

GAHC010143562013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6506/2013

ABHIJIT KUMAR BARUA
S/O- SHRI ANIL BARAN BARUA, BASUNDHARA APARTMENT, GROUND
FLOOR, KAMAKHYA NAGAR, BYE LANE NO. 4, ADABARI TINIALI, GHY-
12.

VERSUS

M/S HINDUSTAN PETROLEUM CORPORATION LTD. and 3 ORS
HAVING ITS REGISTERED OFFICE AT 17, JAMSHEDJI TATA ROAD, MUMBAI
20, REGIONAL OFFICE AT BETKUCHI, GHY- 34, DIST.- KAMRUP.

2:THE DIRECTOR
MARKETING AND APPELLATE AUTHORITY
M/S HINDUSTAN PETROLEUM CORPORATION LTD.
HINDUSTAN BHAWAN
8
SOORJEE BALLABHDAS MARG BALLARD ESTATE
MUMBAI.

3:THE EXECUTIVE DIRECTOR
OPERATIONS and DISTRIBUTION and DISCIPLINARY AUTHORITY
M/S HINDUSTAN PETROLEUM CORPORATION LTD.
HINDUSTAN BHAWAN
8
SOORJEE BALLABHDAS MARG
BALLARD ESTATE
MUMBAI.

4:THE ENQUIRY OFFICER
SENIOR BRAND MANAGER

GMO EAST ZONE
HINDUSTAN PETROLEUM CORPORATION LTD.
6
CHURCH LANE
KOLKATA- 1

Advocate for the Petitioner : MR.S K MEDHI

Advocate for the Respondent : MR. U K NAIR (R1-4)

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Date of Hearing : 31.08.2023
Date of Judgment : 24.11.2023

Judgment and Order (CAV)

Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also heard Mr. UK. Nair, learned Senior Counsel assisted by Mr. M.P. Sarma, learned counsel for the respondents.

2] The challenge made in the present writ petition is to the impugned order dated 03.10.2011 passed by the respondent authorities whereby major penalty of "Removal *from service which shall not be disqualification for future employment*" was imposed by the Executive Director as the Disciplinary Authority. The further prayer of the writ petitioner is to reinstate him in service with full back wages. The petitioner was appointed as an Officer Trainee in the

respondents-Corporation i.e. the Hindustan Petroleum Corporation Ltd (hereinafter HPCL) on 19.10.1991 and was posted at Guwahati. He was assigned as Officer on 01.11.1991. He was thereafter transferred to Barauni on promotion and then back to Guwahati and thereafter to Kolkata on 04.09.2002. However, due to personal reasons and problems he submitted his resignation on 19.10.2002 while he was at Kolkata. The said resignation dated 19.10.2002 was ultimately not accepted by the HPCL authority and vide the communication dated 18.06.2003 the HPCL authorities informed the petitioner that his resignation can be accepted only upon clearance of certain dues recoverable from him amounting to Rs.4, 63,94/- with penal interest @ 12%. At that relevant point of time and after the petitioner submitted his resignation, the HPCL authorities introduced the Voluntary Retirement Scheme (VRS). The petitioner withdrew his resignation and opted for Voluntary Retirement scheme by submitting his representation on 30.08.2004. The said representation was, however, rejected on 21.09.2004 by the HPCL authorities. The petitioner approached this Court by filing WP(C) No. 7022/2005 challenging the rejection of his application for voluntary retirement. It is also stated that the HPCL had also instituted a money suit, being M.S. No. 87/2007 before Civil Judge, Kamrup for recovering of an amount of Rs.12,91,856/- with interest. At the time of filing the writ petition, the suit was pending. However, by a letter dated 29.11.2006,

the petitioner informed the HPCL authorities that he wanted to withdraw his resignation. The HPCL authorities, in turn, intimated him verbally that he would be allowed to rejoin his duties only if the pending WP(C) No.7022/2005 was withdrawn. Upon being given such assurance by the HPCL authorities, the petitioner withdrew WP(C) No.7022/2005. However, since the petitioner was not permitted to join in spite of assurance being given by the HPCL authorities, he approached this Court and filed another writ petition being WP(C) No.330/2007. The said writ petition was duly contested and a coordinate Bench of this Court disposed of that writ petition vide judgment dated 03.04.2008. This Court arrived at a finding that since the petitioner's resignation was not accepted by the HPCL authorities, he continued to remain in the services of the HPCL authorities. The question of back wages, however, was left to be decided by the Corporation. Liberty was also granted to the Corporation to take such action on the question of absence of the petitioner even after non-acceptance of his resignation. The matter was carried in appeal by the HPCL authorities by filing WA no. 218/2008.

