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*** IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 6990/2009**

Date of judgment: September 16, 2015

GOVT. OF NCT OF DELHI AND ORS. Petitioners
Through : Mr. Satyakam, Addl. Standing Counsel for
GNCTD.

Versus

SH. KRISHAN KUMAR Respondent
Through : Mr. S.C. Luthra, Advocate.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

G.S.SISTANI, J.

1. By way of the present Writ Petition, the Petitioner challenges the order dated 31.10.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1191/2007, whereby the Tribunal has set aside the punishment of removal imposed on the Respondent vide order dated 13.09.2006 and the order dated 15.03.2007 of the Appellate Authority.
2. To appreciate the controversy at hand, it would be necessary to give a brief gist of the facts.

“2. The facts necessary to be considered in this case would show that a memorandum dated 08.09.2005 was issued to the Applicant under Central Civil Services (Classification, Control and Appeal) Rules, 1965. (hereafter CCS (CCA) Rules) under Rule 14, informing the Applicant that it was proposed to hold major penalty

proceedings against him. The statement of imputation of misconduct, annexed to the aforesaid) memorandum reads thus :

ANNEXURE-1

ARTICLE-1

On 5.07.05 at about 1.00PM a call was received from petition Officer's Warder, who was detailed for surveillance at Jail No 8, that some financial dealing between one of Warder and one outsider is going to be finalized soon just opposite gate No.3. According Petition officer's advised Sh. Vinay Thakur, AS and Parveen Kumar, AS to go spot and investigate the matter. Both AS reached at the spot & waited at about 1.40PM. Warder Kumar came on cycle and talk to an outsider and thereafter enter to sulabh sochilya and was followed by two outsider and petition Officer's warder in civil dress. Sh. Krishan Kumar, Warder demanded Rs 150/- from outsider and outsider gave him. AS Sh Vinay Thakur and Sh Parveen Kumar Sinha, AS tried to catch hold him but of a sudden he pushed and ran away by crossing the small wall and threw the cheques and amount in open ground, which were later on collected by Vinay Thakur AS and Parveen Kumar Sinha, AS.

The above act on the part of Sh Krishan Kumar, Warder-706 is highly objectionable as a Govt Servant which shows lack absolute integrity and devotion towards his duty thus Sh Krishan Kumar, Warder-706 has violated Rule 3 of CCS (Conduct) Rules 1964.

ANNEXURE –II

ARTICLE-1

On 5.7.05 at about 1.00PM a call was received from Petition Officer's Warder who was detailed for surveillance at Jail No 8, that some financial dealing between one of Warder and one outsider is going to be finalized soon just opposite gate No 3. According petition

officer's advised Sh. Vinay Thakur, AS and Parveen Kumar, AS to go (to the) spot and investigate the matter. Both Vinay Thakur, AS and Parveen Kumar, AS reached at the spot and waited at about 1.40PM. Warder Sh. Krisha Kumar, demanded Rs 150/-from outsider and outsider gave to him the same. Sh Viriay Thakur, AS and Sh Parveen Kumar Sinha, AS tried to catch hold him but of a sudden he pushed and ran away by crossing the small wall and threw the cheques and amount in from hand in open ground, which were later on collected by AS Vinay Thakur and Parveen Kumar Sinha, AS.

On enquiry from outsider, it was revealed that the warder has taken money in -lieu of the job of getting the cheques signed from inside the Jail and thereafter return the same to the outsider. The statement of the outsider has been obtained which explains that outsider is Manish whose father Ram Narayan S/O Sube Sinha is lodged in Jail No 8. As per the statement on 1.7.095 this Warder Krishan Kumar range at their residence and stated that he is having a letter from his father, it can be collected in the evening at Delhi Cantt Railwlay Station Manish collected the letter and paid him Rs 200f-. There after they became acquaint with each other and hence the dealing of today. The details of the cheques and amount recovered is as under:-

Cheque No 765987 and 675677

<i>Amount</i>	<i>No.</i>
<i>Rs 50 note</i>	<i>4LU-710940</i>
<i>Rs 50 note</i>	<i>7 AU-790356</i>
<i>Rs 209 note</i>	<i>33 M-318613</i>
<i>Rs 10 note</i>	<i>55W-553926</i>
<i>Rs 10 note</i>	<i>46W-909030</i>

3. An enquiry was held in these charges culminating in the passing of the impugned orders at Annex A-1 and

Annex A-2.

