the oral and documentary evidence adduced by the prosecution and defence, the learned Magistrate acquitted the accused of the charges. Relying on the said judgment, Mr.H.P.Chakravorty submitted that the applicant in the present case is similarly placed as accused-Suresh Prasad and, therefore, the charges against the applicant are baseless and the impugned disciplinary proceedings and the orders passed by the DA, AA and RA are unsustainable and liable to be quashed.

5.1 In **S.Sundar Raju Vs. Union of India and others** (supra), the reference was made to the Full Bench of the Tribunal on the following three questions:

- õ(i) Whether the departmental proceedings, which is the basis for imposition of penalty against the officers, i.e., the applicants herein, were conducted as per the rules and procedure and after due observance of principles of natural justice;
- (ii) Whether the finding of the Inquiry Officer on the charges is based on no evidence;
- (iii) Which view of the Tribunal, i.e., the common judgment dated 19.3.2008 of the Hyderabad Bench or the decision of the Bangalore Bench dated 30.12.2008 is correct.ö

While answering the questions, it has been held by the Full Bench that documents seized in search can be proved by one who seized them. Mere marking of documents is not enough. The documents can be proved by witnesses. Charges cannot be proved merely by brief of Presenting Officer.

5.2           **In Roop Singh Negi Vs. Punjab National Bank and others** (supra), the appellant was a Peon in respondent Bank. He along with others was involved in a case of theft of Bank draft book. An FIR was lodged for the alleged loss and after investigation by the police, the appellant and others were prosecuted. The appellant was, however, acquitted by criminal court. Departmental proceedings were also conducted against him wherein charge against the appellant was held to have been established on the basis of FIR, some other documents and appellant's alleged confession before the police. These documents were, however, not proved during the course of departmental enquiry by examining and cross-examining the witnesses. Contentions raised by the appellant were also not considered by the departmental authorities, and the appellant was dismissed from service. The Hon'ble High Court dismissed the appellant's writ petition. The Hon'ble Supreme Court, while allowing the appeal and setting aside the judgment of the Hon'ble High Court, has observed thus:

523.           Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on

record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding, but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as well known, however high may be, can under no circumstances be held to be a substitute for legal proof.ö

5.3 The excerpts from the **Swamy's-Reservation and Concessions in Govt. Services** (ibid) read thus:

In the case of *S.P.Sakthidevi v. The Collector of Salem and others* (1984 Writ Law Reporter 535), a Division Bench of the Madras High Court has issued the following guidelines in dealing with Caste Certificates in respect of SCs/STs, for the guidance of all Courts and authorities:-

- (1) A Caste/Community Certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority.
- (2) Their contents are to be treated as correct and every public authority, undertakings, bodies, institutions, etc., which are bound by instructions relating to such certificates, are bound to act upon them, so long as they are not cancelled.
- (3) In no disciplinary proceedings, their genuineness or correctness of their contents can be gone into. It is open to the department or employer or organization to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued could be still valid, on materials which have since come to their knowledge. They can appear in the verification enquiry and place the materials.
- (4) If the certificate is cancelled, then disciplinary proceedings can be initiated for having furnished false information.
- (5) Appointing Authorities have the right to verify the genuineness of the certificates by approaching the District Magistrate-Collector of the District or such other constituted authority and once the report is received that the certificate is genuine, thereafter the



certificate holder cannot be further harassed to prove his caste/community in any other manner.

- (6) In causing verification, the Collector is bound to follow the procedure laid down in Letter, dated the 7<sup>th</sup> July, 1983(enclosed) of Government of Tamil Nadu.
- (7) In view of what is stated in Chapter 19 of Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services, 6<sup>th</sup> Edition (1982), the instructions issued by the Central Government from time to time relating to Scheduled Castes and Scheduled Tribes, pertaining to issue of Caste Certificates are binding on Public Sector Undertakings, Statutory and Semi-Government Bodies and Voluntary Agencies receiving grant-in-aid from the Central Government, as provided therein.ö

5.4            **In Suresh Prasad Vs. Secretary, Department of Personnel & Training and others** (supra), the applicant challenged the charge memo issued by the DA on the allegations that he belonged to Nonia Caste, which comes under OBC category. He dishonestly obtained a fake Caste Certificate dated 5.2.1982 in his name, under the forged seal and signatures of Zila Padadhikari, Saran (Chapra), showing him of Kharia caste and used this caste certificate as genuine, knowing it to be a fake and forged and on the basis of which, secured employment in Central Bureau of Investigation on 04.09.1989, against the vacancy reserved for Scheduled Tribe candidate. After considering the materials available on record and referring to the judgment of the Honøble High Court of Judicature at Patna passed on 20.4.2010 in CWJC No.12334 of 2009 (**Akhil Bhartiya Kharia-Nonia Vikas Mahasangh and others Vs. The State of Bihar and others**), the coordinate Bench of the Tribunal has held thus:

8.        In our considered view, when the High Court of Judicature at Patna has asked the State Government of Bihar to

make an inquiry to find out whether the Kharias/Kharia-Nonia communities were Tribals or not, whether they belong to Scheduled Tribes or not and whether the members of the said communities including the applicant have obtained the forged certificates of the caste and the competent authority has cancelled those certificates after due inquiry, no coercive steps should be taken in the matter. Therefore, the respondent-department should not have been in a hurry to establish with their own departmental inquiries that the Kharia caste is a Scheduled Tribe and Nonia caste is an OBC. It is an admitted fact that the applicant is in possession of a certificate showing that he belongs to Kharia caste and it is a Scheduled Tribe. In case the findings of the Central Bureau of Investigation is that the applicant is not a Kharia as per the certificate issued to him and he belongs to OBC category they should have taken necessary steps to get the certificate issued to the applicant cancelled by the competent authority. In our considered view, just because the respondents came to the conclusion through their own method of verification that the applicant does not belong to the Kharia community which has been declared as a Scheduled Tribe and it is not established that the applicant belongs to that community, the respondents cannot come to a conclusion that he has obtained the Scheduled Tribe certificate by forgery or by any unlawful means. The genuineness or correctness of the Caste Certificate cannot be gone into by the appointing authority/disciplinary authority in a disciplinary proceedings. It can, of course, ask the issuing authority or the District Collector to verify whether the certificate as issued to the applicant could still be valid or not. However, it is only if the Certificate is cancelled, the disciplinary authority can proceed against the employee for having furnished the false certificate. The cancellation of the caste certificates has its own prescribed procedure and it is for the competent authority to follow it. Secondly, it is seen that a criminal case on the very same issue is pending against the applicant with identical list of documents and witnesses. In the said criminal case also, the allegation against the applicant is that he is having a forged caste certificate showing that he belongs to Kharia community. As held by the Apex Court in Capt. M. Paul Anthony (supra), since the departmental proceedings and the criminal proceedings are based on identical and similar set of facts and the charge in the criminal case against the applicant is of a grave nature which involves complicated questions of law and fact, it is quite appropriate that the departmental enquiries in such cases should wait for the decision in the criminal case pending against the applicant.ö

5.5 In **Vijay Kumar Vs. Union of India and another** (supra), the disciplinary proceedings were initiated against the applicant on the charges that the applicant was initially appointed as Packer (Group-D) as an S/T community candidate with effect from 01.04.1981 and it came to the notice of the Department that the caste certificate submitted by the applicant was fake. He was, thus, alleged to have managed to get his appointment by submitting a fake caste certificate. The IO submitted the enquiry report holding the charge as proved against the applicant. The DA passed the order of dismissal from service. The appeal and revision filed by the applicant were rejected by the AA and RA. After considering the facts and circumstances of the case, and in view of the judgment of the Honøble High Court of Judicature at Patna in **Akhil Bhartiya Kharia-Nonia Vikas Mahasangh and others Vs. The State of Biahrr and others**, and the Tribunalø decision **Suresh Prasad Vs. Secretary, Department of Personnel & Training and others** (supra), the coordinate Bench of the Tribunal has quashed the charge sheet, IOø report, and the orders passed by the DA, AA and RA.

5.6 In **CBI Vs. Suresh Prasad** (supra), after holding that the prosecution failed to prove on record that the ST community certificate of the accused was a forged document and that the accused cheated the Government of India by procuring the job of LDC under the reserved ST category, the learned Magistrate acquitted the accused of the charges.

