

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : January 17, 2013*
Judgment Pronounced on : February 07, 2013

+ **WP(C) 969/2011**

NATIONAL INSTITUTE OF FASHION
TECHNOLOGY

.....Petitioner

Represented by: Mr.K.B.Upadhayay, Advocate.

versus

UOI & ANR.

..... Respondents

Represented by: Ms.Sweety Manchanda and

Mr.Puneet Siddhartha, Advocate for R-1.

Ms.Jyoti Singh, Sr.Advocate instructed by Ms.Tinu

Bajwa and Ms.Saahila Lamba, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. In the year 1986 the respondent No.2 joined National Institute of Fashion Technology i.e. the petitioner as an Assistant Registrar.
2. On December 16, 2004 a charge memo was issued to him alleging as under:-

“Article of Charge – I

That Shri O.P. Sharma while functioning as Dy. Registrar (Administration), NIFT, New Delhi, during 1997, had raised a debit note dated 30th July, 1997 which is reproduced below:

“An amount of ₹17,45,126/- (Rupees Seventeen lakhs forty five thousand and one hundred and twenty six only) was spent by NIFT New Delhi on account of payment towards purchase of Steam Finishing Systems (RAMSONS). This amount has to be divided among 5 NIFT Centres at Chennai, Calcutta, Mumbai, Gandhinagar and Hyderabad. The share for your Branch works out to ₹3,49,025.50 (Rupees Three lakhs forty nine thousand twenty five and paise twenty only)”

The above debit note does not indicate the File and the authority who approved the raising of the debit note. Moreover the said debit note does not indicate the number, type, quality and specifications of the Steam Finishing Systems which had been supposedly purchased for the NIFT Centres by the Head Office. Again the relevant vouchers/bills of purchase, the mode of sending the systems to the Centres have also not been sought. Moreover excepting NIFT Centre Chennai, the other 4 Centres at Kolkata, Hyderabad, Mumbai and Gandhinagar have not apparently received the same. These irregularities apart, the NIFT Centres at Kolkata, Hyderabad, Gandhinagar have stated that neither the debit note nor the item Steam Finishing Systems (RAMSONS) as mentioned in the debit note have been received by them. Thus Shri O.P. Sharma, has not only committed gross procedural irregularities and shown gross negligence as well as lack of devotion of duty but has also been instrumental for the non-availability of the said items and causing wrongful loss to NIFT. Shri O.P. Sharma has, in the process, violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article of Charge – II

That Shri O.P. Sharma while functioning as Dy. Registrar (Administration), NIFT, New Delhi, during 1997, had raised a debit note dated 30th July, 1997 which is reproduced below:

“An amount of ₹13,01,825/- (Rupees Thirteen lakhs one thousand eight hundred twenty five only) was spent by NIFT New Delhi on account of payment towards purchase of Specialized Industrial Sewing Machines. This amount has to be divided among 5 NIFT Centres at Chennai, Calcutta, Mumbai, Gandhinagar and Hyderabad. The share for your Branch works out to ₹2,06,365/- (Rupees Two lakhs six thousand three hundred sixty five only)”

The above debit note does not indicate the File and the authority who approved the raising of the debit note. Moreover the said debit note does not indicate the number, type, quality and specifications of the Specialized Industrial Sewing Machines which had been supposedly purchased for the NIFT Centres by the Head Office. Again the relevant vouchers/bills of purchase, the mode of sending the systems to the Centres have also not been sought. Moreover excepting NIFT Centre Chennai, the other 4 Centres at Kolkata, Hyderabad, Mumbai and Gandhinagar have not apparently received the same. These irregularities apart, the NIFT Centres at Kolkata, Hyderabad, Gandhinagar have stated that neither the debt note nor the item Specialized Industrial Sewing Machines have been received by them. Thus Shri O.P. Sharma, has not only committed gross procedural irregularities and shown gross negligence as well as lack of devotion of duty but has also been instrumental for the non-availability of the said items and causing wrongful loss to NIFT. Shri O.P. Sharma has, in the process, violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article of Charge – III

That Shri O.P. Sharma while functioning as Dy. Registrar (Administration), NIFT, New Delhi, during 1997, had raised a debit note dated 30th July, 1997 which is reproduced below:

“An amount of ₹2,08,827/- (Rupees Two lakhs eight hundred twenty seven only) was spent by NIFT New

Delhi on account of payment towards purchase of the Cutting Room Equipments. This amount has to be divided among 5 NIFT Centres at Chennai, Calcutta, Mumbai, Gandhinagar and Hyderabad. The share for your Branch works out to ₹41,565.40 (Rupees Forty five thousand five hundred sixty five and paise forty only)”

The above debit note does not indicate the File and the authority who approved the raising of the debit note. Moreover the said debit note does not indicate the number, type, quality and specifications of the Cutting Room Equipments which had been supposedly purchased for the NIFT Centres by the Head Office. Again the relevant vouchers/bills of purchase, the mode of sending the systems to the Centres have also not been sought. Moreover excepting NIFT Centre Chennai, the other 4 Centres at Kolkata, Hyderabad, Mumbai and Gandhinagar have not apparently received the same. These irregularities apart, the NIFT Centres at Kolkata, Hyderabad, Gandhinagar have stated that neither the debt note nor the Cutting Room Equipments, Spares and Peripherals have been received by them. Thus Shri O.P.Sharma, has not only committed gross procedural irregularities and shown gross negligence as well as lack of devotion of duty but has also been instrumental for the non-availability of the said items and causing wrongful loss to NIFT. Shri O.P. Sharma has, in the process, violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Articles of Charge – IV

Shri O.P. Sharma while functioning as Dy. Registrar (Admin.), NIFT, New Delhi during 1996-97 had placed an Order No.NIFT Gen. 1/95 dated 6th August, 1996 to M/s Uniastrum Impex, 1305, Hemkunt House, 6 Rajendra Place, New Delhi – 110 008 for the supply of specialized Industrial Sewing Machines. The said order was placed on the basis of a Proforma Invoice No.101 dated 12.07.96 which has been placed on record, though it bears no diary number of NIFT. Further no record exists to show that

prior approval of competent authority was obtained before placing the said order. Again no purchase procedure was apparently followed and no tender was floated to secure competitive rates for the benefit of NIFT.

