

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.31736 of 2015

K.Nagarajan

...Petitioner

versus

1. The Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Head Office, 14, Bikaji Cama Place,
New Delhi 110 006.
 2. The Additional Central Provident Fund Commissioner,
Zonal Office, South Zone,
EPF Organisation,
3-4-763, Barakatpura, Hyderabad,
Andra Pradesh.
 3. The Regional Provident Fund Commissioner-I,
Employees' Provident Fund Organisation,
Regional Office, PB.No.3875,
Dr.Balasundaram Road, Coimbatore.
 4. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.
- ...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in its order, dated 07.07.2015, passed in O.A. No.1195 of 2012 and quash the same and consequently, allow the Original Application filed by the petitioner.

For Petitioner : Mr.Karthik

ORDER

(Order of the Court was made by S.MANIKUMAR ,J.)

Being aggrieved by the order made in O.A.No.1195 of 2012, dated 07.07.2015, passed by the Registrar, Central Administrative Tribunal, Chennai Bench, Chennai, the present writ petition has been filed.

2. Facts deduced from the materials on record, are that the writ petitioner has filed the above application under Section 19 of the Administrative Tribunal Act, 1985, to set aside the order No.VIG/XI(II)/2004/1432, dated 25.03.2011, passed by the Central Provident Fund Commissioner, Employees Provident Fund Organisation, Head Office, New Delhi, 1st respondent herein, confirming the order No.EPFO/ACC/SZ/Appeal/37(138)2006/5170, dated 19.01.2007, issued by the Additional Central Provident Fund Commissioner, Zonal Office, South Zone, Employees' Provident Fund Organisation, Hyderabad, Andhra Pradesh, 2nd respondent herein and the order No.VIG/TN/RO/CBE/Adm/A1/KN/2006, dated 04.04.2006, issued by the Regional Provident Fund Commissioner-I, Employees' Provident Fund Organisation, Regional Office, Coimbatore, the 3rd respondent.

3. That on 09.06.2014, a charge memo, has been issued to the writ petitioner, under Rule 10 of the Employees' Provident Fund Staff (CCA) Rules, 1971, for imposition of major penalty. The charges reads as follows:

"That the said Shri K.Nagarajan, Peon, while working as such in EPFO, SRO, Madurai, during the period 2003-04 is alleged to have committed gross misconduct, in that he connived with Mr.K.Rajapandian, LDC in the false/fictitious claim Form No.19, which was generated by Mr.K.Rajapandian, LDC in the name of Shri.L.Krishnaswamy holder of PF A.c.No.TN/1048/603 and got the same attested by the Mayor of Corporation of Madurai and accompanied Shir.K.Rajapandian, LDC in order to open a bank account in the name of Shri.L.Krishnaswamy with an intention to fraudulently withdraw the amount/pecuniary gain of Rs.4,94,008/- which was standing in the credit of Mr.L.Krishnasamy as detailed in the statement of imputations. Thus, Shri.K.Nagarajan, Peon by the aforesaid willful act has failed to maintain absolute integrity and behaved in a manner unbecoming of an employee of

Employees' Provident Fund Organisation thereby violated clauses (i) and (iii) of Sub-Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964 with Regulation 27 of EPF (Staff and Conditions of Service) Regulation, 1962."

4. After going through the procedure, the Regional Provident Fund Commissioner-I, Employees' Provident Fund Organisation, Regional Office, Coimbatore, 3rd respondent herein, vide order, dated 04.04.2006, has imposed a penalty of reduction of pay by five stages for a period of three years, from the date of the order, with cumulative effect. In the appeal, dated 18.05.2006, the Additional Central Provident Fund Commissioner, Zonal Office, South Zone, Employees' Provident Fund Organisation, Hyderabad, Andhra Pradesh, 2nd respondent herein, vide order, dated 19.01.2007, has sustained the penalty. Thereafter, the writ petitioner has filed a revision petition, dated 12.03.2007, to the Central Provident Fund Commissioner, Employees Provident Fund Organisation, Head Office, New Delhi, 1st respondent herein. Vide order, dated 25.03.2011, the revisional authority, by observing that there is no extenuating circumstances, warranting interference with the orders of the abovesaid authorities, rejected the revision. Thus, after exhausting the statutory remedies, O.A.No.1195 of 2012, has been filed, for the reliefs, as stated supra. After considering the pleadings, submissions and a catena of decisions, vide order, dated 07.07.2015, the Central Administrative Tribunal, Madras Bench, has dismissed the Original Application and confirmed the penalty.