6. *Per contra*, Shri B.L.Wanchoo, the learned counsel appearing for the respondent submitted that considering the materials available on record, the statutory authorities have rejected the pleas/contentions as now raised by the applicant in the present proceedings after assigning cogent and convincing reasons in support of the findings arrived at by them. The procedure established by law has been duly followed. There is no infirmity in the orders passed by the authorities. The decisions cited by the learned counsel appearing for the applicant do not support the case of the applicant. Therefore, there is no scope for interference with the orders passed by the statutory authorities, and the O.A. is liable to be dismissed.

7. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only (i) where the disciplinary proceedings are initiated and held by an incompetent authority; (ii) such proceedings are in violation of the statutory rule or law; (iii) there has been gross violation of the principles of natural justice; and (iv) on account of proven bias and mala fide.

8. In **State of Mysore v. Shivabasappa**, (1963) 2 SCR 943 = AIR 1963 SC 375, it has been held thus:

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound

to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

9. The Honøble Apex Court in the case of **K.L. Shinde v. State of Mysore**, (1976) 3 SCC 76, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence, has ruled as under:

õ9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be

observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in *State of Mysore v. Shivabasappa*, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against

whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

10. In **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others**, AIR 1984 SC 1805, it has been laid down by the Hon<sup>ble</sup> Supreme Court that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It has also been laid down that where a quasi judicial tribunal records findings based on no legal evidence and the findings are its mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

11. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon<sup>ble</sup> Apex Court has held as under:

§12. 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 eye of the Court. When an inquiry is conducted on charges of a 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 be 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 nor 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 on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the 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 of where 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 mould the relief so as to make it appropriate to the facts of each case.

12. In **R.S. Saini v. State of Punjab and ors**, (1999) 8 SCC 90, the

Hon~~o~~ble Apex Court has observed as follows:

"We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the



evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

13. The above view has been followed by the Honøble Apex Court in **High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil**, (2000) 1 SCC 416, wherein it has been held as under:

õ...Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority, (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed before Article 226 of the Constitution.ö

14. In **Syed Rahimuddin v. Director General, CSIR and others**, (2001) 9 SCC 575, the Honøble Apex Court has observed as under:

õí It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable maní .ö

15. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan**, (2006) 2 SCC 373, the Honøble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error

if it results in manifest miscarriage of justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority” ..ö

16. Keeping in mind the principles laid down by the Hon'ble Supreme Court in the above decisions, we have to examine the rival contentions of the parties.

17. The statement of articles of charges, the statement of imputation of misconduct in support of the articles of charges framed against the applicant read thus:

(i) **Article-I**

That the said Shri Rajendra Mahto, UDC, has secured employment in the Ministry of External Affairs, Government of India, on the basis of a fake Scheduled Tribe community certificate.

By his above act, Shri Rajendra Mahto has exhibited lack of integrity and conduct unbecoming of a Government servant thereby violating Rules 3 (1)(i) and 3 (1)(iii) of CCS (Conduct) Rules 1964.

**Article-II**

That Shri Rajendra Mahto, UDC, in his response dated 8.11.2006 to Vigilance Unit's memorandum No.Q/Vig/842/15/06 dated 30.10.2006 misrepresented that he belonged to -Khariaø community and that his Scheduled Tribe community certificate No.309 dated 5.6.1979 was genuine.

By his above act, Shri Rajendra Mahto has exhibited lack of integrity and conduct becoming of a Government servant thereby violating Rules 3 (1)(i) and 3 (1)(iii) of CCS (Conduct) Rules 1964.

(ii) Statement of imputation of misconduct in support of the article of charge against Shri Rajendra Mahto, UDC in the Ministry of External Affairs.

Shri Rajendra Mahto had secured appointment as Peon in Ministry of External Affairs, New Delhi, on 25<sup>th</sup> November, 1982 vide order No. Q/PE/578 /64/82 dated 25.11.1982 on the basis of a Scheduled Tribe certificate (No.309 dated 5.6.1979), which was purportedly issued by the District Magistrate, Chapra (Saran), Bihar. The said certificate, showed Shri Rajendra Mahta as belonging to 'Kharia' community under Scheduled Tribe category.

2. PD Section, MEA, vide their letter No.Q/PD/551/13/2005 dated 23.12.2005 had written to the District Magistrate, Chapra, Bihar for verifying the genuineness of the said community certificate. In response, the office of the District Welfare Branch, Chapra, vide their letter No.280 dated 8.3.2006, which was signed by the Additional Collector, Chapra, confirmed that the said certificate had not been issued from that office.

3. Vigilance Unit vide their memorandum No.Q/Vig/842/15/06 dated 30.10.2006 had asked Shri Rajendra Mahto to explain why disciplinary action should not be taken against him for entering into employment in the Ministry of External Affairs on the basis of a fake certificate. In his response dated 8.11.2006, Shri Rajendra Mahto submitted that he belonged to the 'Kharia' community which is recognised as Scheduled Tribe in Bihar and asserted that the caste certificate in question was genuine. He further submitted that it has not been proved that he did not belong to the 'Kharia' community, that the said certificate was not issued by the competent authority or that the certificate was fake.

4. The matter was then referred vide letter No.Q/Vig/842/15/06 dated 20.11.2006 to the Chief Secretary, Government of Bihar, with an endorsement (dated 23.11.2006) to the District Magistrate, Chapra, along with a copy of the ST certificate and letter dated 8.3.2006 from the office of the

District Welfare Branch, Chapra. The office of the DM, Chapra, vide their letter No.1314 dated 11.12.2006 confirmed that the said ST certificate was issued from their office and was genuine, and that Shri Rajendra Mahto belonged to the -Khariaø community. As this contradicted the contents of the letter dated 8.3.06 from the Additional Collector, Chapra, the matter was again referred to the Chief Secretary of Bihar vide letter No.Q/Vig/842/15/06 dated 26.12.2006 for clarification.

5. The Chief Secretary vide his letter No.394/CCS dated 17.1.2007 informed that he had got the matter enquired into by the Divisional Commissioner, Chapra. He has further stated that the enquiry held by the Divisional Commissioner who visited the village of Shri Rajendra Mahto (village-Panchpatiya, P.O. Deoria, District-Saran) along with the District Magistrate, Chapra, and SDO, Chapra, has revealed the following:-

- a) that the letter dated 8.3.2006 issued by the Additional Collector, Chapra, was genuine (which stated that the ST community certificate of Shri Rajendra Mahto was not issued by their office).
- b) that the certificate/letter No.1314 dated 11.12.2006 allegedly issued by DM, Chapra, was forged.
- c) that Shri Mahto belonged to -Noniaø caste which falls in the category of extremely backward caste.

6. The above enquiries have confirmed that the ST certificate No.309 dated 5.6.1979 in respect of Shri Rajendra Mahto, which he produced at the time of securing employment in the Ministry of External Affairs, is fake.

7. By his above act, Shri Rajendra Mahto, UDC, has exhibited lack of integrity and conduct unbecoming of a Government servant thereby violating Rules 3 (1)(i) and 3 (1)(iii) of CCS (Conduct) Rules 1964.ö

17.1 The relevant part of the enquiry report submitted by the IO finding the charges as proved against the applicant reads thus:

### **“Terms of Reference**

Inquiry held under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965. Joint Secretary (CNV) in the Ministry of External Affairs vide his Order No. Q/Vig/842/15/2006 dated May 25, 2007 in exercise of powers conferred by sub-rule (2) of the said rule read with sub-rule (22) of Rule 14 of the CCS (CCA) Rules 1965 appointed the undersigned as the Inquiry Officer to inquire into the charges framed against Shri Rajendra Mahto.

The Inquiry was held in South Block, New Delhi and the dates of enquiry with a gist of the arguments made during the hearing follow-

### **Hearings**

#### **Proceedings during Preliminary Hearing**

The Preliminary hearing was conducted on 28.06.2007. During the hearing, Shri Mahto denied the charges brought against him by this Ministry of securing employment in the Ministry on the basis of a fake ST Community Certificate and on the charge that he misrepresented he belonged to Kharia community. He further desired that he be given more time to produce documents to substantiate his claim of belonging to the Kharia/Nonia (ST) community. Shri Mahto was given the option of engaging the services of a Defence Assistant to present his case. However, he chose not to engage any Defence Assistant on his behalf.

The first regular hearing was scheduled for July 10, 2007. However, this hearing could not take place as Mr. Mahto was indisposed. He subsequently produced a medical certificate as an explanation for his absence.

The regular hearings took place on 23 July 2007; August 31, 2007; 10 December 2007 and 17 December 2007.

