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Raje Singh

... Petitioner

Versus

Union of India & Ors.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.H.S.Dahiya

For Respondents : Mr.S.K.Sharma & Dr.Ashwani Bhardwaj

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

1. The petitioner has sought the quashing of punishment order dated 30th April, 1997, the order dated 26th June, 1998 dismissing the revision petition filed by the petitioner and the order dated 7th August, 1999 passed by the appellate authority. The petitioner has further sought his reinstatement with full service benefits.

2. Brief facts to comprehend the controversies are that the petitioner was detailed for election duty in Uttar Pradesh. While camping at CISF Unit, IISCO Burnpur certain officers had mistaken the alleged toy pistol of the petitioner to be a real pistol, which led to an incident due to which reason the petitioner was ordered to be apprehended, as the petitioner had become violent under the influence of liquor, he was

therefore, taken to the police station in the night of 13th September, 1996.

3. The petitioner was thereafter released on bail on the next day, and after trial in the Court of SDJM Asansol on 16th September, 1996 the petitioner was convicted and fined Rs.50/- under Section 290 of the Indian Penal Code.

4. The petitioner was also placed under suspension with effect from 15th September, 1996 and on receipt of the preliminary enquiry report he was chargesheeted under Rule 34 by memo dated 25th October, 1996. The charges framed against the petitioner are as under:-

Charge No.I

No. 894360205 Constable Raje Singh of CISF Unit, ASP Durgapur indulged in gross misconduct, an act of indiscipline, insubordination and unbecoming a member of an Armed Force in that while comping at CISF Unit, IISCO Burnpur for onward journey to Uttar pradesh on election duty, has after consumption of liquor misbehaved with Insp/Exe B.Guruswamy at 'A'- Coy line of CISF Unit, IISCO Eiurnpur and Shri J.S.Negi, Asstt. Commandant/JAO of CISF Unit, IISCO Burnpur on 13.09.96 at about 1915 hrs using unparliamentary/abusive and threatening language thereby creating an ugly scene in the Unit premises for which he was handed over to Police', convicted under Section-290 of IPC, and later released by the SDJM Assansol Court with fine of Rs.50/-. Hence the charge.

Charge No.II

During the service in CISF, No.894360208 Constable Raje Singh has been awarded 04 Major penalties and 03 minor penalties under CISF Rules, 1969 for 'gross misconduct, indisciplined activities and negligence of duty but he has not corrected himself inspite of enough opportunities given to him, which shows that Constable Raje Singh is unfit to become/not likely to be a desirable member of Armed Force being a habitual offender and incorrigible. Hence the charge."

5. The enquiry proceedings were held at CISF Unit, IISCO Burnpur and later at Durgapur in phases. During the enquiry proceedings 8 witnesses were examined on behalf of the respondents and the petitioner also gave his statement. Though the defence assistant was appointed and the petitioner was given an opportunity to cross examine the witnesses, however, the petitioner did not cross examine most of the witnesses and rather stated that he had been pressurized and threatened. The petitioner did not cross examine Sh.J.S.Negi, Assistant Commandant, CISF Unit, IISCO Burnpur, PW-1; Sh.B.N.Bej, Inspector PW22; Constable Rudresh Kumar, CISF Unit, IISCO, Burnpur, PW-3; Insp./Exe.B.Guruswamy, PW-4; ASI/Exe.Ram Kishore of CISF Unit, IISCO, Burnpur, PW-5 and Sh.S.V.Bhai, Assistant Commandant, PW-6.

6. On 31st December, 1996, the petitioner was given another opportunity to cross examine the witnesses as the enquiry proceedings were shifted from Burnpur to Durgapur, to be conducted at CISF Unit,

ASP, Durgapur. He was advised that he need not fear anyone, nor he should feel pressurized, as on earlier occasions he had been declining to cross examine the witnesses on the ground that he is being pressurized and threatened. Despite another opportunity being given to the petitioner to cross examine the witnesses, he did not cross examine any of the witnesses.

