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

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Date of Decision: 29.07.2019

% **W.P.(C.) No. 8043/2019**

RATI PAL SAROJ

..... Petitioner

Through: Mr. Shanker Raju with Mr. Nilansh
Gaur, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mrs. Suparna Srivastava with Ms.
Nehul Sharma, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

C.M. No. 33335/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C.) No. 8043/2019

1. The petitioner has preferred the present writ petition to assail the order dated 10.09.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in O.A. No. 419/2013. The

Tribunal has rejected the said Original Application preferred by the petitioner, wherein he had assailed the inquiry proceedings and the consequent punishment order of dismissal from service inflicted upon him. The charge sheet issued to the petitioner contained the following charge:

“ARTICLE I

That Shri Rati Pal Saroj, while functioning as section officer/ Under Secretary in the Union Public Service Commission, New Delhi during the period 1985-86, with the help of other officials of the Union Public Service Commission, substituted fresh written answer sheets of General Studies Papers I & II, answer books of History Paper II and Philosophy Papers I & II for the Civil Services (Main) Examination held in 1985 and obtained very high marks with the result that he was selected and delivered appointment letter dated 31.7.1986 by the Central Government for the post in the Indian Administrative Service Group ‘A’ service for which he could not otherwise have been selected.

Shri Rati Pal Saroj by his above acts exhibited lack of integrity and conduct unbecoming of a Government Servant, thereby violating Rule 3 of the Central Civil Services (Conduct) Rules, 1964.”

2. He has been found guilty of the said charge and, accordingly, dismissed from service.
3. The first submission of Mr. Raju is that the memorandum of charge had not been approved by the competent authority, namely the Prime Minister of India before its issuance. In this regard, he places reliance on the decision of the Supreme Court in **B.V. Gopinath & Ors. v. Union of**

India & Ors., (2014) 1 SCC 351. The Tribunal has dealt with this submission of the petitioner from paragraph 18 onwards of the impugned order. The Tribunal takes note of the fact that a comprehensive note was submitted for the approval of the Prime Minister. Paragraph 10 and 11 of the note prepared by the Desk Officer on 28.09.1989 mention the drafts of the sanction order for prosecution of the petitioner, and the charge sheet for initiation of departmental proceedings, and states that they are based on facts mentioned in the SP's report and that they appear to be in order. Paras 10 and 11 of the said note read as follows:

“10. The drafts of the sanction order for prosecution of Shri Rati Pal Saroj and chargesheet for initiating departmental proceedings against him are based on the facts mentioned in the SP's report and appear to be in order.

11. The case may be submitted to the Prime Minister through MOS(PP) for soliciting his approval to the prosecution as well as initiation of major penalty proceedings against Shri Saroj. Approval of the Prime Minister is also solicited for appointment of Inquiry Officer and Presenting Officer in case Shri Saroj denies the charges against him.”

4. The Tribunal also takes note of the fact that the said note states in final paragraph 10, as follows:

“10. Orders of Prime Minister as Minister inCharge of the Department is solicited for the following:-

(1) To initiate major penalty proceedings against Shri Ratipal Saroj under Rule 14 of the CCS (CCA) Rules, 1965 on the following charge:

(a) That while functioning as Under Secretary in the Union Public Service Commission, New Delhi during the period 1985-86, with the help of other officials of UPSC substituted three answer sheets of General Studies Papers I & II, answer papers History Paper I & II and Philosophy Papers I & II for the Civil Services (Main) Examination held in 1985 and obtained very high marks with the result that he was selected and delivered appointment letter dated 31.7.86 by the Central Government to the Indian Administrative Service, for which he could not otherwise have been selected. Shri Saroj by his above act exhibited lack of integrity and conduct, unbecoming of a Government servant thereby violating Rule 3 of the CCS (Conduct) Rules, 1966.

(2) Sanction to prosecute Shri Ratipal Saroj under different Sections of the IPC and the Prevention of Corruption Act for entering into a criminal conspiracy with employees of the Union Public Service Commission, New Delhi with the object of cheating the UPSC, as well as Central Government, by corrupt or illegal means, or by abusing the official position of the accused public servants.

