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

% *Judgment delivered on: January 06, 2015*

+ **W.P. (C) No. 5907/2012**

RAVI SARAN Petitioner

Represented by: Mr. Rajiv Aggarwal, Advocate.

Versus

THE COOPERATIVE STORE LTD., SUPER BAZAR Respondent

Represented by: Ms. Perna Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present petition is directed against the award dated 03.09.2005 whereby ld. Industrial Adjudicator in I.D. No. 754/2004 (Old I.D. NO. 318/1991) held that the termination of services of the petitioner was legal and justified and, therefore, the petitioner is not entitled to any relief.

2. The present petition is also directed against the order dated 11.12.2002 passed by the ld. Industrial Adjudicator, whereby it was held that the enquiry conducted was legal, fair, proper and in accordance with the principles of natural justice.

3. Brief facts of the case are that petitioner joined the respondent Establishment as a Sweeper in the year 1966 and his last drawn wages were Rs.1,400/- per month. When the petitioner was posted at A-1, Paschim Puri Branch of respondent Establishment, an audit team headed by Sh. P.K. Mistri, Asst. Accounts Officer, carried out a physical checking of the stock of the respondent Establishment on 30.04.1988 and found some shortages in the Store. At the relevant time, Sh. Kuldeep Singh was Incharge of the Store. Accordingly, charges were framed against Sh. Kuldeep Singh (Incharge), Rajeshwar (Helper), N.K. Dua, Sales Assistant and the petitioner as under:

“The goods were entrusted to the staff of the Paschim Puri, A-1 Branch and they miserably failed to render proper accounts of the goods and caused heavy loss to the Organisation. They have committed misconduct as envisaged in sub-para (v) and (xxii) of Rule 69 of the aforementioned Service Rules?”

4. Thereafter, a domestic enquiry was conducted by Sh. S.P. Bansal, Enquiry Officer, who submitted the report on 15.03.1990. On the basis of the aforesaid enquiry report, the General Manager of the respondent Establishment removed the petitioner from the service vide order dated 31.03.1990.

5. Being aggrieved, the petitioner sent legal demand notice dated 11.05.1990 to the respondent Establishment. Since there was no response, petitioner raised an industrial dispute by filing a statement of claim before the Conciliation Officer. However, the conciliation

proceedings resulted into failure and thereafter, the appropriate Government vide its order dated 02.05.1991, referred the dispute pertaining to the termination of the services of the petitioner for adjudication to the Industrial Adjudicator with the following terms of reference:

“Whether the services of Sh. Ravi Saran have been terminated illegally and / or unjustifiably by the Management and if so, to what relief is he entitled and what directions are necessary in this respect?”

6. Based upon the pleadings of the parties, Id. Tribunal vide order dated 17.12.1992 framed the following issues:

“(1) Whether the enquiry held by the Management is legal, fair and proper

(2) As per the terms of reference?”

7. The case of the petitioner / workman before the Labour Court was that he was working as a Safai Karmchari with the respondent Establishment at its Paschim Puri Branch. Some shortages were detected. Accordingly, the whole staff working over there were suspended. His removal from service was illegal, bad, unjust and malafide. A fake domestic enquiry was conducted by Sh. S.P. Bansal. His first grievance was that he was not provided proper opportunity of being heard. His second grievance was that enquiry officer was biased and third grievance was that his removal from service was based on extraneous and foreign considerations. The workman submitted before the Id. Tribunal that his dismissal is unjustified and same may be set

aside and a lesser punishment be granted.

8. On the other hand, Management examined Sh. S.P. Bansal, the Enquiry Officer, who testified that he had conducted the enquiry strictly as per the principles of natural justice. He provided full opportunity to the workman to defend himself. All relevant documents had been provided to him.

9. Mr.Rajiv Aggarwal, learned counsel appearing on behalf of the petitioner submitted that while conducting the enquiry, the Enquiry Officer supposed to act impartially as a Judge. He had to provide all opportunities to both the parties to put up their respective cases. He was to allow the workman to cross-examine the witnesses of the Management and lead his own evidence and also examine his witnesses.

10. Ld. Tribunal in its order dated 11.12.2002 recorded that the workman failed to prove that he had not been provided an opportunity of being heard. He made bald and general allegations against the Enquiry Officer. In what manner, the Enquiry Officer was biased and how the Enquiry Officer did not maintain the partial attitude has not been established. Moreover, during cross-examination, he did not claim that the Enquiry Officer had not provided him with proper opportunity to cross-examine the Management witnesses. Accordingly, Ld. Tribunal held that the enquiry conducted was legal, fair and proper and it does not suffer from any infirmity.