7. The defence assistant, however, cross examined Insp./Exe.P.C.Abraham, PW-7 who stated in the cross examination that from the way the petitioner had been walking and conversing it was evident to him that he was under the influence of liquor. No other question was put to the said witness in the cross examination. After that statement of ASI/Exe.Tulsi Ram, PW-8 was examined, and the petitioner was offered that the cross examination of the said witness can be deferred as his defence assistant Constable Satpal Singh had been posted out from the unit, however, the petitioner stated that the enquiry may continue even the absence of his defense assistant, as he himself would cross examine the said witness, and thus the petitioner cross examined PW-8 Tulsi Ram. The said witness also categorically stated that the petitioner went on uttering unparliamentary language and that the Assistant Commandant J.S.Negi had taken the petitioner to the police station and thereafter, the FIR was registered and the police had detained the petitioner for investigation.

8. The petitioner in his defence statement deposed that he had not consumed liquor and relied on the copy of the medical examination report dated 13th September, 1996. He further deposed that Constable R.S.Chib was interrogated as to why he had assaulted Constable Rudresh Kumar with pistol and why the unauthorized weapon was kept by him, when, in fact, the said pistol was a toy pistol which belonged to the petitioner, which was taken by Constable R.S.Chib just before the incident. The petitioner deposed that therefore, he intervened into the matter and he requested them to return his pistol to which the officers of IISCO, Burnpur did not agree leading to some of the members of IISCO, Burnpur using power against the petitioner and confining him and taking him to the police station. The petitioner further deposed that he did not misbehave with any of the officials. However, the petitioner did not produce any other witnesses in support of his pleas and contentions. The enquiry officer after considering the pleas and contentions and the evidence of the witnesses produced before him by his report dated 31st January, 1997 held that the charges against the petitioner were made out. The enquiry officer observed that the prosecution version could not be disbelieved since on account of the time gap from the time of consumption of liquor and the time of examination by the doctor, the effect of alcohol was over and thus there was no reason to disbelieve this explanation of the respondents.

9. The petitioner was given the copy of the enquiry report and he was asked to make his representation. The petitioner submitted a written representation dated 12th March, 1997 to the enquiry report in which he categorically admitted in para 2.4 that the petitioner had been provided with the copy of the preliminary enquiry report dated 16th September, 1996, however, he had not been supplied with the statements of the concerned personnels who had deposed during the preliminary enquiry. The petitioner also represented that despite his written request dated 25th November, 1996 and 14th December, 1996, regarding holding of an enquiry at CISF Unit, ASP, Durgapur, he was forced to go for enquiry at IISCO, Burnpur where he was manhandled and where free and fair enquiry was not possible in his opinion. However, the disciplinary authority after considering the enquiry report and the representation of the petitioner by its order dated 30th April, 1997 imposed the punishment to reduce his pay by two stages from Rs.900 to Rs.870/- for a period of one year and it was also stipulated that he would not earn any increment of pay during the period of reduction and on expiry of the period of reduction it would have the effect of postponing his future increment of pay and that the period of suspension from 15th September, 1996 to 13th November, 1996 would be treated as period not spent on duty for all purposes. It was also directed that he would not be entitled for any other remuneration except what has been paid to him as subsistence allowance.

10. Pursuant to the order dated 30th April, 1997, DIG CISF, Calcutta exercised the suo motu power under Rule 49(1) of CISF Rules, 1969 and gave a show cause notice dated 9th January, 1998 asking the petitioner as to why the penalty of reduction in pay be not enhanced to that of removal from service. The petitioner gave a reply to the show cause notice dated 9th January, 1998, seeking to enhance the punishment, by his reply dated 2nd April, 1998. The petitioner in the reply to the show cause notice for enhancement of his punishment from reduction of pay to that of removal from service categorically stated that as promised by him before the disciplinary authority, that he would not be involved in any sort of activities which might tarnish the image of the force, he had been keeping the promise and working hard even beyond normal working hours with utmost devotion of duties, which was even reflected in the four cash rewards he had earned within a period of six months and thus he urged that he would keep his promise till retirement. The Deputy Inspector General, however, considered the charges established against the petitioner and his previous record awarding him various major and minor punishments on account of his gross misconduct which are as under:-