11. Prime Minister may therefore kindly approve; i) Major Penalty Proceedings under Rule 14 of the CCS (CCA) Rules, 1965 against Shri Ratipal Saroj, ii) Appointment of Inquiry Officer and Presenting Officer, and iii) Accord sanction for prosecution under Section (19) (a) (a) of the Prevention of Corruption Act, 1988 and under Section 197 of Cr.PC.”

5. The submission of Mr. Raju is that the approval of the charge is not the same as approval of the charge sheet, which is mandatorily required under Rule 14(2) of the CCS CCA Rules.

6. A comparison of the article of charge contained in paragraph 10 of the note prepared by the Desk Officer dated 29.09.1989, with the statement of articles of charge framed against the petitioner, shows that the same is

identical. The requirement of Rule 14 of the CCS CCA Rules is only that the Disciplinary Authority should examine, and be aware of the nature of the charge in respect whereof it is proposed to hold a departmental enquiry against the delinquent officer. He should apply his mind while granting sanction/ approval to initiation of disciplinary proceedings. In the present case, the approval of the Hon'ble Prime Minister was obtained on the Article of charge set out the note dated 29.09.1989, and the charge sheet issued to the petitioner also relates to the same charge. Moreover, the note of the Desk Officer is noted by the Tribunal to be comprehensive, and it is not the case of the petitioner that the said note was not comprehensive. He has not even produced the said note before us, though, it appears that the said note was placed on the record of the Tribunal. That being the position, we do not find any merit in the first submission of Mr. Raju that the decision in ***B.V. Gopinath*** (supra), as understood by this Court in ***Suresh Sharma v. NTRO Through its Chairman & Ors.***, W.P.(C.) No. 3937/2017, decided on 18.08.2017, has not been followed.

7. Mr. Raju submits that based on the same allegation, the petitioner was subjected to a criminal trial and he has been acquitted by the Trial Court. He submits that the said decision of the Trial Court has attained finality. He submits that since the Criminal Court has not found the petitioner guilty, he could not have been found guilty in the departmental proceedings on the identical charge.

8. Firstly, we may observe that it is well settled that the standards of proof required in relation to criminal proceedings, and in relation to

departmental enquiries, are substantially different. Whereas, the charge has to be proved beyond reasonable doubt in criminal proceedings, the standard of proof required in departmental enquiries is based on preponderance of probabilities. Therefore, it is possible that the same evidence may lead to acquittal of the delinquent officer in criminal proceedings, while it may lead to a finding of guilt in the departmental proceedings. It is only in those cases, where the Criminal Court returns a clear finding of fact on the substance of the charge in favour of the accused, and gives him a clean acquittal, that the findings of fact returned by the Criminal Court may be relied upon by the delinquent officer in the departmental enquiry.

9. In the present case, the findings returned by the Trial Court show that the petitioner has been acquitted by giving him the benefit of the doubt, and not by way of a clean acquittal. There is no finding of fact returned by the Trial Court that the concerned answer books of the petitioner were not tampered with. In fact, even the Trial Court finds that the concerned answer books of the petitioner were having the peculiar features which the enquiry officer has found as relevant to hold the petitioner guilty. The Trial Court finds that there is tampering in the answer sheets. However, the Trial Court gave the benefit of the doubt to the petitioner on the basis of the testimonies of the witnesses that there was irregularity in the matter of binding of the answer sheets in the examination in question. In paragraph 53 of the decision rendered by the Trial Court it, inter alia, observed:

“ So in the light of Statement of PW17 and PW,35.this court is of the view that It will not be safe to give much credence to the difference of staple wire as noted by the expert

in the answer sheets of GS I and II in his report Ex. PW29/19 and Ex. PW29/28.”

10. Thus, there is no merit in the submission of Mr. Raju that the acquittal of the petitioner barred the finding of guilt of the petitioner in the Departmental enquiry.

11. At this stage, we may also take note of the statement of imputation of misconduct or misbehaviour in respect of the articles of charge framed against the petitioner. The said statement reads as follows:

1. That Shri Rati Pal Saroj joined the Union Public Service Commission, New Delhi as Section Officer in the month of February, 1983. He was working as Under Secretary in the Union Public Service Commission during the period 1985-86.

2. That prior to joining the Union Public Service Commission he appeared in Civil Services Examination in the years 1981, 1982. After joining the service he also appeared in the said examination in 1983, 1984 and 1985.