4. The Enquiry Officer has examined four witnesses for the prosecution which include MPS Bali, the petition Officer, Vinay Thakur and Praveen Kumar, the Assistant Superintendents and Manish Singh, from whom bribe was allegedly taken. Relevant parts of statements are noted hereafter. MPS Bali, the Petition officer was responsible for surveillance of the premises of the Jail. He got information on 5.07.05 at about 1.00 PM that the Applicant was to enter into monetary dealings with some outsider near gate number 3 of the Jail. He would not divulge the name of the informant, this being a secret. No one was present in his office when this call was received. He did not remember from where he called the two Assistant Superintendents, Vinay Thakur and Praveen Sinha. He was not present at the spot, where the alleged incident took place. He just accepted the report dated 5.07.2005 given by the As.sistant Superintendents, who were responsible officers. He had ascertained from the Applicant that the latter commuted every day from Gurgaon to Delhi Cantonment Railway Station.

5. Praveen Kumar Sinha, Assistant Superintendent, said that he stood by the facts recorded in his report dated 5.07.2005. We note, however, that this report has not been exhibited. The Applicant would, therefore, be unaware of its contents. This contention has been seriously raised by the learned counsel in his submission on behalf of the Respondent. In fact this point has been repeatedly raised by the Applicant in his statement of defence before the Enquiry Officer and in his appeal against the order of the Disciplinary Authority. He has stated that he was present in the office of the Petition Officer, M P Bali, along with the other Assistant Superintendent Vinay Thakur, when the information was received at about 1.00 PM on 5.07.2007 about the impending monetary transaction, adverted to in the charge. He would not know the name of the warder who

gave the information. The transaction of the transfer of money and giving of cheques to the Applicant by Manish Singh did not take place in his presence as he was standing outside the toilet. The charged officer escaped by pushing one warder and Vinay Thakur, AS both of whom were present in the toilet. He and other warders were present outside the toilet. He stated that the wall jumped over by the Respondent, while escaping from the scene of the alleged misconduct was four feet high. He did not know the name of the warder who called to give this information. Sh. Vinay Thakur, AS on the other hand stated that the call was received at 11.30AM. He was accompanied by the other Assistant Superintendent, P K Sinha and two warders of Petition officer's Branch at gate number 3. He did not remember the names of the warder. He was positioned at the outer entrance gate of the toilet and the incident of giving and taking of money and cheques was not visible from outside. According to him, the wall over which the Applicant jumped was five to six feet high. Only one warder of the petition Officer's Branch was present inside the toilet. He P. K. Sinha and another warder were at the 'out gate' of the toilet. Nobody pushed us. The Applicant jumped over the wall on seeing them. It is difficult not to notice the subtle and no subtle differences, inaccuracies and in congruencies in the statements of the witnesses. According to MPS Bali, he was alone in his room when the information was received about the possibility of the Applicant taking bribe. According to both the Assistant Superintendents, they were present in MPS Bali's room when the aforementioned information was received. According to P. K. Sinha, the other Assistant Superintendent Vinay Thakur was present inside the toilet at the time of the alleged incident along with a warder. However, according to Vinay Thakur, AS, he was positioned along with P. K. Sinha at the out gate along with two warders. Only one warder was present inside the toilet. The number of warders, accompanying

them was two according to P. K. Sinha and three as per AS Vinay Thakur's version. As per the imputation of miss-conduct there was one warder from the Petition Officer's Branch. However, these warders - one, two or three – are anonymous. They are, if they exist, crucial witnesses yet their names are not known to any of the three witnesses from the department. One of the Assistant Superintendents says that the Applicant pushed the other Assistant Superintendent, Vinay Thakur. However, Vinay Thakur denied that he was pushed. In the matter of the height of the wall, which the Applicant jumped over, there is considerable variation. A plan of the site drawn by a certified architect has been placed at page 47 of paper book according to which the height of the wall varies from eight feet nine inches to five feet eight inches. This has also been mentioned in paragraphs 4.37 and 5.9 (ii) of the O.A. and not contested the reply affidavit. Only an Olympian could jump over this height from a near static position, as in the instant case. There is variation also about the time when the call regarding the Applicant likely to enter into some monetary transaction was received by M. P. Bali. According to M. P. Bali and P. K. Sinha, it was received at 1.00 PM. According to Vinay Thakur, AS the time of the call was 11.30AM.