Thus Shri O.P. Sharma has committed gross procedural irregularities and has also been instrumental for extending undue pecuniary favor to the said M/s Uniastrum Impex. In the process Shri Sharma has conducted himself in a manner unbecoming of a NIFT Officer and has failed to maintain devotion to duty and absolute integrity and thus violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.”
(Emphasis Supplied)

3. The statement of imputation of misconduct in support of the charges reads as under:-

“Article I

During the process of reconciliation of inter Centre transfer of Assets and funds it came to the notice of NIFT that the accounts of 5 NIFT Centres at Kolkata, Chennai, Gandhinagar, Mumbai and Hyderabad stand debited on account of goods purchased by the NIFT Head Office at New Delhi and transferred to the said NIFT Centres. The debit notes raised in support of the transfers by the Head Office were found to be lacking in showing details of vouchers and bills as also quantity and quality of goods supposed to have been purchased and transferred to the Centres. The debit notes also did not indicate the reference file number which could have facilitated locating the files and finding the administrative approval and not available in Asset register or Stock register to reconcile the debit notes with actual purchases made. Moreover gate passes showing the inward and outward movements of the goods mentioned in the debit notes are also not available. What is striking is that though the debit notes were supposed to have been sent to the 5 NIFT Centres, as it appears from the debit note issued to NIFT Centre at Chennai, the other 4 NIFT centres have not confirmed the receipt of the same and apparently these Centres did not receive these debit notes. The debit note mentioned in the Article of Charge – I not only suffers from the deficiencies mentioned above but also did not seek

acknowledgment of receipts of the same by the Centres to whom these were addressed. The deficiencies in the debit note constructively constitute gross negligence of duty and gross procedural irregularities. Moreover, the NIFT Centres at Gandhinagar, Hyderabad and Kolkatta have stated that they have not received the said debit note or vouchers and bills in support of the debit note. More importantly they have stated that they did not receive items viz. Steam Finishing Systems as mentioned in the debit note. Accordingly it is apparent that the items have been misappropriated and wrongful loss has been caused to NIFT. Shri O.P. Sharma, who had raised the debit note in question did not follow even normal procedures and has thus acted negligently and to the detriment of the interest of NIFT. The non-receipt of goods mentioned in the debit note by the 3 NIFT Centres mentioned above show that the goods have been misappropriated and Shri O.P. Sharma is responsible for the said misappropriation directly and/or he has facilitated the misappropriation to say the least and has thus caused wrongful loss to NIFT. Shri Sharma has conducted himself in a manner unbecoming of a NIFT Officer and a public servant and has failed to maintain devotion to duty and absolute integrity, thus attracting the mischief of Rule 3 of CCS (Conduct) Rules, 1964.

Article IV

In course of reconciliation of inter centre transfer of assets it came to the notice of NIFT that large scale purchases had been made in 1996 which mostly has been transferred subsequently to new NIFT centres and debit notes have been raised much later. The scrutiny of a few such purchases revealed that Shri O.P. Sharma Dy. Registrar (NRC), NIFT, New Delhi had placed orders for purchase of specialized Industrial Sewing Machines as detailed below on M/s Uniastrum Impex, 1305, Hemkunt House, 6 Rajendra Place, New Delhi – 110 008 vide the order No.NIFT/Gen.1/95 dated 6th August, 1996.

S. No.	ITEM	QTY.	UNIT RATE	AMOUNT US \$
--------	------	------	--------------	-----------------

			US \$	
1.	EASTMAN MODEL 629 Blue Steak – II Straight Knife Cutting Machine 8”	5	1680.00	8400.00
2.	KM MODEL RS100 Round Knife Cutting Machine Hand-held	5	431.00	2155.00
3.	BROTHER MODEL DB-II B 737-413/ES 40 Single Needle Lockstitch With UBT & Control Panel	5	1738.00	8640.00
4.	BROTHER MODEL DB-II B 771-3 Single Needle Lockstitch with Needle Fee and Side Cutting Mechanism	5	3600.00	18000.00
	Total			37195.00

(Rupees Thirty Seven Thousand One Hundred and Ninety Five only)

The said firm was an agent of the principal supplier, M/s Wealthy Dragon Company, Hong Kong. A Proforma Invoice No.101 dated 12.07.1996 was placed in records though the same does not bear any diary number of NIFT and in the absence of diary number it is difficult to trace how, when and who received the same in NIFT and placed it in the records. In the said proforma invoice the reference number are written by hand as shown below:

Yours ref. No.: “TO WEALTHY DRAGON”

Our Ref. No.” “KIND ATTN. ALLAN”

It may not be a matter of mere coincidence that the handwriting bears a close resemble to that of Shri O.P. Sharma himself. Further there was nothing on record to show that appropriate purchase procedure namely call of tenders, constitution of a tender committee, approval of

the accepting authority and the like was followed. Available papers do not indicate whether the approval of competent authority was obtained prior to the placing of the order by Shri O.P. Sharma. Shri Sharma has seemingly acted in gross abuse of official powers and against prudent norms of procurement of store items. The items so purchased also do not figure in the Asset Register and this assumes potent significance when viewed in the context that some of the NIFT Centres have now reported that such items have not been either recovered by them or can be matched by them against the debit notes raised by Shri O.P. Sharma. The needle of suspicion pointed towards Shri Sharma for not only showed undue favor to M/s Uniastrum Impex in the matter of purchase of Industrial Sewing Machines but also in subsequent non availability and non accountal of some of these items by certain New NIFT Centres.

Thus the aforesaid acts of omission and commission by Shri O.P. Sharma clearly shows gross negligence, abuse of power, flouting of the established or prudent norms of purchase and financial transactions. In the process Shri Sharma has failed to maintain devotion to duty and absolute integrity and thus violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.”

(Emphasis Supplied)

(We are not noting the statements of imputation of misconduct in support of charges II and III for the reason charges I, II and III leveled against the respondent No.2 are near identical, the only difference being in the amount and item mentioned in the debit note(s) which form the subject-matter of said 3 charges)

4. Respondent No.2 denied the charges and the Disciplinary Authority appointed an Inquiry Officer to record evidence and submit a report. Six witnesses were examined by the department at the inquiry and we proceed to briefly note such relevant admissions or statements of

fact deposed to by the witnesses which have a material bearing on the charges.

5. Pradeep Kumar Jha SW-1, Accounts Officer, NIFT, Gandhinagar deposed that the debit note(s) dated July 30, 1997 issued by the respondent No.2 were not received at NIFT centre at Gandhinagar.

6. It would be relevant to note following portion of the deposition of the witness:-

“Examination-in-Chief

Q 2 - What is a debit note and what details are required to be recorded in the debit note?

SW-1: If an organization does some favour to other organization in monetary terms a debit note is raised by the first organization on the other. The debit note must contain details/specifications, copy of invoices with it.

Q 3 - Who issues a debit note?

SW-1 Accounts Department of the first organization who has spent on behalf of the other organization.

Cross Examination

Q 3 - Please peruse the debit note and tell us to whom it is addressed to and what direction it contains?