3] During the course of the hearing of the appeal vide order dated 25.03.2009, the Division Bench of this Court arrived at a finding that non-compliance of the direction of the learned Single Judge contained in the order dated 03.04.2008 should be proceeded with in contempt and notice to the

Chairman-cum-Managing Director was issued by the High Court under its contempt jurisdiction. This order was assailed before the Apex Court by filing SLP No. 30257/2008 which however, was dismissed by the Apex Court. Thereafter, the Corporation proceeded to act in terms of the liberty granted by the Coordinate Bench of this Court in terms of the order dated 03.04.2008 and proceeded to initiate a Disciplinary Proceeding and placed the petitioner under suspension.

4] Miscellaneous application was filed by the petitioner in W.A. No. 218/2008 praying for staying the Departmental Proceeding till dismissal of the appeal which however, was rejected. However, since the proceeding had commenced *ex parte* against the petitioner, a direction was issued to the HPCL authorities to initiate the same at the very inception. Against this order, a review petition was preferred by the HPCL authority, being Review Petition no. 116/2008 which however, came to be dismissed by the Division Bench. The HPCL authorities thereafter filed an appropriate application before the Division Bench for withdrawal of the writ appeal which was, accordingly permitted by the Court and the WA no. 218/2008 was, accordingly dismissed. The Disciplinary Proceedings, as directed by the Court, continued against the petitioner from the inception and the authorities concluded the Disciplinary Proceeding holding the charges to be proved and the Disciplinary Authority thereafter imposed the

penalty of removal from service which is under challenge in the present writ petition along with the prayer to reinstate the petitioner in service with full back wages.

5] By the Memorandum dated 15.04.2009, the following 3 charges were framed against the petitioner:

Articles of Charge -I

“Shri Abhijit Kumar Barua, while he was working as Executive Operations Officer at Budge Budge Terminals, had submitted his resignation from the service of the Corporation vide his letter dated 19.10.2002 effective immediately. Since acceptance of resignation of Shri Abhijit Kumar Barua was subject to the clearance of all the outstanding dues to the Corporation, Shri Abhijit Kumar Barua -was advised vide letter dated 08.11.02 that he continues to be an employee of the Corporation and that he should attend to such assignment as are entrusted to him by his immediate supervisor till the time he is issued ‘Letter of Release’.

However, it is reported that Shri Abhijit Kumar Barua did not report to duty and remained absent unauthorisedly without any approval of leave permission of his supervisor continuously from 23.10.2002 onwards.

Thus, Shri Abhijit Kumar Barua has been negligent and has shown lack of interest, by willfully remaining unauthorisedly absent without prior permission.

Shri Abhijit Kumar Barua’s unauthorized absence, as mentioned above, has been causing disruption in day to day functioning of the operations of Budge Budge Terminal. Shri Abhijit Kumar Barua’s unauthorized absence has also caused additional financial burden on the Corporation since an officer had to be deputed to look after the jobs which were assigned to Shri Abhijit Kumar Barua and consequential expenditure on the same.

By the above actions, Shri Abhijit Kumar Barua failed to maintain discipline, devotion to duty and behaved in a manner unbecoming of an officer of the Corporation and thereby, violated Clause 2, 4 (a), (b) and (c) of Part-I of conduct rules and committed misconducts 8, 10, 22 & 31 under Part II A of the Discipline and Appeal Rules as per the Conduct, Discipline and Appeal Rules applicable to the Management employees of the Corporation.

ARTICLE OF CHARGE – II

It is reported that Shri Abhijit Kumar Barua while he was working as Executive Operations Officer, Budge Budge Terminals effective 23.09.2002, started his own IT business while continuing in the services of the Corporation without the previous permission of the Competent Authority of the Corporation. Shri Abhijit Kumar Barua had disclosed / admitted this fact vide his letter dated 27.04.2004 addressed to the then DGM-I/C-EZ stating as under,

"I request you kindly to allow me few months for returning the outstanding payable by me. Sir, you will appreciate that after resigning from the services, I have started my own business like IT education training and computer sales & service in partnership with my Friends. I am struggling hard to make my earning. I have taken loan from different sources to establish my business. I am sure within one year I will be financially stable and will be in a position to pay the dues to HPCL."