6. The learned counsel for the Applicant has also contended that it has been mentioned in the charge sheet that Rs 150/- have been recovered from the site, when the Applicant allegedly threw the money, which he had in his hands but the amount mentioned in the imputation of misconduct totals only to Rs 140/-. The argument is that the entire enquiry shows extremely slip"-shod and casual approach of the Respondent. It has also been pointed out that it has been mentioned in the imputation of misconduct that the Applicant arrived at the spot on his cycle. The learned Counsel for the Applicant has argued

that any prudent person at the spot would have seized the cycle after the Applicant allegedly ran away from the spot by scaling or jumping over the wall. This could have been a crucial piece of evidence. He would contend that it only showed that the whole case against the Applicant is concocted.”

3. The Tribunal after considering the abovementioned facts and contentions of both the counsels allowed the O.A. filed by the Respondent and held as under:-

“We are convinced that this is a case of ‘no evidence’ and the inquiry is also procedurally flawed, as discussed in the preceding paragraphs.”

4. It has been contended by the counsel for the petitioners that the learned Tribunal failed to appreciate that in the Departmental Enquiry the matter is to be decided on the basis of evidence led before the Enquiry Officer, the charge is not to be proved on probability and circumstantial evidence also.
5. The counsel further argued that the Tribunal has failed to appreciate that the report of Sh. Vinay Kumar Thakur, Assistant Superintendent and Sh. Praveen Kumar Sinha, Assistant Superintendent dated 5th July, 2005 is a listed document as Annexure-II to the chargesheet. Therefore, it cannot be contented that it is neither an exhibited document nor the respondent is aware of the same. The document was supplied to the Respondent with the chargesheet and is exhibited in the Enquiry proceedings. Thereafter, the counsel also argued that the Tribunal has failed to appreciate that the demand was of Rs. 150/- and recovery amount was Rs. 140/- when the money and the unsigned cheques are recovered and fault or discrepancy has

been pointed out with respect of recovery the question of disbelieving the evidence does not arise.

6. The counsel for the petitioners further contended that the Tribunal has failed to appreciate that even though a call is received at 11:30AM, it is not unusual that the culprit was caught at 1:40PM and this fact in any case is not denied by the Respondent. In fact, he had admitted that he had gone to the toilet at the relevant time which should have been accepted. Furthermore, it is well settled law that disciplinary proceedings are not criminal proceedings. The standard of proof required is that of pre-ponderance of the probability and not proof beyond reasonable doubt vide *Union of India v. Sardar Bahadur* reported in *1972 (2) SCR 225*, it is further submitted that strict rules of procedures and proof do not apply to a departmental enquiry vide *Union of India v. A. Nagamalleswara Rao*, reported in *AIR 1998 SC 111*.
7. Whereas the counsel for the respondent argued that none of the three official witnesses against the respondent is an eye witness of the incident. The warder or warders, who were allegedly inside the toilet watching the money changing hands from Manish Singh to the Respondent, have not been produced as witnesses. Even their names are not known which would be a fatal flaw in conducting the disciplinary proceedings.
8. The learned counsel further contends that there have been serious procedural irregularities in the enquiry. It is mandatory under Rule 14(18) of the CCS (CCA) Rules, 1965 that the Enquiry Officer should examine the charged official by informing him about the circumstances appearing against him and asking for his explanation. The Enquiry Officer failed to do so. If the

Enquiry officer failed to do so, it would vitiate the enquiry. Rule 14 (18) is reproduced below:-

"(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him."