5. Assailing the correctness of the abovesaid order, Mr.Karthik, learned counsel for the petitioner submitted that the Central Administrative Tribunal, Madras Bench, has failed to consider that the enquiry was conducted in total disregard to the principles of natural justice; statements made by the persons, during preliminary enquiry, and not brought as witnesses, were relied on. According to him, there was deprivation of a valuable right of the petitioner to cross-examine those witnesses, whose statements were relied on. It is also his contention that their statements ought not to have been marked as documents, by PW.1, as he was not the author of the documents.

6. Referring to the Articles of charge of memorandum, learned counsel for the petitioner submitted that there are three aspects, viz., connivance of the petitioner with Mr.K.Rajapandian, LDC., in the alleged fraudulent act, accompanying Mr.Rajapandian, LDC., in opening a bank account

and getting the form attested by the Mayor. It is his further contention that the Central Administrative Tribunal, Madras Bench, has erred in holding that the order of penalty, cannot be interfered with, as the petitioner has played some role in the fraudulent transaction.

7. According to the learned counsel for the petitioner, when Mr.K.Rajapandian, LDC., one of the delinquents, in the transaction, himself had confessed that he alone was the master mind in the alleged misconduct and when the petitioner had only filled up the SBI Account Opening Form, on the available materials, the finding of the 3rd respondent herein, holding that the charge as proved, ought to have been reversed by the appellate/revisional authorities and on their failure to exercise their jurisdiction, the Central Administrative Tribunal, Madras Bench, should have interfered with the same, in the Original Application No.1195 of 2012. He also submitted that when there were sufficient materials on record to indicate that the petitioner did not connive with Mr.K.Rajapandian, LDC., with an intent to fraudulently withdraw the Provident Fund amount standing in the credit of Sri.L.Krishnaswamy, the finding of the enquiry officer to the contra, is perverse and consequently, the penalty, is liable to be set aside.

8. Learned counsel for the petitioner further submitted that the Central Administrative Tribunal, Madras Bench, has erred in holding that the disciplinary/appellate authority, is not required to pass orders, with detailed reasons, when the finding of the enquiry officer itself is questionable. According to him, each authority has to independently apply his mind to the facts of the case, and not to mechanically accept the finding of the enquiry officer.

Heard the learned counsel for the parties and perused the materials available on record.

9. In order to address the grounds of challenge impugned in this writ petition, we deem it fit to consider the decisions, referred to by the Central Administrative Tribunal, Madras Bench, in O.A. No.1195 of 2012, dated 07.07.2015, which are as follows:

"(i) Kuldeep Singh v. Commissioner of Police & Ors., reported in (1999) 2 SCC 10, [C.A.No.6359-6361 of 1996 decided on December 17, 1998], whereas, the Hon'ble Supreme Court, held as follows:

"If, therefore, there is no evidence to

sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

8. The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence. This principle was laid down by this Court in *State of Andhra Pradesh v. Sree Rama Rao*, 1964 2 LLJ 150 = AIR 1963 SC 1723 = 1964 (3) SCR 25, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India v. Prakash Chand Jain*, 1969 2 LLJ 377 (SC) = AIR 1969 SC 983 and *Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors.*, 1976 Labour & Industrial Cases 4 (SC) = AIR 1976 SC 98 = 1976 (2) SCR 280 = (1976) 1 SCC 518. In *Rajinder Kumar Kindra v. Delhi Administration, through Secretary (Labour) and Others*. AIR 1984 SC 1805 = 1985 (1) SCR 866 = (1984) 4 SCC 635, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

.....

32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311 (2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a

statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness.

33. In *State of Mysore v. Shiv Basappa*, 1963 (2) SCR 943 = AIR 1963 SC 375, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.

34. In *Kasoram Cotton Mills Ltd., v. Gangadhar*, 1964(2) SCR 809 = AIR 1964 SC 708 and *State of U.P., v. Om Prakash Gupta*, AIR 1970 SC 679, the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent.

35. Having regard to the law as set out above, and also having regard to the fact that the factors set out in Rule 16(3) of the Delhi Police (F&A) Rules, 1980, did not exist with the result that Rule 16(3) itself could not be invoked, we are of the opinion that the Enquiry Officer was not right in bringing on record the so-called previous statement of witnesses Radhey Shyam and Rajpal Singh.