#### **Hearing (July 23, 2007)**

The first regular hearing took place on July 23, 2007. In the beginning, the Presenting Officer presented the prosecution documents for verification. Following this, the Presenting Officer indicated that he did not have anything else to add. Shri Mahto was asked to go through the prosecution documents and give a certificate to the effect that he is satisfied with the

documents presented by the Prosecution side (Certificate Enclosed). Shri Mahto indicated that he is satisfied with the documents. The undersigned as an Inquiry Officer also examined the documents and found them in order.

In his defence, Mr. Mahto rejected both the charges levelled against him by this Ministry. He maintained that he is a Khariya and that Khariyas and Nonias are synonyms and by implication both Khariyas and Nonias are part of the Schedule Tribe community. He submitted a copy of the Report of the Backward Classes Commission, 1976 for this Ministry's reference. In addition, (a) copy of a Letter No. 373 dated December 31, 1984 from Director, Welfare Department (b) Portions of the Annual Report 2004-05 of the Ministry of Tribal Affairs, Government of India (c) Portions of Bihar District Census Handbook, Saran 1961 and (d) Portions of Census of India, 1961 Vol. I were also submitted as Defence Documents. However, these were photocopies documents (unattested).

Mr. Mahto sought more time to produce other documents in his defence for which he indicated he would be required to travel to Bihar.

### **Hearing (August 31, 2007)**

This was the second regular hearing during which Shri Mahto submitted additional set of documents, which were admitted as defence documents. Further, Shri Mahto sought more time and permission to leave for Bihar to bring additional documents to substantiate his claim. Towards this, he was advised to seek JS (CNV)'s approval before proceeding on leave to Bihar.

Shri Mahto was given permission by JS (CNV) to proceed on leave vide Q/Vig/842/15/06 dated September 13, 2007 from 24/09/2007 to 10/10/2007.

Shri Mahto did not report back to this Ministry after exhausting his sanctioned leave. Subsequently, an order was issued by the undersigned dated November 26, 2007 asking Shri Mahto to report for the next round of hearing by December 10, 2007. Shri Mahto presented him for this hearing on December 10, 2007.

### **Hearing (December 10, 2007)**

This was the third regular hearing. During this hearing, Shri Mahto was asked to explain why he did not report to the undersigned after exhausting his sanctioned period of leave. Shri Mahto explained his absence by pointing to the police case which was lodged against him by this Ministry for forgery and an arrest warrant was issued against him in this regard.

He also submitted the following documents to further reference his arguments-

- (a) Backward Class Community Report 1976/Certified Copy from an Officer of the Government of Bihar.
- (b) Submissions by Village Panchayat functionaries/local residents including Mukhiya, Raj Jhaunwa, Dighwara, Saran/Mukhiya Gram Panchayat Raj Kothiyan, Garhwa, Saran to the effect that Kharias and Nonias are synonyms and that Shri Mahto belongs to Khariya and Nonia community.

#### **Hearing (31.12.07)**

This was the fourth and the final regular hearing. During this hearing Shri Mahto submitted that he had no additional document/s to produce in support of his claim of belonging to the ST Community.

#### **General Examination (May 7, 2008)**

Shri Rajendra Mahto declined to offer himself as a witness. He was generally examined by the Inquiry Officer.

He pleaded not guilty on both the charges.

Shri Mahto raised doubts on the conclusion reached by Commissioner Saran pointing out that it was based on statements recorded from six local residents. Shri Mahto wanted to know whether any responsible local Government functionary or Panchayat Officials like the Sarpanch or the Mukhiya were consulted or their statements recorded by the Commissioner. In his defence, Shri Mahto pointed out that he has submitted statements of villagers including Mukhiya and other village functionaries that he is from Khariya/Noniya community.

Further, Shri Mahto pointed out that the Commissioner visited the village on January 15, 2007, conducted his enquiry the very same day and sent his reply to the Chief Secretary that very day.

In his reply to the question on the authenticity of his Caste Certificate in the light of Chief Secretary of Bihar's letter which pointed out that District Welfare Branch, Chapra vide their Letter No. 280 dated 8.3.2006, signed by Additional Collector, Chapra confirmed that the caste certificate (No. 309 dated 5.6.1979) submitted by Shri Mahto had not been issued from that office, Shri Mahto answered that "my father got the caste certificate prepared on my behalf and at that time I would most probably be studying in Class 9 or 10. While submitting the Caste Certificate at the time of my employment, there was no "mens rea" on my part.

Shri Mahto further added that he has worked for almost twenty-five years in this Ministry and his record is unblemished. Shri Mahto also pointed out that the Letter issued by District Welfare Branch, Chapra vide their Letter No. 280 dated 8.3.2006, signed by Additional Collector did not bear "any stamp of the Officer nor was it issued on the office letter head". This being the case, Shri Mahto "challenged the authenticity" of the Letter.

Attention was also drawn to the letter issued by Chapra's Additional Collector (number 280 dated 8.3.2006) as per which no ST register is maintained in the District Welfare Branch as the number of STs in Saran is zero. This, Mr. Mahto, argued contradicts the information provided by the Saran District authorities to a RTI Question GS/ABKNUM/RTI /?M/Bihar/07-08/31 in which the district authorities have accepted that as per the 2001 Census, the number of Schedule Tribes in Saran is 6,667. Shri Mahto has argued that information provided by the District authorities in the above two instances are inconsistent.

Shri Mahto was also asked whether he would like to add something to his previous statements on Noniyas and Khariyas being synonyms. On this particular issue, Shri Mahto cited a judgement of 1983 of Delhi Sessions Court (Vijay Kumar vs. CBI). As per Mr. Mahto's contention, the judgement of the Court accepts that Noniyas and Kahriyas are the same. However, an authenticated copy of the judgement could not be provided.



## Background

That Shri Rajendra Mahto had secured appointment as Peon in Ministry of External Affairs, New Delhi on November 25, 1982 vide order no. Q/PE/578/64/82 dated November 25, 1982. The said appointment was secured on the basis of a Schedule Tribe (ST) certificate (No. 309 dated 5.6.1979), which was issued by the District Magistrate, Chapra (Saran), Bihar. The certificate showed Shri Rajendra Mahto as belonging to Kharia community under Schedule Tribe community.

PD Section in the Ministry of External Affairs vide its letter No. Q/PD/551/13/2005 dated 23/12/2005 had written to the District Magistrate, Chapra, Bihar for verifying the genuineness of the said community certificate, vide their letter No. 280 dated 8.3.2006, which was signed by the Additional Collector, Chapra, confirmed that the said certificate had not been issued from that office.

Vigilance Unit vide their memorandum No. Q/Vig/842/15/06 dated 30/10/2006 had asked Shri Rajendra Mahto to explain why disciplinary action should not be taken against him for entering into employment in the Ministry of External Affairs on the basis of a fake certificate. In his response dated November 8, 2006- Shri Mahto submitted that he belonged to the Kharia community that is recognized as Schedule Tribe in Bihar and asserted that the Caste Certificate in question was genuine. He further submitted that it has not been proved that he did not belong to the Kharia community, that the competent authority did not issue the said certificate or that the certificate was fake.

The matter was subsequently referred to the Chief Secretary, Bihar Government with an endorsement to District Magistrate, Chapra. DM Office, Chapra confirmed that the ST certificate was issued from their office and was genuine and that Shri Mahto belonged to the Kharia community. As this contradicted the contents of the letter dated 8/3/06 from Additional Collector, Chapra, the matter was again referred to the Chief Secretary of Bihar.

The Chief Secretary of Bihar in his letter 394/CCS dated 17/01/2007 informed this Ministry that-

- a- that the letter by Additional Collector, Chapra was genuine
- b- that the certificate/ letter no. 1314 dated 11.12.2006 allegedly issued by DM, Chapra was forged.
- c- that Shri Mahto belonged to the Nonia caste which falls in the category of extremely backward caste.

Charges against Shri Rajendra Mahto

#### ARTICLE I

That the said Shri Rajendra Mahto, UDC, has secured employment in the Ministry of External Affairs, Government of India, on the basis of a fake Schedule Tribe community certificate.

By his above act, Shri Mahto has exhibited lack of integrity and conduct unbecoming of a Government servant thereby violating rules 3 (1) (i) and 3 (1) (iii) of CCS (Conduct) Rules, 1964.

#### ARTICLE II

That Shri Rajendra Mahto, UDC in his response dated 8.11.2006 to vigilance Unit's memorandum No. Q/Vig/842/15/06 dated 30.10.2006 misrepresented that he belonged to Kharia community and that his ST community certificate No. 309 dated 5.6.1979 was genuine.

Both the charges were admitted for hearing and Shri Rajendra Mahto was given all opportunities demanded by him to contest these charges.