Shri Abhijit Kumar Barua did not submit any application for obtaining the prior approval of the Competent Authority of the Corporation before starting his trade or business which he was required to obtain as per the Conduct, Discipline and Appeal Rules for Management Employees of the Corporation.

Thus, Shri Abhijit Kumar Barua started his own business without the prior approval of Competent Authority of the Corporation.

By the above actions, Shri Abhijit Kumar Barua failed to maintain discipline, devotion to duty and behaved in a manner unbecoming of an officer of the Corporation and thereby violated Clause 2, 4 (a), (b), (c) and 11(a) of Part I of conduct rules and committed misconducts 22, 25 & 31 under Part II A of the discipline and Appeal Rules as per the Conduct, Discipline and Appeal Rules applicable to the Management employees of the Corporation.

Article of Charge – III

It is reported that as per the policy of the Corporation, Shri Abhyit Kumar Barua had applied for housing loan vide application dated 20.06.2000 for availing housing loan of Rs 653700/-(Rupees six lacs fifty three thousand and seven hundred only) for purchasing a flat at Radha Krishna Apartment, Ananda Nagar, Guwahati-781012. Shri Abhijit Kumar Barua was sanctioned the aforesaid amount vide letter dated 16.08.2000. Accordingly, Corporation executed the housing loan Agreement with Shri Abhijit Kumar Barua to enable him to purchase the aforesaid flat. The said amount was to be released to Shri Abhijit Kumar Barua in 10 installments as per the schedule of loan sanctioned by the Corporation.

Shri Abhijit Kuamr Barua was released an amount of Rs. 392220/(Rupees three lacs ninety two thousand two hundred & twenty only) on account of his 1 to 5" installments, Shri Abhijit Kumar Barua submitted the receipt dated 21.09.2000 of Rs. 3,92,220/- issued 'by the Builder. 'Thereafter, Shri Abhijit Kumar Barua had drawn the amount of installments being 6th, 7th and 8th installments of Rs. 1,63,425/- (Rupess one lacs sixty three thousand four hundred and twenty five only) at a time on 04.04.2001, but as per clause of the agreement, Shri Abhijit Kumar Barua did not submit the receipt of payment of the amount of loan of Rs. 163425/-. Shri Abhijit Kumar Barua vide letter dated 10.09.2002 informed the Corporation that due to the dispute with the promoter, he has cancelled the deal of purchase of the Flat and he has not paid the amount of Rs. 163425/-to the promoter.

As per the housing loan policy of the Corporation, upon cancellation of the deal, Shri Abhijit Kumar Barua was required to refund the total amount disbursed to him alongwith the interest and penal interest. However it is reported that Shri Abhijit Kumar Barua did not refund the said amount to the Corporation.

Shri Abhijit Kumar Barua misutilized the said disbursed amount of Rs. 5,55,645/-(3,92,220+1,63,425) to fulfill his personal interest which is the public money. Hence

Shri Abhijit Kumar Barua misappropriated the property of the Corporation and accordingly violated the rules and regulations of the Corporation.

By the above actions, Shri Abhijit Kumar Barua failed to maintain absolute integrity, to maintain devotion to duty and behaved in a manner unbecoming of an officer of the Corporation and thereby violated Clause 2, 4 (a), (b), (c) of Part I of conduct rules and committed misconducts I, 22, 30 & 31 under Part II A of the discipline and Appeal Rules as per the Conduct, Discipline and Appeal Rules applicable to the Management employees of the Corporation.”

6] Along with articles of charges, the statement of allegations of Misconduct or Misbehaviour in support of Article of Charges under the Conduct, Discipline and Appeal Rules, applicable for the Management of Employees of the Corporation, the list of documents and the list of the witnesses to be relied upon by the Management during the enquiry process is enclosed

7] The petitioner submitted his written statement of defence by communication dated 18.05.2009 denying all the charges levelled against him. In his statement of defence, however, he admitted that he had started an IT business and at the relevant point of time, he had already submitted his resignation and the competent authority to accept his resignation framed certain conditions and clarifications. The HPCL authority had also appointed an Enquiry Officer as well as a Presenting Officer. Besides certain documents which the petitioner had relied upon, he examined one witness in support of his defence. Upon conclusion of the enquiry, the Enquiry Officer submitted his report holding that the charges framed against the petitioner had been found to be proved.

The Disciplinary Authority accepted the enquiry report on 29.09.2010 and by order dated 03.10.2011, the penalty of removing the petitioner from service was issued.

