

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/900/2016

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

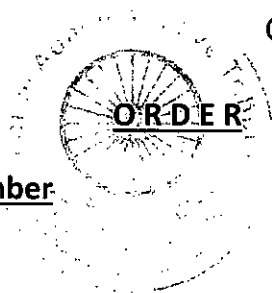
BIVAS CHAUDHURI
VS.
UNION OF INDIA & OTHERS
(M/O STATISTICS)

For the applicant : Mr. K. Sarkar, counsel
Mr. T.K. Mohanty, counsel

For the respondents : Ms. P. Goswami, counsel
Mr. A.K. Chattopadhyay, counsel

Heard on : 08.04.2019

Order On : 27-19.



Bidisha Banerjee, Judicial Member

Heard Id. counsels.

2. To maintain his challenge to the order of Minor Penalty, dated 20.01.2016 and the charge sheet dated 17.07.2014, the applicant preferred this O.A. to seek the following reliefs:-

"i) to direct the respondents to cancel, withdraw and/or rescind the chargesheet dated 17.07.2014; as contained in Annexure "A-1" herein;

ii) to direct the respondents to cancel, withdraw and/or rescind the advice and/or recommendation of Union Public Service Commission dated 26.08.2015 communicated through memo dated 09.09.2015; as contained in Annexure "A-3" herein;

iii) to direct the respondents to cancel, withdraw and/or rescind the purported order of punishment dated 20.01.2016(wrongly typed as 20.01.2015) along with its corrigendum dated 24.02.2016 as contained in Annexure "A-5" and pay reduction order dated 1.6.2016 as contained in Annexure "A-6" herein respectively;

iv) to direct the respondents to produce the entire records of the case for effective adjudication of the issues involved herein;

v) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

3. The indictments against the applicant are as under:

"Article 1

A total of 27 posts was created vide Order No.A-11011/5/95-Ad.II dated 27.7.1995 by erstwhile Department of Statistics in the Central Statistical Organisation (IS Wing), Kolkata for a period of six months under the plan Scheme "Strengthening of ASI data Processing Work and Strengthening of Analytical capabilities of ASI Unit." The posts were to be filled up through contract appointment. These 27 posts included 1 post of Sr. Data Processing Assistant (Sr. DPA) and 14 post of Data Processing Assistant (DPA). There were no Data Entry Operator (DEO) post created under this Plan Scheme. All the post of DEO were regular post in the Non plan post in CSO(IS Wing), Kolkata.

A Selection Committee meeting was held on 21.6.1997 for recruitment of 6 posts of Data Entry Operator (Grade A)[UR-3, SC-2 and OBC-1]. The Committee was chaired by Shri S.K. Nath, in his capacity as Joint Director, CSO(IS Wing), Kolkata[now retired as DG, CSO in which Shri Bivas Chaudhuri, ISS, presently posted as Director, CSO(IS Wing), Kolkata, participated as member of the DPC in his capacity as Deputy Director(Admn.) CSO(IS Wing), Kolkata and Member-Secretary of the said Selection Committee.

The Committee in its minutes has recorded that in order to fill up the 6 posts of Data Entry Operator(Grade A)[UR-3, SC-2 and OBC-1] CSO(IS Wing) obtained prior approval of the Staff Selection Committee(SSC) vide letter No.6/35/94-Admn.I dated 5.1.95 and Staff Selection Commission (SSC) had endorsed "No objection Certificate" vide their letter No.9/1/95-Rectt. Dated 20.1.95. The said minutes recorded by the Members of the DPC further states that accordingly, CSO(IS Wing) approached the Employment Exchange for sponsoring of candidates for selection of DEO. It is noted from the content of the letter No.9/1/95-Rectt. Dated 20.1.1995 that the Staff Selection Commission had conveyed its no objection to the CSO(IS Wing) to fill up 5(SC-2, ST-1 & UR-2) post of Data Entry Operator (Grade A) in the pay scale of Rs.1150/-1500/- through other permissible channel including employment exchange. Thus the 'No objection' dated 20.1.1995 conveyed by the Staff Selection Commission was a one-time clearance in respect of those 5 posts of DEO for which a reference had been made by the CSO(IS Wing) prior to 20.1.95 and it was not of a general nature covering all future appointments. Thus the members of the DPC by recording incorrect fact citing the letter of SSC instead of reporting the vacancy in the post of DEO 'A' to Staff Selection Committee, in an illegal manner resorted to the recruitment on Contract basis to the Non Plan post of DEO 'A' by calling list of candidates from the Sub-Regional Employment exchange. The said recruitment was made without any data entry speed test applicable for the post of Computer (Junior Scale) in terms of the Recruitment Rules (Draftsman, Computer(Sr. Scale), Computer(Junior Scale), though the data entry speed test was intimated to the employment Exchange vide letter No.6/35/94-Admn(Vol.II) dated 6.2.96 while calling for list of candidates.

Another Selection Committee meeting was held on 24.8.1999 for recruitment of 3 posts of Data Entry Operator (Grade B)[UR-2 and OBC-1]. There were no Data Entry Operator (DEO) Grade 'B' post created under the Plan Scheme. All the post of DEO including Group 'A' and 'B' posts were regular posts in the Non plan post in CSO(IS Wing), Kolkata participated as member of the DPC in his capacity then as Deputy Director (Admn.), CSO(IS Wing) Kolkata and Member-Secretary.

The Committee in its minutes has recorded that in order to fill up the above posts [UR-2 and OBC-1], CSO(IS Wing) obtained prior approval of the Staff Selection Committee vide their letter No.9/1/95-Rectt. Dated 20.1.95(corrected as 2.1.96). The said minutes recorded by the Members of the DPC further states that accordingly, CSO(IS Wing) approached the Employment Exchange for sponsoring of candidates for DEO. It is noted from the content of the letter No.9/1/95-Rectt. Dated 20.1.1995 that the Staff Selection Commission had conveyed its no objection to the CSO(IS Wing) to fill up 5(SC-2, ST-1 &

UR-2) post of Data Entry Operator(Gr.A) in the pay scale of Rs.1150-1500/- through other permissible channel including employment exchange. Thus the 'No Objection' dated 20.1.95 conveyed by the Staff Selection Commission was a one-time clearance in respect to those 5 posts of DEO for which a reference had been made by the CSO(IS Wing) prior to 20.1.95 and it was not of a general nature covering all future appointments. Thus the members of the DPC by recording incorrect fact citing the letter of SSC, in an illegal manner resorted to the appointment on Contract basis to the Non Plan post of DEO 'B' by calling list of candidates from the Sub-Regional Employment Exchange.

As per the minutes of the said meetings dated 24.8.99, CSO(IS Wing), Kolkata vide Letter No.6/17/98-Ad.I/6/5/96-Ad.I dated 08.07.1999 had sought list of candidates from the Employment Exchange. As per the letter dated 08.07.1999, while calling for the list of the candidates for the post of Data Entry Operator from Employment Exchange, possessing speed of not less than 8000 key depression per hour for the Data Entry Work was one of the essential criteria. However, from the minutes of the meeting dated 24.8.99, it is clear that no Data Entry Speed Test was taken before selection of the candidates by the Selection Board. Thus, the recruitment was made without any Data Entry Speed Test contrary to the provisions of Recruitment Rules(Draftsman, Computer (Senior Scale), Computer(Junior Scale) and also in violation of the letter dated 08.07.1999 calling for names from Employment Exchange.

Thus the said Shri Bivas Chaudhuri, ISS presently Director, CSO(IS Wing), Kolkata while participating as member of the Selection Committee held on 21.6.1997 and 24.8.1999 fictitiously calculated vacancies in the Grades of DEO 'A' and DEO 'B' respectively; falsified records and made recruitment to the posts of DEO Grade 'A' and DEO Grade 'B' in violation of the applicable Recruitment Rules, thereby acted in a manner which is unbecoming of a Government Servant violating Rule 3(1)(iii) of CCS(Conduct)Rules, 1964.



A Departmental Promotion Committee(DPC) meeting was held on 28.8.1997 under Chairmanship of Shri S.K. Nath, then Joint Director, CSO(IS Wing)[now retired as DG, CSO] in which Shri B. Chaudhuri, ISS, Director, presently posted at CSO(IS Wing), Kolkata was one on the Members of the DPC. This DPC had considered promotion to the grade of Assistant, filling up of the post of Peon, Chowkidar, Safaiwala under non plan post and two posts of Peon under the Plan post for appointment on contractual basis.

As per the minutes of the DPC, due to resignation of Shri D.K. Saha, Peon, the DPC decided to fill up one vacant post of Peon under Non plan post by appointing Shri P. Nandy, Chowkidar under the provisions of MHA OM No.49015/1/81-Estt(C) dated 4.8.81, even though Shri Nandy was not having requisite service of 5 years on the date of DPC. Further the DPC filled up the resultant vacancy of the Chowkidar Shri P. Nandy(appointed as Peon), by appointing Shri Subir Kr. Das, Peon(Plan-contractual). As per the minutes of the DPC one post of Safaiwala under the Non Plan post got vacant due to resignation of Shri R.P. Hela, Safaiwala and the DPC decided to appoint Shri Alope Bhattacharjee, Peon(Plan-Contractual) as Safaiwala under the Non plan post (vacant vice Shri R.P. Hela).

Against the two vacant post of Peon(Plan-contractual) which got vacant due to appointment of Shri Subir Kr. Das, Peon(Plan-contractual) and Shri Alope Bhattacharjee, Peon (Plan-contractual) against the post of Safaiwala and Chowkidars under the Non plan post as mentioned above, the DPC decided to appoint Casual Labourers (Mazdoor), working in the office since November, 1995. The DPC appointed Shri Sankar Samanta and Shri Subhash Chakraborty against the two vacant post of Peon (Plan-Contractual).

As per the Central Statistical Organisation(Industrial Statistics Wing), Calcutta(Class IV Posts) Recruitment Rules, 1970, mode of recruitment to the post of Peon and Safaiwala is by Direct Recruitment failing which by transfer of persons holding similar or equivalent

post in the Central Govt. and possessing the prescribed qualification. Thus essentially the first available mode of recruitment is by Direct Recruitment. As per the Government of India instructions all vacancies to be filled by direct recruitment in Central Government Establishments other than those filled through the UPSC or agencies like the Staff Selection Commission should be notified to the nearest Employment Exchange/Central Employment Exchange and given wider publicity through publication in the Employment News, etc.