(2) *Roop Singh Negi v. Punjab National Bank & Ors.*, reported in 2009 (2) SCC 570, [C.A.No.7431 of 2008 decided on December 19, 2008], wherein, the Hon'ble Supreme Court held as follows:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be

found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

(3) Union of India v. Sardar Bahadur reported in 1972 (4) SCC 618, [C.A.No.1798 of 1970 decided on October 29, 1971], wherein the Hon'ble Supreme Court held as follows:

"10. In M/s.Bareilly Electricity Supply Co. Ltd., v. The Workmen and Others, [1971] (2) SCC 617 at 629, the scope of the above observation was considered and this is what Jaganmohan Reddy, J. said:-

"But the application of principle-, of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine

document, what are its contents and are the statements contained therein true."

We do not think that the statements should have been received in evidence as the appellant had taken no step to produce the persons who made the statements for cross-examination of the respondent. It was the duty of the appellant to have produced the persons whose statements were sought to be proved for the cross-examination of the respondent. In *State of Mysore v. S. Makapur*, (1963) 2 SCR 943, this Court said that the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party. As the persons whose statements were sought to be relied on were in Delhi and as they were not produced and tendered for cross-examination by the respondent, we think that the Inquiring Officer was right in refusing to act upon the statements relied on by the appellant. As there was no material before the Inquiring Officer to show that P. S. Sundaram mentioned in the cheque is P. S. Sundaram, the Deputy Secretary, we think the High Court was justified in holding that these charges had not been proved."

(4) *Central Bank of India Ltd., v. Prakash Chand Jain* reported in (1969) 1 SCR 735 : AIR 1969 SC 983 [in C.A.No.498 of 1966 decided on 20th day of August 1968], wherein the Hon'ble Supreme Court held as follows:

"9. However, we find that, on the other ingredients of the first charge, the Tribunal was justified in arriving at the conclusion that the findings recorded by the Enquiry Officer were perverse. The Tribunal gave the reason that these findings were based on hearsay evidence. This view taken by the Tribunal appears to be fully justified..... It is in this connection that importance attaches to the views expressed by this Court in the cases cited above, where it was pointed out that a finding of a domestic tribunal may be perverse if it is not supported by any legal evidence. It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical

rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. In fact, learned counsel for the appellant Bank was unable to point out any case at all where it may have been held by this Court or by any other Court that a domestic tribunal will be justified in recording its findings on the basis of hearsay evidence without having any direct or circumstantial evidence in support of those findings.

(5) Commissioner of Police, Delhi v. Jai Bhagwan reported in 2011 (6) SCC 376, [C.A.No.4213 of 2011, decided on May 10, 2011], wherein, the Hon'ble Supreme Court said as follows:

"13. O.P. Yadav, Inspector, and Arjun Singh, S.I., during the departmental enquiry proceedings have only deposed that Rs. 100/- was returned by the respondent to the complainant. During the course of enquiry proceedings no witness was examined on behalf of the appellants to prove and establish by tendering any direct, cogent and reliable evidence that the aforesaid amount of Rs. 100/- was received by the respondent by way of illegal gratification from anyone.

14. In the present case the strange thing is that the two persons, namely, O.P. Yadav and Arjun Singh, on the basis of whose statement present case was initiated, have stated that they have not witnessed/seen respondent taking any money from the complainant and that they have only witnessed the fact of respondent returning money to the complainant. Even otherwise, besides these two persons, there must have been many other persons including police officers on duty near about the X-Ray machine belt but none of them was cited and examined as witness during the departmental proceedings to prove and establish that such money

as alleged was received by the respondent as illegal gratification. The place where security check was carried out was an open place and there must have been many other persons, besides police officers, present at that time but none of them has been examined during the departmental proceedings against the respondent to prove the alleged fact of demanding and receiving illegal gratification by him.

(6) A. Lourdusamy v. Deputy Chief Security Commissioner, Railway Protection Force, reported in 2007 (5) CTC 157 [W.A.No.989 of 2001, decided on 03.04.2007], wherein, in Para 5 the Hon'ble High Court said as follows:

"Moreover, we see that the confessional statement of Ponnusamy Nadar, based on which the appellant was charge-sheeted was neither marked nor a copy of the same was furnished to the appellant. That apart, the said Ponnusamy Nadar was not examined during the departmental enquiry nor was he made available for cross-examination by the appellant. Therefore, unless the contents of the confessional statement is corroborated by the oral evidence of Ponnusamy Nadar, it cannot be taken into consideration as an admissible piece of evidence. Moreover, it is an admitted fact that the said Ponnusamy Nadar was acquitted by the Criminal Court as regards the said offence. In such circumstances, we are of the view that the Department ought not to have proceeded against the appellant and dismissed him from service. In the absence of direct evidence to connect the appellant to the offence, solely on the basis of circumstantial evidence, when it lacks corroboration, the major punishment of dismissal from service, imposed on the appellant is illegal and unsustainable.