3. That Shri Rati Pal Saroj, while working in the Union Public Service Commission developed intimacy/ friendship with UPSC employees i.e. Inder Nath Uppal, Jug Lal, Radhey Shyam, B.S. Negi, Pramod Behari Mathur, Des Raj Chug and others.

4. That Shri Inder Nath Uppal was working as Assistant in the Union Public Service Commission under Shri Rati Pal Saroj. Shri Jug Lal was working as a Section Officer, Confidential Section VI, Shri Pramod Behari Mathur was working as Section Officer, Confidential Section IX, Shri Des Raj Chug was working as Assistant, Confidential Section V. Shri B.S. Negi was working in Confidential Section VII and Shri Radhey Shyam was working as LDC/ Record Keeper, UPSC, during the period 1985-86.

5. *That Shri Rati Pal Saroj while working in the UPSC appeared in the Civil Services (Main) Examination 1985. His Roll No was 137936. He had taken 3 subjects having two separate papers of each i.e. (1) General Studies Papers I & II (2) History Papers I & II and (3) Philosophy Papers I & II. The examinations were held between 22.11.85 to 17.12.85.*

6. *That the General Studies Paper I was dealt within Confidential Section VI where Shri Jug Lal was Section Officer General Studies Paper II was dealt with in Confidential Section IX where Shri Pramod Behari Mathur was Section Officer, History Papers I & II were dealt with in Confidential Section VII where Shri B.S. Negi was working as dealing Assistant and Philosophy Papers I & II were dealt with in Confidential Section V where Shri Des Raj Chug was working as Assistant. All these persons had access to the answer books received in their respective Sections from different examination centres. They were processing these answer books by sending them to examiners for evaluation and on receipt, they were processing the same for tabulation of the marks for each candidate.*

7. *That Shri Rati Pal Saroj picked up some blank answer sheets/ answer books from the examination hall of UPSC where the same were lying scattered during examination period. He also managed to get the copies of model answers of GS Papers I & II prepared by the head examiners for evaluation of answer books by examiners with the help of accused Shri Jug Lal and/ Pramod Behari Mathur.*

8. *That Shri Rati Pal Saroj prepared a fresh answer of all the questions of General Studies Papers I & II on sheets which he had picked up from Examination Hall, with the help of model answers, various books and notes. He substituted the original script i.e original answer sheets with subsequent written fresh answer sheets of General Studies Papers I & II with the help of Section Officer Shri Jug Lal and Shri Pramod Behari Mathur. After substituting fresh written answer sheets of both papers and placing the same within*

original cover of answer books Shri Shri Rati Pal Saroj destroyed the original answer sheets subsequently.

9. That Shri Rati Pal Saroj with the help of Shri Inder Nath Uppal contacted Shri B.S. Negi of Confidential Section VII where History Papers I & II were dealt with. Shri Saroj prepared a fresh answer of all required questions of History Paper II with the help of various notes after its examination was over and managed to substitute the entire answer book after removing the original answer book of History Paper II with the help of Shri B.S. Negi and I.N. Uppal and destroyed the original script subsequently.

10. That the examination of Philosophy Papers I & II were over on 13.12.1985. The answer books were received in Confidential Section V where these answer books were processed. Shri Rati Pal Saroj first tried to substitute fresh written answer books of both papers with the help of Section Officer Shri K. Gopal Krishnan Nair but he was refused. Thereafter Shri Rati Pal Saroj with the help of one Shri Radhey Shyam contacted Shri Des Raj Chug who was working in Confidential Section V where Philosophy Papers I & II were dealt with. Shri D.R. Chug had access to all answer books of Philosophy Papers I & II. Shri Rati Pal Saroj prepared answers of all questions afresh and substituted the same in place of original answer books with the help of Shri Des Raj Chug.

11. That after evaluation of the answer books by the different Examiners the same were received in the respective Sections and tabulation of marks was done. Shri Rati Pal Saroj obtained very high marks. He qualified in the written test and thereafter he faced the interview for personality test. The merit list was prepared and Shri Rati Pal Saroj was recommended for the post of IAS Group 'A' Service to the Ministry of Personnel Public Grievances & Pension, Shri Rati Pal Saroj was offered appointment letter by DDP vide letter No. 13013/4/86-IAS (1) dated 31.7.1986 for the post of IAS Group 'A' Service.