8] Learned counsel for the petitioner submits that this is a classic case of harassment and highhandedness of the respondents authorities. He submits that the petitioner had submitted his resignation on 19.10.2002 and had also handed over his charge to one Sri Palash Acharaya who was presented as a defence witness by the petitioner during the enquiry proceeding. Learned counsel for the petitioner submits that he was informed by his supervisor that his resignation in principle could have been accepted by the respondent authorities subject to clearance of certain dues. Since he had handed over his official responsibilities to Sri Palash Acharaya and as he was not allotted any other responsibility by the Management as he had to come to Guwahati in view of the medical treatment for his mother. It is submitted that the petitioner was under *bonafide* belief in view of the assurance given by the Management that his resignation has been accepted and the same will be approved subject to clearance of certain dues receivable from him. Learned counsel for the petitioner submits that as the Division Bench of this Court by order dated 25.03.2009 had issued notice to the respondent-Corporation under contempt jurisdiction, since then the Management has been behaving inimically towards the petitioner. The

learned counsel for the petitioner submits that on assurances given by the Corporation, he withdrew his application and submitted his application for voluntary retirement. However, that was also rejected because of which the petitioner had approached this Court in the earlier round of litigation. Learned counsel for the petitioner submits that there was no misconduct on the part of the petitioner as alleged and he could not join his duties as no such communication or advisory was issued by the authority concerned. Since the petitioner had very limited source of earning, he was compelled to file his source of earning by resorting to business. It is submitted that under such circumstances, it cannot be said that he is guilty of misconduct warranting a penalty of removal from service as has been done.

9] Learned counsel for the petitioner has relied upon a judgment of the Apex Court rendered in *United Bank of India vs. Biswanath Bhattacharjee* reported (2022) 13 SCC 329. Pressing this judgment into service, learned counsel for the petitioner submits that where the findings arrived at by the Enquiry Officer are not based on evidence and therefore, perverse and on such findings, the Disciplinary Authority proceeds to impose penalties, Writ Court has ample power to interfere with such penalty imposed in exercise of judicial review under Article 226 of the Constitution of India.

10] The respondents Corporation contested the case by filing their affidavit-in-opposition wherein the contention made by the petitioner has been denied.

11] Mr. U.K. Nair, learned Senior Counsel appearing for the respondents strongly disputes the contentions of the learned counsel for the petitioner. He submits that the liberty to proceed for Disciplinary Proceeding was granted by this Court vide order dated 03.04.2008 and accordingly, the petitioner was placed under suspension and the Disciplinary Proceeding was drawn up. Referring to the Rules, learned Senior Counsel submits that Clause 8, 25 and 31 of Part II under the heading of "*Misconducts*" specifically defined such act as misconducts. Under heading Clause-B (Penalties), removal from service which shall not be disqualification for future employment, is one of the major penalties prescribed under the Rules. The learned Senior Counsel submits that Clause-F under Chapter 2 prescribes detail procedure for imposition of major penalties. It is submitted that this procedure laid down that a Disciplinary Proceeding is to be initiated by framing definite charges along with the statement of allegations, copies of documents, list of witnesses etc which are to be communicated to the delinquent. Grant of opportunity of filing the written statement by the delinquent officer is also prescribed. A Presenting Officer is to be appointed. Learned Senior Counsel for the respondents, therefore, submits that the procedures prescribed under the Rules have been strictly followed and

thereafter, the Disciplinary Authority upon proper assessment of the finding arrived at by the Enquiry Officer had passed the impugned order. In the present case, the Disciplinary Authority accepted the finding of the Enquiry Officer and imposed the penalty of removal from service. He, therefore, submits that the judgment referred to and relied upon by the learned counsel for the petitioner does not apply to the petitioner. In the facts and circumstances of the case, the order of dismissal does not warrant any interference as also the Disciplinary Proceedings conducted and the penalty imposed by the Disciplinary Authority.

12] The rival submissions have been duly considered. Pleadings on record have been carefully perused. The Conduct, Discipline and Appeal Rules for Management Employees has also been perused. The judgments cited at the bar has been carefully noted.

13] In the proceedings conducted against the petitioner, there are three charges brought against the petitioner, namely:

- (i) that petitioner had willfully remained unauthorisedly absent without prior permission.
- (ii) that while the petitioner was working as Executive Operations Officer, he started his own IT business without prior approval of Competent authority of the Corporation.