(7) K.Ramalingam v. Superintendent of Police, Perambalur reported in W.P.No.39098 of 2006, decided on 20th April, 2009], wherein the Hon'ble Madras High Court said as follows:

"14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry officer's finding of guilt on the part of the petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said

witness during the preliminary enquiry, I am of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him."

16.Director General, Indian Council of Medical Research and Others v. Dr. Anil Kumar Ghosh and Another reported in 1998 (7) SCC 97 [C.A.No.4073 of 1991, decided on August 6, 1998], wherein it has been held as follows:

"10. The entire record of the enquiry proceedings have been placed before us. We have gone through the same and we find that there is absolutely no justification in the allegation that principles of natural justice have been violated. We have already referred to the fact that the first respondent did not furnish any list of witnesses and only in the course of enquiry he requested the Enquiry officer to examine the officials of the Municipality who had issued the certificates produced by him in support of his claim of H.R.A. It is surprising that the High Court overlooked the simple fact that the said certificates were produced by the first respondent himself as having been issued by the high officials of the Municipality and unless the factum of such issuance was in dispute there was no necessity to examine those officials. At another stage the first respondent challenged the authenticity of the internal audit report and wanted the author thereof to be examined in order to substantiate the same. the presenting officer stated that the said report was not necessary for the case and the same was not introduced in evidence. Hence, there was no necessity to examine the Accounts officer who prepared the internal audit report. If the first respondent wanted to examine any witness on his side he was given sufficient opportunity to produce witnesses and examine them but he did not do so. The record shows that he was permitted to reopen his defence and present further defence even on 28.3.1977. On that date as well as on 7.5.77 he had categorically stated that he did not have any witness to be called as defence witness on his behalf.

11. The second objection is equally meaningless. The documents were taken on file

during the course of the enquiry and the first respondent perused everyone of them before the conclusion of the enquiry. Copies were also furnished to him and as requested by him he was given seven days' time for presenting his defence after the receipt of copies of documents though under the rules only three days' time was permitted. Instead of giving numbers to the exhibits as and when the documents were taken on file, the Enquiry officer would appear to have given serial numbers to the exhibits at the conclusion of the enquiry on 21.7.77. The adoption of such procedure by the Enquiry officer was not violative of the principles of natural justice."

10. With the background of the above principles of law, the Central Administrative Tribunal, Madras bench, has adverted to the facts, evidence adduced during the enquiry and the submissions of the petitioner, made before the Tribunal. Though the charge is sought to be sustained, on the basis of the statements of Mr.K.Rajapandian, LDC, dated 02.01.2004, Mr.S.Sasidharan, dated 24.12.2003 and 02.01.2004 respectively and that of the petitioner, dated 02.01.2004, two of them, were not called as witnesses in the enquiry. But on 07.03.2005, through his defence assistant, the petitioner had cross-examined PW.1, Shri Gopaldas, the Assistant Director (Vigilance), wherein, his examination/cross-examination has covered the aspect of the involvement of the petitioner.

11. After scrutinising the statement of the petitioner, dated 02.01.2004, given to the Assistant Director (Vigilance), PW.1, the Central Administrative Tribunal, Madras Bench, has recorded that the petitioner and Mr.K.Rajapandian (LDC), had gone to the Indian Bank, Madurai Main, on 25.09.2003, to open SB Account (No.48148), in the name of L.Krishnaswamy; that Mr.K.Rajapandian had got a loan of Rs.500/- from the petitioner, to open the said account, in the name of L.Krishnaswamy; and that in response to the query (Item 16), "Then, how you have filled up the application?", the petitioner had replied that, "To help Shri.Rajapandian to open the A/c., in the name of Mr.L.Krishnasamy." and after recording the reply to Question No.25, wherein, the petitioner himself has admitted that he had filled up the application form, ie., Account Opening Form, in his own handwriting, as per the advise of Mr.K.Rajapandian, LDC., and also taking note of the cross-examination of PW.1, Assistant Director (Vigilance) and after considering the enquiry report of the Regional Provident Fund Commissioner-I, Employees' Provident

Fund Organisation, Regional Office, Coimbatore, 3rd respondent, dated 18.07.2005, wherein, he has recorded a categorical finding that the petitioner had played a key role in opening the bank account, in a false name and generated by Mr.K.Rajapandian, LDC in the name of L.Krishnaswamy, holder of PF A/c.No.TN/1048/603 and got the same attested by the Mayor of Corporation of Madurai and thus, concurring with the views of the departmental authorities that the charge as proved, the Central Administrative Tribunal, Madras Bench, vide order in O.A.No.1195 of 2012, dated 07.07.2015, held as follows:

"It is clear that the applicant has played some role in the fraudulent transaction by way of assisting Mr.K.Rajapandian though he was himself not the master mind behind it. The IO had done a very detailed examination and analysis of the evidence in para 10 of his Report and rendered his finding that the charge in Article 1 of the Charge-Memo, was proved. While in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt, in departmental proceedings the standard of proof is only one of preponderance of probability. It cannot be said that it is a case of no evidence or perverse evidence."