SW-1 Although the debit notes are addressed to NIFT, Chennai, however, in the debit note it is mentioned that the items procured were for all the NIFT centres. As far as directions are concerned, there is no specific direction in the debit notes. It seems just an intimation.

Q 4 – In one of your answers to PO’s question you have described the debit note in detail as an accounts expert. In the event of receipt of so called debit note not in conformity to the specifications described by you. What action you as an Accounts Officer will take on such a communication?

SW-1 I would intimate the HQ regarding the discrepancy and request them to send the desired specification/details for proper accounting treatment.

Q 5 – Till such time the discrepancies pointed out by you in the debit notes to the HQs are resolved or answered to, will you take cognizance of the faulty communication (debit note) in your books of accounts?

SW-1 No, till I have satisfied myself regarding the procedural formalities I would not take these entries into our accounts.

Q 6 - Some machines and equipments mentioned in the debit notes were sent to your centre in 1996. At what time will you take these machines in your fixed asset register?

SW-1 As soon as I receive the value of the assets with details like copy of invoices, I will take these machines into our accounts book, after properly verifying the same with the existing physically available assets.

Q 7 – This precisely means that dispatch/receipt of goods at the centre has no direct linkage with the issue of the debit note?

SW-1 Yes, precisely for taking into account the same at fixed assets register.

Q 14 – As an accounts officer you control receipt and release of payments of your centre what are the mandatory checks that you will ensure while processing at payment proposals/release of the payment to the supplier?

SW-1 First of all I will check whether prior approval of the competent authority has been obtained before incurring the expenditure. Then, I will verify whether the items have been received or not and proper entries are made in the stock register or not.

Q 16 – Please tell in specific as to the gain that an officer issuing a debit note will draw by withholding the same.

SW-1 An officer can gain if the all or some of items mentioned in the debit notes are not physically transferred to the centre.

Q 17 – Payment to the suppliers is released on the basis of the approval of the competent authority, receipt of the goods in good condition. In what way, therefore, an officer who has not purchased the items will gain through the debit note communication issued after one year gap of the procurement of the goods?

SW-1 If the officer is not involved at all with the purchases and merely issuing debit notes I don't think he will be able to gain anything. Whether he is accounts officer or chief accounts officer or any officer.

Q 18 – As Deputy Registrar, NRC I did not have any financial or administrative delegation of authority. All the powers wrested in Executive Director (Ex.D-3) of the institute. Under such a situation if DR, NRC sends you a file recommending release of ₹10 lakhs to M/s XYZ for purchases of machines etc. will you honour the proposal?

SW-1 No, if the approval of the competent authority is not there in the file I will not honour the proposal.

Q 23 Please once again go through the contents of the debit note and tell us whether the document is an instrument of sale, purchase withdrawal of cash remittance of money?

SW-1 No.

Re-Examination

Q 6 - When you were in Head Office who was authorized to deal with bank and opening of L/C etc.?

SW-1 As far as I remember the Chief Accounts Officer and the then Consultant, Projects, were authorized to deal with bank and opening of L/C."

(Emphasis Supplied)

7. And we would simply highlight that from the answer given to question No.3 the witness brings out that the so called writings of the second respondent which were labeled as '*debit notes*' were not debit notes but were mere intimations.

8. D.Gopala Krishna SW-2, Accounts Officer, NIFT, Mumbai deposed that the debit note(s) dated July 30, 1997 issued by the respondent No.2 were not received at NIFT centre at Mumbai. It would be relevant to note following portion of the deposition of the witness:-

“Examination-in-Chief

Q.2 - What is a debit note and what details are required to be recorded in the debit note?

SW-2: A debit note is a written order expressed in terms of money issued by one office to the other for the expenditure incurred on behalf of the other. The debit note should be signed by the authorized official of the accounts department and all the relevant supporting documents such as administrative approvals, purchase orders, copy of invoices, acknowledgement of receipt of goods should be enclosed.

Q 3 - Who issues a debit note?

SW-2 The person who incurs the expenditure on behalf of other for official purpose.

Cross Examination

Q.4 – You have exhaustively defined the debit note in one of your replies to the PO, is it because the three debit notes did not fall within the definition of the debit note, the three debit notes were not given cognizance and did not find place in the books of accounts?

SW-2 No.

Q.5 – Please peruse the debit note and tell us what direction in note?

SW-2 The debit notes are communicating the share of expenditure of Chennai Centre on account of purchase of steam finishing systems (RAMSONS), specialized industrial sewing machines, cutting room equipments, spares and peripherals.

Q.6 Does the above communication (debit note) directs you for any action on your part i.e. to debit or credit?

SW-2 The issue of debit note implies that the account was already debited in the books of HO.

Q.7 In one of your answers to PO'S question you have described the debit note in detail as an accounts expert. In the event of receipt of so called debit note not in conformity to the specification described by you. What action you as an Accounts Officer will take on such a communication?

SW-2 I would intimate the HQ regarding the discrepancy and request them to send the desired specification/details for proper accounting treatment.

Q.8 - Till such time the discrepancies pointed out by you in the debit notes to the HQs are resolved or answered to, will you take cognizance of the faulty communication (debit note) in your books of accounts?

SW-2 No, till I have satisfied myself regarding the procedural formalities I would not take these entries into our accounts.

Q.9 - Some machines and equipments mentioned in the debit notes were sent to your centre in 1996. At what time will you take these machines in your fixed asset register?

SW-2 In 1996.

Q.10 – This precisely means that dispatch/receipts of goods at the centre has no direct linkage with the issue of the debit note?

SW-2 No, it has got direct linkage with the issue of debit note since the acknowledgment from the Centre would be the base for issuance of the debit note.

Q.19 – As an accounts officer you control receipt and release of payments of your Centre what are the mandatory checks that you will ensure while processing at payment proposals/release of the payment to the supplier?

SW-2 First of all I will check whether prior approval of the competent authority has been obtained before incurring the expenditure. Then, I will verify whether the items have been received or not and proper entries are made in the stock register or not.

Q.20 – Please tell in specific as to the gain that an officer issuing a debit note will draw by withholding the same.

SW-2 No comments.

Q.21 – Payment to the suppliers is released on basis of the approval of the competent authority, receipt of the goods in good condition. In what way, therefore, an officer who has not purchased the items will gain through the debit note communication issued after one year gap of the procurement of the goods?

SW-2 If the purchasing officer and the officer responsible for issue of debit note is not the same then there might not be any gain.

Q.22 - As an officer I did not have any financial or administrative delegation of authority. All the powers wrested in Executive Director (Ex.D-3) of the institute. Under such a situation if DR, NRC sends you a file recommending release of ₹10 lakhs to M/s XYZ for purchases of machines etc. will you honour the proposal?