- (iii) that the petitioner had availed a housing loan and the petitioner had misutilized the disbursed amount of Rs.5,55,645/- and thereby, misappropriated the property of the Corporation and violated the Rules and Regulations of the Corporation.

14] In so far as the First charge is concerned, the Enquiry Officer held that since the petitioner was fully aware of the procedure prescribed under the Rules and as various evidences were adduced during the enquiry proceedings, the Enquiry Officer arrived at the conclusion that the Charged Officer, namely, the petitioner failed to maintain devotion and discipline and thereby, committed misconduct under the Caluse-8, 10, 22 and 31 Part II A of the Conduct, Discipline and Appeal Rules for Management Employees. In So far as the Charge no.II is concerned, it was held that the Enquiry Officer came to a finding that since no prior approval of the competent authority of the Corporation was taken, he had committed the misconduct under the Clause 22, 25 and 31 under Part -II of the Rules. In so far as the allegations under Charge no. 3 is concerned, the Enquiry Officer arrived at a finding that the petitioner could had given satisfactory explanation as to why he could not inform the Corporation regarding the cancelation of the deal with the promoter immediately and as to why he failed to return the money disbursed to the Corporation for so long.

15] Having carefully considered the materials made available before this Court, it is seen that in so far as the Charge no.I is concerned, there is no dispute that the petitioner had submitted his resignation and that his resignation was to be accepted subject to clearance of the dues. There is no dispute that the petitioner had handed over the charges to Sri Palash Acharaya who was a defence witness presented by the petitioner during the enquiry proceeding. From the enquiry proceeding, it is seen that the said defence witness had categorically stated that the petitioner had handed over charges and he had taken over the charges from the petitioner. At that relevant point of time, the petitioner was working as an Executive Operation Officer under the Corporation in Budge Budge terminals. There is no denial by the Management that handing over of charges had indeed taken place. As such, unless the petitioner is assigned specific duties by the Corporation, his reporting to the Office every day till his resignation accepted or rejected will not serve the purpose as the nature of the employment of the petitioner to render technical service in the Budge Budge Terminal as Executive Operation Officer. There are no materials placed before the Enquiry Officer by the Corporation that notwithstanding the handing over and taking over the charges, there would still be work available for the petitioner to attend his duties in his place of posting during the relevant point of

time. The communication dated 08.11.2002 which was issued by the Manager Installation, Budge Budge – II categorically provides that the release of the petitioner from the services of the Corporation is subject to a letter to release to be issued to the petitioner by the Corporation. Till such time, the petitioner will continue to be an employee of the Corporation *and attend to such assignments as are entrusted to you by your immediate superior*. The receipt of this particular communication has been denied by the petitioner. The said denial, however, has been disputed by the respondents as it was sent at the address available in the records of the respondents and in which address, subsequent communication was also made which were not denied to have been received by the petitioner.

16] Be that as it may, notwithstanding that the respondents dispute the claim of the petitioner not to have received this particular communication, what is apparent is that the petitioner was required to continue to be an employee and to attend to such assignment as entrusted by the immediate superior. During the Enquiry proceedings no such evidence has been brought out by the Corporation to show that pursuant to handing over and taking over by the petitioner, other assignments were issued to him which he declined or failed to attempt to.

17] Considering that the handing over taking over has never been denied or disputed or even recalled by the Corporation, under such circumstances, it cannot be said that the petitioner had failed to attend the duties and had caused financial losses to the Corporation and no such duties had been assigned to the petitioner pursuant to handing over taking over. The fact that notwithstanding the resignation submitted by the petitioner, he continued to be an employee is a finding of fact by a Coordinate Bench of this Court in its judgment and order dated 03.04.2008 passed in WP(C) No. 330 of 2007. This finding of fact attained finality in view of withdrawal of the writ appeal i.e. WA no. 218/2008 preferred by the respondents. Since, the petitioner, who was working as an Executive Operation Officer at Budge Budge terminal under the Corporation, had already handed over his charge to the defence witness no.1 and which fact is not disputed or denied by the respondent authorities nor any order/procedure of handing over taking over of charge by the petitioner to the defence witness no.1 was issued by the respondent authorities, it was incumbent upon the respondent authorities to assign the petitioner such responsibilities before leveling any charge against the petitioner that he refused to attend his duties notwithstanding that his resignation was not accepted at the relevant point of time. In view of the communication dated 08.11.2002, there is no evidence to arrive to the charge that the petitioner declined or failed to carry

on his duties.