12. On the proposition of law that in disciplinary proceedings, Courts/Tribunals cannot go into the correctness of charge and re-appreciate the evidence, by assuming the role of appellate authority and it is open for Courts/Tribunals to interfere only when the proceedings are based on no-evidence, perverse evidence, surmises or conjectures, the Central Administrative Tribunal, Madras Bench, has relied on the following decisions,

"18.in State of Andhra Pradesh v. S.Sree Rama Rao reported in 1963 (3) SCR 25 : AIR 1963 SC 1723, a three Judge Bench of the Hon'ble Supreme Court of India held as follows:

"But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

19. There is a string of judgments in this regard. If there is some legal evidence on which the findings could be based, then adequacy or even reliability of such evidence would be outside the

pale of judicial review [High Court of Judicature at Bombay v. Shastrikat S. Patil reported in 2000 (1) SCC 416]. In Apparel Export Promotion Council v. A.K.Chopra reported in 1999 (1) SCC 759, the Hon'ble Supreme Court held on 20 January, 1999 as follows:

".....Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Halton in Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, observed : The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court.

Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

.....

In B.C.Chaturvedi v. Union of India, (1995) 6 SCC 749, this Court opined : The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate them evidence or the nature of punishment. In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant.

Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

20. In the case of State of Madras v. G.Sundaram reported in AIR 1965 SC 1103, the Constitution Bench of the Hon'ble Supreme Court held that it is not open to the High Court to re-appreciate the evidence before the Tribunal and record the conclusion that the evidence does not establish charges against the delinquent."

13. It is useful to extract few decisions, on the above aspect, as follows:

(i) In Syed Yakoob v. K.S.Radhakrishnan reported in AIR 1964 SC 477, the Hon'ble Apex Court, held as follows:

"....the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court."

(ii) In *Railway Board v. Niranjan Singh* reported in (1969) 1 SCC 502 : (1969) 3 SCR 548, the Hon'ble Apex Court held that the High Court does not interfere with the conclusion of the disciplinary authority, unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding.

(iii) In *State of Andhra Pradesh v. Chitra Venkata Rao* reported in 1975 (2) SCC 557, the Hon'ble Supreme Court, at Paragraphs 21 and 23, held as follows:

"The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of Andhra Pradesh v. S. Sree Rama Rao* [[1963] 3 S.C.R. 25]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal of Inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental inquiry invalid. The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to

the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of facts however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorary. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakooob v. K.S.Radhakrishnan* [1964 (5) SCR 64 : AIR 1964 SC 477]."

(iv) In *State of Haryana v. Rattan Singh* reported in 1977 (2) SCC 491, the Hon'ble Supreme Court, at Paragraph 4, held as follows:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not

apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

(v) In *Government of T.N. v. A.Rajapandian* reported in 1995 (1) SCC 216, the Hon'ble Supreme Court, while considering the above issue, in Paragraphs 9 and 10, held as follows:

"9. This Court in *Union of India v. Sardar*

Bahadur reported in 1972(4) SCC 618, held as under:

"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a Court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy of reliability of the evidence cannot be canvassed before the High Court."

10. In Union of India v. Parma Nanda reported in 1989 (2) SCC 177, this Court observed as under:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the

ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

(vi) In *Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh and others* reported in 1997 (3) SCC 657, the Hon'ble Supreme Court at Paragraph 6 of the judgment, answered a question as to whether the High Court would be correct in law to appreciate the evidence, the manner in which the evidence was recorded and record a finding in that behalf. The Court held as follows:

"The judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice."