12. That Shri Rati Pal Saroj had given carpet to Shri Jug Lal, Shri Inder Nath Uppal and Shri DesRaj Chug for their help in substituting the said answer sheets/ answer books. Shri Rati Pal Saroj had also helped Shri Jug Lal in getting telephone connection and in purchasing Refrigerator.

13. That Shri Rati Pal Saroj with the help of above said persons changed the original scripts by substituting a fresh written answer sheets with the result that, he obtained very high marks in Civil Services (Main) Examination, 1985 and was offered a post of IAS Group 'A' Service for which he was not capable.

14. Shri Rati Pal Saroj by his above acts, exhibited lack of integrity and conduct unbecoming of Government servant thereby violating Rule 3 of the Central Civil Services (Conduct) Rules, 1964. (emphasis supplied)

12. Thus, the substance of the allegation against the petitioner was that while he was serving with the UPSC as an Under Secretary, he appeared in the Civil Services Examination, inter alia, in 1985. Taking advantage of his employment with the UPSC and his friendship and intimacy with a few named employees, he manipulated his answer sheets and replaced the sheets in the answer books of some of the papers that he appeared in.

13. To prove the charge, the respondents relied upon the reports prepared by the CFSL after forensic examination of the answer sheets of the petitioner. The CFSL found that the answer sheets had been tampered with in as much, as, the inner sheets had been replaced. This conclusion was drawn upon close examination of the staple marks; the punch marks; the glue used in the answer sheets for binding; as well as the difference in the printed answer sheets.

14. The enquiry officer who found the petitioner guilty of the charge framed against him has examined the answer sheets of the petitioner relating to the different subjects wherein he appeared. The assessment of evidence, as found in the enquiry report is telling, and reads as follows:

“Assessment of Evidence

5.1.1 General Studies (GS1)

Selected pages of Bharat 84 and Model Answers of GS 1 are on record. It is observed that

*(a) CO has written 8 points in answer to Q 3 (a) (S 1/1-2) and 6 points in answer to Q 4(a) (S 1/5) covering more than one written page each. **Answers are in the same sequence and are copy / extract of the text about 'Lalit Kala Academy' and 'Sangeet Natak Academy' at pages 93-94 & page 95 of Bharat 84 (S 34/1-2).** CO has argued that he had been studying the publication since 78, has gifted faculty to memorise and had qualified 6 times out of 7 times (that he had appeared) in the exam. **This argument for almost exact reproduction of contents of the book, that too in the same sequence, is not convincing. Instead, it is likely that CO would have reproduced the answers with the aid of the book.***

*(b) (i) CO has written about Nalanda, Ellora, Ajmer, Mahabalipuram, Wardha in answer to Q 3(b) covering one written page. **It is in the same sequence as given in Model Answers of GS Paper I of CS(M) exam 85 (S 59/4-5) and his answer is extract in Hindi of answers given in the Model Answers.***

(ii) CO has written about one page each in answers to Q 3(C) (S 1/3) and Q 3(d) (S 1/4) these are extract from Model Answers (S 59/5 & S 59/5-6).

Arguments of CO that model answers were in English and it could not be copied in Hindi is not convincing. Above discussion in respect of Q 3(b), Q 3(C) and Q 3(d) clearly indicate that answers have been extracted from Model Answers. CO has not given reasons for similarities between his answer and Model Answers. There can't be any reason for the similarity other than CO having copied extracted from the Model Answers. It is further supported by the deposition of Sh. Udai Vir Singh (SW 21), the examiner, who has stated 'seems or appears to have been copied'

5.1.2 General Studies II (GS II)

Selected pages of Bharat '84 are on record. It is observed that

On S 2/5 & S 2/7, CO has answered as

'Ayog kee sifarishon aur un par kee gayee karyawhi ke barey mein vistrut gyapan sansad ke dono sadanon ke samachch rakhe jate hain. Samvidhan lagu honey ke bad se 8 vitt ayog banaye gaye hain'