#### **Brief Statement of Facts and Documents Admitted/Evaluation of the Arguments**

Shri Mahto made two written submissions (dated 23/07/2007 and 17/12/2007) during the period of hearings. After the conclusion of the hearings, Shri Mahto was given a copy of the findings made by the Presenting Officer dated 13.05.2008 and asked to make a final submission that was subsequently made by him on May 27 2008 (previous submission dated March 4, 2008 has also been considered).

The crux of Shri Mahto's defence made during the hearings and through his written submissions is-

- (a) That he is not guilty on both the charges.
- (b) That he belongs to the Khariya community clan of the Nonia Community which is recognized as a Schedule Tribe in Bihar. That Khariya is known in Bihar by many synonyms- Nonia being one of them. Shri Mahto cites a Welfare Department Letter no. 373 dated 31.12.1984 as one of the basis for his contention. He also cites the report of the Mungerilal Backward Classes Commission Report published in 1976 to further substantiate his claim. Shri Mahto has also cited the Annual Report of 2004-05 of Government of India showing Khariya as a ST community in Bihar. He has also mentioned the Census of 1961 for the District of Saran to further his claim. Shri Mahto has further cited a 1983 judgement of Delhi Sessions Court (Vijay Kumar vs CBI). As per Mr. Mahto's contention, the judgment of the Court accepts that Noniyas and Khariyas are the same (Shri Mahto has not managed to provide and authenticated copy of the judgment, which he claims has been weeded out).

However, all the documents submitted by Shri Mahto, as indicated above, do not in any way suggest that (1) Shri Mahto is a Kharia, (2) Khariyas and Nonias are treated as synonyms by the Government and (3) Nonias are treated as a Schedule Tribe Community.

- (c) That the caste Certificate submitted by him at the time of his appointment is genuine. According to Shri Mahto, it is wrong and is denied that the Caste Certificate issued by DM, Saran (Chapra), Bihar is not genuine. Shri Mahto also contends that it has not been proved that the competent authority did not issue the ST certificate through which he secured his employment with the Ministry of External Affairs and that the said certificate is fake one. There is no report of the competent authority regarding the correctness of the said certificate or on whether the enquiry was conducted as per law. That the said enquiry is totally against the principles of natural justice and articles 14 and

16 of the Indian Constitution and Rule 14 and 11 of the CCS (CCA) rules.

Shri Mahto has not been able to furnish any document which contradicts the conclusion reached by Chief Secretary, Bihar based on the findings of Shri Ramaiah, Commissioner, Saran Division, Chapra, Bihar who in his Letter dated 15/01/2007 has clearly said that Shri Mahto does not belong to the Khariya (ST) caste of Bihar after recording statements from local residents who hail from Shri Mahto's village. Chief Secretary, Bihar has also pointed out that District Welfare Branch, Chapra vide their Letter No. 280 dated 8.3.2006, signed by Additional Collector, Chapra confirmed that the said certificate (No. 309 dated 5.6.1979) had not been issued from that office.

- (d) That the entire ongoing proceedings are vitiated and violate the Fundamental Rights guaranteed by the Constitution of India to Shri Mahto as an Indian citizen.

Shri Mahto has been given all the opportunities that he has sought for to prove his contention. This Inquiry forms a part of that effort.

- (e) Shri Mahto has sought the identity and locus of the complainant on whose complaint the entire proceeding was initiated. Shri Mahto argues that the disclosure of the complainant's name would help in throwing more light on the issues involved in his defence.

The undersigned as an Inquiry Officer overrules this point of Shri Mahto that identity and locus of complainant should be disclosed on the ground that the above has no bearing on Shri Mahto's defence against the two charges brought by MEA against him.

- (f) That the Letter sent by Additional Collector, Saran, Chapra denying issuance of ST Certificate does not bear any seal, designation or name of the said authority. That the procedure adopted for verification of the certificate-asking certain villagers to comment on Shri Mahto's identity is vague. That the name and signature of the DM Saran,

Chapra at the relevant point in time in 1979, has not been verified. Shri Mahto also claims that no register bearing records of SC/ST Certificates issued by DM's office is maintained. That the area is a flood prone area and such old records cannot be found. Shri Mahto says that on an application under the RTI Act, similar information has not been answered till date on the plea of being more than 10 years old.

Attention was also drawn to the letter issued by Chapra's Additional Collector (number 280 dated 08.03.2006) as per which no ST register is maintained in the District Welfare Branch as the number of STs in Saran is zero. This, Mr. Mahto, argued contradicts the information provided by the Saran district authorities to a RTI Question GS/ABKNUM/RTI/?M/Bihar/07-08/31 dated March 4, 2008 in which the district authorities have accepted that as per the 2001 Census, the number of Schedule Tribes in Saran is 6,667. Shri Mahto has argued that information provided by the District authorities in the above two instances are inconsistent.

This enquiry is not mandated to go into procedural issues raised by Shri Mahto.

Shri Mahto has also presented some submissions made by Village functionaries/village residents to the effect that he is a Kharia/Nonia.

This inquiry stands by the conclusions reached by Chief Secretary, Government of Bihar and communicated to this Ministry in this regard that Shri Mahto is not a Kharia. Also, there is no official notification/document which was brought to the notice of the undersigned during the hearings by the defence side which proves that the Government treats Khariyas/Nonias as one. Chief Secretary Bihar in his letter dated January 17, 2007 addressed to Joint Secretary (CNV) has informed that Shri Mahto belongs to the Nonia Caste which falls in the category of the extremely backward.

### **Report of the Presenting Officer**

The Presenting Officer in his report has concluded that since Shri Rajendra Mahto, could not submit any document

which could contradict the article of charges framed against him, the charges should be held as proved.

### **Conclusion**

Shri Rajendra Mahto preferred to respond to the charges mostly through written submissions. At the very outset, Shri Mahto denied the charges brought against him by this Ministry- contesting the charge of taking up employment on the basis of a forged Caste Certificate and making a defence that he belonged to the Khariya community clan of the Nonia Community. The undersigned as an Inquiry Officer has reached the following conclusions-

*Charge I:* (That the said Shri Rajendra Mahto, UDC, has secured employment in the Ministry of External Affairs, Government of India, on the basis of a fake schedule Tribe community certificate. By his above act, Shri Mahto has exhibited lack of integrity and conduct unbecoming of a Government servant thereby violating rules 3 (1) (i) and 3 (1) (iii) of CCS (Conduct) Rules 1964).

*Finding:*

**Chief Secretary, Government of Bihar vide his letter dated January 17, 2007 addressed to Joint Secretary (CNV) has also communicated that the Caste Certificate submitted by Shri Mahto is not genuine. He has further pointed out that District Welfare Branch, Chapra vide their Letter No. 280 dated 08.03.2006, signed by Additional Collector, Chapra confirmed that the said certificate (No. 309 dated 05.06.1979) had not been issued from that office.**

**This inquiry stands by the conclusions reached by Chief Secretary, Government of Bihar and communicated to this Ministry that Shri Mahto is not a Kharia. Chief Secretary Bihar in his letter dated January 17, 2007 addressed to Joint Secretary (CNV) has informed that Shri Mahto belongs to the Nonia Caste which falls in the category of the extremely backward.**

Moreover, the inconsistency being pointed out by Shri Mahto (about the number of ST population in the District) has no bearing on whether the Caste certificate on the basis of

which he secured employment in this Ministry is genuine or not.

Shri Mahto has been unsuccessful in proving that the caste certificate on the basis of which he secured employment in this Ministry is genuine. Charge I stands proved.

*Charge II:* (That Shri Rajendra Mahto UDC in his response dated 08.11.2006 to Vigilance Unit's memorandum No. Q/Vig/842/15/06 dated 30.10.2006 misrepresented that he belonged to Kharia community and that his ST community certificate No. 309 dated 05.06.1979 was genuine).

***Finding:* Shri Mahto could not prove his claim that he belongs to the ST community. He could not produce any document which could prove that he is a Khariya or that Noniyas and Khariyas are synonyms or that Noniyas are considered as a ST community. Chief Secretary Bihar in his letter dated January 17, 2007 addressed to Joint Secretary (CNV) has informed that Shri Mahto belongs to the Nonia Caste which falls in the category of the extremely backward. Charge II stands proved.**

(A report by the IO was submitted to JS (CNV) earlier on March 25, 2008. However, it was subsequently discovered that the general examination of the charged officer was not carried out. A general examination of the charged officer, as required, was carried out by the undersigned. The charged officer did not volunteer himself as a witness. Based on the hearings of this case including the General Examination, the Presenting Officer presented his revised report to the undersigned holding Shri Rajendra Mahto, the charged officer, and he was given another opportunity to present a written defence based on the report of the Presenting Officer. This Report by the undersigned has taken in to consideration all the above.)