In the instant case the DPC in which Shri Bivas Chaudhuri, ISS, presently Director, CSO(IS Wing), Kolkata participated as member of the DPC did not adhere to the provisions of the applicable Recruitment Rules for appointment to the post of Peon and safaiwala(Non plan). No names were called from the Employment Exchange for making appointment to these posts. Instead the DPC in which Shri Bivas Chaudhuri, participated as member of the DPC in gross violation of the instructions, restricted the choice of available candidates by resorting to appointment by transfer mode by considering internal candidates of CSO(IS Wing), Kolkata.

Again a Selection Committee meeting was held on 10.3.2003 under Chairman ship of Shri N. Ray, in his capacity as Joint Director, CSO(IS Wing), Kolkata presently posted as DDG, NSSO, FOD, Kolkata in which Shri Bivas Chaudhuri, ISS, presently Director, CSO(IS Wing) while working as Deputy Director (Admn.), CSO(IS Wing) was one on the Member of the Selection Committee. This Selection Committee was held for appointment to one post of Peon(Plan) on contractual basis.

Shri Bivas Chaudhuri, ISS, presently Director, CSO(IS Wing), Kolkata in his capacity as Deputy Director, CSO(IS Wing), Kolkata vide Letter No.6/21/96-Admn.I dated 10.2.2003, sent a requisition to the Employment Officer, Sub-regional Employment Exchange for sponsoring of list of names for the post of Peon by 17.2.2003 i.e. within a period of one week. Sub-regional Employment Exchange vide its letter No.US/MISC/VAC/2000/6944 dated 18.2.2003 addressed to Deputy Director, CSO(IS Wing), Kolkata had informed that it would not be possible to send the names within the specified date unless it is extended by one month from the date of receipt of the communication. The Selection Committee meeting was held on 10.3.2003, i.e. after one month of the requisition to the Sub-regional Employment Exchange, yet no attempt was made again by the CSO(IS Wing) to solicit list of names from the Sub-Regional Employment Exchange with regard to their letter No.US/MISC/VAC/2000/6944 dated 18.2.2003. The Selection Committee went ahead on the applications received by it through the limited notice displayed by it in the notice board of the office. The Selection Committee appointed Shri Dipak Kr. Samanta, who was already working as Casual labour in the CSO(IS Wing) office at Kolkata.

Thus the Selection Committee held on 10.3.2003 in which Shri Bivas Chaudhuri, ISS, presently Director, CSO(IS Wing), Kolkata participated as member of the Selection Committee in gross violation of the instructions, restricted the choice of candidates to the casual labourers in the CSO(IS Wing) Kolkata office.

Thus, the said Shri Bivas Chaudhuri, ISS, presently Director, CSO(IS Wing), Kolkata while participating as member of the DPC in his capacity as Deputy Director, CSO(IS Wing), Kolkata while recommending candidates for appointment to the post of Peon violated the provisions of recruitment rules and the Government of India instructions thereby conducted in a manner which is unbecoming of a Government Servant violating Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

Article 3

A Departmental Promotion Committee(DPC meeting was held on 28.8.1997 under Chairmanship of Shri S.K. Nath, then Joint Director, CSO(IS Wing), Kolkata [now retired as DG, CSO] in which Shri Bivas Chaudhuri, ISS, presently Director, CSO(IS Wing), Kolkata while working as Deputy Director(Admn.), CSO(IS Wing), Kolkata was one on the Member of the DPC. This DPC had considered promotion to the grade of Assistant, filling up of the post of Peon, Chowkidar, Safaiwala under non plan post and two posts of Peon under the Plan post for appointment on contractual basis.

Against the two vacant post of peon(Plan-contractual) which got vacant due to appointment of Shri Subir Kr. Das, Peon (Plan-contractual) and Shri Alope Bhattacharjee, Peon(Plan-contractual) against the post of Safaiwala and Chowkidars under the Non plan post, the DPC without calling for the names from the Employment Exchange, decided to appoint Casual Labourers (Mazdoor), working in the office since November, 1995. The DPC appointed Shri Sankar Samanta and Shri Subhash Chakraborty against the two vacant post of Peon(Plan-contractual).

As per the Bio data of Shri Sankar Samanta, appointed as Peon(Plan-Contractual) it is noted that his date of birth is 2.9.1970 and on the date of DPC his age was around 26 years, 10 months and 26 days. Similarly as per the Bio data of Shri Alope Bhattacharjee, Peon(Plan-contractual) who was appointed as Safaiwala, under Non plan post, his date of birth is 7.10.1970 and his age on the date of DPC was 26 years 9 months and 21 days. As per the Recruitment Rules for the post of Peon and Safaiwala age limit is 25 years.

The said Shri Bivas Chaudhuri, ISS presently working as Director, CSO(IS Wing), Kolkata while participating as member of the DPC held on 28.8.1997 recommend Shri Sankar Samanta and Shri Subhash Chakraborty against the vacant posts of Peon (Plan-Contract) and Safaiwala respectively who were over aged and not meeting the eligibility criteria of age as per the provisions of the Central Statistical Organisation (Industrial Statistics Wing), Calcutta (Class IV Posts) Recruitment Rules, 1970 thus violated the provisions of recruitment rules and the Government of India instructions thereby acted in a manner which is unbecoming of a Government Servant violating Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

Article 4

A total of 27 posts was created vide Order No. A-11011/5/95-Ad. II dated 27.7.1995 by erstwhile Department of Statistics in the Central Statistical Organization (IS Wing), Kolkata for a period of six months under the plan Scheme "Strengthening of ASI data Processing Work and Strengthening of Analytical capabilities of ASI Unit". The posts were to be filled up through Contract appointment. These 27 posts included 2 posts of Lower Division Clerk (LDC), for which the appointment was to be made on contract basis.

CSO (IS Wing) vide letter No. 6/26/96-Ad.I dated 03.04.1996 addressed to Staff Selection Commission (SSC) had intimated anticipated regular 4 vacancies (SC-1, OBC & UR-2) in the grade of LDC for the period from 01.04.1997 to 31.03.1998. However, vide another letter No. 6/26/96-Ad.I dated 14.1.1997, Shri Bivas Chaudhuri in his capacity as Deputy Director (Admn.), CSO (IS Wing), Kolkata informed 'Nil' vacancy for the post of LDC for the year 01.04.1997 to 31.03.1998 and 01.04.1998 to 31.03.1999 with reference to SSC's letter No. 3/1/96-Nom. (59) dated 23.10.1996. Shri Bivas Chaudhuri also informed SSC that the 4 number of vacancies reported earlier vide letter No. 6/26/1996-Ad.I dated 03.04.1996 for the period 01.04.1997 to 31.03.1998 may be treated as cancelled.

Thereafter a Departmental Promotion Committee meeting was held on 29.7.1997 which was chaired by Shri S.K.Nath, in his capacity as Joint Director, CSO (IS Wing) (now retired as DG, CSO) in which Shri Bivas Chaudhuri, ISS presently director, CSO (IS Wing), Kolkata participated as member of the DPC in his capacity as Deputy Director (Admn.) and Member-Secretary. The DPC noted that there were 18 sanctioned posts under the Non Plan, for the post of Lower Division Clerk in addition to the 2 posts under Plan (created vide Order No. A-11011/5/95-Ad.II dated 27.7.1995). As per the instructions of the Department of Statistics for two Plan Post of LDC only, CSO (IS Wing) was permitted to resort to the contract appointment as these two posts were purely temporary in nature. This DPC in gross violation of the instructions related to the appointment of the incumbent to the regular Non Plan post of LDC, decided to convert LDCs appointed on

B

contract basis into regular basis. The DPC instead of reporting the Non Plan vacancies to the post of LDC to SSC for recruitment, decided to fill up the 3 vacancies in the post of LDC through Contract method in an illegal manner. The decision to convert the LDCs appointed on contract basis into regular basis against the Non plan Post was contrary to the provisions of the Central Statistical Organization (Industrial Statistics Wing), Calcutta (Lower Division Clerk including Typist (Hindi) Rules, 1987 which prescribes minimum speed of 30 words per minutes in typewriting in English and minimum speed of 25 words per minute in type writing in the case of Typist Hindi.

To fill up the 3 post of LDC as decided earlier DPC mentioned above, a Selection Committee meeting was held on 3.10.1997 chaired by Shri S.K.Nath, in his capacity as Joint Director, CSO (IS Wing) (now retired as DG, CSO) in which Shri B.Chaudhuri, ISS presently Director, CSO (IS Deputy Director (Admn.) and Member-Secretary. The Selection Committee in its minutes has recorded that in order to fill up the above posts (e posts of LDC under UR category and one post of LDC under OBC category) CSO (IS Wing) obtained prior approval of the Staff Selection Committee vide Office Letter No. 6/35/94-Admn.I dated 5.1.95 and Staff Selection Commission had endorsed "No Objection Certificate" vide their letter No. 9/1/95-Rectt. dated 20.1.95. The said minutes recorded by the Members of the Selection Committee further states that CS (IS Wing) approached the Employment Exchange for sponsoring of candidates for LDC. It is noted from the content of the letter No. 9/1/95-Rectt. dated 20.1.1995 that the Staff Selection Commission had conveyed its no objection to the CSO (IS Wing), Kolkata to fill up 5 (SC-2, ST-1, & UR-2) post of Data Entrée Operator (Gr.A) in the pay scale of Rs. 1150-1500/- through other permissible channel including employment exchange. Thus the 'No Objection' dated 20.1.95 conveyed by the Staff Selection Commission was a one-time clearance in respect to those 5 posts DEO for which a reference had been made by the CSO (IS Wing) prior to 20.1.95 and it was not of a general nature covering all future appointments. Thus the members of the Selection Committee first by recording incorrect fact citing the letter of SSC instead of reporting the vacancy to the post of LDC to Staff Selection Committee, in an illegal manner-resorted to the appointment on Contract basis by calling list of candidates from the Sub-Regional Employment Exchange, in violation of the Central Statistical Organization (Industrial Statistics Wing), Calcutta (Lower Division Clerk including Typist (Hindi) Rules, 1987 which prescribes minimum speed of 30 words per minutes in typewriting in English and minimum speed of 25 words per minute in type writing in the case of Typist Hindi.

Thus on one hand Shri Bivas Chaudhuri vide his letter dated 14.01.1997 reported 'Nil' vacancy to SSC for the period 01.04.1997 to 31.03.1998 and fro 01.04.1998 to 31.03.1999, at the same time participated in a DPC meeting hld on 3.10.1997 for selection of 3 posts of LDC.

SSC vide letter No. 3/5/98-NOM (73) dated 27.07.1998 had requested CSO (IS Wing) for intimating any vacancies to the post of LDC by 31.10.1998. Shri Bivas Chaudhury vide letter No. 6/26/98-Ad.I dated 14.08.1998 in response referring to earlier letter No. 6/26/96-Ad.I dated 14.01.1997 specifically informed that there will be no regular vacancy in the Grade/Post of LDC up to 31.03.1999. However, before intimating of the 'Nil' vacancy to the SSC vide letter No. 6/26/96-Ad.I dated 14.08.1998 as referred above, a Departmental Promotion Committee meeting was held on 28.7.98, which was chaired by Shri S.K.Nath, in his capacity as Joint Director, CSO (IS Wing), Kolkata [now retired as DG, CSO] in which Shri Bivas Chaudhuri, ISS presently Director, CSO (IS Wing), Kolkata participated as member of the DPC in Member-Secretary. In this meeting, the Committee Regularized Shri T N Ghosh, LDC who was appointed as LC on contract basis by a

selection Committee on 30.12.1995, against the regular Non plan post of LDC. The decision of the DPC to convert the incumbent appointed on Contract basis against a regular Non plan post without reporting the vacancy to the Staff Selection Commission, was grossly illegal.

Thus the said Shri Bivas Chaudhuri, ISS presently Director, CSO (IS Wing), Kolkata while participating as Member-Secretary of the DPC held on 29.7.97, 31.12.97 and 28.7.98 resorted to illegal regularisation of the incumbents initially appointed to the Plan posts of LDC on Contract basis against regular Non-Plan posts, deliberately not reported the regular vacancies to Staff Selection Commission, resorted to illegal appointments to the regular posts of LDC by calling candidates from the Employment Exchange and making recruitment in utter violation of the Recruitment Rules for the post of LDC and as such conducted in a manner which is unbecoming of a Govt. Servant thereby violated to 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article 5

Shri Bivas Chaudhuri vide Office Order No. 6/27/1997-Ad. I dated 17/19.11.1997 issued Orders for revision of pay scale of DEO including benefit of fixation of pay in terms of central Services (Revised) Pay Rules, 1997 in respect of 30 number of incumbents to the post of DEOs which included the incumbents appointed on contract basis. Shri Bivas Chaudhuri extended the benefit of pay fixation, increment, arrears of pay etc. to the contract employees as is available to the regular employees of Government of India.

Vide Order No. A-12018/4/1996-Ad. IV dated 31.07.1998, Department of Statistics had issued order for revised structure of Electronic Data Processing (EDP) staff of this Ministry which included such posts in CSO (IS Wing), Kolkata. The revised structure of the Data Entry and Data Processing Stream was applicable for regular posts of CSO (IS Wing), Kolkata and the same was clarified to CSO (IS Wing), Kolkata vide D.O. letter No. 12018/4/1996-Ad. IV (Pt.) dated 22.02.1999. However, Shri Bivas Chaudhuri while working as Deputy Director (Admn.), CSO (IS Wing), Kolkata extended the revised designation and scale to the incumbent of DEO Grade-A appointed on contract basis also as is evident from Office Order No. 6/27/1997-Ad.I dated 27.07.1999 and 08.09.1999. Shri Chaudhuri, also issued Orders NO. 6/17/98-Admn.I dated 06.09.1999, 10.4.2000, 25.1.2001, 9.8.2001 giving the benefit of the higher scale of pay to the DEO appointed on contract basis.

Similarly on the issue related to fitment of the then existing DEO 'A' and DEO 'B' under the EDP restructuring, this Ministry vide letter No. 12018/4/1996-Ad.IV dated 07.04.2000 had clarified with the approval of Competent Authority that as one time measure erstwhile DEO 'A' in the CSO (IS Wing), irrespective of the educational qualification at the time of the recruitment will be fitted in DEO 'B'. It was also clarified that all the DEO 'A' will be placed in en-block below DEO 'B' since the existing DEO 'B' be were either promoted from DEO 'A' or were recruited Direct basis as DEO 'B'. From the content of this letter, it was amply clear that the whole fitment guideline was with regard to the regular incumbents to the Non-plan posts as only they were recruited by way of Direct Recruitment fulfilling the described educational qualification and other criteria. This fitment formula was not applicable for the incumbents of DEO 'A' / DEO 'B' who were appointed against the plan post of contractual basis.

Contrary to the above guidelines Shri Bivas Chaudhuri in his capacity as Deputy Director (Admn.), CSO (IS Wing), Kolkata vide Order No. 6/27/1997-Ad.I dated 17.05.2000 issued Order for placement of incumbents to the posts of DEO 'A' appointed on contract basis for revised pay scale and designation of DEO 'B' in the higher scale of pay Rs. 4500-7000/- inspite of the fact that these were not applicable for the contract employee of CSO (IS Wing).

Thus, the said Bivas Chaudhuri, ISS, presently Director, CSO (IS Wing), Kolkata in his capacity as Deputy Director (Admn.) extended the benefit of revised pay scale, increment, arrears of pay vide Order dated 17/19.11.1997, extended the benefit of revised EDP pay scale in pursuance to Order No. A-12018/4/1996-Ad.IV dated 31.07.1998 and subsequently granted the benefit of one time fitment of DEO 'A' into DEO 'B' vide Order dated 17.05.2000 in spite of the fact that incumbents to whom these benefits were extended were appointed on contract basis on purely temporary posts and these benefits were not applicable in their cases there by committed grave administrative and financial irregularities resulting in undesirable and uncalled for financial and administrative liabilities for the Government and thereby conducted in a manner which is unbecoming of a Govt. Servant thereby violated to 3 (1)(iii) of CCS (Conduct) Rules, 1964.

Article 6

A Selection Committee meeting was held on 24.8.1999 for recruitment of 3 posts of Data Entry Operator (Grade B) [UR-2 and OBC-1]. No Data Entry Operator (DEO) Grade 'B' post created under this Plan Scheme. All the post of DEO including Group 'A' and 'B' posts were regular post in the Non plan post in CSO (IS Wing). The Committee was chaired by Shri N. Ray, in his capacity as Joint Director, CSO (IS Wing), Kolkata [now an officer in the grade of DDG] in which Shri Bivas Chaudhuri, ISS presently Director (Admn.), CSO (IS Wing), Kolkata participated as member of the DPC in his capacity as Deputy Director (Admn.), CSO (IS Wing), Kolkata and Member-Secretary.

The Selection Committee in its meeting on 24.8.1999 had recommended panel of two candidates against the unreserved (UR) category (with extended panel/wait list of two candidates in the same category), one candidate for OBC category (with extended panel/wait list of one candidate in the same category). As per the Govt. of India instructions/ guidelines, the validity of the Selection Committee/Departmental Promotion Committee panel is one year from the date of such panel.

Shri Bivas Chaudhuri, ISS presently Director, CSO (IS Wing), Kolkata in his capacity as Deputy Director (Admn.), CSO (IS Wing), Kolkata vide his note dated 31.8.2000 referring to the letter No. A-11011/4/95-Ad.II (pt) dated 30.8.2000 ordered for issue of appointment order in respect of the candidates who were selected by the Selection Committee in its meeting held on 24.8.1999, inspite of the fact that the panel prepared was not valid as per the instructions/ guidelines. Shri Bivas Chaudhuri, was also aware that there were no post of DEO under the Plan Scheme as per the Order No. A-11011/5/95-Ad.II dated 27.7.1995, therefore, its continuance was not at all relevant. As per notes at page 39-41 of file No. 6/17/1998-Ad. I of the dealing Officer, it was clearly pointed out that there is no post of DEO either in Group 'A' or Group 'B' under the plan scheme and no sanction for the same has been received up to 31.12.2000. Accordingly, it was proposed by the dealing Officer that before filling up these posts a reference, in this regard, may be sent. Shri Bivas Chaudhuri completely ignoring this fact that there is no post of DEO under the plan Scheme as referred in this Ministry Statistics letter No. A-11011/4/1995-Ad.III dated 30.08.2000 decided to go ahead with filling up of the posts of DEO 'B' inspite of the fact that the validity of panel had expired by that time. The proposal was approved by Shri N. Ray in his capacity as Joint Director, CSO (IS Wing), Kolkata. The appointment Orders for the three selected candidates were issued by Shri Bivas Chaudhuri vide Order No. 6/17/98-Admn.I dated 31.8.2000. The order for appointment on contract was issued by the said Shri Bivas Chaudhuri by use of the panel which had already lapsed.

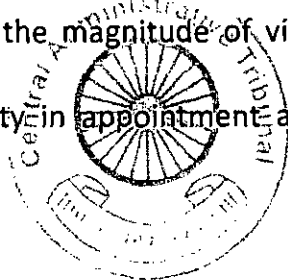
The said Shri Bivas Chaudhuri, ISS, presently Director, CSO (IS Wing), Kolkata while working as Deputy Director (Admn.), CSO (IS Wing), Kolkata issued order for appointment of candidates to the post of Data Entry Operator 'B' vide Order dated

31.8.2000 by use of panel selected on 24.8.1999 i.e. after a period of one year knowing well that there is no post of the DEO in the Plan scheme of CSO (IS Wing), Kolkata.

Thus, the said Shri B. Chaudhuri, ISS, presently Director, CSO (IS Wing), Kolkata in his capacity as Deputy Director, CSO (IS Wing), Kolkata in discharge of his official duties failed to exercise due diligence, care and caution and instead acted with gross negligence thereby conducted in a manner which is unbecoming of a Govt. Servant thereby violated Rule 3 (1)(iii) of CCS (Conduct) Rules, 1964."

4. The admitted facts that could be culled out from the pleadings of the respondents, run thus:-

In the month of May, 2006, one complaint related to alleged instances of irregularity in contract appointment of certain posts at Data Processing Centre(DPC), Bangalore was received. The matter was examined in detail and keeping in view the nature of alleged instances, Ministry constituted a committee of 3 officials headed by Shri Ramesh Koli, DDG(NAD)(since retired) vide Order dated 17.07.2006 to identify the magnitude of violation as well as the officers responsible for the irregularity in appointment at DPD(HQ), Kolkata and DPC, Bangalore.



On receipt of the report of the said Committee, headed by Shri Ramesh Koli, the matter was examined in detail with reference to alleged instances of irregularity and the findings of the committee. There were instances of irregularity in DPC, Ahmedabad also therefore vide Office Order dated 13.03.2007, another committee headed by Shri Rattan Chand, DDG(NAD) and two other officers of the Ministry was constituted with direction to take immediate possession of the relevant record from the Ministry, DPD, Kolkata and DPC, Ahmedabad to identify the magnitude of violation and the officers responsible. The group was also required to suggest remedial measures. The report of this group was received in the month of June, 2007. The report of both the groups were examined and it was noted at the competent level that since lot of

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investigations have to be done by DPD, (HQ) and DPCs located at Kolkata, Bangalore and Ahmedabad, for which Ministry did not have sufficient resource and capability to undertake such investigation in professional manner, the matter be referred to an investigating agency to report within a time frame.

The matter was examined in consultation with DOPT and it was decided to refer the matter to CVC for their advice regarding investigation by CBI. The CVC in its advice, vide OM dated 02.04.2008, did not agree with the proposal of the Ministry for an investigation by CBI. Rather, it advised that Ministry must have their own mechanism for preliminary inquiry, if necessary, by putting in place a team exclusively for the process and approach the Commission with first stage advice after conclusion of the inquiry and drawing necessary inferences on the involvement of the different officials. If evidence indicated criminal intent, the need and desirability of CBI investigation could be considered.

In accordance with the advice of CVC, the matter was examined and with the approval of competent authority it was decided to constitute a team for preliminary inquiry for pin pointing the irregularities and persons responsible for the same. Accordingly, vide Office Order dated 29.08.2008, a team of 3 officials, headed by Shri A.K. Shukla, Director (Admn./HOD), was constituted. On receipt of the report of the committee, the matter was examined in the month of February, 2010 and based on the examination of the report of the committee, a total of 18 officers were mainly found responsible for various instances of irregularity. It included ISS officers and officers from other services. Out of these officers, some officers had retired by that time. Accordingly, it was decided with the approval of Disciplinary Authority i.e. Hon'ble Minister to seek explanation from the serving officers regarding the irregularity committed by them. It was also decided to give

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opportunity to retired officers to explain their position. As regards the other officials not from ISS and whose whereabouts were not known, it was decided to ascertain their whereabouts and seek their explanation.

5. According to the respondents, preliminary enquiry was held for the purpose of collection of facts in regard to the conduct and work of the Government servant in which he may or may not be associated. Such a preliminary enquiry would be *ex parte*, for it was merely for the satisfaction of the concerned authority. At such enquiry, all available evidences and relevant documents are collected and in important cases, evidence of witness are to be reduced in writing and got signed by them, if possible, in the presence of the employee concerned.

During the course of such enquiry, for the sake of fairness, the Government servant complained against is normally given an opportunity to have his say to find out if he is in a position to give satisfactory information or explanation. Such preliminary enquiry was thus a 'fact finding enquiry' and the investigation report and the preliminary evidences are examined by the appropriate authority to come to a decision whether prima facie case exists for initiation of formal disciplinary proceedings. Therefore, as per the decision of the Disciplinary Authority, explanation from all the officers who were found responsible were called for. The explanation from the applicant was also sought for vide memorandum No.C-31016/3/2010-Vig(Pt.II(Annexure R-1). The applicant sent his response vide letter dated 11.10.2010(Annexure R-2). On collection of the requisite original/certified documents, the matter was examined in the Ministry in the light of the explanation submitted by the concerned officer from whom the explanations were sought. After in depth examination of the case in

the respondent Ministry, it was referred to the CVC for their advice. After completion of the consultation process with CVC, and with the approval of the Disciplinary Authority i.e. Hon'ble Minister, it was decided to initiate minor penalty charge sheet against six officers. In respect of three officers, it was decided to issue 'Warning'. In respect of seven officers who had retired, it was noted that under Rule 9(2)(b)(ii) of CCS(Pension) Rules, departmental action was not permissible. One officer had expired and so it was decided to close his case. In respect of one other officer, it was found that the allegations were not sustained, therefore, the charges were dropped against him.

6. Extract of CCS(CCA) Rules, 1965 relating to the minor penalty proceeding placed by the respondents is as under:-

"16. Procedure for imposing minor penalties:

(1) Subject to the sub-rule(3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after:

(a) Informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub rules(3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause(b) into consideration;

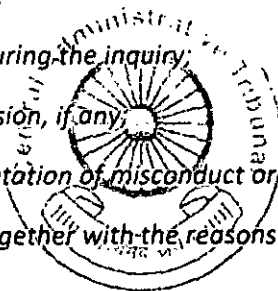
(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(I-A) Notwithstanding anything contained in Clause (b) of sub-rule(1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (A) of that sub-rule, to withheld increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government Servant or to withheld increments of pay for a period exceeding three years or to withheld increments of pay with cumulative effect for any period, any inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing, on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

- i) a copy of the intimation to the Government servant of the proposal to take action against him;
- ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- iii) his representation, if any;
- iv) the evidence produced during the inquiry;
- v) the advice of the Commission, if any;
- vi) the findings on each imputation of misconduct or misbehaviour; and
- vii) the orders on the case together with the reasons therefor."



7. It has been averred that in terms of such statutory rule, charge sheet of the minor penalty proceedings, vide Memorandum No.C-31016/3/2010-Vig(Part-IV) dated 17.07.2014 was issued to the applicant with request to furnish representation within a period of 10 days. Thus the applicant was given reasonable opportunity of making representation on the specific charges for which all the relevant documents which were relied upon had been enclosed.

The applicant vide his letter dated 01.08.2014(Annexure R-4) sought extension of three weeks to submit his reply and vide his letter dated

19.08.2014(Annexure R/5) made his statement of defence against the minor penalty charge sheet.

The matter was examined by the Disciplinary Authority based on the facts of the case; records available on file; and reply of CO. The Disciplinary Authority approved the charges against the CO and directed to seek the advice of UPSC. Accordingly, the matter along with the file was referred to UPSC for its advice vide letter of even number dated 15.04.2015(Annexure R/6). The UPSC, vide its letter dated 26.08.2015, on the basis of observations and findings made, noted that charges levelled against the CO were established and advised that the ends of justice would be met in his case if the penalty of 'Reduction of a lower stage in the time scale of pay by one stage for a period of two years, without cumulative effect and not adversely affecting his pension' is imposed. In terms of the procedure involved in minor penalty proceedings stipulated in Rule 16 of CCS(CCA) Rules, 1965 and with the approval of the Disciplinary Authority a copy of the Report of the Commission was provided to the applicant vide O.M. No.C-31016/3/2010-Vig.(Pt.II) dated 09.09.2015 for his written representation within 15 days. The applicant, vide letter dated 11.10.2015 made his submissions on the Report of the Commission(Annexure R/9). The matter was examined based on the facts of the case; records available on file; reply of CO; advice of the UPSC and the submissions made by CO on the report of the UPSC. The matter was placed before the Disciplinary Authority. The Disciplinary Authority after taking into consideration all material facts including the advice of the Union Public Service Commission, was satisfied that the ends of justice would be met in his case if the minor penalty of 'Reduction of a lower stage in the time scale of pay by one stage for a period of two years, without cumulative effect and not adversely affecting

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his pension' is imposed upon Shri Bivas Chaudhuri, the Director. Hence, the Disciplinary Authority in exercise of powers conferred under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in consultation with UPSC, ordered for imposition of minor penalty of 'Reduction of a lower stage in the time scale of pay by one stage for a period of two years, without cumulative effect and not adversely affecting his pension' on Sh. Shri Bivas Chaudhuri, Director vide order dated 20.01.2015(Annexure R/10).

8. Against the challenge the respondents would also raise some preliminary objections, which are as under:-

a) The disciplinary proceedings are governed and regulated by a complete set of rules and instructions and the delinquent gets adequate opportunity to defend himself. None of the relevant rules or instructions has been violated.

b) The penalty of 'Reduction of a lower stage in the time scale of pay by one stage for a period of two years, without cumulative effect and not adversely affecting his pension' has been imposed by the Disciplinary Authority in consultation with Union Public Service Commission.

c) The interim relief, as prayed in the O.A, is indirectly the main relief itself and ,therefore, this Hon'ble Tribunal may not grant the same.

d) The applicant based on the conjectures and surmises has unnecessarily impleaded Respondents No.2 to 4 in this OA who have merely discharged their official duties. The OA is bad for misjoinder of parties.

9. The applicant on the other hand, vide oral submissions and written notes of argument would assail the impugned orders highlighting the following legal lacunae in the conduct of proceedings, at each stage, as discussed infra:

(A) ON THE PENALTY ORDER:

(I) It is bereft of any reason at all: It simply describes the articles of charge and the factual statements of how and when the reply was filed, when the file went to the Union Public Service Commission, what the Union Public Service Commission said

and what penalty was imposed. There is no discussion as to how the charges are sustained and as to why the replies of the applicant were not accepted. Therefore, the order of minor penalty dated 20.01.2016 is bad on the ground of being an unreasoned order.

It is well settled law that every action of the State or an instrumentality of the State must be informed by reason, Actions uninformed by reason may amount to being arbitrary and liable to be questioned under Article 226 or Article 32 of the Constitution. The action must be just, fair and reasonable. Fair play and natural justice are part of fair public administration; non arbitrariness and absence of discrimination are hall marks for good governance under rule of law. In view of the above legal position, the decision of the Disciplinary Authority to impose penalty on the applicant without issuing a reasoned and speaking order, itself is bad in law, being uninformed by reason.

In support, applicant would rely upon the decision in Sant Lal Gupta and Ors. Vs. Modern Cooperative Group Housing Society Limited and Ors., (2010) 13 SCC 336. He would also quote from Gurdial Singh Fijji vs. State of Punjab [(1979) 2 SCC 368]. To fortify his claim, he would rely upon the following pronouncements:

- (i) *M.J. Sivani v. State of Karnataka*, AIR 1995 SC 1770 : (1995) 6 SCC 289 : [1995]3 SCR 329;
- (ii) *Kumari Shrilekha Vidyarthi v. State of U.P.*, AIR 1991 SC 537: (1991)1 SCC 212 : [1990] Supp 1 SCR 625;
- (iii) *Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. M/s. Shukla & Brothers*, (2010)4 SCC 785;
- (iv) *S.N. Mukherjee v. Union of India*, (1990)4 SCC 594];

- (v) *Mc Dermott International Inc. v. Burn Standard Co. Ltd.* (2006)SLT 345;
- (vi) *State of Maharashtra v. Vithal Rao Pritirao Chawan*, [(1981)4 SCC 129];
- (vii) *Ravi Yashwant Bhoir v. District Collector, Raigad*, (2012)4 SCC407 : JT 2012(3)SC 186 : 2012(3) SCALE 303;
- (viii) *L.I.C. of India v. Consumer Education and Research Centre*, AIR 1995 SC 1811;
- (ix) *Union of India v. M.L. Capoor*, AIR 1974 SC 87;
- (x) *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation*, AIR 1993 SC 935;
- (xi) *State of West Bengal v. Atul Krishna Shaw*, AIR 1990 SC 2205;
- (xii) *Krishna Swami v. Union of India*, AIR 1993 SC 1407;
- (xiii) *Institute of Chartered Accountants of India v. L.K. Ratna* AIR 1987 SC 71.

(II) Exceeding of authority by the Union Public Service Commission, Non-application of mind by the Disciplinary Authority and abdication of jurisdiction by the Disciplinary Authority : The applicant has asserted that the Union Public Service Commission exceeded its authority in giving a finding on the Articles of Charge and in proposing the quantum of punishment. Further, the Union Public Service Commission has given no reasons for the same, which is bad in law. Paragraph 11 of the judgment/order dated 11.12.2013 in O.A.No.2837 of 2013 (*Tushar Ranjan Mohanty v. Union of India*) of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi would be referred to in support.

Applicant would contend that it is trite that when a discretionary power is conferred on an authority, the authority must exercise that power after applying its mind to the facts and circumstances to the case. If the condition is not satisfied, there is clear non-application of mind on the part of the authority concerned.

He has further relied on the following judgments:

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- (i) *Jagannath V. State of Orissa*, AIR, 1966 SC 1140;
- (ii) *Abdul Rajjak Abdul Wahab V. Commissioner of Police* (1989)2 SC 222;
- (iii) *Reita Rahman V. Bangladesh*, 50 DLR (1998);
- (iv) *Rina Sen v. CIT* [1999] 235 ITR 219, 225-26 (Pat.);
- (v) *ITO v. James Joseph O'Gorman*[1993]204 ITR 454,458(Cal.);
- (vi) *New Central Jute Mills v. Dwijen-dralal Brahmachari* [1973]90 ITR 467(Cal.);
- (vii) *Jai Singh v. State of Jammu & Kashmir*, 1985 (1) SCALE 105, (1985)1 SCC 561, 1985(17) UJ 410; and
- (viii) *Ghaziabad Zila Sahkari Bank Ltd. v. Additional Labour Commissioner and Others*, JT 2007(2) SC 566, 2007(2) SCALE 165, (2007)11 SCC 756, [2007]1 SCR 1007

Further, applicant would allege that the Disciplinary Authority has blindly followed the dictate of the Union Public Service Commission, without discussing the reason why it was accepting the recommendations of the Union Public Service Commission. Therefore, it became a twin case of exceeding of authority by the Union Public Service Commission and abdication of authority by the Disciplinary Authority, making the order of minor penalty dated 20.01.2016, bad in law.

(III) The third ground of challenge : PENALTY ORDER has been issued without holding an enquiry: The applicant has claimed that an enquiry was required in terms of the statutory rules and the well settled law [Paragraph 10, 12, 14 and 15 of the Judgment/Order dated 11.12.2013 in **OA No.2837 of 2013**(Tushar Ranjan Mohanty v. Union of India)]. When the applicant, in paragraph 50 of the reply dated 19.08.2014, categorically demanded a personal hearing where he wished to explain all facts and circumstances and produce documentary evidence and oral evidence of all involved, the Respondent Ministry having not held an enquiry acted *de hors* the Statutory Rules [Rule 16 of the Central Civil Services

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(Classification, Control and Appeal) Rules, 1965] and the Government of India instruction thereunder as extracted below for ready reference:

"16. PROCEDURE FOR IMPOSING MINOR PENALTIES:

(1)(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal; >
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation or misconduct or misbehavior; and
- (e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.]

Government of India's Decision:

(1) Enquiry mandatory in certain types of the penalty of withholding of increments:-

It has been decided in the meeting of National Council held on the 6th and 7th November, 1967, that in cases where increments are withheld for a period of more than

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three years or where increments are stopped with cumulative effect or where such stoppage is likely to affect adversely the pensionary entitlement, the procedure of holding an enquiry should invariably be followed.

As the Ministry of Finance etc. are aware, clause (b) of sub-rule (1) of rule 16 of the CCS (CCA) Rules, 1965 makes provisions for holding an enquiry in the manner laid down in sub-rules (3) to (23) of rule 14 *ibid* in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary. In view of the decision of the National Council, mentioned in the preceding paragraph, it has been decided that, notwithstanding the provision contained in rule 16 (1) (b) of the CCS (CCA) Rules, 1965, if in a case it is proposed, after considering that representation, if any, submitted by a Government servant, to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period or if the penalty of withholding of increments is likely to affect adversely the amount of pension payable to the Government servant, an enquiry shall invariably be held in the manner laid down in sub-rules (3) to (23) of rule 14 *ibid*.

[MHA OM No. 7/3/67-Ests. (A) dated the 19th January, 1968]

(2) Minor Penalty – holding of inquiry in specific circumstances:-

The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965 had suggested that Rule 16 (1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been given a detailed consideration. Rule 16 (1-A) of the CCS (CCA) Rules, 1965 provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16 (1) *ibid* leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehavior communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

[Deptt. of Personnel & Training OM No. 1101218/85-Ests.(A) dated 28th October, 1985]"

Applicant would plead that to give the devil its due, even if it was assumed, but not conceded that the Respondent did not understand the request for

personal hearing as a demand for enquiry (the request of the applicant being politely worded) it was anyway incumbent upon the Respondent to hold an enquiry, as the allegations were factual and denied by the applicant, in terms of the judgment of the Hon'ble Supreme Court in **O.K. Bhardwaj v. Union of India, (2001) 9 SCC 180**.

(IV) His next ground of challenge was that No findings on each of the Articles of Charge are given : It was argued that findings on each article of charge, as required under Rule 16(1)(d) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (supra) being not there, the order of minor penalty dated 20.01.2016 was rendered bad in law.

(V) The next ground of challenge to the order of minor penalty dated 20.01.2016 is that the Respondent Ministry in their Counter-Reply stated that they had consulted the Central Vigilance Commission, which was never communicated to the Applicant and this action of the Respondent is violative of the judgment of the Hon'ble Supreme Court in **State Bank of India v. D.C. Agarwal, (1993) 1 SCC 13**. The Central Vigilance Commission has since issued a Circular No.99/VGL/66 dated 28.09.2000 [Annexure RJ-2 of the Rejoinder], which is extracted below:

"No.99/VGL/66
Government of India
Central Vigilance Commission

Satarkta Bhavan, Block "A",
GPO Complex, I.N.A.,
New Delhi-110023
Dated the 28th September 2000

To

All Chief Vigilance Officers of Ministries / Departments of Government of India/ Nationalised Banks / PSUs / Autonomous Bodies, Societies etc.

Subject: - Consultation with the CVC - Making available a copy of the CVC's advice to the concerned employee.

Sir,

Para 3.6 (iii), chapter XI and para 8.6, Chapter XII of the Vigilance Manual, Vol. I, provide that the advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the concerned employee. It also mentions that the Central Vigilance Commission tenders its advice in confidence and its advice is a privileged communication and, therefore, no reference to the advice tendered by the Commission should be made in any formal order.

2. The Commission has reviewed the above instructions in view of its policy that there should be transparency in all matters, as far as possible. The Commission has observed that the Hon'ble Supreme Court had held a view in the case - State Bank of India Vs. D.C. Aggarwal and another [Date of Judgement: 13.10.1992] - that non-supply of CVC's instructions, which was prepared behind the back of respondent without his participation, and one does not know on what material, which was not only sent to the disciplinary authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. Further, the Hon'ble High Court of Karnataka at Bangalore, in writ Petition No. 6558/93, has also observed that if a copy of the report (CVC's advice) was furnished to the delinquent officer, he would have been in a position to demonstrate before the disciplinary authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC's report.

3. The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of inquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge sheet served upon him, for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report, to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

4. In view of the position stated above, para 3.6 (iii), Chapter XI and para 8.6, Chapter XII of the Vigilance manual, Vol. I, and also para 2 of the Commission's letter No. 6/3/73-R dated 20.08.1973 may be treated as deleted.

5. Para 12.4.4 of Special Chapter on Vigilance Management in Public Sector Banks and para 22.6.4 of the Special Chapter on Vigilance Management in Public Sector Enterprises envisage that the inquiring authorities, including the CDIs borne on the strength of the Commission, would submit their reports to the disciplinary authority who would then forward the IO's reports, along with its own tentative views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The disciplinary authority may, after examination of the inquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, along with the disciplinary authority's views, may be made available to the concerned employee. On receiving his representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along with the records of the case, to the Commission for its reconsideration.

6. Thus, if on the receipt of the employee's representation, the concerned administrative authority proposes to accept the CVC's advice, it may issue the orders accordingly. But if the administrative authority comes to the conclusion that the representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission.

Yours faithfully,

(K.L. Ahuja)
Officer on Special Duty"

(VI) Further, it was urged that Laid down Procedure was not followed: and that by not following the laid down procedure the Respondent is guilty of Malice in law at least. In support, the Applicant would rely upon the following decisions:

- (i) *R.S. Garg v. State of U.P.*, AIR 2006 SC 2912 : 2006 (4)Suppl. SCR 120: 2006(6)SCC 430;
- (ii) *Smt. S.R. Venkataraman vs. Union of India & Anr.* [(1979)2 SCC 491 : AIR 1979 SC 49];
- (iii) *State of A.P. vs. Goverdhanlal Pitti*, (2003)4 SCC 739;
- (iv) *Chairman & M.D., BPL Ltd. Vs. S.P. Gururaja*. [(2003)8 SCC 567];
- (v) *Punjab SEB Ltd. Vs. Zora Singh*, (2005)6 SCC 776;
- (vi) *Viscount Haldane in Shearer and Another v. Shields*, (1914) AC 808 at p.813;
- (vii) *P. Mohanan Pillai V. State of Kerala*, 2007 AIR 2840, 2007(3)SCR 53 : 2007(9) SCC 497;
- (viii) *The Manager, Govt. Branch Press and Another v. D.B. Belliappa* -AIR 1979 SC 429;
- (ix) *K.K. Bhalla v. State of M.P. and Others*, (2006) 3 SCC 581;
- (x) *M.P. State Co-op. Dairy Fedn. Ltd. V. Rajnesh Kumar Jamindar*, (2009)15 SCC 221;
- (xi) *Kalabharati Advertising v. Hemant Vimalnath Narichania*, (2010)9 SCC 437;
- (xii) *Swaran Singh Chand v. Punjab State Electricity Board*, AIR 2010 SC 151 : JT 2009(8) SC 385 : (2009)13 SCC 758 : [2009]8 SCR 1084 : 2009(7) SCALE 622; and
- (xiii) *Ravi Yashwant Bhoir v. District Collector, Raigad*, (2012)4 SCC 407 : JT 2012(3) SC 186 : 2012(3) SCALE 303

(B) ON MINOR PENALTY CHARGE SHEET:

- (I) Bad in law being uninformed by reason :

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The first ground of challenge to the minor penalty charge dated 17.07.2014 is that the applicant submitted a detailed reply in response to the explanation called from him vide letter No.C 31016/3/2010-Vig. dated 29.07.2010 initially on 05.08.2010 and this was later on strengthened by letter dated 11.10.2010. However, the Respondent Ministry did not even bother to consider the replies dated 05.08.2010 and 11.10.2010 of the applicant and instead went forward to issue the illegal charge sheet dated 17.07.2014, without even formally disposing of the replies dated 05.08.2010 and 11.10.2010 by any reasoned and speaking order, which itself was bad in law being uninformed by reason.

(II) Non application of mind :

Besides, the Respondent Ministry had also send the same set of queries to the National Sample Survey Organisation(Data Processing Division) and the Central Statistics Office(Industrial Statistics Wing) and received formal replies from these organisations. There is no proof on record that these official replies have been duly considered by the competent Disciplinary Authority before issuing the charge sheet dated 17.07.2014. This, therefore, is a classic case of non-application of mind too.

bold. (III) (Inordinate delay) Applicant urged that the law now is well settled that undue delay in holding an inquiry into the misconduct is fatal to the inquiry. The applicant would rely upon the following judgments of the Hon'ble Supreme Court of India , in support:

- (i) *State of Punjab v. Chaman Lal Goyal*, (1995)2 SCC 570 : JT 1995(2) 18 : 1995 SCALE (1) 390;
- (ii) *State of Andhra Pradesh v. N. Radhakishan*, AIR 1998 SC 1833 : 1998(2)SCR 693 : (1998)4 SCC 154 : 1998(2)SCALE 672 : 1998(3) JT(SC)123;
- (iii) *P.V. Mahadevan v. M.D. Tamil Nadu Housing Board*, 2005(6) SCC 636, the Hon'ble Apex Court, relying upon *State of M.P. Vs. Bani Singh*, 1991 SCC (L&S) 638, and *State of A.P. Vs. N.Radhakishan*, (1998) 4 SCC 154,

- (iv) *In M.V. Bijlani v. Union of India*, 2006, AIR 3475 : 2006(3) SCR 896 : (2006)5 SCC 88 : 2006(4) SCALE 146 : 2006(4) JT(SC)469

He would also rely on the following decisions:

- (i) *Madhya Pradesh v. Bani Singh & Anr.*, [(1990) Supp. SCC 738];
- (ii) *P.D. Agarwal v. State Bank of India & Ors.*, AIR 2006 SC 2064 : 2006(1) Suppl. SCR 454 : 2006(8) SCC 776 : 2006(5) SCALE 54 : 2006(5) JT(SC)235;
- (iii) *District Council, Amraoti through Secretary vs. Vithal Vinayak Bapat*, [AIR 1941 Nagpur 125];
- (iv) *Government of A.P.V.V. Appala Swamy*, 2007(2) SCR 19 : 2007(3) SCALE 1; and
- (v) *The Secretary, Forest Department & Ors. v. Abdur Rasul Chowdhury*, (2009)7 SCC 305

Applicant has urged that it is trite law that delay causes prejudice to the delinquent and in absence of any blame attributable to the applicant for causing such delay, and also in absence of any explanation for the delay caused by the Prosecution, the charge sheet is bad in law, as held by a Division Bench of the Kerala High Court in *Meeran Rawther v. State of Kerala*, 2001(5) SLR 518 and further by the Punjab and Haryana High Court in *Rajbir Singh Gill v. State of Punjab*, 1997(7) SLR 422.

It was urged that in the present case, a delay of seventeen years in initiating the charge sheet has prejudiced the applicant in more than one manner. The first and biggest prejudice caused to the applicant was that the persons involved were likely to have forgotten the details of the incident due to the lapse of time, and would not have been in a position to place full facts to bring out the truth and that precisely for this reason no enquiry was held. The applicant too, was at sea, not having several important documents to prove his innocence. The

second and equally important prejudice caused to the applicant is that due to the delay in instituting the inquiry, the applicant has been superseded by several batches of his juniors.

Further, the disciplinary proceeding was initiated on 17.07.2014 and the penalty was imposed on 20.01.2016, which was more than one and half years later. In ***Prem Nath Bali v. Registrar, High Court of Delhi, AIR 2016 SC 101 : 2015 (10)CTR 1145 : 2015(12)JT 267 : 2015(13)SCALE 742***, the following has been held:

"33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

In ***Prem Nath Bali (supra)*** the Hon'ble Supreme Court had given maximum one year time for completion of pleadings, but as in the present case there was no enquiry, the proceedings should have taken at best six months. However, it has taken 18 months, which is violative of the well-settled law.

(IV) Reliance on the prosecution documents by the respondent in the present proceedings without its authenticity and genuineness being proved, is bad in law. In support the following have been referred to:

(i) In Swamy's Manual on Disciplinary Proceedings for Central Government Staff, by Muthuswamy and Brinda, Swamy Publications, Tenth Edition, 2006, at page 301, it is stated that:

"15. Admitted documents and facts can be taken note of straightaway. Earlier written statement, if any, given by a witness may be read out to him and he may be specifically questioned whether he admits the same or not. If the witness does not admit the statement in full, then his statement has to be recorded from the very beginning. The Presenting Officer should produce documents, which are disputed through witnesses. The witness should be examined in such a way as to bring out the case in a logical and understandable manner. He will examine the witness without putting leading questions."

(Emphasis supplied)

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(ii) Swamy's Manual on Disciplinary Proceedings for Central Government Staff, by Muthuswamy and Brinda, Swamy's Publication, Tech Edition, 2006, at page 315 the following is stated :

"(2) The undisputed documents may be taken on record straightaway. Documents which are not admitted as genuine or authentic by the CO have to be introduced through witnesses who can prove the authenticity and genuineness of the documents."

(iii) Further, references in this regard is drawn to the Special Chapter on Vigilance Management in Public Sector Undertakings by the Central Vigilance Commission, published in July, 1999. The relevant portions thereof are quoted below for ready reference:

"22.5 REGULAR HEARINGS

- (i) **GENERAL** - Admitted documents may be taken on record straightway and marked as exhibits.....
- (ii) **PRESENTATION OF PROSECUTION CASE** - In the first instance PO would be asked to present his case. He should introduce unadmitted/disputed listed Documents through relevant witnesses.....

22.6.2 The initial burden in departmental inquiry of proving the charge with evidence on record is that of prosecution. Once the same is discharged, the burden of disapproving the same and/or bringing to light special circumstances relating to innocence of CO will be that of later....."

"40. INTERPRETATION

40.1 If there is inconsistency between provisions of this Chapter and the provisions of CDA Rules of any PSE; the concerned PSE should get its CDA Rules amended/updated/modified to the extent necessary. If any question arises relating to interpretation of these provisions, it may be referred to CVC for clarification."

(iv) In Swamy's Manual on Disciplinary Proceedings for Central Government Staff, by Muthuswamy and Brinda, Swamy's Publications, Twelfth Edition, 2009, at page 333, the following is stated :

"Recording of Evidence—Recording of evidence includes providing the validity of listed documents through witnesses and recording their oral statements, if any. Examination of a witness is done in three parts, viz., examination-in-chief, cross-examination and re-examination. There are definite guiding procedures regulating all the three parts. Admitted documents and facts can be gone into straightaway. Earlier written

statements, if any given by a witness, may be read out to him and he may be specifically questioned whether he admits the same or not. If he does so, the statement may be marked as an Exhibit and the CO asked to proceed with the cross-examination. The PO should produce the disputed documents through witnesses."

(Emphasis Supplied)

In this regard, the applicant would place reliance on the judgment of the Hon'ble Supreme Court in **Swaran Singh Chand v. Punjab State Electricity Board, 2009(7) SCALE 622.**

Ld. Counsel for the Applicant would further canvass that the law regarding the Prosecution Document is well settled now by the Hon'ble Supreme Court of India. In this regard, he would rely upon the ratio decidendi in catena of judgments of Hon'ble Supreme Court, cited herein-below :

- (i) **Roop Singh Negi v. Punjab National Bank, 2009 (1) SCALE 284;**
- (ii) **L.I.C. of India v. Ram Pal Singh Bisen, (2010) 4 SCC 491;**
- (iii) **R. Balakrishnan v. Food Corporation of India, judgment dated 07.02.2011, of the Hon'ble High Court of Madras, in W.P. No. 20896 of 2003;**
- (iv) **M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475 : 2006 (3) SCR 896 : 2006 (5) SCC 88 : 2006 (4) SCALE 146 : 2006 (4) JT (SC) 469;**
- (v) **Sher Bahadur v. Union of India, AIR 2002 SC 3030 : 2002 (1) Suppl. SCR 568 : (2002) 7 SCC 142 : 2002 (5) SCALE 616 : 2002 (6) JT (SC) 152;**
- (vi) **Kuldeep Singh v. Commissioner of Police, AIR 1999 SC 677 : 1998 (3) Supple. SCR 549 : (199) 2 SCC 10;**
- (vii) **Nand Kishore vs. State of Bihar, AIR 1978 SC 1277 = (1978) 3 SCC 366 = 1978 (3) SCR 708;**

Further, his next contention was that the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in **OA No. 2837 of 2013 (Tushar Ranjan Mohanty v. Union of India)**, has held in paragraph 12 that reliance of the Prosecution Documents without its authenticity being proved is bad in law.

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(V) **Charges levelled does not constitute misconduct:**

To contend that the charges levelled against him does not amount to misconduct, as it has been categorically held that mere error of judgment cannot be termed as misconduct and procedural lapses, without ill motive also cannot be termed as misconduct also that, one time aberration also should not be termed as misconduct, the applicant would cite the following decisions:-

- (i) *Baldev Singh Gandhi v. State of Punjab*, AIR 2002 SC 1124;
- (ii) *M.M. Malhotra v. Union of India*, 2005 AIR SCW 5497;
- (iii) *J.J.Mody v. State of Bombay*, AIR 1962 Guj 197;
- (iv) *Union of India v. J. Ahmed*, AIR 1979 SC 1022;
- (v) *A.L. Kalra v. P&E Corpn. Ltd.*, AIR 1984 SC 7357;
- (vi) *State of Punjab v. Ram Singh*, 1992 AIR SCW 2595;
- (vii) *Union of India v. K.K. Dhawan*, AIR 1993 SC 1478;
- (viii) *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749;
- (ix) *Ravi Yashwant Bhoir v. District Collector, Raigad*, (2012) 4 SCC 407 : JT 2012 (3) SC 186 : 2012 (3) SCALE 303;
- (x) *State of Punjab & Ors. v. Ram Singh Ex. Constable*, AIR 1992 SC 2188;
- (xi) *Disciplinary Authority-cum-Regional Manager & Ors. v. Nikunja Bihari Patnaik*, (1996) 9 SCC 69;
- (xii) *Government of Tamil Nadu v. K.N. Ramamurthy*, AIR 1997 SC 3571;
- (xiii) *Inspector Prem Chand v. Govt. of NCT of Delhi & Ors.* (2007) 4 SCC 566;
- (xiv) *State of India & Ors. v. S.N. Goyal*, AIR 2008 SC 2594;
- (xv) *Government of A.P. v. P. Posetty*, (2000) 2 SCC 220;
- (xvi) *General Manager, Appellate Authority, Bank of India & Anr. v. Mohd. Nizamuddin*, AIR 2006 SC 3290; and
- (xvii) *P.H. Kalyani v. Air France*, AIR 1963 SC 1756

Ld. counsel placing reliance on the decisions enumerated supra would submit that assuming, but not conceding, that the allegations in the articles of

charge are true, the same would not amount to misconduct in view of the above pronouncements and would have to be called as mistakes, or "innocent misconduct", as coined by the Hon'ble Supreme Court. He would further submit that the allegations are false and the applicant had rebutted each and every article of charge at paragraph nos. 9 to 48 of the Reply dated 19.08.2014 to the charge sheet dated 17.07.2014 and at paragraph Nos.26 to 71 of the Response dated 11.10.2015 to the Advice of the Union Public Service Commission, but they have not been rebutted by the Respondent at any place.

Reliance was, thereafter, placed upon *Bongaigaon Refinery & P.C. Ltd. & Ors. v. Girish Chandra Sarmah*, AIR 2007 SC 2860 : (2007)7 SCC 206 : 2007(9) SCALE 648 : 2007(10)JT(SC) 81, where the Hon'ble Supreme Court has held as follows:-

"8. So far as the legal proposition as contended by learned Additional Solicitor General with regard to appreciation of evidence is concerned, there is no quarrel that the Courts cannot sit as appellate authority over the domestic enquiries but in the present case what appears is that the respondent has become a scapegoat in order to make someone responsible for no fault of his. He alone was targeted for the simple reason that he submitted preliminary report where the price of the land proposed by the land owner was Rs.30 lakhs. But this was tentative price given by the land owner and the authorities negotiated with the land owner and she quoted the price at Rs.61 lakhs and thereafter they again negotiated with her. The background was fully known to Shri S.C. Goswami, General Manager(Marketing) who was the Chairman of the Tender Negotiating Committee and even otherwise also just because that one of the officers has submitted a preliminary report intimating the price given by the landowner as Rs.30 lakhs for 7 acres of land, that does not bind the land owner to sell the land for similar price, later on if she wriggles out, for which the officer of the appellant company who had inquired from the land owner cannot be found guilty. The respondent cannot be held responsible for the same and more so in the present case the price has been negotiated by the Price Negotiating Committee. Therefore, simply because a preliminary report was submitted by the respondent and all the three Committees in which he was a member along with others cannot disown their liability. If the respondent is targeted then all the members of the Committees are equally responsible. Therefore, such finding given by the enquiring authority cannot be countenanced. Similarly, so far as the appointment of Shri I. Sharma is concerned, the respondent alone was not responsible."

In the aforesaid context, it was argued that from minor penalty charge sheet dated 17.07.2014 it is clear that Shri S.K. Nath, who retired as Director General, Central Statistics Office, was also involved in the matter as the

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appointing authority and also the Chairman of the DPC. While the same problem prevailed in the five centres of Data Processing Division of National Sample Survey Office; the Computer Centre; and the Central Statistical Organisation (Industrial Statistics Wing), Kolkata, only a few officers including the applicant have been isolated and targeted. This is arbitrary and discriminatory and cannot stand the test of law. It is clearly in violation of the law laid down by the Hon'ble Supreme Court quoted in the preceding paragraph.

In this regard, Ld. Counsel would invoke the principle of "*Omnia Praesumuntur rite et solemniter esse acta donec probetur in contrarium*" or where it has been proved that an official act has been done then it will be presumed that until the contrary is proved, the said act complied with necessary formalities and the person who did not was duly appointed (*Cresswell* 1876 1 QBD 446 and *Dillon*, 1982 AC 484).

To contend forcefully that when the act of several similarly situated officers have not been treated to be a wrong, therefore, the actions of the applicant cannot be said to be wrong. Ld. Counsel would refer to the twin readings of the above principle of Law and the judgment of the Hon'ble Supreme Court in the case of *Bongaigaon Refinery & P.C. Ltd. & Ors. v. Girish Chandra Sarmah*, AIR 2007 SC 2860 : (2007) 7 SCC 206 : 2007(9) SCALE 648 : 2007(10) JT (SC) 81 and urge that therefore, the applicant cannot be said to have committed any misconduct.

It was pleaded that some others, like Shri Ashish Kumar, the Director General of Central Statistics Office in 2014, who were indicted in the preliminary Inquiry Report have been let off, while the applicant is visited with a formal charge sheet that will indeed act as a grave barrier for his future career. The applicant pleaded that these officers who were allowed to go scot free, were a category, and to borrow the words of the Hon'ble Supreme Court in *Comptroller*

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and Auditor General of India v. K.S.Jagannathan, AIR 1987 SC 537 : (1986) 2 SCC

679, they fall in the following quote :

*"We are the precious chosen few;
Let all the rest be damned.
There's only room for one or two;
We can't have Heaven crammed.*

Reliance was also placed on **Dhirendra Nath Gorai v. Sudhir Chandra, AIR 1964 SC 1300**, a three Judge Bench of Hon'ble Supreme Court which considered the question whether the sale made without complying with Section 35 of the Code of the Bengal Money Lenders Act, 1940 was nullity and whether the objection against the violation of that section could be waived. After examining the relevant provisions the Hon'ble Apex Court held :

"A waiver is an intentional relinquishment of a known right, but obviously an objection to jurisdiction cannot be waived, for consent cannot give a court jurisdiction where there is none. Even if there is inherent jurisdiction, certain provisions cannot be waived. Maxwell in his book "On the Interpretation of Statutes", 11th Edn., a p. 357, describes the rule thus:

"Another maxim which sanctions the nonobservance of a statutory provision is that cuilibet licet renuntiare juri pro se introducto. Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy."

The same rule restated in **"Craies on Statute Law"** 6th Edn. At p.269 that:

"As a general rule, the conditions imposed by statutes which authorise legal proceedings are treated as being indispensable to giving the court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court."

The Applicant would also quote from the judgement of the Hon'ble Supreme Court in **Gokak Patel Volkart Ltd. V. Dundayya Gurushiddaiah Hiremath, 1991 SCR(1) 396 : (1991)2 SCC 141 : JT 1991(1) SC 376 : 1991 SCALE (1) 193**, wherein it was held that :

".....The rule is that the authority, having been abused by doing a wrongful act under cover of it, is cancelled retrospectively so that the exercise of it becomes actionable....."

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In the aforesaid context, it was forcefully argued that although the above judgment was rendered in the context of law of Torts and Companies Act, the principle equally applied to the present case. The allegation against the applicant is one of *nonfeasance or negligence*, both of which are well known concepts in the tort law. Therefore, before a charge of nonfeasance or negligence on part of the applicant can at all be levelled, let alone proved, the so called wrongful act complained of has to be cancelled first retrospectively. Unless this is done, the so-called wrongful act is not "*actionable*", as is clear from the use of the expression "*so that*" in the law declared by the Hon'ble Supreme Court. It was argued that in the present case the appointments have not been cancelled, rather they have been upheld by the Hon'ble High Court of Calcutta. Therefore, the allegations of wrong appointment cannot stand the test of law.

Further, as some of the seniors of the applicant, including the appointing authority and several others have not been charge sheeted, the present case is only of persecution of the applicant and hence, is not a genuine or legal exercise of enforcing discipline. The applicant made clear in the Paragraph 33, 34 and 35 of the reply dated 19.08.2014 to the charge sheet that he had only obeyed the directions of his superiors, which was his mandatory duty in terms of Rule 3(2)(ii) of the Central Civil Services(Conduct) Rules, 1964.