'1954 kee ati bhishan badh ke bad yeh avashyak samajaha gaya ki badh niyahtran ke prayason ko suniyojit karyakram ke adhar par tej kiya jaye. Tadnusr 1954 mein Rashtriya Badh Niyantran Karyakram arambh kiya gaya. Karyakram ko teen bhagon mein banta gaya: Tatkalik, laghu avadhi aur deerghavadhi. Tatkalik karyakram teji se akaren sankalit karne aur badh niyantran ke tatkal upay karane ke liye tha. Lagh avadhi Karyakarm Dwitiya Panchavanrshiya Yojana ke sath – sath chala aur wah tatbandhon ke nirman, kuch kasbon kee rachcha, gramon ko uncha uthane adi ke liye tha. Deerghavadhi Karyakarm jalasayon ka nirman karane pahale kiye gaye kamon ke labhon ko stthirata pradan karane tatha tatbandh nirman aur nadi jal nikashi adi kamon ke liye tha'

It is exact reproduction of para written on page 265 and 364-365 of Bharat 84 (S 35/2).

Arguments of CO mentioned above in case of GS I does not convincingly explain as to how verbatim reproduction of text from Bharat' 84 could be possible. It is clear that CO has written answers with the aid of the book.

5.1.3 History II

Selected pages of Aaj ka Bharat, Asia Ka Adhunik Itihas, Adhunik Bharat, Adhunik Bharat ki Samajik Prisht Bhoomi and Bhartiya Dharam Evam Sanskriti are on record. It is observed that CO has written in answer to Q 4 as 'Asthai Jamindari bandobast ka uddesya England ke dhang par jamindaron ka ek aisa naya barg taiyar karna tha jo angreji raj ke liye samajik adhar ka kam kare. Angrejon. ne yeh mahusoos kiya ki unki sankhya kaffee kam hai aur unki ek vishal abadi par apna adhipatya kayam rakhna hai. Is liye apni satta banaye rakhne ke liye unhon ne ek aisa barg paida kiya jo loot khasot ka ek hissa pakar apne nihit swarth ko angreji rajya ke bane rahne ke saath jodle.' (S 3/11) '1793 mein Lord Cornwallis Bengal, Bihar, Orissa tatha bad mein uttar Madras ke kutch ilakhon ke liye vikhyat istmarari bandobast lagoo kiya. Angrejon ne in jamindaron ko hamesha ke liye jamin ka malik banadiya aur asthai taur par ek aisi rashi tai kar di jo sarkar ko de sake. Voh rashi kisanon ki kul bhugtan rashi ke 10/11 ke dar se jodi gayi aur 11th hisse ko jamindar dwara bhugtan karne ke liye chod diyagaya.' 'Sarkar ne yeh nirdharit kiya ki Bengal ke jamindar prati varsh 30 lakh pound kisanon se vasool karke sarkari kosh ko diya karenge' 'Dhoort aur dhan lolup yapariyon ka ek aisa barg samne aaya jisne in jamindaron ko khari liya. Yeh kisanon se ek ek payee vasoolne ke liye har tarah ka hathkhanda apnat the. Bhadra malikon ke naye barg ka yehi swaroop tha aur istamarari bandobast ka uddesya bhi aisehi varg taiyar karna tha. (S3/12).

It is copy of para written on pages 246 - 248 of Aaj ka Bharat (S 36/1-2)

2 ½ pages of CO's answers to Q 8 'Napolean ke Yudhon ki sampan. nahin kar sakate the' (S 3/18-12 and 3/22) 'bees vi sadi ke prarambh mein Japan unnatike marg par badi teji ke saath agrasar hone lag gaya tha. Poorvi asia ko vah apne samrajya prasar ka upayukth kshetra samajhtka tha.' is copy of para at pages 268-269 of Asia ka Adhunik Itihas (S 36/3).

CO's arguments that he had crammed up many good answers from many books and had gifted faculty to memorise is not convincing for exact reproduction of so many pages from books. It is more likely that CO has written answers with the aid of books. It is further supported by deposition of Sh. MS Jain (SW 20), the examiner, who has stated 'I have not come across a candidate during last 50 years who can reproduce verbatim answers to so many questions to so many different subjects'(Q 9).

5.1.4 Philosophy I

PO has not indicated the portion of answers/ answers in the answer book of Philosophy I (S 4) which is alleged to have been copied. The undersigned also does not find any such portion with reference to selected pages of books available on record.