9. The counsel for respondent argued that the Government of NCT of Delhi had issued a circular dated 25.11.2005 cautioning the concerned authorities to follow the rules strictly. The circular is quoted below:

"Sub: Conducting of departmental inquiries under the CCS (CCA) Rules, 1965, it has been observed by the Chief Secretary, Delhi that the officers of NCT of Delhi, who are appointed as part time inquiring Authorities for conducting departmental inquiries under the CCS (CCA) Rules, 1965 against the officials of Govt of NCT of Delhi do not scrupulously follow the procedure as laid down u/r 14 of the CCS (CCA) Rules, 1965. In most of the cases, the Inquiring Authorities invent their own procedure and drift away from the prescribed procedure of rule. It has frequently been observed that the Inquiring Authorities do not obtain the defence of the Charged Officers after the conclusion of Disciplinary Authority's case and also do not conduct the general examination of the charged officer on the circumstances appearing in the evidence against them as provided under sub-rule 16 & 18 of Rule 14 of the CCS (CCA) Rules, 1965. Although shortcomings seen trivial yet these are sufficient enough to render the entire proceedings ab-initio. In order to avert such situations, the inquiry has been remitted to the Inquiry Authorities for holding further inquiry, which delays the finalization of Disciplinary proceedings

against the Charged Officers and they have to suffer mental agony due to pendency of disciplinary proceedings.

The Chief Secretary, Delhi has expressed his displeasure about these procedural lapses repeatedly committed by the Inquiring Authorities. in conducting the inquiries under Rule 14 of CCS (CCA) Rules, 1965 and directed that all officers, who are appointed as Inquiring Authorities must scrupulously follow the provisions as laid down u/r 14 of the CCS (CCA) Rules, 1965. Any laxity on the Inquiring Authorities in this regard will be viewed seriously and would be taken against them."

10. The Hon'ble Supreme Court in ***Ministry of Finance & Anr v. S. B. Ramesh, (1998) 3 SCC 227*** has favourably considered the observations of this Tribunal in regard to the mandatory nature of Rule 14 (18) of CCS (CCA) Rules follows:

"13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW-1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18.6.1991, observed as follows:

"After these proceedings on 18.6.1991 the Enquiry Officer has only received the brief from the PO and then finalized the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18.6.1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a

case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18.6.1991 when the inquiry was held for recording the evidence in support of the charge even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority."

11. The counsel for the respondent argued that the evidence adduced before the Enquiry Officer does not link him with the alleged misconduct. Reliance has been placed on ***Sher Bahadur Vs Union of India and others, (2002) 7 SCC 142***, in which the Hon'ble Supreme Court has held that:

"7. It may be observed that the expression sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as

adduced in the enquiry" would not in principle satisfy the rule of sufficiency of evidence."

12. To decide the present case in hand we are of the view that it is important to discuss the law laid down by the Apex Court in regard to the contention of the Counsels that the Tribunal can not look into the evidence adduced in a disciplinary enquiry in judicial review. The Hon'ble Apex Court in ***Kuldeep Singh v. The Commissioner of Police and Ors: (1999) 2 SCC 10***, held:

"8. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amendable to judicial scrutiny.

9. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with".

13. In ***Sher Bahadur Vs Union of India and others, (2002) 7 SCC 142*** the Hon'ble Apex Court held:

"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the

enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry', would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Sh.

R. A. Vashist, Ex CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ex P-0 1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in difference phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Canst) was proved is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.

14. In ***Ministry of Finance & Anr v. S. B. Ramesh***, (1998) 3 SCC 227, the Hon'ble Apex Court clearly approved the following part of the order of the Tribunal.

“14. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW-1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18.6.91, observed as follows:-

"After these proceedings on 18.6.91 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18.6.91. Under Sub-Rule 18 of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry authority. The learned counsel for the respondents argued that as the inquiry itself was held ex-parte as the applicant did not appear in response to notice, it was not possible for the Enquiry authority to question the applicant. This argument has no force because, on 18.6.91 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex-parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the inquiry authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule 18 of Rule 14 of CCS (CCA) Rules. The omission to do this is a serious error committed by the enquiry authority. Secondly, we