(vii) The Hon'ble Supreme Court in *Commissioner and Secretary to the Government v. C. Shanmugam*, reported in 1998 (2) SCC 394, considered the case of compulsory retirement, which was interfered by the Tribunal on the ground of absence of evidence. The Hon'ble Apex Court, after dealing with the various judgments on the point and held that only in the absence of any evidence, i.e., no evidence or if there was any perversity, the Court can interfere. At Paragraph 2 of the judgment, the Hon'ble Supreme Court held as follows:

"It is seen from the order of the Tribunal that at the regular departmental enquiry held, the employees who were present at the time of the incident in the office on 02.08.1980 were examined and they all supported the charges (misbehaviour with the superior officer) levelled against the respondent/delinquent. The Tribunal on a re-appreciation of evidence, in judicial review, was of the view that the enquiry report based on such evidence cannot be totally accepted as free from bias and an order passed on such reports cannot be accepted as a fair and just one. Assailing this view of the Tribunal, the learned counsel appearing for the appellants

brought to our notice three judgments of this Court reported as State of T.N. v. Subramaniam, Govt. Of T.N. v. A.Rajapandian and State of Haryana v. Rattan Singh. In State of T.N. v. Suibramaniam, a three-Judge Bench of this Court observed as follows: (SCC.pp.511-12, para 5)

"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by the Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record the findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power

to re-appreciate the evidence and would (sic) come to its own conclusions on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."

(viii) In Apparel Export Promotion Council v. A.K.Chopra reported in 1999 (1) SCC 759, the Hon'ble Supreme Court at Paragraphs 16 and 17 held as follows:

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division

Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of the fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* reported in 1982 (3) ALL. ER 141 HL observed:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the Court."

"17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

(ix) The above position was reiterated in *Commandant v. D. Paul* reported in 1999 SCC (L&S) 789, and at Paragraphs 4 and 5 of the judgment, the Hon'ble Supreme Court held as follows:

"4.It is not the function of the Tribunal to review the decision and to arrive at an independent finding on the evidence and that if there be some legal evidence on which the findings

can be based, the adequacy or the reliability of that evidence is not a matter which can be permitted to be canvassed before the Tribunal."

"5. It is settled law that the Tribunal, while exercising its power of judicial review in respect of disciplinary action taken against the a government servant, cannot re-appreciate the evidence adduced to prove the charges in the disciplinary proceedings."

(x) In High Court of Judicature at Bombay v. Shashikant S. Patil reported in 2000 (1) SCC 416, while considering the scope of Judicial Review of the decision of the Disciplinary Authority in exercise of the powers under Article 226 of the Constitution of India, the Hon'ble Apex Court, at Paragraph 16, held as follows:

"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a Writ Petition filed under Article 226 of the Constitution."

(xi) In Sub-Divisional Officer, Konch v. Maharaj Singh reported in 2003(9) SCC 191, at Paragraph 5 of the judgment, the Hon'ble Apex Court held as follows,

"It has been stated by this Court on a number of occasion that the jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one, and as such the Court would not be justified in re-appreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority."

(xii) In Moni Shankar v. Union of India reported in 2008 (3) SCC 484, at Paragraphs 17 and 18, the Hon'ble Apex Court held as follows:

"17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See - State of U.P., v. Sheo Shanker Lal Srivastava: (2006)) 3 SCC 276 and Coimbatore District Central Co-operative Bank v. Coimbatore District Central Co-operative Bank Employees Association and another: (2007) 4 SCC 669.

18. We must also place on record that on certain, aspects even judicial review of fact is permissible. (E v Secretary of State for the Home Department : [2004] 2 W.L.R. 1351)."

(xiii) In a recent decision in Union of India v. P.Gunasekaran reported in 2015 (2) SCC 610, the Hon'ble Supreme Court, at Paragraphs 12 and 13, held as follows:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience."

14. On the principle of law that the Disciplinary/Appellate Authority is not required to record detailed reasons, in support of the punishment order, except where he directs fresh or further enquiry or disagrees with the findings of the Inquiry Officer, the Central Administrative Tribunal, Madras Bench, has relied on the following decisions, State of Madras v. A.R.Srinivasan reported in AIR 1966 SC 1827, Oriental Bank of Commerce & Anr. v. R.K.Uppal reported in 2011 (8) SCC 695, State Bank of Bikaner & Jaipur v. Prabhu Dayal Grover reported in 1994 (4) SCT 674 : 1996 (1) SLJ 145 (SC), S.N.Mukherji v. UOI (Constitution Bench Judgement) reported in AIR 1990 SC 1984 and R.B.Kamble v. Union of India & Ors., [Decided by Mumbai Bench of CAT on 23 July, 2004].

15. Though the petitioner has mainly contended that the statements obtained during the preliminary enquiry, ought not to have been relied on, in the regular enquiry, quite contrary to the same, he himself has relied on the statement of Mr.K.Rajapandian, LDC, recorded by the Assistant Director (Vigilance), PW.1, in the departmental enquiry, to contend that the whole transaction was the master mind of Mr.K.Rajapandian and that the petitioner has helped him only to fill up the application form. He has also relied on the statement of Mr.K.Rajapandian, LDC, to submit that there was no dealing between them, towards any payment.