5.1.5 Philosophy II

*PO has argued that the portion 'ek baar musalmano ko.... bhagwan ka stawan hai' at 2nd and 3rd para in Philosophy II answer book (S 5/23) has been copied from the last para of page 166 of Bharatiya Dharam Aur Sanskriti (S 38). CO has contested submissions of PO and has argued that the aforesaid portion is in quotation and is a statement of Guru Nanak. Since quotation has to be exact reproduction of the quote and it is less than half page of written answer which does not appear to be difficult to memorise, the submission of PO that it has been copied from the book is not convincing. **In view of the above, it is clear that CO has copied answers in answer books relating to GS I, GS II and History II. Evidence on***

record do not indicate copying in respect of Philosophy I and Philosophy II.

5.2.1 GS II

CFSL expert Sh. SL Mukhi has confirmed his reports dt. 20th May 87 (S 22). and 13th Nov 87 (S 23).

The report dt. 20th May 87 is regarding GS II answer sheets and it states 'the inner pages of questioned answer book marked Q 10, Q 10/1 to Q 10/23 have been substituted to the top cover sheet marked Q 8/1 and Q 8/2....'.

CO has argued in this regard that

(i) CFSL report on CBI letter dt. 13th Mar 87 (S 21/8-9) was not provided and non-availability certificate from CFSL was not provided though he had intimated about it to I.O.

(ii) CBI letter dt. 19th Dec 86 (S 20/1-3) did not mention that answer books used in CS 85 were defective,

(iii) Two holes at the distance of approx. 1.7 cm is visible on the answer book of GS II (S 2/1) and the book could not be bound without counterpart of stapler pin on the back sheet of the answer book,

(iv) List of documents enclosed with CBI letter dt. 13th Mar 87 (S 21/9) indicated that answer books of GS I, GS II, History II, Philosophy I & Philosophy II (S 1 to 5) were stapled in silver coloured stapler as in blank answer books. (Y1 to 5) enclosed with CBI letter dt. 13th Mar 87.

(v) Shade of ink on Q9 of answer book of GS II (S 2/1) and Q 10/1 to 28 of answer book of GS II (S 2/1-28) are same and difference in shade of ink on Q 9 of answer book of GS II (S 2/2) establishes continuity of writing / shade of cover page and inner page,

(vi) Word Hindi of cover page has impression / indented strokes on the first page of inner sheet. Aforesaid arguments of CO are not convincing for reasons given below:

One, *As mentioned above, CFSL report of 20th May 87 unambiguously states that inner pages of the answer book had been substituted in the top cover of, the book and CO did not raise his arguments before Sh. Mukhi (SW 46), the expert, during the deposition of the witness.*

Two, *(i) Regarding CFSL report on CBI letter dt, 13th Mar 87, it is observed that PO has informed CO regarding the document vide letter dt, 7th Oct 03 as 'already supplied as D22'. Records of proceedings indicate that CO did not make any further request about the document to PO and previous IO. Further, as discussed in para 1 above, CO participated in the proceedings and did not demand for the document till conclusion of RH. It is further observed that the letter has been referred in CBI letter dt. 17th Aug 87 (S 21). CFSL report dt. 19th Nov 87 (S 23) refers the aforesaid CBI letter. It appears that in its report, CFSL has considered the CBI letter dt. 13th Mar 87 and documents enclosed with it. Besides the above, it is also observed CO did not ask Sh. Mukhi whether there was any report other than two CFSL reports which are on record.*

(ii) It is correct that no such mention has been made. But arguments of CO is not convincing. Firstly, he did not ask the witness whether it would have had any effect on the findings. Secondly, it appears that the damage to books would not have made difference to observations recorded in CFSL report like the observation at I(d) regarding shape of stapler wire and holes not being same in the top cover and inner sheets. Therefore, findings / conclusions would have remained the same.

(iii) CO did not cross-examine the witness on this point. Further, the relevant observation (I (e)) does not mention that

holes were not available at the back sheet as has been argued by CO.

(iv) Arguments of CO is not convincing and therefore not accepted for reasons given in point (i) above and for the reason that CO did not cross-examine the witness on this arguments.

(v) Arguments of CO is not convincing and therefore not accepted because CO did not cross-examine the witness on this argument and also because there does not appear to be any possible reason other than replacement of inner pages for difference in shade of inks.

(vi) Arguments of CO are not convincing and therefore not accepted because CO did not cross-examine Sh Mukhi with the argument. Further, indented markings do not indicate that these were marked when CO wrote on the cover page.