17.2           The relevant part of the order dated 26.9.2008 passed by the DA reads thus:

Shri Rajendra Mahto had secured appointment as Peon in Ministry of External Affairs, New Delhi, on 25<sup>th</sup> November,

1982 vide order No. Q/PE/578 /64/82 dated 25.11.1982 on the basis of a Scheduled Tribe certificate (No.309 dated 5.6.1979), which was purportedly issued by the District Magistrate, Chapra (Saran), Bihar. The said certificate, showed Shri Rajendra Mahta as belonging to òKhariaø community under Scheduled Tribe category.

2. PD Section, MEA, vide their letter No.Q/PD/551/13/2005 dated 23.12.2005 had written to the District Magistrate, Chapra, Bihar for verifying the genuineness of the said community certificate. In response, the office of the District Welfare Branch, Chapra, vide their letter No.280 dated 8.3.2006, which was signed by the Additional Collector, Chapra, confirmed that the said certificate had not been issued from that office.

3. Vigilance Unit vide their memorandum No.Q/Vig/842/15/06 dated 30.10.2006 had asked Shri Rajendra Mahto to explain why disciplinary action should not be taken against him for entering into employment in the Ministry of External Affairs on the basis of a fake certificate. In his response dated 8.11.2006, Shri Rajendra Mahto submitted that he belonged to the òKhariaø community which is recognised as Scheduled Tribe in Bihar and asserted that the caste certificate in question was genuine. He further submitted that it has not been proved that he did not belong to the òKhariaø community, that the said certificate was not issued by the competent authority or that the certificate was fake.

4. The matter was then referred vide letter No.Q/Vig/842/15/06 dated 20.11.2006 to the Chief Secretary, Government of Bihar, with an endorsement (dated 23.11.2006) to the District Magistrate, Chapra, along with a copy of the ST certificate and letter dated 8.3.2006 from the office of the District Welfare Branch, Chapra. The office of the DM, Chapra, vide their letter No.1314 dated 11.12.2006 confirmed that the said ST certificate was issued from their office and was genuine, and that Shri Rajendra Mahto belonged to the òKhariaø community. As this contradicted the contents of the letter dated 8.3.06 from the Additional Collector, Chapra, the matter was again referred to the Chief Secretary of Bihar vide letter No.Q/Vig/842/15/06 dated 26.12.2006 for clarification.

5. The Chief Secretary vide his letter No.394/CCS dated 17.1.2007 informed that he had got the matter enquired into by the Divisional Commissioner, Chapra. He has further stated that



the enquiry held by the Divisional Commissioner who visited the village of Shri Rajendra Mahto (village-Panchpatiya, P.O. Deoria, District-Saran) along with the District Magistrate, Chapra, and SDO, Chapra, has revealed the following:-

- a) that the letter dated 8.3.2006 issued by the Additional Collector, Chapra, was genuine (which stated that the ST community certificate of Shri Rajendra Mahto was not issued by their office).
- b) that the certificate/letter No.1314 dated 11.12.2006 allegedly issued by DM, Chapra, was forged.
- c) that Shri Mahto belonged to Nonia caste which falls in the category of extremely backward caste.

6. The above enquiries have confirmed that the ST certificate No.309 dated 5.6.1979 in respect of Shri Rajendra Mahto, which he produced at the time of securing employment in the Ministry of External Affairs, is fake.

3. In his response dated 17.5.2007 to the charge memorandum, Shri Mahto denied both the articles of charge. Consequently, Shri Sujit Ghosh, Under Secretary (Gulf), was appointed as Inquiry Officer to hold an inquiry into the articles of charge. The Inquiry Officer, in his report dated 18.6.2008, held both the articles of charge as *öprovedö*.

4. The inquiry report was forwarded to Shri Rajendra Mahto along with the reasons for acceptance of the findings of the Inquiry Officer by the Disciplinary Authority for seeking his representation thereon. The reasons forwarded were that the documentary evidence adduced by the prosecution in the inquiry clearly indicated that Shri Mahto belonged to Nonia caste and that his ST certificate was fake, and that the defence documents submitted by Shri Mahto in the inquiry confirmed that there was no reservation for the Noniasö in Bihar till 31.12.1984, whereas the ST certificate of Shri Mahto is dated 5.6.1979. In his response dated 23.7.08, Shri Mahto has submitted the following:-

- i) **that “Kharia” and “Nonia” tribes are synonymous. Shri Mahto states that there are both “Nonia” castes and “Nonia” tribes. In his case, “Nonia” means the latter category who are also known as “Kharia”.**

- ii) **that the defence document, viz. letter dated 31.12.1984 from the Director, Bihar Tribunal Welfare Research Institute, Ranchi, containing a recommendation to the Govt. of Bihar for considering reservation for the “Nonia” community, has been misinterpreted by not considering it in its totality. Again, Shri Mahto has stated that the main issue is that “Nonia” is synonymous with “Kharia”.**
- iii) **attention has been drawn to a case relating to a disputed caste certificate which was adjudicated by Principal Bench of the CAT (OA No.2306 of 1997 : Shri Shivnarain Mahto versus UOI). Shri Mahto while quoting the observation of the Bench that “...it would be appropriate that before taking action, first the matter is referred to the appropriate constitutional authorities, to obtain their opinion in the matter”, has stated that in his case also the finding of the Inquiry would be unreasonable and violative of the principles of natural justice, so long as the Ministry does not seek the opinion of the competent authorities (like the M/O Law and Justice, M/O Tribal Affairs) on the issue of synonymy of Kharia and Nonia tribe.**
- iv) **that some of the prosecution documents like the letter dated 08.3.2006 of DM Chapra and letter dated 17.01.2007 of Chief Secretary Bihar ought to have been accepted only on oath, before initiation of the proceedings.**

5. The response of Shri Rajendra Mahto has been duly considered by the Disciplinary Authority. The argument of the CO of logical extension of ST status to the Nonias on the basis of their synonymy with the Kharias has not been found to be tenable. It is seen that the defence document ó letter dated 31.12.1984 from the Director, Bihar Tribunal Welfare Research Institute, Ranchi, contains a recommendation to the Govt. of Bihar for considering reservation for the õNoniaö community. Thus the document under reference, which the CO has produced in his defence, only establishes that there was no reservation for the õNoniasö under the ST category till 31.12.1984, whereas the ST certificate of Shri Mahto is dated 5.6.1979.

6. As regards the case cited at para 4 (iii) above, it is seen that the case was dismissed by the CAT on grounds of technical infirmity, which does not apply in the present departmental inquiry against Shri Rajendra Mahto. As to their observations cited by the CO, it is seen that the whole lot of defence documents produced by the CO only points to the fact that reservation for the Nonia community in Bihar under ST category does not exist. One of these documents, viz., the Annual Report of 2004-05 of the Government of India, Ministry of Tribal Affairs, does not show 'Nonia' in the list of STs in Bihar. Therefore, as the instant case refers to a certificate issued in 1979, no further clarification is required as to the status of the 'Nonias' at that point of time.

7. Regarding the issue raised at para 4 (iv) above, relating to acceptance of documents under oath, it may be mentioned that the said documents were taken on record by the Inquiry Officer during oral inquiry which was attended by the Charged Officer. Once taken on record, the authenticity of the documents cannot be disputed by the CO, and the documents become immune from any objection.

8. The defence document relating to statements of villagers of Shri Rajendra Mahto's village (village-Panchpatiya, P.O. Deoria, District-Saran, Bihar) that the Co belongs to Kharia / Nonia community has also been duly considered by the Disciplinary Authority. It is seen that this document also does not reveal anything beyond what the CO has been repeatedly asserting that 'Kharia' and 'Nonia' are synonymous.

9. From the above, it is clear that the crux of the arguments extended by the CO in his defence both during the inquiry and in response to the findings in the Inquiry report, is that since the 'Nonia' tribe is synonymous with the 'Kharia' tribe in Bihar, and since the 'Kharia' tribe has been notified as a Scheduled Tribe, it automatically follows that the Nonia tribe is also a Scheduled Tribe. However, the documents mentioned above only confirm that 'Nonia' community was not accorded the Scheduled Tribe status at least till 2004 (Annual Report 2004-05) of the Govt. of India, M/O Tribal Affairs mentioned at para 6 above), thereby contradicting the CO's assertion that 'Nonias' are also a Scheduled Tribe. The documentary evidence adduced during the departmental inquiry clearly indicates that (i) the ST certificate dated 5.6.1979 of Shri Rajendra Mahto is fake, and (ii) Shri Mahto belongs to 'Nonia' and not to the 'Kharia' community.