16. Material on record discloses that the petitioner was a peon in Employees Provident Fund Organisation, Southern Regional Office, Madurai. During the period 2003-04, Mr.K.Rajapandian, was the Lower Divisional Clerk in the said office. There was a PF account bearing No.TN/1048/603, in the name of Mr.L.Krishnasamy. The Provident Fund amount lying in the name of the Mr.L.Krishnasamy, was sought to be withdrawn. Mr.K.Rajapandian, wanted to open an account in the name of Mr.L.Krishnasamy. The writ petitioner has accompanied Mr.K.Rajapandian, LDC. In the above factual matrix, let us now consider few answers of the writ petitioner to the queries posed by PW.1, Assistant Director, Vigilance on 02.01.2004, which are as follows:

Sl.N o.	Please furnish your name, designation, office you are working and your educational qualification	K.Nagarajan, appointed as Peon in SRO, Madurai, from 9/91 onwards. I was transferred to SRO, Tirunelveli and after working for five years, I was again re-transferred to SRO, Madurai in 4/98 - VIII passed.
6	Since how long do you know Shri L.Krishnasamy, S/o.Shri Lakshmi Narasimhan?	I don't know Shri L.Krishnasamy
8	Where you have gone along with Shri Rajapandi on 25.09.2003?	We have been to the Bank to open the SB A/c., in the name of Mr.L.Krishnasamy
10	Why have you visited in Indian Bank, Madurai Main on 25/09/2003?	Only to open the A/c., in the name of Mr.L.Krishnasamy
16	Then, how you have filled up the application?	To help Shri.Rajapandian, to open the A/c., in the name of Mr.L.Krishnasamy
21	Why you have accompanied Mr.K.Rajapandian, Clerk, to meet Shri.S.Sridharan	Mr.K.Rajapandian has only accompanied me.
25	Please say which bank official helped you to fill in the a/c opening form in the name of Mr.L.Krishnasamy or you filled on your own?	No bank official helped him. I filled the application in my own handwriting as per the advise of Mr.K.Rajapandian

17. Reading of the above questions and answers, makes it abundantly clear that both the petitioner and Mr.K.Rajapandian, were colleagues in Employees Provident Fund Organisation, Southern Regional Office, Madurai. Mr.K.Rajapandian, wanted to open an account, in the name of Mr.L.Krishnasamy and thus, there is a clear intention to open an account in somebody's name. To question No.16, the writ petitioner had candidly admitted that he wanted to help Mr.K.Rajapandian, to open an account in the name of Mr.L.Krishnasamy. Though Mr.K.Rajapandian, was working as Clerk, in the very same office, whereas, the petitioner was only a peon, the latter had filled up the application form in his own handwriting, which according to the petitioner, was

done, as per the advice of Mr.K.Rajapandian. Needless to state that when the name of the applicant in the said form, for opening the bank account, Mr.L.Krishnasamy, the petitioner cannot feign ignorance that Mr.K.Rajapandian has made an attempt to open an account, in the name of Mr.L.Krishnasamy, impersonating the said Regional Provident Fund Account Holder. After filling up the name, in the application form as Mr.L.Krishnasamy, by the writ petitioner, stated to have been made on the advise of Mr.K.Rajapandian, it can be reasonably presumed that the latter would have signed the form, as Mr.L.Krishnasamy, in the account opening form, written by the petitioner.

18. When the writ petitioner, with a clear knowledge, had filled up the application form, to open an account in the name of the Provident Fund Account Holder, Mr.L.Krishnasamy and that the said Mr.K.Rajapandian, has signed the application form as Mr.L.Krishnasamy, impersonating the Regional Provident Fund Account Holder, Mr.L.Krishnasamy, the petitioner cannot contend that he had not committed any misconduct, in the whole transaction. When there is an attempt to withdraw a huge sum of Rs.4,94,008/-, standing in the credit of Mr.L.Krishnasamy, the petitioner also cannot contend that there was no connivance with Mr.K.Rajapandian, LDC. He had gone to the Bank, accompanying Mr.K.Rajapandian, filled up the application form, in his own handwriting, knowing fully well that Mr.K.Rajapandian, was not Mr.L.Krishnasamy.