In view of the above, it is established that inner pages of the answer book of GSII were replaced in the cover page.

5.2.2 GS I

The report dt. 13th Nov 87 is regarding GS I, History-II, Philosophy I and Philosophy II answer sheet. It states 'the position of top punch hole marked Q 12/1 do not tally with the punch hole in the inner sheet in the respective position with the present stapling pins. In addition to this the perforation marks "UPSC" of the back cover marked Q 12/2 also do not tally with the perforation marks of the inner sheet with the present stapling pins.....' (S 23/2). It also states 'the shade of ink used in writing the questioned writings marked Q 18/1 and Q 18/2 do not tally with either of the ink used in writing, the questioned writings marked Q 11/1 to Q 11/24, Q 11/25 to Q 11/31.....' (S 23/3). 'Q' documents referred in the CFSL report are answer book, supplementary sheet and top slip with UPSC perforation in respect of GS I of the CO (S 21/5). The aforesaid findings of CFSL establish that inner answer sheets of GS I has been replaced in the cover sheet.

CO has argued that

(i) CFSL report states that completely deciphered indented strokes on Q 11/1 (1st page of the inner sheet) tallies with Q11 (cover sheet). Therefore Q11 and Q 11/1 were together in the examination hall. Sh. Mukhi has deposed that indented writings on Q11/1 came into existence when Q11 was just above Q11/1.

(ii) Q16 (roll no. slip of supplementary book) is part and parcel of Q 17 (supplementary book). Therefore, whole answer book alongwith supplementary was written in the exam hall.

(iii) Shade of ink may differ from cover page to inner page due to gap in time in writing and there is no prohibition on use of more than one pen.

(iv) Difference in UPSC perforation mark due to damage and answer book becoming loose during transit and handling by so many persons.

(v) CFSL report on CBI letter dt. 13th Mar 87 (S 21/8-9) has not been provided.

(vi) Un-rectified books were used in CS 85.

Submissions of CO are not convincing. Therefore, not be accepted for reasons given below:

(i) It is correct that CFSL report does state indented strokes on Q 11/1 and Q 11 tally (II of S 23/2). Since report does not state that these indented strokes relate to writings by CO on the cover page, it cannot be concluded that cover page and inner pages are from the original answer book. Further, other observation of the report mentioned above clearly establish replacement of inner sheets.

(ii) Submission of CO is correct. However, it is not relevant to the allegation which is regarding replacement of

inner pages inside the cover page and not about the supplementary copy being replaced inside the cover page.

(iii) Not convincing for reasons given in case of GS II above. Further, it is very unlikely that a separate pen would have been used exclusively for the cover page. As far as the gap in time in writing on the cover page and inner pages are concerned, it is observed that at the time of examination at CFSL which was about 2 years after CS exam, difference of few minutes would not have made any difference because writings on cover pages as well as inner pages would have aged sufficiently by that time. Besides this, other evidences of copying from books and giving of carpet etc clearly establish replacement of inner pages.

(iv) Argument of CO is not convincing. Firstly, CO did not cross-examine Sh. Mukhi, the expert with his arguments. Secondly, there is no possibility of perforation marks 'UPSC' on the back cover sheet not tallying due to book being loose. If it was so, the report was expected to make such observation.

(v) Argument of CO is not convincing and therefore not accepted for reasons given in case of GS II above.

*(vi) Evidence on record do not support his argument and therefore not accepted. In view of the above, **it is established that inner pages of GS I were replaced in the original cover page.***

5.2.3 History II

*There is no direct evidence in support of the allegation relating to replacement of answer books. However, in view of the fact that answers have been copied from books as discussed above and the fact that it very unlikely that copying could have been done in the exam hall, **it is concluded that answer book of History II was replaced.***

5.2.4 Philosophy I

*There is no direct evidence in support of the allegation that answer book was replaced. Further, PO has not submitted any argument in support of allegation relating to copying and the undersigned does not find evidence in its support. Therefore, **allegation relating to replacement of answer book Philosophy I is not established.***

5.2.4 Philosophy II

*There is no direct evidence in support of the allegation that the answer book was replaced. As discussed above, it has also not been established that CO had copied from books. Therefore, **allegation relating to replacement of answer book of Philosophy II is not established.***” (emphasis supplied)

15. From the above, it would be seen that the enquiry officer compared the answers found in the answer sheets of the petitioner with the text book as well as the model answers and found the same to be identical not only in content but also in the matter of arrangement of the same. The enquiry officer has not accepted the petitioner's submission that he had memorised word by word, and line by line the complete answers from the text book. Even if this submission were to be accepted, there can be no explanation so far as to the identical reproduction of the answers contained in the model answers are concerned.

16. It is well settled that if there is some material evidence available to prove the charge, then the decision of the disciplinary authority in finding the delinquent officer guilty cannot be assailed in judicial review since assessment of evidence is a matter which squarely falls within the domain of the disciplinary authority. In judicial review, it is only the procedural aspects, which have bearing on the right of the delinquent officer to

effectively defend him, which can be examined by the Tribunal/ Court. The Supreme Court has gone so far as to hold that even if there is some infraction of procedure, which does not cause prejudice in the overall analysis, the same would not be a ground to upset the enquiry proceedings and the punishment inflicted upon the delinquent officer.

17. Pertinently, the petitioner did not cross examine the witnesses from the CFSL Shri S.L. Mukhi SW-46 on every aspect which he sought to argue before the enquiry officer.

18. Mr. Raju has argued that several witnesses named in the charge sheet to prove the charges were not produced in the enquiry proceedings. This submission has no merit. It was for the respondents to decide as to how many of the named witnesses they should produce to prove the charge. The matter has to be examined on the basis of the evidence led in the enquiry. What is relevant is the quality of the evidence led and not the quantity. If the evidence brought on record is sufficient to prove the charge, it cannot be the concern of the enquiry officer or disciplinary authority, much less the Tribunal or the Court, if several others named as witnesses have not been produced. If the petitioner was so minded, he could have produced witnesses in support of his defence.

19. The next submission of Mr. Raju is that that the petitioner had sought to produce two witnesses. Notices were issued to them but before they could be served, the enquiry proceedings were closed.

20. In our view, the petitioner has not suffered any prejudice on the aforesaid action. Pertinently, the two witnesses that the petitioner desired to

produce were only sought to be produced to show that the petitioner had not given carpet to Sh. Jug Lal, I.N. Uppal, DR Chug as illegal gratification for their role in substituting the answer sheets/ answer books. He wanted to produce these witnesses to show that he did not help Sh. Jug Lal in getting a telephone connection and in purchasing a refrigerator.

21. A perusal of the statement of imputation of misconduct or misbehaviour shows that the allegation in the aforesaid respect is contained in paragraph 12 thereof. In the preceding paragraphs, the misconduct in relation to substitution and manipulation of answer scripts of the Civil Services Examination 1985 undertaken by the petitioner were set out.

22. Even if the aspect of gratification of Shri Jug Lal, I.N. Uppal and D.R. Chug is said to be not established, the same does not take away from the evidence which was brought on record to establish the tampering and manipulation of the answer scripts of the petitioner in the examination in question. The petitioner was serving in the UPSC which conducted the examination in question, and was the only beneficiary of the said manipulation and, therefore, the conclusion drawn by the disciplinary authority that the manipulation was done at his behest, and at his instance, is a plausible conclusion which does not call for interference in these proceedings. This is particularly so, because the petitioner owned up the answer books as his own, and did not claim that the substituted sheets were not written by him.

23. Lastly, Mr. Raju has argued that the petitioner had rendered about 24 years of service, and the punishment of dismissal from service is

disproportionate to the misconduct proved against him. The effect of dismissal is that his entire service is forfeited and his right to receive pension, gratuity, etc. has also been taken away.

24. The misconduct proved against the petitioner is an extremely serious one. He got into service by adoption of a serious manipulation of the answer scripts. Evidently, he took advantage of the fact that he himself was serving as Under Secretary in the UPSC, who is entrusted with the conduct of the Civil Services Examination. By resorting to such conduct, he got into a position which he did not deserve. He has also deprived another deserving candidate of the post to which he was allocated. The only reason he continued in service was because criminal proceedings were pending and took a long time to conclude. To grant his retiral benefits would amount to putting premium on dishonesty.

25. It, therefore, cannot be said that the punishment inflicted upon the petitioner was shockingly disproportionate to his misconduct.

26. For the aforesaid reasons, we find no merit in this petition.

27. Dismissed.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 29, 2019

N.Khanna