10. Considering the facts and circumstances of the case, the findings of the Inquiring Authority and the submissions of the Charged Officer, the Disciplinary Authority has come to the conclusion that Shri Rajendra Mahto, UDC, is guilty of securing appointment in the Ministry of External Affairs on the basis of a fake ST community certificate, and, therefore, has decided to impose the penalty of removal from service on him.

17.3 The relevant part of the order dated 9.4.2009 passed by the AA reads thus:

5. Shri Mahto has filed an appeal under rule 23 of the CCS (CCA) Rules, 1965 against the aforesaid order of removal vide his letter dated 23.12.2008. The grounds on which the appeal has been made and the observations of the Appellate Authority under each are as follows:-

**(i) That the ST community certificate was fake has not been proved.**

The letter dated 8.3.2006 of the Additional Collector, Chapra had confirmed that the community certificate in question was not issued by their office. The genuineness of this document was confirmed by prosecution document, P-XI, viz. letter dated 17.01.2007 of the Chief Secretary, Govt. of Bihar. Both the prosecution documents were taken on record during the inquiry. This clearly established that the community certificate of Shri Rajendra Mahto was fake. Further, during the inquiry, the CO could not controvert the findings made by Divisional Commissioner, Chapra (forwarded alongwith Chief Secretary, Government of Bihar's letter No.394/CCS dated 17.1.2007), which inter alia were (a) that the letter dated 8.3.2006 issued by the Additional Collector, Chapra, was genuine (which stated that the ST community certificate of Shri Rajendra Mahto was not issued by their office), and (b) that Shri Mahto belonged to Nonia caste which falls in the category of extremely backward caste. Therefore, the charge against Shri Mahto that he had secured employment on the basis of a fake ST community certificate was proved.

**(ii) That the signatories of the letters dated 17.1.2007 (from Chief Secretary, Govt. of Bihar) and 8.3.2006**

**(Additional Collector, Chapra) have not been enlisted as witnesses.**

Shri Mahto had raised this issue in his representation on the Inquiry Report which was duly considered by the Disciplinary Authority and not found tenable as the said documents were taken on record by the IO during the inquiry only after it was duly inspected by the CO who did not raise any objection at that stage. This point was duly incorporated at para 7 of the penalty order dated 26.9.2008.

**(iii) That the findings were arrived at by a pre-set mind without following procedure established by law, giving the Appellant a reasonable apprehension of bias.**

The entire departmental proceedings against Shri Mahto were undertaken as per the procedures prescribed under the CCS (CCA) Rules, 1965. Moreover, the CO had never raised the issue of bias against the Inquiring Authority. Thus, the allegation of Shri Mahto is without any basis.

**(iv) That the caste certificate was believed by the appellant to be true, since he had no occasion to doubt its genuineness as it was given to him by his guardians.**

Based on the rule of preponderance of probability, Shri Mahto is expected to be aware of the genuineness or otherwise of a community certificate on the basis of which he applied and secured employment in the Ministry.

**(v) The appellant was cross-examined by the Inquiry Officer which is untenable in law.**

The records of the inquiry do not indicate that the CO was cross-examined by the IO at any stage.

**(vi) Rule of audi alteram partem has been completely been ignored.**

The records of the inquiry reveal that the CO was given every opportunity by the IO to submit his defence. There was no objection on this account from Shri Mahto during any stage of the inquiry. Furthermore, as already mentioned earlier, the entire proceedings were conducted as per the procedures prescribed in the CCS (CCA) Rules. Thus the contention of Shri Mahto is without basis.

**(vii) That the proceedings against the appellant were initiated at the instance of some complainant whose identity has not been disclosed, which leaves scope for malafide, bias and arbitrariness on the part of the Disciplinary Authority.**

The charge framed against Shir Mahto of securing employment on the basis of a fake ST community certificate was on the basis of its substance and not on the source of the complaint. Since the disciplinary proceedings against Shri Mahto were held in accordance with the prescribed procedures, the question of any malafide, bias or arbitrariness does not arise.

**(viii) Non-application of mind by the Disciplinary Authority on the defence documents submitted by Shri Mahto, while arriving at the findings.**

The Disciplinary Authority had examined thoroughly and taken into account all the documents submitted by Shri Mahto in his defence both during the inquiry and subsequently (submitted by him in response to the inquiry report forwarded to him) along with other records of the inquiry before arriving at the findings against him. Furthermore, it is clearly evident from the order of penalty that the Disciplinary Authority has applied its mind before deciding on the penalty.

6. In addition to the above points, Shri Mahto has raised the issue of synonymity of õKhariaö tribe with õNoniaö tribe. It is observed that this issue was earlier raised in his representation dated 23.7.2008 on the inquiry report which was duly considered by the Disciplinary Authority and the same was incorporated at para 5 and 9 of the penalty order dated 26.9.2008.

7. In the light of the above, the Appellate Authority is of the opinion that the procedures laid down in the CCS (CCA) Rules have been complied with, that the findings of the Disciplinary Authority are warranted by the evidences on the record, and that the appeal does not provide any grounds for review of the decision of the Disciplinary Authority. The appeal of Shri Rajendra Mahto is, accordingly, disposed off.ö

17.4 The relevant part of the order dated 3.1.2011 passed by the RA rejecting the applicant's revision petition reads thus:

õ6. Shri Mahto has submitted a revision petition dated 8.5.2009 under Rule 29 of the CCS (CCA) Rules, 1965 against the above Appellate Order of 9<sup>th</sup> April 2009. The main grounds on which revision has been sought and the observations of the Revising Authority under each are as follows:-

- (a) That the proceedings against the petitioner were initiated at the instance of some complainant whose identity has not been disclosed, which leaves no scope for malafide, bias and arbitrariness on the part of the Disciplinary Authority.**

The charge framed against Shri Mahto of securing employment on the basis of a fake ST community certificate was on the basis of its substance and not on the source of the complaint. Since the disciplinary proceedings against Shri Mahto were held in accordance with the prescribed procedures, the question of any malafide, bias or arbitrariness does not arise.

- (b) That the disciplinary proceedings were barred by limitation since verification of his caste certificate ought to have been done earlier in service either during his probation after initial appointment or subsequently while granting him increment or promotion.**

There is no prescribed limitation for proceeding against Government servants on the basis of false caste certificate.

- (c) That Disciplinary and Appellate authority have failed to consider that the list of witnesses presented by the prosecution / defence ought to have been examined. That some of the prosecution documents like the letter dated 08.03.2006 of DM, Chapra and letter dated 17.01.2007 of Chief Secretary Bihar ought to have been accepted only on oath before initiation of the proceedings.**

No witnesses had been cited by the prosecution nor had the Charged Officer (CO) cited any defence witnesses during the course of the inquiry. Therefore, the question of their examination did not arise. As regards the acceptance of prosecution documents under oath, the issue had been raised by the CO earlier which was duly considered both at the time of passing the penalty order as well as the appellate order and the decisions incorporated in the said orders. It may be reiterated here that the rules of evidence under the Indian Evidence Act

are not applicable in a departmental inquiry. The said documents were duly inspected by the CO during preliminary hearing and not disputed. They were, accordingly, taken on record by the Inquiry Officer (IO). Once so done, the authenticity of the documents cannot be disputed by the CO.

**(d) That the Appellate Authority has failed to consider that prescribed procedure under Rule 14 (14) of the CCS (CCA) Rules were not followed.**

The said rule relates to production of oral and documentary evidence on behalf of the Disciplinary Authority during the inquiry and examination / cross-examination of witnesses. As mentioned earlier, all the prescribed procedures of holding an inquiry were duly observed in this case. Since no witnesses had been cited in the charge memorandum, none were produced during the inquiry. However, all the listed prosecution documents had been produced by the Presenting Officer and duly examined by the CO during the inquiry.

**(e) That Disciplinary and Appellate authority have failed to consider that the appellant was cross-examined by the Inquiry Officer which is untenable in law.**

The records of the inquiry do not indicate that the CO was cross-examined by the IO at any stage, and the CO was so informed vide the appellate order. The Inquiry Officer had generally examined the CO after he had declined to by his own witness ó which was very much in conformity with the prescribed procedures under the CCS(CCA) Rules. The contention of the CO is, therefore, incorrect.

**(f) That the Petitioner was not supplied relevant documents in spite of demand.**

The records of the inquiry reveal that the CO was given every opportunity by the IO to submit his defence. Shri Mahto had not raised any objection on this account during any stage of the inquiry. The entire departmental proceedings were conducted as per the procedures prescribed in the CCS (CCA) Rules. Thus the contention of Shri Mahto is without basis.

**(g) Rule of audi alteram partem has been completely ignored.**



As already mentioned earlier, the CO was given every opportunity by the IO to submit his defence. There was no objection on this account from Shri Mahto during any stage of the inquiry. Furthermore, the entire proceedings were conducted as per the procedures prescribed in the CCS(CCA) Rules. Thus, the contention of Shri Mahto is without basis.

**(h) That Disciplinary and Appellate Authority have failed to consider that IO's findings and prosecution document, P-XI, are far-fetched and erroneous.**

Document P-XI, viz., letter dated 17.01.2007 of the Chief Secretary, Govt. of Bihar, had confirmed, on the basis of investigations conducted by the Divisional Commissioner, Chapra, the genuineness of the letter dated 8.3.2006 of the District Welfare Branch, Chapra conveying that the caste certificate of Shri Mahto was not issued by their office. Both the prosecution documents were taken on record in the inquiry. This clearly established that the community certificate of Shri Rajendra Mahto was fake. Further, during the inquiry, Shri Mahto could not controvert the findings of the Divisional Commissioner. It was on these grounds that the IO had reached to the well reasoned conclusion that the charge under Article-I was proved.

**(i) That Disciplinary and Appellate Authority have failed to consider that the findings were arrived at by a pre-set mind without following procedure established by law, giving the Appellant a reasonable apprehension of bias.**

The entire departmental proceedings against Shri Mahto was undertaken as per the procedures prescribed under the CCS(CCA) Rules, 1965. Moreover, the CO had never raised the issue of bias against the Inquiring Authority, who in his report had proved the charges against him. Thus, the contention of Shri Mahto is without any basis.

**(j) Non-application of mind by the Disciplinary Authority on the defence documents submitted by Shri Mahto, while arriving at the findings; that not a single defence document was examined objectively.**

The petitioner has specifically referred to defence documents D-2 and D-9. As regards the former, which is a letter dated 31.12.1984 from the Director, Bihar Tribunal Welfare Research Institute, Ranchi, containing a

recommendation to the Govt. of Bihar for considering the reservation for the 'Nonia' community, the petitioner has contended that the document has been misinterpreted: that pages 3,5,6, and last para at page 7 should have been taken into account. Shri Mahto has stated that the issue here is that Nonia is synonymous with Kharia. Regarding D-9, which is the Gazette of India Notification dated 20.9.1976, the petitioner has submitted that the document has not been examined in its totality. He has reiterated that the crux of the document is that 'Kharias' are also known as 'Nonias' which means that Kharia ST is also known as Nonia.

The Disciplinary Authority had examined thoroughly and taken into account all the documents submitted by Shri Mahto in his defence both during the inquiry and subsequently (submitted by him in response to the inquiry report forwarded to him) along with all other records of the inquiry before arriving at the findings against him. It may be mentioned here that the application of mind by the Disciplinary Authority is clearly evident in the order of penalty. All the relevant records were revisited by the Appellate Authority before coming to the conclusion that there were no grounds for reviewing the decision of the Disciplinary Authority.

The petitioner has also referred to a letter dated March, 1981 by Shri P.S. Krishnan, then Joint Secretary to MHA addressed to then Secretary Welfare, Govt. of Bihar, regarding revision of the list of SC/STs and an application by the 'Akhil Bhartiya Kharia Nonia Vikas Mahasangh' under the RTI Act pertaining to inclusion of Nonia Community in the list of SC/STs. The petitioner has stated that the letter of MHA remains unanswered by the Govt. of Bihar resulting in harassment to employees like him and that the information sought on the issue under the RTI Act is yet to be obtained. It is obvious that the issue raised in these documents is as yet unresolved and, therefore, not relevant to the case. These documents had been submitted by the petitioner with his representation on the inquiry report and again with his appeal against the penalty order. They had been duly considered both by the Disciplinary and the Appellate Authorities. In fact, the documentary evidence adduced by Shri Mahto himself clearly established that the benefit of reservations has not been extended to 'Nonias' in Bihar.

**(k) Disciplinary and Appellate Authority have failed to go into the history / evolution of caste before arriving at the conclusions.**

This issue is not relevant to and beyond the scope of the inquiry held in the case.

**(l) That Disciplinary and Appellate Authority have failed to consider that the severest punishment has been imposed for no misconduct on his part.**

The penalty of removal from service was imposed on Shri Rajendra Mahto on the proved charge of securing employment on the basis of a fake Scheduled Tribe community certificate. This was in accordance with the instructions laid down in DOPT's OM No.11012/7/91-Estt. (A) dated 19.5.93. The instructions stipulate that under no circumstances should any penalty other than that of removal or dismissal from service be imposed in cases where appointment is secured on the basis of false certificate or information.

7. Vide his revision petition, Shri Mahto had also requested for personal hearing that was granted to him by the Revising Authority, the Hon'ble MOS (PK), at 1300 hrs on 21<sup>st</sup> December 2010. The Revising Authority duly considered the Order dated 21.4.2010 passed by the Hon'ble Patna High Court against CWJC no.12334 of 2009, in which Shri Mahto is one of the petitioners (this order had been submitted by Shri Mahto vide his representation dated 6.5.2010), and informed Shri Mahto during the personal hearing that the aforesaid Order of the Hon'ble Patna High Court is not relevant in his case since he has secured employment in the Ministry of External Affairs by producing a fake Scheduled Tribe certificate which was never issued by any authority.

8. As the appellant has not furnished any new evidence, which has the potential of altering the nature of the case, the revision petition of Shri Rajendra Mahto, stands rejected.

18. Admittedly, the charge memo dated 10.5.2007 did not accompany any list of witnesses, and the articles of charges were sought to be proved on the basis of documentary evidence, as per the list of documents enclosed with the charge memo as Annexure-III. These documents are:

1. Scheduled Tribe Community certificate dated 5.6.1979.
2. Order No.Q/PE/578/64/82 dated 25.11.1982 of appointment of Shri Rajendra Mahto as Peon in Ministry of External Affairs
3. Letter No.Q/PD/551/13/2005 dated 23.12.2005.
4. Letter No.280 dated 8.3.2006 of District Welfare Branch, Chapra
5. Memorandum NO.Q/Vig./842/15/06 dated 30.10.2006.
6. Letter dated 8.11.2006 of Shri Rajendra Mahto, UDC.
7. Letter No.Q/Vig./842/15/16 dated 20.11.2006 to Chief Secretary, Govt. of Bihar.
8. Endorsement No.Q/Vig./842/15/06 dated 23.11.2006 to DM, Chapra.
9. Letter No.1314 dated 11.12.2006 of DM, Chapra.
10. Letter No.Q/Vig/842/15/06 dated 26.12.2006 to Chief Secretary, Govt. of Bihar.
11. Letter No.394/CCS dated 17.1.2007 of Chief Secretary, Govt. of Bihar. (12) Report dated 15.1.2007 of Divisional Commissioner, Chapra.

The plea of non-examination of any witness by the prosecution, as now raised before us, was also raised by the applicant in his revision petition. The RA duly considered the said plea of the applicant, but rejected the same. It was observed by the RA that no witness had been cited by the prosecution, nor had the applicant cited any defence witness during the course of inquiry. Therefore, the question of examination of any witness did not arise. As regards the acceptance of prosecution documents under oath, the issue had been raised by the applicant earlier which was duly considered both at the time of passing the penalty order as well as the appellate order. The rules of evidence under the Indian Evidence Act are not applicable in a departmental inquiry. The said documents were duly inspected by the applicant during the preliminary hearing and not disputed. They were,

accordingly, taken on record by the IO. Once so done, the authenticity of the documents cannot be disputed by the applicant. Thus, it is clear that the RA has dealt with the applicant's plea of non-examination of any witness by the prosecution, but has rejected the same after assigning cogent reasons.

19. Rule 14(3) of the CCS (CCA) Rules, 1965, stipulates, *inter alia*, that where it is proposed to hold an inquiry against a Government servant, the DA shall draw up or cause to be drawn up a statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained. It has nowhere been prescribed in Rule 14(3) that the listed documents are required to be proved by the Department/prosecution by examining any witness/witnesses or by adducing oral evidence in the departmental enquiry. Thus, in the instant case, the articles of charges were proposed to be sustained by the documentary evidence only. The applicant has not brought to our notice any rule, or instruction issued by the Government of India, stipulating that the examination of witnesses and/or oral evidence in a departmental enquiry is a must.

20. In a departmental enquiry, when the copies of the listed documents, by which the articles of charges are proposed to be sustained, are supplied to the charged official, and the documents are

produced by the Department/prosecution and marked as Exhibits without any objection thereto by the charged official and, thus, are admitted in evidence, the charged official gets sufficient opportunity to lead rebuttal evidence not only in the shape of documentary evidence but also by examining defence witness or witnesses on his behalf. As already pointed out by us, the charges levelled against the applicant were based solely on the documents. In the written statement of his defence, or in the representation made by him against the enquiry report, or in the appeal petition, or in the review petition filed by him against the punishment order, the applicant did not dispute the existence of any of the listed documents/documents marked as Exhibits during the enquiry.

21. The evidence includes, besides oral account of facts, all documents produced by the parties for inspection of court. According to Section 3 of the Evidence Act, "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter. At this stage, we must bear in mind another principle, i.e., "party must produce the best evidence in possession or power of the party". In **R.V.E.Venkatachala Gounder Vs. Aralmigu Viswesarswami & V.A.Temple & another**, AIR 2003 SC 4548, it has been held that the objection should be taken before the evidence is tendered and once the

document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an Exhibit. Under Section 58 of the Evidence Act, no fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

22. Consequently, we do not find any substance in the contention of Mr.H.P.Chakravorty, the learned counsel appearing for the applicant, that the documents on the basis of which the IO, DA, AA and RA have held the charges as proved against the applicant have not been proved by witnesses and hence there was no legally admissible evidence available on record of enquiry to prove the charges against the applicant. This view of ours is also strengthened by the decisions of the Honøble Supreme Court in **State of Mysore v. Shivabasappa** (supra) and in **K.L.Shinde v. State of Mysore**(supra).

23. After analysing the evidence adduced by the prosecution and defence, the pleas raised and the documents produced by the applicant during the enquiry, the IO in his report has found that all the documents submitted by the applicant do not in any way suggest that

the applicant is a Kharia, that Khariyas and Nonias are treated as synonyms by the Government, and that Nonias are treated as a ST community. The applicant has not been able to furnish any document which contradicts the conclusions reached by the Chief Secretary, Government of Bihar. The Chief Secretary, Government of Bihar, vide his letter dated 17.1.2007 addressed to the Joint Secretary (CNV), has communicated that the Caste Certificate submitted by the applicant is not genuine, and that the District Welfare Branch, Chapra, vide its letter No.280 dated 8.3.2006, signed by Additional Collector, Chapra, confirmed that the said certificate (No.309 dated 5.6.1979) had not been issued from that office. The applicant is not a Kharia and belongs to the Nonia caste which falls in the category of extremely backward. The applicant could not prove his claim that he belongs to the ST community. He could not produce any document which could prove that he is a Khariya or that Noniyas and Khariyas are synonyms or that Noniyas are considered as ST community. Accordingly, the IO has held both the charges as proved against the applicant. It has been held by the Honøble Supreme Court in **R.S.Saini v. State of Punjab and others** (supra) that if there is some evidence to reasonably support the conclusion of the IO, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The IO is the sole judge of the fact so long as there is some legal evidence to substantiate the findings and the adequacy or reliability of the



evidence is not a matter which can be permitted to be canvassed before the Court.

24. After going through the records, we have found that the DA, AA and RA have considered all the materials and the pleas/contentions raised by the applicant in his written statement of defence, representation on the enquiry report, appeal petition and revision petition and have recorded their findings while passing the orders impugned in the present proceeding, the relevant parts of which have already been reproduced by us in this order. Therefore, the contention of Mr.H.P.Chakravorty, the learned counsel appearing for the applicant, that the DA, AA and RA have passed the orders without considering the pleas raised by the applicant in their proper perspective and without assigning reasons, is without any substance.

25. When it has been clearly established during the enquiry and findings have been arrived at by the IO, DA, AA and RA on the basis of evidence available on enquiry record that the purported ST community certificate No.309 dated 5.6.1979 had never been issued by any authority, the question of cancellation of the same by any authority after following the prescribed procedure did not arise. Therefore, we do not find any substance in the contention of Mr.H.P.Chakravorty, the learned counsel appearing for the applicant that in the absence of cancellation of the purported ST certificate

No.309 dated 5.6.1979, the findings recorded by the IO, DA, AA and RA that the said certificate is a fake/forged one are unsustainable.

26. In **Akhil Bhartiya Kharia-Nonia Vikas Mahasangh & others**(supra), the Honøble High Court of Judicature at Patna passed the following judgment:

õThis writ petition is more in the nature of a representative application by alleged members of Kharias/Kharia-Nonia Scheduled Tribe persons. Their grievance is that their ancestors were tribal and, in course of rehabilitation, had been brought to the planes. They do not belong to the planes of Bihar. Having stayed in different parts of the state at different times, they were granted Scheduled Tribe Certificates by district authorities and other authorities as Kharia was duly notified Scheduled Tribe so far as Bihar is concerned. It appears that sometime back, a writ petition was filed in the Delhi High Court wherein a grievance was made that Delhi administration had employed large number of people on basis of Scheduled Caste certificates without verifying their genuineness. In other words, they were employed on forged certificates without verification. The Delhi High Court entrusted the matter to the Central Bureau of Investigation (CBI) to investigate. Petitioners and their like are in employment in Delhi and elsewhere on certificates granted by authorities in Delhi and other places on basis of Scheduled Tribe certificates earlier obtained by their parents. It appears, in course of enquiry, the CBI enquired from the District Magistrate-cum-Collector, Siwan, which district earlier comprised of Gopalganj, Chapra as well which are now independent districts, whether Kharia tribe lived in those districts. The obvious answer was no because the tribe was not resident of these districts. They were from the hills and in course of rehabilitation, starting from the British time, they were brought to different areas. The authorities, unmindful of these facts, are now taking coercive steps against the

petitioners without going into the fact whether the certificate obtained was forged or not, without the certificates being cancelled by competent authority after due enquiry.

Having heard Shri Binod Kanth, learned Senior counsel in this regard on behalf of petitioners, in my view, no useful purpose would be served by keeping the writ petition pending as it can be disposed of conveniently. Having considered the matter, I direct that till it is found that the Scheduled Tribe certificates are forged and the same are not cancelled in due course after enquiry by competent authority, no coercive steps should be taken against the petitioners or members of petitioners' association claiming the status of Scheduled Tribe, as such, provided the investigation and/or departmental proceedings would continue in accordance with law. An additional prayer has also been made to recommend Kharia Nonia as a Scheduled Tribe by the State Government. My attention is drawn to various documents of the State Government wherein they have virtually conceded to the demand of the petitioners. This Court is ill-equipped to decide this issue at this stage. Therefore, it leaves to the State Government to take a decision in the matter in accordance with law at an early date so that the genuine claims are not denied, their due benefit which the Constitution confers on notified Scheduled Tribes. Let it be recorded that this Court has not given any opinion on merits of the claims, as made.

With these observations and directions, the writ petition is disposed of.

In its judgment, the Hon'ble High Court has clearly observed that till it is found that the Scheduled Tribe certificates are forged, no coercive steps should be taken against the petitioners or members of petitioners' association claiming the status of Scheduled Tribe. In the instant case, after vigilance enquiry, when it was found that the purported ST certificate had

never been issued by any authority and that the same is a fake one, the disciplinary proceedings were initiated against the applicant and during the departmental enquiry, it has been clearly established that the purported ST certificate was fake. Thus, the said judgment does not help the case of the applicant. Therefore, we do not find any substance in the contention of Mr.H.P.Chakravorty, the learned counsel appearing for the applicant that in view of the judgment of the Honøble High Court of Judicature at Patna in **Akhil Bhartiya Kharia-Nonia Vikas Mahasangh and others** (supra), the initiation of the departmental proceedings is bad and illegal and consequently, the enquiry report submitted by the IO and the orders passed by the DA, AA and RA stand vitiated and liable to be quashed.

27. Taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that there has been no violation of principles of natural justice. The conclusions are based on evidence. The IO has correctly evaluated the evidence available on record. The DA, AA and RA have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity, or perversity in the impugned orders. Hence, no interference therewith is warranted by this Tribunal. The decisions cited by Mr.H.P.Chakravorty, the learned counsel appearing for the applicant do not come to the aid of the applicant, besides being distinguishable on facts.

28. No other point worth consideration has been urged or pressed by the learned counsel appearing for the parties.

29. In the light of our above discussions, we hold that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SHEKHAR AGARWAL)**  
**ADMINISTRATIVE MEMBER**

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