SW-2 The files received with the approval of the competent authority for release of payments would be processed.

Q.23 Please once again go through the contents of the debit note and tell us whether the document is an instrument of sale, purchase withdrawal of cash remittance of money?

SW-1 No.” *(Emphasis Supplied)*

9. And relevant would it be to state that even as per said witness, though not received at Mumbai, the so called communications sent by the second respondent were not debit notes.

10. M.Muthukumar SW-3, Accounts Officer, NIFT, Chennai deposed that the debit note(s) dated July 30, 1997 issued by the respondent No.2 were received at NIFT centre at Chennai. It would be relevant to note following portion of the deposition of the witness:-

“Examination-in-Chief

Q 2 – What is a debit note and what details are require to be recorded in the debit note?

SW-3 If an organization does some favor to other organization in monetary terms a debit note is raised by the first organization on the other. The debit note must contain details/specifications, copy of invoices with it.

Q 3 –Who issues a debit note?

SW-3 Authorized person of Accounts Department of the first organization who has spent on behalf of other organization.

Q 4 – Did you receive the machines in question i.e. the machines as per the details in the said debit notes?

SW-3 As intimated earlier debit notes did not contain any supporting bills/invoices, it is not possible to say the same machines indicated in the debit note. But we received machines.

Cross Examination

Q 2 – Please peruse the debit note and tell us to whom it is addressed to and what direction it contains?

SW-3 The debit note addressed to NIFT Chennai. It says that the share of the expenditure incurred on machines for the Centres.

Q 4- Please tell us by perusing Ex.S-1 which is a debit note whether the document is an instrument of cash transactions, sales, dispatch of goods or purchase?

SW-3 This debit note says that the expenditure incurred by the headquarters have been transferred to centres.

Q 5 – This means that the document is only an internal communication and any flaw detected at any point of time can be correct?

SW-3 Only issuing authority/the competent authority for issue a debit note can do any modification.

Q 14 – Some machines and equipments mentioned in these debit notes were sent to your centre in 1996. At what time will you take these machines in your fixed assets register?

SW-3 The Centre maintained only stock register. After receipt of the machines and satisfaction of the condition of the machines the entries were made in the stock register.

Q 15 – This precisely means that dispatch/receipt of goods at the centre has no direct linkage with the issue of the debit note?

SW-3 Since the debit note and receipt of the machine were not in same time there is no direct linkage.

Q 17 – As an accounts officer you control receipt and release of payments of your Centre what are the

mandatory checks that you will ensure while processing at payment proposals/release of the payment to the supplier?

SW-3 First of all I will see approval of the competent authority regarding purchases, after verifying the receipt of condition of the machines before the payment proposal is processed.

Q 18 – Please tell in specific as to the gain that an officer issuing a debit note will draw by withholding the same.

SW-3 No comments.

Q 19 – Payment to the suppliers is released on basis of the approval of the competent authority, receipt of the goods in good condition. In what way, therefore, an officer who has not purchased the items will gain through the debit note communication issued after one year gap of the procurement of the goods?

SW-3 A debit note is only an internal communication for purchase of materials I will not think so any gain on this.

Q 20 - As an officer I did not have any financial or administrative delegation of authority. All the powers wrested in Executive Director (Ex.D-3) of the institute. Under such a situation if DR, NRC sends you a file recommending release of ₹10 lakhs to M/s XYZ for purchases of machines etc. will you honour the proposal?

SW-3 No.

Q 24 Please once again go through the contents of the debit note and tell us whether the document is an instrument of sale, purchase withdrawal of cash remittance of money?

SW-3 No.”

(Emphasis Supplied)

11. And relevant would it be to note that even as per said witness, the so called debit note purporting to emanate from the second respondent were not debit notes but were intimations.

12. Satyapal Singh SW-6, Accounts Officer, NIFT, Hyderabad deposed that the debit note(s) dated July 30, 1997 issued by the respondent No.2 were not received at NIFT centre at Hyderabad. It would be relevant to note following portion of the deposition of the witness:-

“Examination-in-Chief

Q 2 – What is a debit note and what details are required to be recorded in the debit note?

SW-6 Debit note is a debit advise issued by one office to other office. Debit note should have details of expenditure incurred by one office on behalf of other office in terms of money.

Q 3 – Who issues a debit note an accounts person or a person of administrative wing?

SW-6 Accounts department.

Q 9 – When all required documents are not found with a debit note received are these entered in books of accounts or fixed asset register? As an Accounts Officer what action shall you take immediately after receiving such debit note?

SW-6 I will request to HO to submit all the required documents before making entry in the fixed asset register as well as books of accounts.

Q 14 – What are the general checks about matching the specifications ordered for/purchased and the payment for which is to be made by you as an accounts officer?

SW-6 On receipt of technical inspection report from indenting department/using department and certification of indenting department stated that quantities are received in good condition and as per our requirement/description

as per purchased order and also verification of the fixed assets register/stock register whether entries are made, if yes, payment can be processed.

Q 15 – In your answer to the question no.2 above you have described about the debit note. Is it like a cheque transfer / DD transfer involving money transfer towards the cost of machines purchased or a dead document?

SW-6 It is a expenditure incurred by one office towards revenue expenditure/capital expenditure on behalf of other office and the same is being debited in favor of other office through debit note in terms of money only.

CROSS EXAMINATION

Q 1 Please peruse Ex.S-1 and tell us the directions or instructions this document contains.

SW-6 This is a debit advice for expenditure incurred on procurement of capital items on behalf of the NIFT centre.

Q 2 - Does it directs you to debit or credit your books of accounts? Please be specific as to the para or line of the text of this letter which asked you to take action.

SW-6 Yes. Debit note implies that expenditure incurred by HO on behalf of the centres.

Q 3 - Which department of the HQ will debit the expenditure?

SW-6 Accounts departments of HQ.

Q 4 – Upon receipt of S-1 (Debit advice) which is not supported with any documents and is also not signed by an official of accounts and the language is also not according to the definition of the debit note that you have given. What action as an Accounts Officer will you initiate on such a paper.

SW-6 I will request to the concerned for required documents of such debit notes.

Q 8 – When the HQs procures an item for the Centre, the account of the centre is debited by HO. However, the entry in the books of the accounts at the centre will not reflect any credit unless debit note directions confirming to the specifications that you described will be received. Under these circumstances what impact non-receipt of an incomplete or faulty internal communication (Ex.S-1/1-3) can have in your account?

SW-6 A credit entry in the books of centres will not reflect unless reconciliation of account of HO/centres are not carried out on non receipt of debit note.