Sl. No	<u>CHARGES/ALLEGATION LEVELLED AGAINST IN BRIEF</u>	<u>PUNISHMENT AWARDED WITH FINAL ORDER NOS. & DATES</u>
1.	a. Constable Raje Singh was found absent from Unit Lines and surprise roll call on	Reduction of pay by one stage from `885/- to `870/- without cumulative effect

	26.04.92 at about 2310 hrs. b. He allegedly stabbed Shri Khagen Choudhury a Civilian at NTPC More, Nabarun, Farakka on 26.04.92 at about 2200 hrs. under the influence of liquor and created public nuisance.	vide Final Order No. V-15014/ Maj/ Disc/ Adm.II/ 92/5224 dated 19.9.92 and subsequent amendment order No.(8050) dated 28.12.92.
2.	a. Constable Raje Singh without any cause, assaulted HC/GD T.S.Neog who is senior in rank at about 2225 hrs. on 20.06.92. b. He disobeyed the order of Inspector R.S.Kolaj for appearing in the enquiry in connection with assault on HC/GD T.S.Neog. c. He snatched the telephone while HC/GD B.L. Deshmukh and Naik Anjalaiah were about to communicate the alleged assault to their senior.	Reduction of pay by one stage from `900/- to `850/- for a period of one year without cumulative effect vide Final Order No. V-15014/ Maj/ Disc/ Adm.II/ 92/8081 dated 29.12.92
3.	Constable Raje Singh of FSTPP Farakka proceeded out of the Unit lines without any out pass and made "Marpit" with the civilian in drunken condition near New Farakka crossing at about 2215 hrs. on 5.6.93 and remained absent throughout night.	Reduction of pay by one stage from `885/- to `870/- without cumulative effect vide Final Order No. V-15014/Adm.II/Maj/RS/94/ 3394 dated 13.6.94
4.	a. Constable Raje Singh along with Constable Ranbir Singh assaulted on HC/GD Devender Singh at CISF Unit FBP Farakka at about 2020 hrs on 20.09.94. b. Constable Raje Singh along with Constable Ranbir Singh and Constable Rohtas	Reduction of pay by three stages from `885/- to `855/- for a period of one year without cumulative effect vide Final Order No. V-15014 (9)/ FBP/ 94/ L&R/477 dated 1.5.95

	Singh once again assaulted on HC/GD Devender Singh at about 2115 hrs. to 2130 hrs. on 20-09-94. c. Constable Raje Singh is habitual offender who could not rectify himself inspite of availing many a opportunities given by the Disciplinary Authority of FBP Farakka.	
5.	He was found absent from duty post at about 1815 hrs. on 2.8.95	Fine amounting to Seven days pay vide Final Order No.V-15014/CISF/ASP/AC(P)/RA/95/1239 dated 29.8.95.
6.	a. He was absent from the Unit Roll Call held at 1800 hrs. on 1.4.96 without any permission from competent authority. b. He was ordered to appear in the orderly room of AC/Plant on 2.4.96 at about 1600 hrs. but he did not appear in the orderly room. c. He was once again ordered to appear in the orderly room of AC/Plant on 4.4.96 at about 1100 hrs. but he did not appear in the orderly room.	Censure vide Final Order No.V-15014/CISF/ASP/AC(P)/RS/96/1426 dated 27.4.96
7.	He while was on temporary duty at CISF Unit FSTPP Farakka on 26.11.95, went to the family quarters area of the unit and created ugly scene by shouting filthy language and confronted with CISF personnel there.	Censure vide Final Order No.V-15014/Adm.III/ ASP/RS/ 96/ 4110 dated 31.8.96.

11. On considering the antecedents of the petitioner and his reply against the proposal for enhancement of punishment, the DIG awarded the punishment of “removal from service” effective from the date of service of the order by his order dated 26th June, 1998.

12. Aggrieved by the order of removal passed by the Deputy Inspector General, the petitioner preferred an appeal contending, inter-alia, that the Revisional authority had illegally and arbitrarily enhanced the punishment from reduction of pay to that of removal from service and consequently, he sought the setting aside of the said order. The appeal filed by the petitioner was, however, dismissed by order dated 7th August, 1999.