11. Thereafter, the Id. Tribunal heard the parties on the point of penalty imposed and held that the staff at the Store had failed to maintain fair and proper accounts of stocks and thereby failed to protect the interest of the Management. Their act of misappropriation has resulted in loss to the Management. Therefore, staffs at the Store are responsible for loss of Rs.1,00,774.25/. Thus, they are accused of making loss to the Management by not preparing proper and fair accounts of the Stocks handed over to them. By doing such act of misappropriation, Sh. Kuldip Singh, Rajeshwar and petitioner indulged in corruption and thereby violated the provisions of Rule 69 (V) of the Cooperative Store Ltd. The act of misappropriation is considered as a very serious act by the petitioner along with his co-employees during the period from 01.01.1988 to 30.04.1988, i.e., within four months. Accordingly, held that punishment granted to the petitioner was not unjust nor disproportionate to the gravity of charges proved against him.

12. Mr. Rajiv Aggarwal, Id. Counsel appearing on behalf of the petitioner submitted that the petitioner was never entrusted with the charge of any goods whatsoever and, therefore, cannot be held responsible for the shortage of the same. The petitioner was working as a Sweeper and has nothing to do with the goods kept in the Store.

13. To strengthen his arguments, Mr. Aggarwal has relied upon a case of *State of H.P. Vs. Sher Singh, Crl. Appeal No. 298/2004*

decided by the High Court of Himachal Pradesh wherein held that the burden of proof of entrustment is always on the prosecution. Mere entries in the books of account without any oral evidence, as to the nature and business and the mode of keeping the account, is not sufficient to prove the entrustment.

14. Also relied upon a case of *Sunil Tripura Vs. State of Tripura, 2013(4)GLT833* whereby held that to prove the requirement of criminal misappropriation and / or criminal breach of trust, the prosecution has to show that there was an entrustment by the Authority on the accused to deal with a particular subject and the accused had absolute domain over it and that the position of subject matter on the date of entrustment, i.e., the goods / articles or cash in hand were entrusted to the accused on the date of his taking over the charge.

15. Mr. Aggarwal further submitted that there is no material on record to prove that the petitioner had misappropriated the goods, moreover, it requires to be proved by document. There is no evidence to show that the petitioner was the Incharge of the Store and at any point of time, the goods were entrusted to him. Moreover, he was not the person to take out the goods from the Store. Therefore, for the said entrustment, the Store Manager can only be held liable.

16. Ld. Counsel further submitted that the Labour Court has failed to appreciate that there is no evidence to show that the petitioner was responsible directly or indirectly for the shortage of the goods.

Moreover, failed to appreciate that independent charges by way of independent charge sheets were required to be proved against the charged officers / employees. Merely because there was a shortage of goods in a Store, all the employees of the Store cannot be terminated on account of the same. Even in a case of strikes, which are illegal, independent charge sheets are required to be served and independent charges are required to be proved against the striking workers as held by the Hon'ble Supreme Court in the case of ***India General Navigation and Railway Co. Ltd. and Anr. Vs. Their workmen***, AIR 1960 SC 219.

17. Mr. Aggarwal, further submitted that the Labour Court also failed to appreciate that the Presenting Officer was a law graduate, whereas the petitioner is an illiterate Sweeper. The Enquiry Officer ought to have informed the petitioner about his right to be assisted by a Lawyer, which the Enquiry Officer failed, thus, there was a clear violation of principles of natural justice as held in a case of ***Board of Trustees of the Port of Bombay Vs. Dilip Kumar Raghavendranath Nadkarni and Ors.*** AIR 1983 SC 109.

18. Ld. Counsel further submitted that the respondent Establishment was represented by its legally trained officer in Enquiry and request of the employee to be represented by a lawyer was refused. Thus, there was a denial of a reasonable opportunity of hearing to the employee.

19. Ld. Counsel further submitted that the petitioner worked for 22

years without any blemished past record. Presuming the charges stood proved against the petitioner, then also the punishment of removal from service is highly / shockingly disproportionate to the gravity of misconduct.

20. On the issue of delay, Id. Counsel for the petitioner has relied upon a case of ***Ram Chandra Shankar Deodhar and Ors. Vs. State of Maharashtra and Ors. AIR 1974 SC 259*** and submitted that the petitioner belongs to lower strata of the Society. His services were terminated by the respondent on 31.03.1990 and thereafter, he continued to fight his legal battle before the Labour Court and vide award dated 03.09.2005 his claim was finally rejected. During the proceedings before the Tribunal and thereafter also the family of the petitioner was on the verge of starvation. He could not challenge the orders passed by the Id. Tribunal in time. Therefore, in the interest of justice, the delay may not come in the way of his legal rights.

21. Mr. Aggarwal has drawn the attention of this Court to the statement of Sh. S.P. Bansal, MW1, who in his cross-examination admitted that the documents on which he relied upon had not been supplied to the workman by him, however, same was supplied in his presence by the Presenting Officer. He admitted that Sh. Virender Singh, the Presenting Officer was a Legal Officer of the Management. He was a law graduate and not a practicing Advocate. Further admitted, the list of witnesses had not been supplied to the petitioner

by him in the beginning of the enquiry, however, voluntarily stated that it was supplied by the presenting Officer to him as well as to the petitioner. Also admitted that the list of documents filed by the Presenting Officer of the Management does not mention the documents. Further admitted that report of Sh. P.K. Mistri dated 02.05.1988 had not been mentioned in the list of documents filed by the Presenting Officer. He further admitted that he had not supplied the copies of documents dated 06.02.1979, 30.01.1988, G.M. Circular dated 23.06.1986 and report of Sh. P.K. Mistri dated 02.05.1988. Also admitted that the Management had not filed any document or rule describing the duty of the workman. Also not filed any document by showing the entrustment of the good. The workman was not represented by any defence assistant.

22. While concluding his arguments, Id. Counsel for the petitioner submitted that the chargesheet was issued against all staff member posted in the Store, however, a chargesheet specifying the allegations against the petitioner has not been issued. Thus, the Enquiry cannot be held fair and proper. He was not entrusted the goods of Store, therefore, cannot be held responsible for any shortage of the goods. The petitioner was neither the Incharge of the Store nor the job of taking care of goods of the Store was assigned to him. Moreover, neither the Enquiry Officer nor the Id. Tribunal gave its findings on the entrustment. Every conduct cannot be considered to be misconduct. It was the duty of the employer to prove the document as well as the

legal assistance. The Enquiry Officer ought to work as an independent person. He had to tell the legal right of the petitioner / workman, however, the said Enquiry Officer failed to do so. Ld. Tribunal also failed to see the legality of the enquiry whether it was fair and proper. Even onus has been put on the workman to prove his case and disprove the case of the Management.

23. On the other hand, Ms. Prerna Mehta, learned counsel appearing on behalf of the respondent Establishment, submitted that the petitioner has impugned the award dated 03.09.2005 in the present petition which has been filed after the lapse of seven years, thus the same is hit by delay and latches. Therefore, on this ground alone, the petition deserves to be rejected.

24. To strengthen her arguments, learned counsel has relied upon a case of ***Cheripalli Madar Vs. Assistant Division Engineers and Others (2005) 11 SCC 546***, wherein held as under:-

“The appellant very seriously contended that because of the fact that for nearly 4 years the appellant was insane he could not defend himself in the domestic enquiry, therefore, he had suffered the order of termination. If opportunity is given to him now he will be able to establish his abandonment in service. He also submits that since the High Court has not gone into the merits of the case we should give him an opportunity of being heard by the High Court by remanding the matter back to the High Court. We do not find any merit in this argument. The Tribunal itself after going through the merits of

the case and after hearing the parties came to the conclusion that the finding of the domestic enquiry does not suffer from any error and the respondent management has followed the principles of natural justice, hence his termination was just. As against the said order the appellant did not prefer a writ petition in time. The petition was actually filed after a delay of 3 years, naturally the High Court was not inclined to interfere in the matter because of the laches. Even on merits from the material the main award of the Tribunal we are satisfied that no injustice has been done. In the said view of the matter this appeal fails and the same is dismissed. ”

25. Also relied upon case of ***Uttaranchal Forest Development Corpn. and Anr. Vs. Jabar Singh and Others (2007) 2 SCC 112***, wherein held as under:

“21. Mr. L. Nageshwar Rao submitted that the High Court was not justified in entertaining the writ petition on the ground that the petition has been filed after a period of 8-10 years and that the petition should have been dismissed by the High Court on the ground of laches. Reliance was placed on Haryana State Coop. Land Development Bank v. Neelam, (2005) 5 SCC 91. Speaking for the Bench, Hon'ble S.B.sinha,J. observed:

"18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not

mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub silentio. The Respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein from 10.8.1988.