Q 16 – Please tell in specific as to the gain that an officer issuing a debit note will draw by withholding the same.

SW-6 I can't say.

Q 17 – As an officer I did not have any financial or administrative delegation of authority. All the powers vested in Execute Director (Ex.D-3) of the institute. Under such a situation if I send a file recommending release of ₹10 lakhs to M/s XYZ for purchase of machines etc. will you honour the proposal as an accounts officer.

SW-6 No.” *(Emphasis Supplied)*

13. And relevant would it be to note that even as per said witness what was received were not debit notes but simply intimations of payments to be made pertaining to certain purchase orders.

14. M.N.Pradhan SW-5, Registrar, NIFT, Kolkata deposed that the debit note(s) dated July 30, 1997 issued by the respondent No.2 were not received at NIFT centre at Kolkata. It would be relevant to note following portion of the deposition of the witness:-

“EXAMINATION-IN-CHIEF

Q 2 – What is a debit note and what details are required to be recorded in the debit note?

SW-5 A debit note is a letter of expression for transfer of money from one office to another in connection with expenditure incurred by an office on behalf of the other office.

Q 3 – Who issues debit note an accounts person or a person of administrative wing?

SW-5 Generally an accounts person.

Q 16- In your answer to the question no. 2 above you have described about the debit note. As per your answer it is a transfer of money with reference to expenditure by one office on behalf of another office. Is it transfer of funds or expenditure already made? Is it like a cheque transfer/DD transfer involving money transfer towards the cost of machines or a dead document?

SW-5 Issue of debit note means transfer of money has been taken place from the books of account.

CROSS EXAMINATION

Q 1 – Please peruse Ex.S-1/1-3 and tell us the directions or instructions this document contains. Please tell in specific which part of the text gives you directions to take an action on debit or credit?

SW-5 This is regarding transfer of money from HQ to five NIFT Centres on account of payment towards purchase of machineries. There is no specific direction for debit or credit except the subject as debit note.

Q 2 – Please peruse Ex.S-1 in context with your definition of a debit note. What action will you take on this communication?

SW-5 One should ask for supporting documents for taking further action.

Q 8 - When the HQ procures an item for the Centre, the account of the centre is debited by HO. However, the entry in the books of the accounts at the centre will not reflect any credit unless debit note directions confirming to the specifications that you described will be received.

Under these circumstances what impact non-receipt of an incomplete or faulty internal communication (Ex.S-1/1-3) can have in your account?

SW-5 The centre does not take cognizance unless supporting documents are received.

Q 15 – Who passes a debit or credit entry in the books of accounts and what are the basis of making such entries? Can it be done merely on informatory communication (Ex. S-1) which neither carries directions nor is supported by any document?

SW-5 Entries are done on the basis of the debit notes issued by the competent authority and supported by the documents.

Q 17 – Please peruse Ex.S-1/1-3 and tell us whether the document is an instrument of cash or bank transaction?

SW-5 The document is neither cash nor bank transaction. It is meant for transfer of fund from book of accounts of one office to another.

Q 19 – Each year internal audit and CAG audit is conducted at the institute. Till 2003 no audit party has reported any anomaly with regard to the issue of debit note/machines. When and how did you detect the alleged discrepancy?

SW-5 As replied earlier the issue came to the knowledge of Centre in June 2004.” *(Emphasis Supplied)*

15. And relevant would it also be to highlight that even as per said witness a debit note would be a document pursuant where to a debit entry has to be made in the books of account.

16. S.Basu SW-6, Accounts Officer, NIFT, Kolkata deposed that the debit note(s) dated July 30, 1997 issued by the respondent No.2 were

not received at NIFT centre at Kolkata. It would be relevant to note following portion of the deposition of the witness:-

“EXAMINATIONIN-CHIEF

Q 2 – What is a debit note and what details are required to be recorded in the debit note?

SW-4 A debit note is a written order expressed in terms of money issued by one office to the other for the expenditure incurred on behalf of the other. The debit note should be signed by the authorized official of the accounts department and all the relevant supporting documents such as administrative approvals, purchase orders, copy of invoices, acknowledgment of receipt of goods in good condition should be enclosed.

Q 3 – Who issues a debit note an accounts person or a person of administrative wing.

SW-4 An accounts person.

CROSS EXAMINATION

Q 1 – Please peruse Ex. S-1 and tell us the directions or instructions this document contains.

SW-4 The document intimates towards purchase of specialized industrial sewing machines on behalf of five NIFT centres at Chennai, Kolkata, Mumbai, Gandhinagar and Hyderabad.

Q 10 – As an accounts officer you control receipt and release of payments of your centre what are the mandatory checks that you will ensure while processing payment proposals/release of the payments to the supplier correlating the items in the debit notes?

SW-4 First of all I will see whether there is approval of the Competent Authority is available. Further, I will see check the availability of purchase order, material receipt note, invoices, certificates about receipt of material in good condition.

Q 23 – Each year internal audit and CAG audit is conducted at the institute. Till 2003 no audit party has

reported any anomaly with regard to the issue of debit note/machines. When and how did you detected the alleged discrepancy?

SW-4 Any audit party whether it is CAG or internal can raise objection about anything comes under their purview at any point of time. However, with regard to issue debit notes and machines discrepancies were detected as per the minutes of the 63rd extraordinary meeting of the Board of Governors of NIFT held on 1.9.2005 at NIFT Campus, New Delhi.”

(Emphasis Supplied)

17. In the written brief submitted by him to the Inquiry Officer, the respondent No.2 admitted that the so called debit notes Ex.S-1 to Ex.S-3 dated July 30, 1997 and the purchase order dated August 6, 1996 (documents forming subject-matter of the charges leveled against the respondent No.2) were raised/issued by him. In his defence, the respondent No.2 primarily contended that:- (i) the depositions of the witnesses examined by the department clearly bring out that the documents Ex.S-1 to Ex.S-3 dated July 30, 1997 cannot be termed as ‘debit notes’ for the same merely intimates the NIFT centre at Chennai that the Head Office had purchased some equipments/machines for said centre; (ii) even if it is assumed that the documents Ex.S-1 to Ex.S-3 dated July 30, 1997 were debit notes, the depositions of the witnesses of the department establish that no wrongful loss whatsoever was caused to NIFT because the said debit notes were raised by respondent No.2 inasmuch as neither an entry was made in the books of accounts by any of the centre of NIFT nor any payment made by NIFT on the basis of said debit notes; (iii) the depositions of the witnesses examined by the department to the effect that the person who was not involved in the purchase of the machines/equipments forming subject-matter of the

WP(C) 969/2011

debit notes in question would not have gained anything by issuing said debit notes goes a long way in establishing the innocence of the respondent No.2 when seen in the light of the fact that the respondent No.2 was not involved in the purchase of machines/equipments forming subject-matter of the debit notes in question; (iv) the respondent No.2 who was working as a Deputy Registrar at the relevant time had no financial powers and thus could not have played a role in the purchase of the machines/equipments; (v) the purchase order dated August 6, 1996 was issued by the respondent No.2 after obtaining the approval of the competent authority, which fact can be discernible from the circumstance that the payment was made to the supplier by way of a Letter of Credit, which Letter of Credit could have been opened by the Bank only on the instructions of authorized person i.e. the competent authority; (vi) the payment proposals/purchase orders issued in respect of the machines/equipments forming subject-matter of the debit notes in question were kept in File No.New NIFT/Gen/1/96, copy of which file was not provided to the respondent No.2 in spite his request for the same. The action of the department in not providing said file to the respondent No.2 has greatly prejudiced the defence of the respondent No.2 inasmuch as had said files been shown to him he could have established that he was not involved with the purchase of machines/equipments in question; (vii) the action of the department of not providing the copies of the audit reports prepared by the Comptroller of Auditor General (CAG) in respect of all centers of NIFT between the years 1995 – 2003 to the respondent No.2 in spite of his request for the same has greatly prejudiced the defence of the respondent No.2 for said reports would have established that no anomaly whatsoever was

WP(C) 969/2011

detected by the CAG with respect to the debit notes/machines in question and thus no irregularity whatsoever was committed by the respondent No.2; and (viii) the machines/equipments forming subject-matter of the charges leveled against the respondent No.2 were received at the respective 6 centres of NIFT.

18. Vide his report dated October 28, 2005, the Inquiry Officer has held that the department has succeeded in establishing the first three charges levied against the second respondent. In said regards, it would be relevant to note following portion of the report of the Inquiry Officer:-

“The controversy on the meaning of a Debit Note seems to have been unnecessarily created by the CO. From the depositions of witnesses and other available records, it is clear that a Debit Note is an instrument issued by one office to another office for the expenditure incurred by the first office on behalf of the second office. First the expenditure has to be accounted for in the accounts of the first office. When a Debit Note is raised it comes in the books of accounts of the second office also. The Debit Note should be signed by an authorized official of the accounts department and supporting relevant documents such as administrative approvals, purchase orders, invoices etc should be enclosed with the Debit Note. Dictionary meaning (a Debt or something due, as an entry on the debit side of an account) of the word Debit will also clarify the meaning of a Debit Note.

The misconduct alleged in the charge sheet was detected after a gap of about 8 years when the reconciliation of Head Office and Branch Office was carried out. The Audit reports also pointed out discrepancies on this account. Unless there are entries in the books of accounts and relevant files and documents are examined by the auditors, specific (pinpointed) observations by the audits are not possible. The audit can make comparisons based on the records made available to them. According to the

PO accounts department of HO was not aware of the Debit Note in question and CO has also stated in his brief that copies were not marked to the accounts. All the witnesses were very clear about the importance of a Debit Note they also stated that the Debit Note signed by the CO will not be taken into account because it did not specify the goods and was not supported by the relevant documents and as such no entries could be made in the books of accounts on basis of such a document. Above all when a Debit Note is not received in 4 out of 5 centres, there was no question of taking the Debit Note in books of accounts. It seems that it was a mere chance that a copy of the Debit Note was available at Chennai. Chennai Centre has also clarified (Ex.S-2) that the machinery received at Chennai was accounted against the Debit Note dated 31.3.1997 issued by Mr.NS Kuppaswamy and not against the Debit Note signed by the CO. Despatch register of Head Office of the relevant period and receipt register of Kolkata show that the Debit Note was not received at Kolkata.

From the above account following **conclusions** are drawn:

That the three Debit Notes have been issued by the CO without authority is proved beyond doubt. The very fact of issuing these Debit notes; the contention of the CO at one time that the Debit Notes are merely an intimation and not an instrument of account, first de-linking any machineries from the Debit Notes and then making effort to explain their receipt at the centres, the non-receipt of Debit Notes at 4 centres and non-receipt of machineries etc at all the 5 Centres, the invoices of M/s Ramsons available in defence documents; the dispatch/receipt and assets registers and availability of purchase order signed by the CO (Ex.S-4) relating to Article-IV of charge; the CO being in charge of all matters regarding opening of new branches of NIFT as per Ex.D-8/1 clearly shows that there was preponderance of probability of mala-fide intentions on the part of the CO with respect to the

misconduct as stated in Articles I, II and III of the charges.”
(*Emphasis Supplied*)

19. With respect to charge No.1V leveled against the respondent No.2, the Inquiry Officer held as under:-

“From the imputation of misconduct, statement of prosecution witnesses, and the written brief of the CO it is clear that the CO had signed the purchase order at Ex.S-4/1-5 while he was not competent to issue this purchase order. The Ex.S-3 and S-4 in any way do not show that there was any tender inquiry. There is no mention of NIFT letter, which could indicate that quotation were invited in this case. The CO was in-charge of all matters regarding opening of new branches of NIFT as per Ex.D-8/1 and as such must be having considerable influence in deciding the actions, such as purchases, relating to the new Centres. Some other points mentioned in the imputation could not clarified by the prosecution but the witnesses have stated that they have not received the machines at their Centres. The imputation of misconduct refers to non-availability and non-accountal of some of these items by certain new Centres. Thus other charges mentioned in the Article-IV of Charge cannot be established beyond doubt.

In view of the above the Article 4 of the charge is partly proved.”

(*Emphasis Supplied*)

20. The report of the Inquiry Officer was forwarded to the Disciplinary Authority who accepted the findings of the Inquiry Officer with respect to charges I, II and III leveled against the respondent No.2. With respect to charge IV, the Disciplinary Authority sent the invoice dated July 12, 1996 to the Forensic Science Laboratory. In said regards, the Government Examiner of Questioned Documents submitted a report

opining that the handwriting contained in the invoice dated July 12, 1996 matched with that of respondent No.2.

21. Based on the report of the Government Examiner of Questioned Documents, the Disciplinary Authority recorded a note of disagreement dated April 21, 2006 disagreeing with the finding of the Inquiry Officer with respect to charge IV leveled against the respondent No.2 and called upon the respondent No.2 to respond to the said note of disagreement. The respondent No.2 did not respond to the aforesaid note of disagreement.

22. Vide order dated May 24, 2006 the Disciplinary Authority held that all the 4 charges leveled against the respondent No.2 have been proved and imposed the penalty of dismissal from service upon him.

24. Aggrieved by the order dated May 24, 2006 passed by the Disciplinary Authority, the respondent No.2 preferred an appeal before the Appellate Authority, which was dismissed vide order dated March 12, 2007.

25. Aggrieved by the order dated March 12, 2007, the respondent No.2 filed a review petition before the Reviewing Authority, which was dismissed vide order dated April 28, 2008.

26. It would be relevant to note the following portion of the order dated April 28, 2008 passed by the Reviewing Authority:-

“5. The grounds on which the appellant has sought review of the appeal and para-wise findings on his averments are as follows:

Contention : The appellant has pleaded that the main case file in which the procurement of material in question for NIFT Centres was dealt which is file NO NEW NIFT/GEN/I/96 which was not provided by the DA. In

the absence of original records how could DA accuse an officer of receiving or not receiving of goods. The appellate authority has ignored this vital and paramount material while disposing of his appeal which has ultimately lead to denial of justice and so this request for review of this decision.

Findings: It is a fact that files No. New NIFT/Gen/I/96 Vol I and noting portion pertaining to Vol. II was not available. The appellant Sh. O.P. Sharma was the concerned dealing officer of the file referred by him in his appeal. There is no record to show that he ever handed over the file to any officer of NIFT.

Contention: The appellant contended that the fact that DA deliberately withheld the release of permitted defence documents namely the main file dealing with the issue of procurements, and also the office order prescribing the procedure for issue of debit note prove beyond doubt the malafide intentions of DA in proceeding against the applicant as no reasonable person shall first accuse and then convict the accused for an offence which never took place.

Findings: As has been stated earlier, it is a fact that files No. New NIFT/Gen/I/96 Vol I and noting portion pertaining to Vol. II is not available in the office. The appellant was the concerned dealing officer of the file referred by him in his appeal. There is no record to show that he ever handed over the file to any office of NIFT.

Contention: Further the documentary and oral evidence prove beyond doubt that the debit notes as per Exhibit S1, S2 & S3 were issued by him addressed to the Chennai centre on the format as per prevalent practice. Receipt of this debit note has been acknowledgment by Chennai centre and also the material i.e. machines etc. Hence one fails to understand where is the irregularity.

Findings: In response to the averments made by the appellant in this para it is stated that in his deposition (SW3), Sh.Muthukumar, Accounts Officer, NIFT Chennai has no where stated that the Chennai centre received the machines as per the details given in the debit notes in question. Sh. Muthukumar, Accounts Officer confirmed receipt of debit note only. He never stated that the machines mentioned in the debit note were received in the Chennai Centre. In fact, all the Accounts Officers in their deposition before inquiry officer have confirmed non-receipt of the machinery in their centres.

(Emphasis Supplied)

27. Aggrieved by the aforesaid, the respondent No.2 filed a petition under Article 226 of the Constitution of India before this Court reiterating the contentions advanced by him in the written brief submitted by him to the Inquiry Officer, which petition subsequently got transferred to the Central Administrative Tribunal, Principal Bench, New Delhi.

28. Accepting the contentions advanced by the respondent No.2, vide impugned judgment dated February 2, 2011, allowing the Original Application filed by the respondent No.2 and setting aside the orders dated May 24, 2006, March 12, 2007 and April 28, 2004 passed by the Disciplinary, Appellate and Reviewing Authorities respectively, the Tribunal directed the petitioner to reinstate the respondent No.2 in service with all consequential benefits. In coming to said conclusion, considerable emphasis were placed by the Tribunal upon the facts that:-
(i) there was a delay of 8 years in initiating the disciplinary inquiry against the respondent No.2 inasmuch as the incident in question pertained to the year 1996-1997 whereas inquiry was initiated against the respondent No.2 only in the year 2004 and (ii) the documents which

had a material bearing on the defence of the respondent No.2, particularly file No.New NIFT/Gen/I/96 were not provided to the respondent No.2, thereby prejudicing the defence of the respondent No.2.

29. Aggrieved by the impugned judgment dated February 2, 2011 passed by the Tribunal, the petitioner has filed the present petition under Article 226 of the Constitution of India.

30. The petition was taken up for hearing on January 17, 2013, on which date the matter was reserved for judgment. The counsel for the petitioner was permitted to file brief written synopsis listing the submissions and case law relied upon by the petitioner. Oral hearing was declined since it was noticed that the counsel for the petitioner was seeking repeated adjournments which were being more than liberally granted.

31. A perusal of the written synopsis filed by the counsel appearing for the petitioner reveals that following 9 submissions have been advanced by the petitioner to assail the legality of the impugned judgment dated February 2, 2011 passed by the Tribunal:-

A That while passing the impugned judgment the learned Tribunal failed to appreciate that the record of the present case revealed that between the years 1995-1996 and 1997-1998 the respondent No.2 had placed several orders for purchase of machines/equipments without any authority/power.

B That the learned Tribunal failed to appreciate that the audit report prepared by the CAG for the year 1996-1997 is in teeth to the contention advanced by the respondent No.2 that no anomaly was detected by the CAG in the debit notes/ machines in question. In said regards, strong
WP(C) 969/2011

reliance was placed upon paras 3 and 10 of the audit report prepared by the CAG.

C That the learned Tribunal committed an illegality in not attaching due importance to the findings of the Inquiry Officer who after minutely scrutinizing the evidence appearing on record and other facts and circumstances of the case concluded that the charges I, II and III leveled against the respondent No.2 have been proved.

D That the learned Tribunal committed an illegality by failing to note the facts that the respondent No.2 was instrumental in getting released the payment to the supplier of the machines which form the subject-matter of the debit notes in question as also in obtaining clearance from the custom authorities in respect of said machines, which facts conclusively establish the guilt of the respondent No.2.

E That the learned Tribunal failed to appreciate that the report prepared by the internal auditors of NIFT clearly indicted the respondent No.2 of the charges leveled against him.

F That the finding of the Tribunal that there was a delay of 8 years in initiating an inquiry against the respondent No.2 is fallacious for the reason the fraud in question was discovered by the NIFT only in the year 2001-2002 when the internal auditors of the NIFT conducted an audit and discovered the fraud in question.

G That while examining the issue of not providing documents to the respondent No.2 the Tribunal ought to have appreciated that the said documents were not available with NIFT requiring an adverse inference to be drawn against the respondent No.2 for disappearance of said documents inasmuch as respondent No.2 was custodian of said

documents in the year 1996-1997 and could have benefitted by the disappearance of the said documents.

H That the impugned judgment passed by the Tribunal is contrary to the settled legal position that it is not for the courts to interfere in with the decision(s) of the departmental authorities so long as the inquiry conducted against the delinquent employee was fair and proper and the decisions of the departmental authorities was based on due consideration of evidence.

I That the respondent No.2 had committed various irregularities in the past, in respect whereof departmental as also criminal proceedings were instituted against him.

32. From a perusal of the contents of the charges, statement of imputation of charges and other circumstances appearing on record, it is evident that the case set up by the department against the respondent No.2 with respect to charges I, II and III was that the respondent No.2 had issued debit notes dated July 30, 1997 (3 in number) based whereon entries regarding the delivery of the machines/equipments forming subject-matter of said debit notes were made in the books/registers of all the 5 NIFT centres and payments were released to the suppliers of said machines/equipments, which caused 'wrongful loss' to the NIFT inasmuch as said machines/equipments were never received at the centres of NIFT.

33. We pause here for a moment.

34. The charges I, II and III leveled against the respondent No.2 record that the debit notes dated July 30, 1997 were never received at the NIFT centre at Mumbai, Kolkata, Hyderabad and Gandhinagar and were only received at NIFT centre at Chennai. Furthermore, the charges

record that the machines/equipments forming subject-matter of the debit notes were received at Chennai. In that view of the matter, the sending of debit notes in question by the respondent No.2 at the NIFT centre in Chennai could not have caused any 'loss' at said centre, for the reason the machines/equipments forming subject-matter of debit notes were received at said centre. As regards other 4 centres of NIFT, we fail to understand that as to how the respondent No.2 could be linked to non-availability of machines/equipments forming subject-matter of debit notes at said centres, when the debit notes in question were never received at the said centres and no payments were released pursuant to said debit notes.

35. But more fundamental than that is a matter of significance which emanates from the testimony of the 6 witnesses examined by the department at the inquiry all of whom have unanimously deposed that neither any entries in the books/registers of the NIFT centres nor any payment could have been made on the basis of the so called debit notes issued by the respondent No.2. The witnesses have further deposed that that the so called debit notes issued by the respondent No.2 had no linkage whatsoever with the delivery of the machines/equipments forming subject-matter of the so called debit notes in question. Such being the position, we fail to understand the 'wrongful loss' caused to the NIFT by the respondent No.2 by issuing the so called debit notes in question. We find that that the Inquiry Officer as also the departmental authorities have not applied their mind to this aspect of the matter, in spite of the respondent No.2 repeatedly drawing their attention to the depositions of the witnesses of the department.

36. The record would bring out that what the department was labeling as debit notes were mere intimations sent by the second respondent to the various centres of NIFT that at the headquarters decisions have been taken to purchase machinery for the centres and that orders had been placed on the suppliers named. Needless to state, issue of making payment and raising of debit notes were admitted by the witnesses as within the power of the officers in the Account Office; and admittedly the second respondent was not in the Accounts Office.

37. Above being the position, we find merit in the contention raised by respondent No.2 that the action of the petitioner of not providing him with the documents sought by him such as purchase orders, payment proposals etc, particularly the file No.New NIFT/Gen/I/96 has greatly prejudiced the defence of the respondent No.2 for the reason had said documents been provided to him the respondent No.2 could have demonstrated that he had no role to play in the purchase of machines/equipments forming subject-matter of the so called debit notes in question and thus had nothing to gain by issuing said so called debit notes which in fact are mere intimations. In said regards, we find no merit in the contention advanced by the petitioner that the respondent No.2 could possibly be behind the disappearance of said documents from NIFT being the custodian of said documents at some point of time. There is not even an iota of evidence on record to suggest that the respondent No.2 was behind the disappearance of the documents sought by him to establish his defence. Surmises and conjectures cannot be a substitute for proof.

38. As regards charge IV, the defence projected by the respondent No.2 was that he had merely placed the purchase order dated August 6, WP(C) 969/2011

1996 after obtaining the approval of the competent authority. It was further his case that the payment in respect of the machines forming subject-matter of purchase order dated August 6, 1996 was under a Letter of Credit which could have been opened by the bank only on the instructions of a competent person, which facts clearly establish that the competent authority had approved the purchase of machines forming subject-matter of the purchase order dated August 6, 1996. In order to prove his defence, the petitioner sought copies of the approval of the competent authority for purchase of the machines forming subject-matter of the purchase order dated August 6, 1996 as also documents relating to opening of the Letter of Credit, which documents as per the petitioner were kept in the file No.New NIFT/Gen/I/96. As already noted hereinabove, the department did not provide said file to the respondent No.2 on the ground that the said file is not available with the department and thus it is apparent that prejudice has been caused.

39. In view of the failure of the department to provide file No.New NIFT/Gen/I/96 to the respondent No.2 which has prejudiced his defence coupled with the fact that the Letter of Credit for making payment in respect of the machines forming subject-matter of the purchase order dated August 6, 1996 could have been opened only on the instructions of the competent authority, the benefit of doubt should be extended to the respondent No.2 and he ought to be exonerated with respect to charge IV framed against him.

40. Having carefully perused the orders passed by the departmental authorities, we find that there is a complete non-application of mind by the departmental authorities regarding the contentions advanced by the respondent No.2. Take for instance, in dealing with the contention

advanced by the respondent No.2 that no loss was caused by the respondent No.2 by sending the debit notes dated July 30, 1997 at the NIFT centre at Chennai for the machines/equipments forming subject-matter of said debit notes were received at NIFT centre at Chennai, it has been held by the Reviewing Authority that the machines/equipments forming subject-matter of the debit notes in question were not received at NIFT centre at Chennai. This finding by the Reviewing Authority that the machines/equipments forming subject-matter of the debit notes in question were not received at NIFT centre at Chennai is clearly fallacious for the reason the charges I, II and III leveled against the respondent No.2 itself record that the machines/equipments forming subject-matter of the debit notes in question were received at NIFT centre at Chennai.

41. We are fully conscious of the legal position that the courts should not lightly interfere with the decision of the departmental authorities. However, it is equally settled that the courts can interfere with the decision of the departmental authorities where the departmental inquiries have been held against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode on inquiry or where the findings or conclusions reached by the departmental authorities are based on no evidence or perverse or such which no prudent person would have reached. In the present case, we can safely conclude that no prudent person could have reached the conclusion that the respondent No.2 is guilty of charges leveled against him.

42. Regarding the last submission advanced by the petitioner, suffice would it be to state that past record of the respondent No.2 has no

relevance in the present case, particularly when no charge was made regarding his past conduct in the charge memo issued to him and additionally for the fact that whatsoever bad may be the past conduct, unless for the present charges he was indicted, no penalty could be levied upon the respondent.

43. The writ petition is accordingly dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 07, 2013
dk