(VI) **Suspicion or surmises cannot take the place of proof:**

Reliance was also placed on *Shri Bhagwan v. Commissioner of Police*(OA No.2706 of 2004, where the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi has held that 'suspicion' or 'surmises' cannot take the place of proof. It was vociferously argued that there neither exists any direct evidence nor

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circumstantial evidence to link the alleged misconduct to the applicant. Relevant portion of the judgment being as under:

"10. In *Union of India vs. S.C. Goyal*, AIR 1964 SC 364 and also in *Kuldeep Singh vs. Commissioner of Police*, JT 1998(8) (SC) 603, it has been held that "suspicion" and "surmises" would not take place of proof and perverse finding, without any evidence to link or to conclusively establish the charge, would not be sufficient to hold guilty, even on preponderance of probability, a delinquent officer in a disciplinary proceedings. Recently a High Court's decision Andhra Pradesh in *Union of India vs. G. Krishna*, 2005(3) ATJ 359, held as under:

"11. In *Nand Kishore v. State of Bihar*, AIR 1978 SC 1277, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusion on the basis of some evidence, that is to say, **such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent** and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse."

(Emphasis supplied)

(VII) **Supplementing fresh reasons:**

The Hon'ble Apex Court in *K.K. Bhalla Vs. State of M.P. and Ors.*, (2006) 3 SCC 581 has noted as under:

- (1) In *Commr. of Police, Bombay vs. Gordhandas Bhanji* [AIR 1952 SC 16], it is emphatically held:

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

- (2) In *Mohinder Singh Gill*, (1978) 1 SCC 405, Hon'ble Apex Court observed:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*."

Referring to *Gordhandas Bhanji* (supra), it was further observed:

"Orders are not like old wine becoming better as they grow older."

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(VIII) ON DUTY TO GIVE REASONS, applicant would refer the judgment in **Sant Lal Gupta and Ors. Vs. Modern Cooperative Group Housing Society Limited and Ors.**, (2010) 13 SCC 336, wherein it has been held by the **Hon'ble Apex Court**:

"what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud." An authority cannot be permitted to evade a law by "shift or contrivance."

And that

"Not only administrative but also judicial order must be supported by reasons, recorded. While deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing."

10. We delved in depth into the materials on record, considered the decisions as are relevant for the purpose of adjudication and could decipher some of which are discussed infra.

A) ON INSTRUCTIONS

Swaran Singh Chand v. Punjab State Electricity Board, 2009(7) SCALE 622

wherein it has unequivocally been held that instructions issued by the Government are binding on it. The judgment quotes as follows:

"10. It is furthermore well-settled that when the State lays down the rule for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to scrupulously follow the same. Mr. Justice Frankfurter in Vitrelli v. Seaton[359 US 535] stated;

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

And that

The guidelines issued by the State are binding on it.

(Emphasis Supplied)

This view was reiterated in *H.V. Nirmala v. Karnataka State Financial Corporation*, (2008) 7 SCC 639, by the Hon'ble Supreme Court.

In *Raman Dayaram Shetty vs. International Airport Authority*, AIR 1979 SC 1628 : 1979 SCR (3) 1014 : (1979) 3 SCC 489, reiterating the aforesaid view, Hon'ble Court added as infra:

"This Court accepted the rule as valid and applicable in India in *A.S. Ahluwalia v. Punjab* [(1975) 3 S.C.R. 82] and in *Sukhdev v. Bhagatram* [(1975) 3 S.C.R. 619]. Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanation from Article 14, does not rest merely on this article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we return to the judgment of Mr. Justice Frankfurter and examine it, we find that he has sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule administrative law". xxx xxx xxx. It is indeed unthinkable that in a democracy governed by the rule of law, the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.

(Emphasis Supplied)

B) ON MISCONDUCT:

In *Govt. of Tamil Nadu Vs. K.N.Ramamurthy*, AIR 1997 SC 3571, Hon'ble Apex Court observed:

"the finding accepted by the disciplinary authority was to the effect that by the act of negligence in making the assessment, the delinquent caused loss to the Government exchequer to the extent of 44,850/-. This finding of the disciplinary authority is not open to challenge on the facts of the case. This Court in *Upendra Singh's case* (1994 AIR SCW 2777) (supra) has ruled that the Tribunal has no

jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. This Court in the said case further observed that the function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court".

In **Inspector Prem Chand (supra)** on misconduct, the Hon'ble Apex Court considered legal implication of the term "Misconduct" and discussed several of its decisions and has observed as under:

10. In State of Punjab and Ors. vs. Ram Singh Ex. Constable [1992 (4) SCC 54], it was stated:

"5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.' Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:

"The term 'misconduct' implies, a wrongful intention, and not a mere error of judgment."

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

[Bharat Petroleum Corpn. Ltd. vs. T.K. Raju, [2006 (3) SCC 143].

In Union of India & Ors. vs. J. Ahmed (1979 (2) SCC 286), it was held:

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers)]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, and Satubha K. Vaqhele v. Moosa Raza. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct." (emphasis supplied)

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15. In Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors., [1999 (7) SCC 409], Hon'ble Apex Court has categorically held:

"42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty."

6. In Inspector Prem Chand Vs. Govt. of NCT of Delhi, (2007) 4 SCC 566, having noted the decisions infra, Hon'ble Apex Court noted that:

"The Tribunal opined that the acts of omission on the part of the appellant was not a mere error of judgment. On what premise the said opinion was arrived at is not clear. We have noticed hereinbefore that the appellate authority, namely, the Commissioner of Police, Delhi, while passing the order dated 29.8.2003 categorically held that the appellant being a raiding officer should have seized the tainted money as case property. In a given case, what should have been done, is a matter which would depend on the facts and circumstances of each case. No hard and fast rule can be laid down therefor".

It held that applicant cannot said to have committed a misconduct.

C) ON DELAY:

State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833 : 1998(2)SCR 693 : (1998)4 SCC 154 : 1998(2)SCALE 672 : 1998(3) JT(SC)123;

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty

prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration".

P.V. Mahadevan v. M.D. Tamil Nadu Housing Board, 2005(6) SCC 636, the Hon'ble Apex Court, relying upon State of M.P. Vs. Bani Singh, 1991 SCC (L&S) 638, and State of A.P. Vs. N.Radhakishan, (1998) 4 SCC 154, noted that:-

"irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-1995. But Section 118 of the Tamil Nadu State Housing Board Act, 1961 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 of the said Act relates to annual audit of accounts".

It ruled as under:

"The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions. There is no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. The stand taken by the respondent in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay".

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"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry".

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Therefore, the charge memo issued against the appellant is quashed. The appellant will be entitled to all the retiral benefits in accordance with law".

In Secretary, Forest Department & Ors. Vs. Abdur Rasul Choudhury, (2009) 7 SCC 305, the Hon'ble Apex Court ruled:

"In our view the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The un-explained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary

enquiry proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue".

D) ON JUDICIAL REVIEW:

In B.C.Chaturvedi Vs. Union of India & Ors., (1995) 6 SCC 749, it was held:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. 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 disciplinary authority is the sole judge of facts where appeal is presented the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or 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 that case".

It further held:

"the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof".

Where the Tribunal had substituted the "punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority", it was held by majority view that "the reasoning is wholly unsupportable. The

reasons are not relevant or germane to modify the punishment. In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of punishment was wholly unwarranted".

In **Roop Singh Negi Vs. Punjab National Bank, (2009) 2 SCC 570**, the Hon'ble Apex

Court held as under:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence".

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"23. 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 self-same 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 is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

In **Union of India vs. H.S. Goel [(1964) 4 SCR 718]**, it was held:

"22.....The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that sine no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent."

In **Moni Shankar v. Union of India and Anr. [(2008) 3 SCC 484]**, Hon'ble

Apex Court held:

"17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

In **Narinder Mohan Arya vs. United India Insurance Co. Ltd.** [(2006) 4 SCC

713], while succinctly pointing out the duty of enquiry officer, Hon'ble Apex Court would hold:

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See *State of Assam and Anr. v. Mahendra Kumar Das and Ors.* [(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See *Khem Chand v. Union of India and Ors.* (1958 SCR 1080) and *State of Uttar Pradesh v. Om Prakash Gupta* (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See *K.L. Tripathi v. State Bank of India and Ors.* (1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See *Sawai Singh v. State of Rajasthan* (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See *Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors.* 1987 (2) Cal. LJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See *Central Bank of India Ltd. v. Prakash Chand Jain* (1969) 1 SCR 735, *Kuldeep Singh v. Commissioner of Police* (1999) 2 SCC 10]."

Yet again in **M.V. Bijlani vs. Union of India** (2006) 5 SCC 88, Hon'ble Apex

Court held:

"....Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose

sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

In **Jasbir Singh vs. Punjab & Sind Bank & ors.** [(2007) 1 SCC 566], Hon'ble Apex Court followed **Narinder Mohan Arya vs. United India Insurance Co. Ltd.**, and observed:

"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so."

11. In the backdrop of the detailed enumerations as supra, we would discern that :-

- (i) Irrefutably and undoubtedly, the applicant's prayer for open enquiry was not acceded to and no reason were furnished by the respondent authorities, which palpably violated the mandate of **O.K. Bhardwaj** supra, and defied the DOPT's O.M. dated 28.10.1985 extracted herein before.
- (ii) The inordinate delay in initiation and conclusion of proceedings deserves a quashment in view of the decisions supra on the ground.
- (iii) The term "misconduct" being not available for use loosely in view of the decisions cited supra, ^{we} have noted that 'negligence' per se cannot be termed as misconduct in absence of wrong intention. The Respondents have failed to enumerate and establish that the applicant was guilty of misappropriation or had unduly favoured the principal offender, or that his negligence was actuated by any corrupt motive.

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(iv) The Respondents have clearly and indubitably adopted a pick and choose policy to frame the applicant. Most of the others have been allowed to go scot free without furnishing reasons for such concession which appears to be goaded by extraneous consideration. Therefore, extenuating circumstances are galore to tempt us to interfere.

12. In such view of the matter, we quash the penalty order and remand the matter back to the authorities to act in accordance with law.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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