In so far as the Charge no.II is concerned, the same is based on a statement given by the petitioner himself which he had reflected in his letter that the business was not actually started.

18] Under such circumstances, there was no complete evidence available before the Enquiry Officer to arrive at a conclusion that the petitioner had indeed started his own IT business. That apart, there is no materials were brought out during the enquiry proceeding that the salary payable to the petitioner under the Rules during that period of time or at least the subsistence allowances, if the petitioner was under suspension, was paid to the petitioner. It cannot be accepted that if the petitioner was treated to be an employee, no salary or pay is payable to the petitioner during an enquiry proceeding initiated as no such provision in the Rules has been pointed out.

19] Under the peculiar facts and circumstances of the case, where the petitioner's application for voluntary retirement was rejected by the Corporation, the Corporation is duty bound to show that the petitioner was gainfully employed by drawing the salary/pay payable to the petitioner under the Rules and over and above that the petitioner indulged in business ventures. No such evidence is available before the Enquiry Officer. Under such circumstances, it

must be held that the conclusion arrived in respect of the Charge no.II is completely without evidence and is therefore, perverse.

20] The materials in respect of the Charge no.III can be considered to be sufficient for the Enquiry Officer to arrive at a conclusion that the charge in respect of the Charge no.III has been proved. During the course of hearing, it was submitted at the Bar that the amount recoverable from the petitioner has already been recovered and no pending amount is left to be recovered from the petitioner.

21] Having arrived at a finding that the conclusion arrived at by the Enquiry Officer regarding the Charge no.III being supported by adequate evidence and by also taking into consideration that no such amount is presently found to be payable by the petitioner, the imposition of punishment of removal from service is considered to be harsh and disproportionate. There is no specific provision under the Rules to show that the degree of misconduct committed will attract major penalty of removal from service. This is entirely left to the Disciplinary Authority to impose such a punishment upon consideration of attending facts and circumstances. The commission of misconduct of not remitting the amount of loan which was applied for by the petitioner as housing loan has to be seen from the facts that some installments were returned back and the rest of the

amount could have been adjusted from the petitioner's pay and allowances. That apart, it is already open to the Disciplinary Authority to impose any punishment to the petitioner other than removal or termination or dismissal from service. Accordingly, this Court considers the imposition or removal from service in respect of Charge no.III to be harsh and disproportionate. Perhaps the Disciplinary Authority imposed the punishment of removal of service taking into consideration that all three charges have been proved. Under such circumstances, where this Court is of the considered view that Charges no.I & II cannot be accepted to be proved in absence of specific evidences, imposition of punishment of removal from service only in respect of Charge no.3 is definitely found to be harsh and disproportionate.

22] In view of all these discussions made above, this Court has come to the conclusion that out of the three charges, only, as regards Charge no.-III, the conclusion arrived at by the Enquiry Officer can be said to be based on evidence. Charge no.-I and Charge no.-II have been discussed above and those cannot be held to be proved in view of lack of proper evidence to that effect. In *Biswanath Bhattacharjee (supra)*, the Apex Court has held that although in judicial review the High Court does not act as an appellant authority and cannot reappreciate evidence, however, interference under Articles 226 of the Constitution of India will be justified where it is a case of no evidence or

pervasive and to that extent, judicial review under Article 226 of the Constitution of India is permissible.

23] In view of all the discussions made above, this Court is of the considered view that the charges against the petitioner can be held to be partially proved. Under such circumstances, there are two options available before the Court, first to remand the matter back before the Authority for *de novo* enquiry in so far as charges no.I & II are concerned. However, it is seen that the alleged incident relates to the year 2002 and after 21 years, remanding the matter back for a fresh *de novo* enquiry in respect of the Charges no.I & II may not sub-serve the cause of justice inasmuch as, the relevant witnesses may not all be available or even be in the services of Corporation. The relevant documents also may not entirely be retained by the Corporation which may have a relevant bearing.

24] Under such circumstances, this Court finds it appropriate to direct that the matter should be remanded back to the disciplinary authority to reconsider the penalty imposed and if possible, impose a lesser penalty on the petitioner. To that extent, the impugned order dated 03.10.2011 is interfered with. The matter is remanded back to the Disciplinary Authority to redetermine the penalty and impose a lesser penalty on the petitioner. The Disciplinary Authority shall complete this exercise within a period of 60 (sixty) days from the date of receipt

of a certified copy of this order.

25] The writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant