

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 207/2010

DATED THIS Tuesday THE 15th DAY OF November, 2016

CORAM :HON'BLE SMT CHAMELI MAJUMDAR, MEMBER(J)
HON'BLE Ms. B. BHAMATHI, MEMBER (A)

Ratan Chandra Debnath
R/at. A-5/602,
Building Devdar,
Lok Udyan, Kalyan (W),
District: Thane.
Pin Code - 421 301.

... ***Applicant***

(By Advocate Shri Vincent D'silva)

VERSUS

1. The Admiral Superintendent
Having his office at
Naval Dockyard,
Lion Gate,
Mumbai - 23.

2. The Flag Officer Commanding in Chief
Having his office at
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai - 400 001.

... ***Respondents***

(By Advocate Shri V.S. Masurkar)

O R D E R

Per: Smt Chameli Majumdar, Member (J)

This OA has a chequered history.

2. The applicant has filed this O.A. challenging the punishment order passed by the Disciplinary Authority being the Admiral Superintendent dated 18.02.2009 as well as the

order dated 23.03.2009 passed by the Appellate Authority being the Flag Officer Commanding-in-Chief.

3. This Tribunal by order dated 05.12.2011 dismissed the OA. The applicant challenged the said judgment and order passed by Central Administrative Tribunal before the Hon'ble High Court by filing Writ Petition No.1220 of 2012. The Hon'ble High Court vide order dated 21.01.2013 granted liberty to the applicant to approach the Tribunal for review of the impugned decision on the count that the Tribunal recorded that the applicant in his appeal filed before the Appellate Authority did not raise any ground of discrimination or violation of principles of natural justice. The Hon'ble High Court observed that the applicant raised the issue of breach of principles of natural justice in his appeal as well as in the OA. The matter was remanded back to the Central Administrative Tribunal granting liberty to the applicant to review the judgment. The applicant filed the Review Petition before this Tribunal being RP No.15/2013. The said RP No.15/2013 was again dismissed on 10.05.2013. Finding of the Tribunal was that there was no error apparent on the face of the record

warranting Review. Challenging the said order passed on the Review Petition, the applicant again filed Writ Petition No. 1/2014 before the Hon'ble High Court at Bombay. The said Writ Petition was disposed of on 11.08.2015 by passing the following order:-

"(I) The order dated 5th of December, 2011 passed in O.A. No. 207 of 2010 and Review Petition No. 15 of 2013 in O.A. No. 207 of 2010 decided on 10th of May, 2013 by Central Administrative Tribunal, Bombay bench, Mumbai are hereby set aside.

(II) Tribunal is directed to restore O.A. No.207 of 2010 on its file and decide the same afresh by providing full fledged hearing to the petitioner as well as the respondents and pass the order in the matter as expeditiously as possible, preferably within a period of six months from the date of passing of this order;

(III) The Petitioner is directed to appear before the Central Administrative Tribunal on 25.08.2015 and to make appropriate application to fix the date of hearing of the matter, with due notice to the respondents.

(IV) Liberty is granted to the petitioner to approach this Court in case any order adverse to the interest of the petitioner is passed in the matter.

(v) Rule made absolute in above terms with no orders as to costs."

4. After receiving the certified copy of the order by the Registry of the Tribunal, the matter

was placed for hearing on 13.01.2016 when the proxy counsel for Shri Vincent D'silva, learned counsel for the applicant appeared and sought one Week's time to submit application. In terms of the order of the Hon'ble High Court, the learned counsel made an application to fix the date of hearing. The matter was thereafter posted for hearing on 04.02.2016. On the prayer of the learned counsel for the respondents, the matter was adjourned to 02.03.2016. On 02.03.2016 the adjournment was prayed for on behalf of the learned counsel for the applicant. The matter was adjourned to 14.03.2016. Again on 14.03.2016, adjournment was sought for by proxy counsel for the applicant. The matter was adjourned to 11.04.2016. On 11.04.2016 on 3rd call, the learned counsel for the applicant appeared. The matter was listed for final hearing on 27.04.2016. On 27.04.2016 both the counsel advanced their argument and sought time to file written submission as well as citations on the next date. On 07.06.2016 again adjournment was sought for by proxy counsel for the applicant on the ground that the learned counsel was hospitalised. Accordingly, the matter was directed to be posted on 23.06.2016. On 23.06.2016 no Division Bench was available,

accordingly adjourned to 28.07.2016. Since there were several objections, the matter was posted before the Registrar's Court on 28.07.2016. The matter was adjourned to 04.08.2016 for removal of objections before the Registrar. On 04.08.2016 the matter was again adjourned to 16.08.2016 for removal of office objections. On 16.08.2016 since the objections were still not removed, the matter was adjourned to 26.08.2016. On 26.08.2016 the Registrar passed the order that the objections were removed. Hence posted before the Bench for orders on 14.09.2016. On 14.09.2016 it was held by the Bench that since the parties already filed written submission, therefore the matter was posted for final hearing on 30.09.2016. On 30.09.2016 the matter was reserved for judgment.

5. We have perused the documents including the written submissions filed by the parties. We have also given hearing to the counsel for the parties as well as the applicant in person.