19. Though the learned counsel for the writ petitioner submitted that it is the statement of Mr.K.Rajapandian that nobody guided him, but the attempt was his own brain child, from the answers, extracted supra, it cannot be contended that the writ petitioner had not played any role in the attempt to open a false account, in the name of Mr.L.Krishnasamy and that there was no intention to fraudulently withdraw the amount/pecuniary gain of Rs.4,94,00/-, which was standing in the credit of Mr.L.Krishnasamy. Statement/admission of the writ petitioner itself, is more than sufficient to arrive at a conclusion, on the misconduct alleged. He has also accepted the payment of Rs.500/- from Mr.K.Rajapandian, to open the Bank account, in the name of Mr.L.Krishnasamy, Provident Fund Account Holder.

20. Statement of imputations also reveal that the photograph of Mr.K.Rajapandian, has been affixed in the application form, submitted to open the account, in the name of Mr.L.Krishnasamy. Thus, knowing fully that Mr.K.Rajapandian and Mr.L.Krishnasamy, are different persons, the petitioner

had filled up the form, with the photograph of Mr.K.Rajapandian, affixed in the form. For the specific question to PW.1, Assistant Director (Vigilance), as to whether, there was any possibility of affixing the photograph at a later stage, without the knowledge of the petitioner, PW.1, has categorically stated that there was no possibility of affixing the photograph, after the signature of the Bank Manager, on the bank opening form and that the application form, would not be accepted, if it is not completed in all respects. Moreover, PW.1, has stated that the Manager has to identify and satisfy himself before giving orders for opening the bank account.

21. Though re-appreciating of evidence is not permissible by the Courts/Tribunals, yet analyzing the evidence of the writ petitioner and that of PW.1, Assistant Director (Vigilance), South Zone, the attempt on the part of Mr.K.Rajapandian, to withdraw the Provident Fund amount from the Provident Fund Account Holder, Mr.L.Krishnasamy, is clear, for which, the petitioner has lent his active support with a clear knowledge that Mr.K.Rajapandian, is not the Provident Fund Account Holder, Mr.L.Krishnasamy. He cannot be a brain child, but certainly there are sufficient materials to hold that he has connived with Mr.K.Rajapandian. Submissions of the writ petitioner and the attempt to wriggle out the misconduct, is nothing but to dump a pumpkin in a morsel of food. [முழு பூசணிக் காய்யை சோத்தில் மறைக்க முடியுமா (Tamil Proverb)]

22. Going through the material on record, it could be noticed that all the statutory authorities have applied their mind to the evidence and findings recorded, considered the defence and passed reasoned orders, in conformity with the service rules and principles of law, which do not require any interference. Decisions relied on by the Central Administrative Tribunal, Madras Bench, lend support to its reasoned conclusion. While confirming the finding of the misconduct, taking on record, the instructions of the Railway Board in RBE No.48/2010 and the representation, dated 24.05.2012, the Central Administrative Tribunal, Madras Bench, at Paragraph 22, has passed the following orders:

"It is not known whether these were general instructions on the subject or these were applicable only to the Railways. The Central Provident Fund Commissioner, EPFO/Revisional Authority is directed to verify and if the instructions issued in the aforesaid RBE were applicable to other Departments/Organisations of GOI also, he should re-examine the case and if he

considers that a modification is warranted in the penalty, he should issue on the revision petition, in supersession of his earlier, dated 25.03.2011, a revised order having regard to the representation of the Applicant, dated 24.05.2012. Till such time, the present order of the Revisional Authority will stand. This exercise should be completed preferably within four months from the date of receipt of a copy of this order."

23. In the light of the principles of law applied and on the facts and circumstances of this case, we are not inclined to accept the contentions of the writ petitioner. The finding of the disciplinary authority, confirmed by the appellate/revisional authority and sustained by the Central Administrative Tribunal, Madras Bench, cannot be said to be perverse or it is a case of no evidence. On the contrary, it is in conformity with the principles of preponderance of probability. There is absolutely no need to reverse the same. Consequently, the directions issued by the Central Administrative Tribunal, Madras Bench, are sustained.

24. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To

1. The Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Head Office, 14, Bikaji Cama Place,
New Delhi 110 006.
2. The Additional Central Provident Fund Commissioner,
Zonal Office, South Zone,
EPF Organisation,
3-4-763, Barakatpura, Hyderabad,
Andra Pradesh.

3. The Regional Provident Fund Commissioner-I,
Employees' Provident Fund Organisation,
Regional Office, PB.No.3875,
Dr.Balasundaram Road, Coimbatore.

4. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

1 CC to Mr.Menon, Karthik, Advocate SR.No. 54439

W.P.No.31736 of 2015

SVI (CO)
PSI (16.11.2015)



WEB COPY