13. Aggrieved by the orders passed by the respondents, the petitioner has preferred the above noted writ petition, inter-alia, on the grounds that though he had tried to give an explanation that the pistol was a toy pistol which was purchased by the petitioner for his children, however, his explanation was not believed and rather the Assistant Commandant had ordered to apprehend the petitioner and later on he was handed over to the police authorities. The petitioner contended that the findings of the enquiry officer are perverse because the petitioner was handed over to the police on the premise that he had a real pistol which he was keeping unauthorisedly. The pistol was examined at the police station and it was found to be a toy pistol. The petitioner has also challenged

the findings of the enquiry officer that the petitioner had consumed liquor and misbehaved and had used unparliamentary/abusive language and had thus created an ugly scene for which he was handed over to the police. Relying on the report of the medical examination, it was contended that it had been clearly established that he had not consumed any liquor and that the enquiry officer failed to consider the documentary proof relied on by the petitioner. The petitioner also asserted that after being chargesheeted under Section 290 of IPC, 'punishment for public nuisance in cases not otherwise provided for' he was released after giving punishment of fine of Rs.50/- by the SDJM, Asansol Court and that the petitioner was made to seek forgiveness to avoid long trial at a place where the petitioner was neither posted nor had he been living. According to the petitioner, even in the departmental enquiry the same charges were leveled against the petitioner and, therefore, the petitioner is being punished twice for the same offence which is arbitrary and illegal. The petitioner also challenged the punishment imposed on him on the ground that it was severe and disproportionate to the misconduct attributed to him. The petitioner contended that the Revisional authority ought not to have enhanced the punishment and that the petitioner could not have been imposed the punishment of removal in view of the previous punishment already imposed on him. As for the previous misconducts he contended that he had already been punished for the same. The petitioner also

made the grievance that his representation dated 7th July, 1999 was not considered and disposed of.

14. The learned counsel for the petitioner also contended that he suffered prejudice as he was not given the report of the preliminary enquiry and the petitioner was not allowed to cross examine the witnesses. The learned counsel for the petitioner also relied on State of U.P v. Shatrughan Lal & Anr, J.T 1995 (6) SC 55 to contend that since the petitioner was not given the copies of the statements of the witnesses recorded during the preliminary enquiry, the entire enquiry proceedings are vitiated.

15. The writ petition is contested by the respondents who filed the counter affidavit dated 11th August, 2000. The respondents denied that the suo motu Revisional power exercised by the DIG was illegal. The respondents asserted that although there was no provision for exercising suo motu review of the disciplinary case under the CISF Act, 1968, however, all such suo motu revisions undertaken in absence of the provision in CISF Act, 1968 had been validated by the Parliament while amending the CISF Act, 1968 on 29th December, 1999. The respondents categorically contended that the petitioner has tried to mislead the Court regarding the consumption of liquor by him by relying on the medical documents. According to respondents, the evidence of the witnesses categorically established that the petitioner

had consumed alcohol, and that he had misbehaved with the senior officers and had used unparliamentary/abusive and threatening language. It was also urged that the present incident of the petitioner was not a solitary incident, as he had been punished several times on previous occasions which have been detailed hereinabove and in the circumstances, the punishment of removal from service by the respondents was justified and thus cannot be held to be disproportionate.

16. The learned counsel for the respondents refuted the plea of the petitioner that he was not given the copy of the preliminary report. The counsel pointed out that the petitioner himself had admitted in his representation that he was given the copy of the preliminary report. Rather, he had stated that he was not given the copy of the statements recorded during the preliminary enquiry. The learned counsel for the respondents, Dr.Bhardwaj contended that the report of the preliminary enquiry, a copy of which was given to the petitioner, in fact, detailed the statements given by the various witnesses during the preliminary enquiry and in the circumstances, the petitioner cannot claim that he had been prejudiced in any manner. The counsel also pointed out that the petitioner did not even raise this plea in his appeal against the order of removal passed by the respondents, nor was any such plea has been raised by the petitioner in the writ petition. The learned counsel for the respondents also refuted the plea of the petitioner that there was no

sufficient evidence to hold that the petitioner had consumed liquor and had misbehaved. He relied on a decision of the Division Bench of this Court in W.P(C) No.8063/2011 titled as 'Om Prakash Rai v. Union of India & Ors' dated 12th December, 2011 holding that even if there was no medical evidence but if other cogent evidence is available of the witnesses from which it can be inferred that the delinquent had been under the influence of alcohol, the findings of the enquiry officer on the basis of such evidence cannot be held to be perverse nor can it be set aside on the ground that no evidence was available.