6. After going through the judgment passed by the Hon'ble High Court dated 11.08.2015, it appears that the Hon'ble High Court was of the view that it was necessary for the Tribunal to consider as to whether the procedure envisaged under the relevant

rules and regulations has been followed or not, by the Disciplinary Authority. It was further necessary to see as to whether the principles of natural justice had been duly observed or not, while passing the impugned orders, whether the reasons and findings were based upon due appreciation of evidence adduced in the matter and whether there was any perversity in decision taken by the Disciplinary Authority as well as Appellate Authority. The aspect of punishment awarded was also needed to be considered by the Tribunal and to ensure that the punishment imposed commensurated with the misconduct committed by the person. The Hon'ble High Court was of the view that all such aspects were overlooked by the Tribunal. As such, the Tribunal's order was set aside and the OA was remanded back for hearing.

7. In the Original Application the applicant challenged the report of the enquiry officer, the order of the Disciplinary Authority as well as the order of the Appellate Authority. Grievance of the applicant is that none of the authorities considered the grounds taken by the applicant that the enquiry was vitiated for violation of natural justice. Further grievance of the applicant was

that while passing the order by the Appellate Authority, the said authority did not address the issues raised by the applicant regarding violation of natural justice as well as discrimination in quantum of punishment imposed in identical cases.

8. We have gone through the charge sheet. The said articles of charge are set out herein below:-

"i. That the applicant remained absent for period of 167 days (for the period from 12.04.2006 to 25.09.2006) and 74 days (for the period from 26.12.2006 to 09.03.2007) without prior permission and therefore violated Rule 3(I)(II) of the Central Civil services (Conduct) Rules, 1964.

ii. The applicant obtained a civil passport without prior permission of the competent authority and thus violated Rule 3(I)(II)(III) of the Central Civil Services (Conduct) Rules, 1964.

iii. The applicant travelled abroad on the civil passport without prior permission of the competent authority and thus violated Rule 3(I)(II)(III) of the Central Civil Services (Conduct) Rules, 1964.

iv. The applicant submitted false medical certificate (7 Nos.) to support his absenteeism and thus violated Rule 3 (I)(II)(III) of the Central Civil Services (Conduct) Rules, 1964.

9. The Inquiry Officer held that the applicant guilty of all the charges. The Disciplinary Authority passed the order of Removal from service on 13.05.2008. The applicant preferred an appeal.

The Appellate Authority also confirmed the order of punishment of Removal from service by its order dated 21.05.2009.

10. From the record it appears that the applicant denied all the articles of charge dated 13.05.2008 levelled against him. The Office of the Admiral Superintendent held enquiry against the applicant under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. In the enquiry there were six prosecution witnesses who were examined as well as cross examined by the Defence witness. The Inquiry Officer submitted its report on 30.12.2008 and found the applicant guilty of all the five charges.

11. The applicant challenged the disciplinary enquiry *inter alia* on the ground that the enquiry was vitiated for violation of natural justice and the orders were vitiated being perverse. He made the following submissions:-

"4. The PW-1 namely Shri V.V. Dhule admitted in his cross examination that the applicant had submitted medical certificates in support of his absence for the period (Question No.27). The said witness has further admitted that the applicant joined the duty on 12.03.2007 (Question No.28) and again submitted medical certificates on that day (Question No.29).

5. The PW 2 Mr. B.K. Karnik, was examined on 03.10.2008. In his cross examination,

he has admitted that the applicant was on duty on that day (Question No.41)

6. PW 5 Mr. N. Phatarphekar claimed in the examination in chief that they have received a reply from the regional passport office and from the senior inspector of police, immigration airport branch, Sahar, Mumbai confirming the travel of the applicant abroad on the civil passport. However, he has admitted in his cross examination that he had not seen the passport alleged to have been obtained by the applicant and he had also admitted that he had not seen him/applicant travelling abroad (Question No.53)

The Defence Assistant, requested the Inquiry Officer to produce the Passport officer/Assistant Passport Officer and the senior inspector of police, airport branch, Sahar, Mumbai. However, the enquiry officer refused the request saying that their presence was not necessary as the original letters have been received by them from the authorities regarding the passport and travel of the applicant abroad.

7. The PW 6 Mr. J.S. Konde, deposed that the department has written letters on 23.02.2007 and also on 28.11.2007 to Dr. M.K. Bagchi regarding the medical certificates furnished by the applicant to the department regarding his absence. The said witness has deposed that the said doctor has by his letter dated 09.01.2008 has confirmed that the seven medical certificates has not been issued by him and he has not treated nor given medicine to the applicant and the doctor has further claimed (according to the witness) that applicant is fraud. The said witness has further deposed that they have received a reply letter dated 13.03.2008 from the Mumbai police that the applicant has travelled abroad on more than one occasion (Question No.59)

In spite of request by the Defence Assistant, the Inquiry Officer ruled that the production of doctor was not necessary on the ground that he was

living out of station and to secure the doctor's presence will consume more time to conclude the case. The said witness when asked in cross examination whether the applicant was asked to produce the passport, he answered in the negative (Question No.61). He has further admitted that he has not seen the applicant travelling abroad (Question No.63)

8. In his general examination, the applicant has denied the charges and pleaded not guilty and has explained the circumstances under which he was absent. The applicant has given reason that he was required to visit native place to look after his age, old and ailing parents and for that purpose, he was advised rest. He has also stated that he will be regular in attending his duty (Question No.66)

9. In the defense statement dated 26.12.2008, the applicant has stated that neither the doctor nor the regional passport officer were examined to substantiate the charge of forgery of medical certificates and the applicant travelling abroad or obtaining passport without permission. The applicant has further stated that even the senior inspector of airport branch police station, was not produced. Hence, submitted that he should be exonerated of the charges.

10. The applicant however, upon being declared guilty as per the procedure pleaded for lesser punishment. However, the same was without prejudice to his statutory right of appeal and under Rules. Therefore, the submission of the counsel of the respondents that the same constitutes as admission of guilt is misplaced.

11. The appeal preferred by the applicant before the respondent came to be rejected vide order dated 21.05.2009, on the ground that the same being devoid of merits and without any grounds for intervention.

12. The Appellate Authority did not appreciate and look into the facts that

two material witnesses namely the doctor who had issued the medical certificates and the police officer of the airport branch who had issued the letter confirming the alleged travel of the applicant abroad were not examined. The Appellate Authority also did not look into and appreciate the fact that the passport authority was also not examined to support the charge that the applicant had obtained civil passport without the permission of the competent authority. The enquiry and the decision of the authorities below i.e. the respondents were therefore in violation of the principle of the natural justice and was a biased proceedings against the applicant. The onus was upon the authorities below to prove the charge of forged medical certificates and obtaining of civil passport and travel abroad. Therefore, the omission and refusal of the authorities below to consider the said vital aspects and denial of the opportunity to the applicant to cross examine was fatal to the cause of the applicant.

13. The applicant also brought before the authorities below the cases of persons in employment of the department charged with similar charges. The applicant further brought to their notice that they were handed over comparatively lighter punishment of compulsory retirement with full benefits on proof of the said charges. However, even this plea of the applicant to consider his case for lighter punishment was turned down even the charges of forgery, obtaining of civil passport and travelling abroad were full of infirmities and could not be proved. Therefore, the punishment awarded to the applicant was shockingly and grossly disproportionate to the charges leveled against the applicant.

14. The authorities below ought to have noticed that the applicant had put 19 years of service and the same were unblemished. Therefore, the same ought to have weighed with the authorities below

while handing over the punishment of termination of services which was on the face of it, extremely harsh and shockingly disproportionate (assuming without admitting the appellant was in fact guilty of the alleged violations). The authorities below ought to have considered the fact that applicant was married and had family to sustain which included wife and children before awarding the extreme punishment. Rule 11 of the Central Civil Service (CCA) Rules, 1965 also provides for compulsory retirement as one of the modes of major penalties. The proviso to the said Rule provides that major penalties of removal of services and dismissal from service are to be compulsory imposed in case of the Government servant possesses assets disproportionate to known source of income or accepts any gratification. The second proviso to the said Rule provides that for special reasons to be recorded in writing, any other penalty may be imposed."

12. At the time of argument, the applicant appearing in person submitted that the DoPT letter dated 29.11.1972 laid down the types of cases for imposing one of the major penalties but his case was not covered under those cases where major penalties should be imposed. He further submitted that no warning or caution was given to the applicant before initiating action by the respondents. The applicant was not a habitual delinquent. No special or extra ordinary circumstances existed which justified the imposition of such shockingly, extremely harsh and

grossly disproportionate penalty of termination of services. The applicant relied on the following judgments:-

"(i) 1987 (4) SCC 611 - Ranjit Thakur
Vs. Union of India
(ii) MANU/UP/1310/2003 - Harish Tiwari
Vs. Sri Gaya Tiwari
(iii) MANU/GJ/0091/1981
(IV) MANU/SC/0241/1983
(V) MANU/SC/685/1999 - Hardwari Lal Vs.
State of UP & Ors."

13. We do not find merit in the submission of the applicant that he was not given any show cause notice or caution or warning. The show cause notice, warning are not pre-requisites for initiation of disciplinary enquiry. By issuing the charge sheet the Charged Officer is informed about the allegation against him. If he denies the charge enquiry is started wherein all opportunities are to be given to the delinquent employee to put forward his defence.

14. We have carefully gone through the evidence both oral and documentary to ascertain whether the finding of the Inquiry Officer and the decision of the Disciplinary Authority are based on evidence or not, whether the enquiry was held in accordance with the Rules or not, whether all opportunities were provided to the applicant or not.

15. PW-4 and PW-5 were examined and cross examined to prove the charge Nos.4 & 5. The PW-4 Shri D.B. Adsul, UDC in reply to question No.44

said that he was dealing with the issue of NOC for obtaining passport. He further said in reply to question No.45 that the applicant did not approach his office for obtaining NOC for passport. The defence representative did not want to ask any question to PW-4. PW-5 in answer to question No.51 stated that a letter was written to Regional Passport Office, Mumbai bearing No.DYT/YAS/C.67/DISP/11546 dated 07.03.2008 which confirmed that the passport No.E 7368401 was issued to him. The Passport Officer by his letter dated 10.03.2008 confirmed that the applicant received the Passport. Information regarding confirmation of applicant's leaving the country was sought from the Senior Inspector of Police Immigration Airport Branch, Sahara, Mumbai vide letter dated 11.03.2008. The said police officer by his letter dated 13.03.2008 confirmed that the applicant left the country to travel abroad.

16. It appears from record that the Defence Assistant requested the Inquiry Officer to produce the Passport Officer/Assistant Passport Officer from Regional Passport Office, Mumbai and Senior Inspector of Police, Airport Branch, Sahara, Mumbai to prove the authenticity of the letters referred by the PW-5 in the proceedings. At this point,

Inquiry Officer ruled out stating that those were original letters received from the authorities in connection with the communications held with the Admin Office of the Naval Dockyard, Mumbai and duly verified. Therefore, those were authentic. The production of the witnesses was not considered necessary by the Inquiry Officer to avoid delay for finalising the case earliest and suggested to proceed with cross examination. PW-6 was examined to prove the charge No.5. PW-6 in reply to question No.15 replied as follows:-

"We have written letters on 23 Feb 07 and also 28 Nov 07 to Doctor M.K. Baqchi who have issued medical certificates as per record. The concerned doctor replied by his letter NO. Nil dated 09 Jan 08 which was received by registered post confirmed that 7 medical certificates were not issued by the doctor concerned and can be considered as fake and the signatures of the doctor has been forged. He categorically states in his letter that Shri R.C. Debnath who is employed in Naval Dockyard, Mumbai has been neither treated nor given any medicine to him at any point of time till the date of this letter, nor did the doctor gave any medical certificate to the above person. The doctor also stated that Shri R.C. Debnath, DGS is a fraud. We also made inquiries in the passport office vide our letter DYT/YAS/67/DIS/11546 dated 07 Mar 08. In reply to this the passport office has confirmed that Shri R.C. Debnath holds a passport No.E 7368401 dated 20 Nov 2003 which was issued by Passport Office of Thane vide the Regional Passport Office, Mumbai vide letter No.F7(5) 07-4421-Pool

1 dated 10 Mar 08 based on this information. Then my office wrote a letter to Mumbai Police letter No. DYT/YASC-67/DISP/11546 dated 11 Mar 08 for ascertaining details of foreign travelling, if any. The Mumbai Police replied vide their letter No. 1110/AP/6B-11/CID/2008 dated 13 Mar 2008 and confirmed that Shri R.c. Debnath, DGS had travelled abroad on more than one occasion during the authorised absence. To all these facts considered together proving conclusively that Shri R.C. Debnath, DGS has forged and fabricated 7 in numbers medical certificates and obtained a passport without necessary permission. Did not inform the authority for obtaining a passport and proceeded to abroad more than one occasion unauthorisedly."

17. Again the Defence Assistant requested the Inquiry Officer to produce the Doctor as a witness. The Inquiry Officer did not accept the request stating that original communication with Doctor made by office had already been verified and considered to be genuine and calling the Doctor from outstation would consume more time to conclude the enquiry.

18. To examine the issue raised by the applicant regarding violation of principles of natural justice, we have carefully perused the Inquiry Officer's report. Regarding charge No.1 & 2 of unauthorised absence from duties w.e.f. 12.04.2006 to 25.09.2006, the Inquiry Officer has stated in his report the PW-1 deposed that he dispatched

letter dated 09.04.2006 and during the period from 26.12.2006 to 09.03.2007 the applicant failed to intimate the Centre No.67. The applicant did not respond to the letter issued during both the spells of absence asking him to join. During cross examination the PW-1 answered the question that the applicant reported for duty on 26.09.2006 and 12.03.2007. He submitted medical certificates but the medical certificates appeared to be fake and forged. PW-II produced the muster rolls monthwise and the Inquiry Officer examined the same and was convinced about the unauthorised absence of the applicant from duty during the period from 12.04.2006 to 25.09.2006 and 26.12.2006 to 09.03.2007. PW-III deposed that the applicant was not granted any leave during that period. He produced a copy of the printout of leave record.

19. Regarding charge No.III that the applicant got a civil passport without prior permission of the competent authority, the Inquiry Officer has stated in his report that PW-4 deposed that the applicant did not approach his office for obtaining NOC for obtaining the passport to travel abroad. PW-5 stated that the office confirmed that a passport was issued to the applicant from Regional

Passport Office.

20. The Office of PW-5, Senior Manager sought for confirmation from the Police Immigration Airport Branch, Mumbai that the applicant travelled abroad. The communication was verified and found correct. The witness however deposed that he did not see the applicant while travelling abroad. The defence assistant requested to produce the Passport Officer and representative of Police Authority as witness but the Inquiry Officer ruled out the demand holding that the production of the additional witness was considered not necessary as the documents had already been verified.

21. PW-6, Manager deposed that their office wrote letters to the Doctor who issued the medical certificates. The Doctor informed the office that medical certificates were not issued by him covering the period of absence from duty. He also stated that he neither treated the applicant nor any medicine was given to him. The signatures on the certificates had been forged and the certificates could be considered fake. PW-6 further deposed that his office also made inquiries to the Passport Office. It was confirmed that the applicant held passport issued by them and police

department confirmed in writing that the applicant travelled abroad on more than one occasion during the period of unauthorised absence from duty. The demand for production of the Doctor as witness was considered not necessary as the communication on subject was clear and authentic. The Police Officer was also not produced as witness as the police authority had given full particulars of the travel of the applicant to abroad and the letters were authentic to establish the incident. The Inquiry Officer held the applicant guilty of all the charges.

22. From the discussions on evidence made by the Inquiry Officer in his report, it appears that the defence assistant was offered to cross examine the witnesses if he desired. The defence witness cross examined PW-1. During cross examination the defence assistant asked for attendance sheet. The witness agreed to produce the same during the next hearing. The witness provided the xerox copies of the attendance sheet of both the spells of absence and the Inquiry Officer admitted those sheets as exhibits. PW-3 submitted the muster rolls monthwise. The Inquiry Officer asked the Defence Assistant to cross examine the PW-3 but the Defence

Assistant said that he did not want to put any more question. The Inquiry Officer asked the Defence Assistant to conduct cross examination of PW-4 & 5 if he desired. The Defence Assistant before conducting cross examination requested the Inquiry Officer to produce the Passport Officer/Assistant Passport Officer from Regional Passport Office, Mumbai and Senior Inspector of Police, Airport Branch, Sahara, Mumbai as a witness. The Inquiry Officer ruled out stating that there were original letters received from the authorities alongwith the authentic communication so the production of witnesses were not considered necessary. The Defence Assistant thereafter cross examined PW-5. PW - 5 said that he did not see that the passport was issued to the applicant or he did not see that the applicant travelling abroad. The Inquiry Officer asked the Defece Assistant to cross examine PW-6 also. At the beginning of cross examination the Defence Assistant requested to produce the Doctor as a witness but the Inquiry Officer ruled out the demand since according to the Inquiry Officer the original communication made with the Doctor was available in original which had already been verified and considered as genuine. The Defence

Assistant requested to provide the correspondence between Doctor and the concerned authority or administration. The Inquiry Officer directed Presenting Officer to hand over the xerox copies of the communications. At this stage, the PW-6 presented the original copies of communications to the Defence Assistant. PW-6 stated that DGS being the applicant did not submit the passport to the office till that date. As all the details required by office were available in the office the applicant was not asked to produce the passport any more. From the records and the Police report, it was confirmed that the applicant travelled abroad more than one occasion. The Defence Assistant again requested the Inquiry Officer to produce the Police Inspector to which he had seen the applicant travelling abroad. This demand was also ruled out by the Inquiry Officer as the original communication was available.

23. The Inquiry Officer thereafter held general examination of the applicant. The applicant submitted that he denied all the charges. He said that circumstances forced him to visit his native place to look after his aged and ailing parents frequently. The applicant took seriously ill and

underwent medical treatment. He was advised to take rest by the Doctor. Unfortunately, his house was badly damaged. He had to stay there for repairing work of house. He stated that he would be regular in attending his duty in future.

24. We have also perused the order passed by the Disciplinary Authority. In the penalty order, the Disciplinary Authority recorded that the applicant in his submission against the Inquiry officer's report dated 09.01.2009 stated that he was very poor and only earning member and he would be on the street if the maximum penalty would be imposed on him and requested to take lenient view towards him and award him the punishment of 'compulsory retirement' with pensionary benefits. The Disciplinary Authority came to a finding that the applicant committed a gross misconduct. Accordingly, a penalty of removal from service was imposed on the applicant.

25. The applicant preferred an appeal to the Appellate Authority dated 23.03.2009. In the appeal he raised various issues that the Inquiry Officer did not follow the established procedure of departmental enquiry. Although in departmental proceeding following 'Indian Evidence Act' was not

mandatory, atleast preponderance of facts should be there in the departmental enquiry to establish the guilt. He further stated in the appeal that the Inquiry Officer relied on the letter of the Regional Passport Officer, the Senior Inspector of Police, Airport Branch and Dr. Malay Kumar Bagchi without examining them or giving him a chance to cross examine them which was against the principles of natural justice. The penalty of removal from service was very harsh and disproportionate to the charges. He requested to consider his case sympathetically and show mercy on him and modify the punishment of removal from service, awarded by the Admiral Superintendent, Naval Dockyard, Mumbai.

26. The Appellate Authority passed the order on 21.05.2009. The Appellate Authority held that the appellant attended the enquiry and during the course of enquiry, the appellant was given ample opportunities to defend his case by supplying him copies of letters issued by Regional Passport Office, the letter issued by Dr. Malay Kumar Bagchi alongwith charge memo. The Appellate Authority held that the appellant committed the misdemeanour of forging signature of Medical Officer and obtained passport without prior approval of the competent

authority. Such act of the appellant had no relevance to his past clean record. The appellant had gone abroad which was proved beyond doubt as he did not disclose anywhere till date the purpose of going abroad.

27. It is true that while holding the applicant guilty of the charges the Inquiry Officer relied on the letter of the Passport Officer from Regional Passport Office, letter of the police authority at Mumbai Airport as well as letter of the Doctor who allegedly informed that he did not issue any medical certificate and his signature has been forged but none of them were produced as a witness. However, it appears from the Inquiry Officer's report and the case proceedings that defence witness was offered to cross examine the Prosecution witnesses which he did. The communication between the respondent authorities and the Regional Passport office, Police authorities or the concerned Doctor were also produced in the enquiry to put forward questions to the Prosecution witnesses who made the communication to the said authorities and received the communication from the said authorities.

28. In support of the charge of unauthorised absence, the leave records, muster rolls, attendance register were produced to prove that the applicant was absent in the above mentioned two spells. In view of confirmation of the Doctor that he did not issue any medical certificates or he never treated the applicant, the Inquiry Officer held that the charge of unauthorised absence was proved. It is evident from the deposition of PW-3 that the applicant produced medical certificates at the time of joining. We find that the concerned Doctor totally denied that he treated the applicant. The Doctor made serious allegations against the applicant that the applicant was fraud and he forged his signature. Therefore, in our considered view the applicant ought to have been given an opportunity to cross examine the said Doctor as a witness to prove his innocence.

29. The charge No.I is unauthorised absence and charge No.IV is submission of false fabricated medical certificates. Charge No.I is interlinked with charge No.IV so far as charge of unauthorised absence is concerned. Those documents were produced in the enquiry and proved namely the leave register, attendance register, muster roll and such

others. The Defence Assistant was given an opportunity to cross examine those PWs. From the oral and documentary evidence, it was proved that the applicant was absent during those two spells but to prove unauthorised absence, the authenticity of medical certificates submitted by the applicant was to be established. The Inquiry Officer relying on Doctor Bagchi's letter came to the finding that the applicant submitted false medicate certificates and found him guilty of charge No.4. In view of such finding of the Inquiry Officer that the medical certificates were false, the charge of unauthorised absence was held to be proved by the Inquiry Officer but in spite of the request of the defence witness to produce Doctor Bagchi was not acceded to by the Inquiry Officer.

30. Regarding charge No.2 of obtaining civil passport from the Regional Passport officer without prior permission, the Inquiry Officer relied on the letter of Regional Passport Officer wherein the passport No.E7368401 was given. The applicant neither denied that he possessed the said passport. It is also evident from the deposition that the applicant in spite of repeated request did not produce the passport in the enquiry. Finally the

conclusion was drawn that he was holding the said passport and he obtained the passport without getting NOC from the office which is a pre requisite formality for the Government officer to obtain a passport. We are of the view that the applicant did not deny that he was possessing the said passport bearing the same no. but withheld the production of his own passport. Such withholding of personal knowledge may draw adverse inference against the applicant. Had the applicant been produced all details would have come to fore as to whether the applicant travelled abroad or not or the duration of his travelling abroad. The Inquiry Officer's finding that he obtained the passport without NOC and he travelled abroad with the said passport are supported by the letters written by the concerned authorities. In our view, the authenticity of the said letters could not be questioned or for that purpose non production of authors of those letters who were not interested witnesses do not vitiate the finding of the Inquiry Officer. Those two letters were produced by the PWs who made communications with the concerned authorities being the Regional Passport Officer and the concerned Police Officer of Sahara Airport.

Those letters were given to the charged Officer. The Defence Assistant was also given opportunity to cross examine the PWs on those letters.

31. The Disciplinary Authority accepted the report of the Inquiry Officer and imposed the punishment of 'Removal from service.' From the order of the Disciplinary Authority, it appears that the applicant denied all the allegations. At the same time he himself prayed for a lesser punishment in his representation against the report of the Inquiry Officer before the Disciplinary Authority. He made the same prayer of lesser punishment to the Appellate Authority. In the OA, he has alleged that in a similar situation the other officers were given lesser punishment. His grievance is that the respondents have resorted to discrimination even in imposition of punishment.

32. The Hon'ble Supreme Court has laid down the parameters under which the Reviewing Court may interfere in disciplinary matters such as (a) the Disciplinary enquiry suffers from violation of natural justice (b) The Disciplinary enquiry suffers from procedural impropriety (c) The finding of the Inquiry Officer is perverse that means based on no evidence or on such evidence a man of

ordinary prudence will not arrive at such finding. The conclusion or the decision of the Disciplinary Authority is not supported by the evidence and the same is perverse. (d) The delinquent employee has been denied real and reasonable opportunity of putting forward his own defence in the enquiry. (e) The Disciplinary Authority did not apply his mind in the materials on record and substituted the view of the enquiry officer. (f) The Appellate Authority being a quasi judicial authority did not apply independent mind in all the materials on record as well as the findings of the Inquiry Officer, order of the Disciplinary Authority and failed to come to a independent decision giving reasons for concurring or differing with the order of the Disciplinary Authority.

33. In a departmental enquiry fairness in the procedure is a part of principles of natural justice. It is also not possible to lay down any rigid rules regarding the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis.

34. It is well settled that while exercising powers of judicial review the Courts cannot embark

upon an appreciation of evidence and arrive at a conclusion of its own on the sufficiency of the evidence or on the correctness of the conclusion which is based on such evidence. Sufficiency of evidence in a departmental enquiry postulates existence of some evidence which links the charged officer with the misconduct alleged.

35. It has been held by the Hon'ble Supreme Court in the case of **Lalit Popli Vs. Canara Bank** reported in **AIR 2003 SC 1796** that application of technical rules of evidence and doctrine of proof beyond doubt is not necessary for ascertaining misconduct. Preponderance of probabilities and material on records is sufficient. At the same time the Hon'ble Supreme Court in the case of **U.P. State Road TPT Corporation Vs. Musairam** reported in **1999 (3) SCC 372** held that when a report is disclosed and taken on record after the examination of the author of the report and there is no cross examination of the author in spite of opportunity to do so, the report would have the characteristic of uncontroverted material and a finding based on the same cannot be perverse.

36. In the instant case, we find that the Inquiry Officer relied on the letter of the Doctor

to prove the applicant guilty of unauthorised absence inasmuch as the said Doctor mentioned in the letter that he never treated the applicant and his signature was forged but the said Doctor was never called by the Inquiry Officer to prove the letter and to take the said letter on record as exhibit. The ground taken by the Inquiry Officer that the same would delay the proceeding is not sustainable inasmuch as a serious charge of forgery has been levelled against the applicant. In a departmental enquiry both the Disciplinary Authority as well as the Government servant are entitled to produce their respective witnesses and such witnesses are liable to be cross examined and re-examined.

37. There are certain circumstantial flexibility inasmuch as when the allegations are properly made and disclosed and no reply is filed or no dispute is raised or if a reply is filed and substantial facts are admitted, it may not be necessary to lead evidence and non examination of witnesses in such cases will not result in breach of the principles of natural justice. We find that the Defence witness all through asked for production of the authors of the letters issued by

the Passport Officer, Police Inspector at the Airport and the Doctor but the Inquiry Officer ruled out the request of the Defence witness on the ground that the same will delay the proceeding.

38. The Hon'ble Supreme Court in the case of **Union of India Vs. Prakash Kumar Tandon** reported in **2009 SC 1375** held that it is incumbent upon the Inquiry Officer to consider the request for summoning a particular witness and to pass an order thereon. An Inquiry Officer cannot ignore such request. There will be a denial of reasonable opportunity if the authorities refuse to summon the witnesses desired by the charged employee on the ground that the charged employee was unable to defray the costs of the attendance of the witnesses or where no list of witnesses is given and no prosecution witnesses examined. In our considered view, the order of the Inquiry Officer that calling of the witnesses particularly the medical Doctor as unnecessary was not founded upon cogent reasons.

39. It is also well settled by the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. P. Thayagarajan** reported in **AIR 1999 SC 449** the requirement of oral evidence is not satisfied by admitting letters addressed to the

Inquiry Officer to be treated as statements made before him and the Disciplinary Authority will be right in not accepting a report based on such evidence.

40. It is well settled that the natural justice requires that a party be given an opportunity of challenging by cross examination of witnesses called by other parties on relevant issues. In the case of **K.L. Tripathi Vs. State Bank of India reported in AIR 1984 SC 273** the Hon'ble Supreme Court held that failure to give an opportunity to cross-examine will not unnecessarily vitiate the proceedings, e.g. Where there is absence of prejudice as to facts because allegations are not disputed by the delinquent officer. In the instant case, we find that the applicant denied all the charges and Defence witness requested for production of the authors of the letters which letters were relied on by the Inquiry Officer who held the applicant guilty of the misconduct.

41. We are of the view that serious allegations were made against the applicant by the Doctor himself. Therefore, the Doctor ought to have been called as a witness for examination as well as for

cross examination by the charged officer. Regarding production of the passport officer or Assistant Passport Officer to verify that the passport was issued or not, it appears that the Inquiry Officer refused to call them to avoid delay. It was submitted by the Inquiry Officer that it was verified by the Department. It appears from the evidence, particularly, the evidence of PW-6 that the applicant was asked on several occasions to produce his passport but he did not produce the said passport in the enquiry. PW-6 also stated in reply to question No.62 whether the applicant was asked to produce the passport, he replied that he refused to produce the same. PW-6 further stated that it was not required since all necessary details were already provided by the Regional Passport Office vide their letters. The letters were produced in the enquiry.

42. Although the scope of judicial review in reappraising of evidence or fact is very much limited but we are of considered view that the Inquiry Officer should have asked the applicant to produce his passport wherefrom it could be established whether he travelled outside India during the period in question. It is evident that

the applicant did not deny that the passport bearing No.E 7368401 was not his passport or he obtained the said passport after taking No Objection Certificate from the employer or the passport in his possession did not bear the same number. Therefore, the charge that passport was obtained without NOC is proved from the evidence.

43. The Hon'ble Supreme Court in the case of **Director General, Indian Council of Medical Research Vs. Anil Khose**, reported in **1998 (7) SCC 972** held that where the genuineness of a document produced in a departmental enquiry was not in dispute, it was not necessary to have their authors examined. In the instant case, the defence witness repeatedly requested for production of the authors of the letters and the delinquent employee denied the charges. Therefore, it was incumbent upon the Inquiry Officer to call atleast one of the authors of the letters being the Doctor who denied that he treated the applicant or issued those medical certificates submitted by the applicant. The other two authors of the letters being the Police Inspector at Sahara Airport and the Regional Passport Officer, we have already said that the letter mentioned the number of passport and the

applicant never disputed that he was not possessing the said passport but he withheld the passport and if the passport has been produced then details of his travel abroad, if undertaken, could have been proved from the passport itself.

44. It appears that the applicant before the Disciplinary Authority as well as the Appellate Authority submitted that he should be given lesser punishment since in similar situation the officers of the department were given lesser punishment. He also submitted that his past record was good. However, the Appellate Authority did not deal with the issue of discrimination but held that considering the gravity of the misconduct the punishment of Removal from service was misappropriated.

45. It is not for the Court or the Tribunal to examine the proportionality of punishment. Imposition of punishment is within the power and discretion of the authority and Courts or Tribunals have no jurisdiction to substitute the punishment imposed by such authority unless the same is shockingly disproportionate. It has been held by the Hon'ble Supreme Court in the case of **Union of India Vs. P. Chandra Mouli**, reported in **2003 (10)**

SCC 196 that the power of punishment was within the employer's discretion and the Court shall not ordinarily interfere where there was no infirmity with the procedure. However, if there is any lacuna in the departmental proceeding, the order of punishment can be interfered with. It is well settled that the Court or Tribunal cannot sit as a Court of appeal and interfere with the punishment by re-assessing the evidence on its own. There must be material for imposing the punishment. However, the Hon'ble Supreme Court held that the Court or Tribunal may interfere with the quantum of punishment if the same is shockingly harsh since the same is in violation of Article 14.

46. The scope of judicial review in a disciplinary proceeding is very limited. The Court or Tribunal cannot reappraise the evidence and come to a different conclusion. However, the Court or Tribunal can interfere if the orders passed by the authorities including the Disciplinary Authority and the Appellate Authority are mechanical. From the order of the Hon'ble Supreme Court, in the instant case we find the Hon'ble Supreme Court was observed that all these questions of violation of natural justice and discrimination in respect of

imposition of punishment were taken in the appeal but the Appellate Authority did not address those issues.

47. The scope of appeal is much wider than scope of judicial review where the rules provide that the Appellate Authority is to consider the appeal. The expression 'consider' shows that the Appellate Authority must record his reasons while dealing with the appeal after addressing all the issues raised by the appellant. The Appellate Authority in a disciplinary proceeding acts in a quasi judicial capacity and the order passed by it has to be a reasoned one showing application of mind to the question raised by the appellant and if that is not done the appellate order is vitiated.

(Divisional Forest Officer Vs. Madusudan Rao, 2008

(3) SCC 469.)

48. Non application of mind is manifest where in appeal against order of dismissal passed by disciplinary authority, the Appellate Authority by simply adopting the language employed by the Disciplinary Authority refuses to interfere with a dismissal order. (**Director (Marketing), Indian Oil**

Corporation Limited Vs. Santosh Kumar, 2006 (11)

SCC 147.)

49. The Hon'ble Supreme Court reiterated the principle by observing that the Appellate Authority while deciding a statutory appeal is not only required to give a hearing to the Government servant but pass a reasoned order dealing with the contentions raised in the appeal. If an appellate order is in agreement with that of the disciplinary authority it may not be a speaking order but the authority passing the same must show that there had been proper application of mind in compliance with the requirements of law while exercising his jurisdiction. But the Appellate Authority, when the the rules required application of mind on several factors and serious contentions had been raised, was bound to assign reasons so as to enable the court reviewing its decision to ascertain as to whether he had applied his mind to the relevant factors which the rules required him to do. (***Narinder Mohan Arya Vs. United India Insurance Co. Ltd., (2006) 4 SCC 713***)

50. The Hon'ble Supreme Court in the case of **Anjali Vs. State Bank of India reported in 1994 II LLJ 312 (AP)** held that where serious and arguable points are raised in the appeal the appellate authority is bound to apply his mind to all such

points. The Appellate Authority has to show that the Appellate Authority considered the real ground urged in the appeal.

51. The Hon'ble Supreme Court in the case of **Divisional Forest Officer vs. Madhusudan Roa,** reported in **2008 (3) SCC 496** held that even if the disciplinary authority has given an order with detailed reason it is also the duty of the appellate and revisional authority to give a reasoned order as the delinquent officer is entitled to know the mind of the appellate or revisional authority in arriving at their respective decisions. Detailed reasons need not be given but at least brief reasons should be given even if the order passed by the authority is affirmed.

52. A Full Bench of the Punjab & Haryana High Court has held that the Appellate Authority has to keep in mind three factors when an appeal is preferred to such authority:-

(a) There should be proper application of mind and scrutiny of the records before it by the appellate authority to enable it to record its satisfaction in terms of the rules.

(b) It would pass a speaking order which would atleast *prima facie* show that the authority concerned has applied its mind to the various contentions or points or

determination raised before it. Further that it has particularly examined whether the penalty imposed is excessive and/or inadequate.

(c) The scope of applicability of the maxim Audi Alterem Partem before the appellate authority depending upon the language of relevant regulation/rule. (**Ram Niwas Bansal Vs. State Bank of Patiala, 1998 (4) SLR 711 (P&H)**)

53. After going through the order passed by the Appellate Authority, we find that the Appellate Authority recorded the submission of the applicant that the Inquiry Officer relied on the letter of the Regional Passport Officer, the Senior Inspector of Police, Airport Branch and Dr. Malay Kumar Bagchi without examining them and without giving a chance to the applicant to cross examine them which was against the principles of natural justice. The Appellate Authority also recorded the submission of the applicant that the penalty of Removal from service was very harsh and disproportionate to the charges. It appears that the Appellate Authority did not address these contentions raised by the applicant. The Appellate Authority in the order stated that the punishment awarded to the applicant was proportionate and commensurate with the gravity of the offences committed by the applicant. Moreover, the Appellate Authority held that the

applicant could have availed of liberty to bring Senior Police Inspector and Dr. Malay Kumar Bagchi as defence witness to prove his innocence that he failed to do so. In our considered view, such observation of the Appellate Authority is unwarranted in service jurisprudence. Onus is on the Disciplinary Authority to prove the charged officer guilty of the misconduct. When the Inquiry Officer relies on any documents to prove the charged officer guilty, the onus is not shifted to the charged officer to bring the authors of those documents as defence witness.

54. Accordingly, the order of the Appellate Authority dated 21.05.2009 is set aside. The matter is remitted back to the Appellate Authority to reconsider the entire case based on the materials on evidence and to reconsider the issues taken by the applicant in his appeal regarding violation of principles of natural justice and discrimination in awarding punishment. Since the Appellate Authority has also an adjudicatory responsibility, the Appellate Authority is directed to consider the entire case alongwith the past records of the applicant in accordance with law as well as in the light of this judgment and order and thereafter

pass a reasoned and speaking order within six weeks from the date of receipt of a copy of the order.

55. The Original Application is disposed of with the above directions. No order as to costs.

(Ms. B. Bhamathi)
Member (A)

(Smt Chameli Majumdar)
Member (J)

ma.