notice that the enquiry authority has marked as many as 7 documents in support of the charge, while SW-1 has proved only one document, namely, the statement of Smt. K.R. Aruna alleged to have been recorded in his presence. How the other documents were received in evidence are not explained either in the report of the enquiry authority or in the proceedings. Even if the documents which were produced along with the charge sheet were all taken on record, unless and until the applicant had requested the enquiry officer to mark certain documents in evidence on his side, the enquiry authority had no jurisdiction in marking all those documents which he had called for the purpose of defending himself on the side of the applicant while he has not requested for making of these documents on his side. It is seen that some of these documents which is marked on the side of the defence not at the instance of the applicant, has been made use of by the enquiry authority to reach a finding against the applicant. This has been accepted by the disciplinary authority also. We are of the considered view that this is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with law should not have been received in evidence and that, any inference drawn from these documents is misplaced and opposed to law. We further find that the enquiry authority as well as, the disciplinary authority have freely made use of the statement alleged to have been made by Smt. K.R. Aruna in the presence of SW1 and it was on that basis that they reached the conclusion that the applicant was living with Smt. K.R. Aruna and that, he was the father of the two children of Smt. K.R. Aruna. The S.W. 1 in his deposition which is extracted above, has not spoken to the details contained in the statement of Smt. K.R. Aruna which was marked as Ex.1. Further it is settled law that any statement recorded behind the back of a person can be made use of against him in a proceeding unless the person who is said to have

made that statement is made available for cross-examination, to prove his or her veracity. The disciplinary authority has not even chosen to include Smt. K.R. Aruna in the list of witnesses for offering her for being cross-examined for testing the veracity of the documents exhibited at Ex. 1 which is said to be her statement. Therefore, we have no hesitation in coming to the conclusion that the enquiry authority as well as, the disciplinary authority have gone wrong in placing reliance on Ex. 1 which is the alleged statement of Smt. K.R. Aruna without offering Smt. K.R. Aruna as a witness for cross-examination. The applicant's case is that the statement was recorded under coercion and duress and the finding based on this statement is absolutely unsustainable as the same is not based on legal evidence. The other documents relied on by the Enquiry authority, as well as by the disciplinary authority for reaching the conclusion that the applicant and Smt. K.R. Aruna were living together and that they have begotten two children have also been not proved in the manner in which they are required to be proved."

15. In ***Central Bank of India v. Prakash Chand Jain: AIR 1969 SC 983***, the Hon'ble Apex Court held:

"...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..."

16. In ***Union of India v. K. A. Kittu and others: (2001) 1 SCC 65***, the Hon'ble Apex Court considered the scope of the judicial review and observed the following after hearing the counsel for the parties:

“6. We have heard Mr. Mukul Rohtagi, learned Additional Solicitor General for the appellant and Mr. K. Sukumaran, learned senior counsel for the respondent.

7. On behalf of the appellant it has been urged that the Tribunal acted as an Appellate Court which is erroneous in as much as in exercising power of judicial review the Tribunal could not have re-appreciated the evidence on record. It has also been urged that it is not a case of no evidence and therefore the tribunal ought not to have interfered with the finding of the inquiry Officer.

8. In reply the learned senior counsel for the respondent has urged that the Tribunal in the impugned judgment clearly noticed by referring to the decisions of this Court the power of judicial review by the Tribunal. It has also been contended that Tribunal rightly held that the inquiry report was bad in law, in as much as evidence of all the witnesses examined by the delinquent officer was not at all considered by the Tribunal.

9. On perusal of the judgment we find that Tribunal also held that Inquiry Officer was biased and also there was violation of principle of natural justice.”

17. Similarly, in ***M.V. Bijlani v. Union of India and others, (2006) 5 SCC 88***, the Hon’ble Apex Court considered the scope of judicial review and held:

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had

been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts.”

18. On perusal of facts, submissions of both the counsels and law laid down by the Hon’ble Apex Court in regard to the present case, we are in consonance with the view of the Tribunal that the order passed by the Disciplinary Authority and Appellate Authority are quashed and set aside and the law in this regard is well settled by the Hon’ble Supreme Court in many cases. Therefore, we find that the whole edifice of the enquiry has no foundation, which will collapse at the slightest probing. The counsel for the Respondent has given brief of his defence to the Enquiry Officer, which a very well drafted document with cogent argument to repel the case of the prosecution. Not even one point of fact is considered by the Enquiry Officer. No cognizance is taken by the Appellate Authority. The points raised in the present petition, the order of the Appellate Authority is laconic and is a non-speaking order.
19. Hence, we find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 16, 2015/gr