17. This Court has heard the learned counsel for the parties and have perused the record of the enquiry proceedings produced by the respondents. This Court has also perused the statements of witnesses recorded before the Enquiry Officer.

18. Regarding the plea of the petitioner that he was not allowed to cross examine the witnesses, from the perusal of the testimonies of the witnesses recorded before the Enquiry Officer, it is apparent that the petitioner did not cross-examine the witnesses, though the opportunity was given to him. The petitioner was also duly represented by a defense assistant. The petitioner had cross-examined only one witness, namely, Tulsi Ram, PW8. The other witnesses, PW-1 to PW-6 had deposed against the petitioner categorically stating that the petitioner had become violent and had even used abusive language. PW-1, J.S.Negi,

Assistant Commandant stated that the petitioner was making noise and abusing continuously in un-parliamentary language to his senior officers which had created a very bad scene at the Unit Lines where a large number of Unit personnel were staying. As he was creating nuisance, he was taken to the Police Station and he appeared under the influence of liquor. Sh.J.S.Negi deposed that the pistol in question was examined by the SHO of the Police Station, but he could not find out whether it was a country made pistol or a toy pistol. Thereafter, the petitioner had told the SHO that it was a toy pistol and the petitioner himself had displayed the operation of the same. Assistant Commandant, Sh.J.S.Negai, PW-1 also deposed that the SHO was satisfied with the explanation given by the petitioner, and had returned the pistol and sent the petitioner for medical examination. However, it is pertinent to note that even though the said witness had categorically deposed that the petitioner was under the influence of alcohol, and he had creating nuisance by using four letters expletives, however, still he was not cross-examined by the petitioner. The Enquiry Officer had even sought a clarification from Sh.J.S.Negi requiring him to specify the exact language used by the petitioner at that time, to which the Assistant Commandant deposed that the petitioner had stated, as to how he could have become an Inspector and that he would finish him and also abused him by using four expletive words which have been recorded verbatim in the statement of the PW-1. Regarding the petitioner being under the influence of liquor, when it was put to the

said witness that as per the medical report, there was no smell of alcohol, while on the other hand the said witness had deposed that he had consumed the alcohol, Mr.J.S.Negi, Assistant Commandant had deposed that when he had gone to "A" Company barrack and the petitioner was standing in front of him he smelled of alcohol. He also deposed that later on again in the presence of others when he continued to create a nuisance, he was still smelled of alcohol. According to the said witness, the medical examination was conducted very late, and, therefore, there is possibility that the smell of the alcohol had been over by that time. On behalf of the petitioner, however, his defense assistant did not refute the statement made by Sh.J.S.Negi, Assistant Commandant. It was also not put to him that the petitioner did not smelled of alcohol nor had any mala fides or bias had been attributed by the petitioner to the said witness. PW-2, Sh. B.N. Bej also reiterated and supported the statement of Sh.J.S.Negi, Assistant Commandant, PW-1 about the nuisance by the petitioner and the use of the four letters expletive used by him while abusing seniors, however, even the said witness was not cross-examined by the petitioner though the opportunity was given. The next witness PW-3 was Rudresh Kumar who categorically deposed that the petitioner had used four letters expletive against the Assistant Commandant and told him "Boss Banta Hai". He stated that the petitioner had assaulted him and since he resisted, a scuffle took place, when he saw the pistol lying near his bed, which he took and handed over to Sh. JS Negi. He had also

accompanied Assistant Commandant, Sh.J.S.Negi, and the petitioner to the Police Station. The said witness also was not cross-examined despite opportunity being granted to the petitioner. PW-4, B.Guruswamy, was categorical in deposing that the petitioner was intoxicated and he had threatened the Assistant Commandant with dire consequences by stating that “he will finish him”. He also reiterated the four letters expletive words used by the petitioner. Even to the said witness nothing was put in the cross-examination on behalf of the petitioner that the petitioner was not under the influence of liquor or that the witness has deposed falsely that the petitioner was under the influence of liquor or that he had been falsely implicated on account of some other prejudice or bias of the said witness or the other witnesses against him.

19. PW-5, Sh.Ram Kishore, only deposed about the pistol under the papers, whereas PW-6 Sh.S.V.Bhai, Assistant Commandant, deposed about the filthy language used by the petitioner while abusing the Inspector and the other officials in the presence of a large number of the personnel of the Unit. The said witness again was not cross-examined despite the opportunity given to the petitioner.

20. Though the petitioner had stated that he was under pressure, however, when the inquiry was shifted from Burnpur to Durgapur, on 31st December, 1996, the petitioner was again given another

opportunity to cross-examine PWs 1, 2 and 3, and therefore, he had nothing to fear or have any reason to feel pressurized. However, the petitioner did not avail the opportunity to cross-examine PW-1, Sh.J.S.Negi, Assistant Commandant, PW-2 Sh. B.N.Bej or PW-3 Sh.Ruddresh Kumar. Thus if these witnesses have deposed categorically that the petitioner was under the influence of liquor and have also given the explanation that when the medical examination was done after considerable time, the smell and effect of the liquor might have waned, then the deposition of these witnesses cannot be ignored. In any case, this Court in exercise of its power of judicial review does not have to re-appreciate the entire evidence and come to a different conclusion or inference even if they are feasible nor have to substitute the inferences drawn by the Enquiry Officer with its own inferences, unless and until there is any illegality, perversity or procedural impropriety on the part of the Enquiry Officer, or if the conclusions of the Enquiry Officer have been arrived without any material or document available on the record or the relevant documents had been ignored without any basis. However, the learned counsel for the petitioner is unable to show any relevant evidence which had not been considered by the Enquiry Officer or any documents which had not been considered by the Enquiry Officer while concluding that the charges against the petitioner were made out. Merely because at the time of the medical examination, which was admittedly done much later after the alleged incident, if the smell of alcohol was not deducted, it could not be

inferred that the petitioner was not under the influence of alcohol when he created the nuisance and abused the superior officials in the presence of the other personnel of the Unit. The enquiry officer in the facts and circumstances had considered the medical report which was also based on the observation of the medical officer about the smell of alcohol emanating from the petitioner and not on the basis of any test carried out on the petitioner detecting the extent of alcohol in his blood and other fluids. The enquiry officer after considering the statements of the witnesses whose testimonies remained unrebutted and the medical report has believed the testimonies of the witnesses and in the circumstances it cannot be contended on behalf of the petitioner that the findings of the enquiry officer are perverse or could not be arrived at by any ordinary person.

21. In the circumstances, the findings of the Enquiry Officer cannot be faulted on any of the grounds raised by the petitioner, nor is the petitioner entitled to contend that the Enquiry Officer has committed procedural irregularity in not allowing him to cross-examine the witnesses. From the record, it is apparent that the petitioner and his defense assistant was given ample opportunity to cross-examine the witnesses in Burnpur and even when the inquiry was shifted from Burnpur to Durgapur, however, it was not availed by the petitioner or his defense assistant. The plea of the petitioner that he did not cross-examine the witnesses at Burnpur on account of threat or pressure on

him also cannot be accepted in these circumstances. In WP(C) 8063 of 2011 titled as 'Ct.Dvr. Om Prakash Rai v. UOI' decided on 12.12.2011 it was held that the findings of the Enquiry Officer were based on the evidence of witnesses, whereby they had deposed both before the Court of Inquiry and the Enquiry Officer that they had found the delinquent smelling of alcohol which was also not refuted by cross examining those witnesses specifically on this point by the charged officer. It was further held that the said testimonies could not be disbelieved solely on the basis of endorsement on the medical certificate which was only based on the observation of the Doctor that the delinquent was not smelling of alcohol, since it wasn't on the basis of any tests carried out at the time of the medical examination to ascertain the extent of alcohol in the charged officer's blood and other bodily fluids.

22. In the circumstances, it is inevitable to infer that the findings of the disciplinary authority are based on cogent and reliable evidence holding that the charges against the petitioner are made out. In the disciplinary proceeding the charges imputed against a charged officer are not to be proved like it is during a criminal trial i.e. beyond all reasonable doubts. The Disciplinary Authority, on analysing the evidence and documents, is to arrive at a conclusion that there is a preponderance of probability in favour of the establishment of the charges on the basis of the material on record. While doing so, the Disciplinary Authority cannot take into consideration any irrelevant

fact, nor can it refuse to consider the relevant facts. Assumptions cannot be made by the Disciplinary Authority, nor can the burden be shifted, nor can the relevant testimonies of the witnesses be rejected only on the basis of surmises and conjectures, nor can there be an inquiry into an allegation with which the charge officer has not been charged with. The learned counsel for the petitioner has not been able to show any such irregularity in the reasoning of the enquiry officer and the disciplinary authority in the facts and circumstances.

23. The grounds on which administrative action is subject to control by judicial review are, "illegality"; "irrationality" and "procedural impropriety". This Court will not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held that on material, it is a decision "so outrageous" so as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist or are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the court has to find out if the authorities have left out any relevant factors or taken into account any irrelevant factors. It was held in (2006) 5 SCC 88,

M.V.Bijlani Vs Union of India & ors. that the judicial review is of the decision making process and not the re-appreciation of the evidence.

The Supreme Court in para 25 at page 96 had held as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. 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.

Similarly in (1995) 6 SCC 749, B.C.Chaturvedi v. Union of India & ors Supreme Court at page 759 has held as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in 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. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary

authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate 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 each case.

24. The learned counsel for the petitioner also contended that the petitioner was not supplied with the copy of the preliminary enquiry report and consequently the entire enquiry proceedings and the punishment imposed upon the petitioner are vitiated. Perusal of the record reveals that no such plea has been taken by the petitioner in the writ petition nor has it been alleged as to how the petitioner was prejudiced on account of the alleged non-supply of the copy of the preliminary report. In response to the charge memo dated 25th October, 1996, the petitioner had filed a reply dated 9th November, 1996. In the said reply, the petitioner did not raise the plea that he had not been supplied with the copy of the preliminary enquiry report and that he had been prejudiced on account of it. After the enquiry was conducted, a copy of the same was supplied to the petitioner and he was asked to give his reply to the findings of the enquiry officer's report. The petitioner had filed a reply dated 12th March, 1997 in which the

petitioner rather admitted that he had been provided with a copy of the preliminary enquiry report dated 16th September, 1996 contrary to the pleas raised on behalf of the petitioner that he was not supplied with the copy of the preliminary enquiry report. The petitioner in the said reply had, however, contended that though he was supplied with the copy of the preliminary enquiry report but he was not supplied with the copy of the statements of the witnesses which were recorded in the preliminary enquiry. As to what prejudice was caused to him, he contended that he could not judge as to whether the witnesses had actually deposed what was recorded by the Preliminary Enquiry Officer. The Disciplinary Authority had held that the deposition of all the witnesses were recorded in his presence during the regular enquiry as was in the preliminary enquiry report. The petitioner was given full opportunity during the regular enquiry to cross examine the said witnesses, however he did not cross examine any of the witnesses despite the opportunity given to him on the ground that he did not have the copies of the statements of the witnesses examined during the preliminary hearing. In any case, the enquiry officer while establishing the charges against the petitioner has not relied on any of the statements of any of the witnesses recorded during the preliminary hearing. In any case, since the copy of the preliminary enquiry report was given to the petitioner, solely on the basis of the allegation that he could not have know if the statements of the witnesses in the preliminary enquiry were recorded as given by them, it cannot be

inferred that it would have caused any prejudice to the petitioner. In the circumstances, it is difficult to infer that such prejudice was caused to the petitioner on account of non-supply of the copies of the statements the witnesses recorded during the preliminary enquiry, which were in any case not relied on or referred to by any of the authorities while establishing the charges against the petitioner, so as to vitiate the entire enquiry proceedings and the punishment awarded to the petitioner. The Supreme Court in *Union of India v. Alok Kumar*, (2010) 5 SCC 349, at page 379 had held that the prejudice should not be based on mere apprehension. The Supreme Court had held as under:

“89. The well-established canons controlling the field of bias in service jurisprudence can reasonably be extended to the element of prejudice as well in such matters. Prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion. It is important that the element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default which relates to statutory violations. It will not be permissible to set aside the departmental enquiries in any of these classes merely on the basis of apprehended prejudice.”

25. The case of *Shatrughan Lal & Ors.* (supra) relied on by the petitioner is apparently distinguishable. In the said case, the documents which were proposed in the charge sheet to be produced in the departmental proceedings as proof in support of the articles of charges were not supplied to the delinquent. It was also admitted by the authorities that the documents were not supplied to the delinquent and

they could be examined by him at any time. It was further noticed that the statements recorded during the preliminary enquiry were also not supplied to the delinquent. Thus, it was held that the copies of the documents relied upon in support of the charges must be supplied to the charged officer and that he ought to be given an opportunity to inspect them, as in this case the documents were voluminous. Regarding non-supply of the copies of the statement during the preliminary enquiry it was held by relying on *Kashinath Dikshita v. UOI & ors.* (1986) 3 SCC 229 that the non-supply of the documents relied on by the enquiry officer would vitiate the enquiry unless it is shown and established as a fact that the non-supply of copies of the documents had not caused any prejudice to the delinquent in his defence. Admittedly, in the case of the petitioner the copy of the preliminary enquiry report was supplied to him which also contains the gist of the statements made by the witnesses in the preliminary enquiry. The copies of all the documents relied in the charge sheet were also supplied to the petitioner. The petitioner however, has failed to establish as a fact that the non-supply of the full statements recorded during the preliminary enquiry has prejudiced him in any manner. What was stated by the petitioner was that he could not have known whether the depositions of the witnesses in the preliminary enquiry were correctly recorded or not. In any case, the statements of the witnesses in the preliminary enquiry had not been relied on by the respondents in establishing the charges against the petitioner. In reply to the charge

sheet, the petitioner did not demand that the copies of the statements recorded during the preliminary enquiry should be given to him and that he had been prejudiced in any manner on account of it. The petitioner has also not averred in the writ petition as to how he had been prejudiced on account of the non-supply of the copies of the statements recorded during the preliminary hearing even though a copy of the preliminary enquiry report was supplied to the petitioner. The case as relied on by the petitioner is apparently distinguishable and relying on the ratio of the same, it cannot be held that in the case of the petitioner the enquiry proceedings and the punishment awarded to the petitioner are to be vitiated. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the factual situation and circumstances in the two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.* (AIR 2004 SC 778) had held that a decision cannot be relied on without considering the factual situation. In the said judgment, the Supreme Court had observed as under:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it

may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59), the Supreme had observed:-

"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

26. It is also pertinent to note that the petitioner had admitted his guilt before the Criminal Court and he was punished for the same. Therefore, the petitioner cannot be allowed to plead now that he admitted his guilt because he could not have contested the case on account of his postings and various other factors as alleged by him. The learned counsel for the petitioner has not been able to show any rule or precedent holding that if a delinquent is punished by a Criminal Court, then he cannot be punished for the same misconduct on his part, by the Department in the disciplinary proceedings. The plea to this effect in the facts and circumstances cannot be accepted.

27. The plea of the petitioners that the punishment imposed upon him is disproportionate to the charges proved against him also cannot be accepted in the facts and circumstances. The misconduct for which

the petitioner has been punished is not the solitary incident. The respondents have taken into consideration his previous record before awarding the punishment. There is application of mind in the facts and circumstances, by the respondents and it cannot be held that the punishment has been awarded without considering the relevant factors. In the circumstances, the petitioner has not been able to make out a case of disproportionate punishment awarded to him.

28. For the foregoing reasons and in the totality of facts and circumstances the petitioner has failed to make out a case of illegality, irrationality or perversity in the actions and decisions of the respondents so as to require any interference by this court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and is liable to be dismissed. The writ petition is therefore, dismissed. Parties are however, left to bear their own costs.

ANIL KUMAR, J.

APRIL 9, 2012
'k'

SUDERSHAN KUMAR MISRA, J.