20. It is true that the Respondent had filed a writ petition within a period of three years but indisputably the same was filed only after the other workmen obtained same relief from the Labour Court in a reference made in that behalf by the State. Evidently in the writ petition she was not in a position to establish her legal right so as to obtain a writ of or in the nature of mandamus directing the Appellant herein to reinstate her in service. She was advised to withdraw the writ petition presumably because she would not have obtained any relief in the said proceeding. Even the High Court could have dismissed the writ petition on the ground of delay or could have otherwise refused to exercise its discretionary jurisdiction. The conduct of the Respondent in approaching the Labour Court after more than seven years had, therefore, been considered to be a relevant

factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one. The Labour Court in the aforementioned situation cannot be said to have exercised its discretionary jurisdiction injudiciously, arbitrarily and capriciously warranting interference at the hands of the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution."

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"42. With regard to the non-maintainability of the writ petition and the contention that the writ petition by respondents were barred by laches, Mr.Mehta submitted that the availability of alternative remedy is only a rule of prudence and in a case like the present one where there were no disputed questions of fact, he submitted the High Court was justified in entertaining the writ petition. Mr. Bharat Sangal also made his submissions that this Court under Article 136 of the Constitution of India is entitled to mould the relief to be given to the workmen in the present case in view of the fact that Section 25N (7) statutorily provides all benefits to the workmen in case of illegal retrenchment, the workmen concerned in the present cases would be entitled to the said benefit without any modification or mould the relief by this

Court. He, therefore, submitted that the civil appeals filed by the Corporation deserves to be dismissed in favour of the respondent-workmen.

*43. We are unable to countenance the above submission of Mr. Mehta and Mr. Sangal insofar as it relates to the non-maintainability of the writ petition and the delay and laches. It is not in dispute that the effective alternative remedy was not availed by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches. We have already referred to the decision of this Court in **U.P. State Spinning Co. Ltd. v. R.S. Pandey and Anr**, 12(2005)8SCC264. This Court speaking through Arijit Pasyat, J. has held in categorical terms that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act unless exceptional circumstances are made out.”*

26. Learned counsel further submitted that present writ petition is under judicial review and this Court need not to re-appreciate the

evidence recorded by learned Labour Court and only has to look into whether there is any perversity in passing the Award dated 03.09.2005.

27. On the issue of judicial review, learned counsel for the respondent has relied upon case of ***Union of India and Anr. Vs. B.C. Chaturvedi (1995) 6 SCC 750***, wherein held as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the

charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

*13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry 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. In **Union of India v. H.C. Goel** 5 (1964) 4 SCR 718, this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on*

no evidence at all, a writ of certiorari could be issued.”

28. She submitted, there has been misappropriation of the goods of worth Rs.1,00,774.25/-. Enquiry has been conducted by giving the proper opportunity to the petitioner and the same has been held legal and proper vide order dated 11.12.2002 passed by learned Labour Court.

29. Learned counsel further submitted that Shri G.P. Jain, Junior Supervisor, Saraswati Vihar Processing Unit, appeared as a witness, who deposed that supply of sugar and atta to Patel Nagar branch RDC and branches under this RDC were made from the Saraswati Vihar Unit. He has certified Ex.MW-5/1, which is an Issue Chart showing supply of sugar and atta during the period 01.07.1987 to 31.12.1987. The value of goods worth of Rs. 2,43,422.50/- were issued to Paschimpuri Branch and again during the period from 01.01.1988 to 30.04.1988, the goods value of Rs. 1,60,561.60/- were issued. The petitioner did not cross-examine this witness either way, rather remained unauthorizedly absent on the date of evidence of Shri G.P. Jain.

30. Learned counsel has drawn the attention of this Court to the defence taken by Kuldip Singh who stated that he was posted in the Branch at Paschimpuri on 14.01.1988 and as such, the entire shortage of the period from 01.01.1988 to 30.04.1988 cannot be attributed to

this period. He caught one of his colleagues Shri R.N. Pathak making clandestine sale of items and Shri N.K. Dua, R.N. Pathak and the petitioner were making complaints against him as part of common conspiracy. The maximum theft of goods from the branch took place during the period 23.03.1988 to 12.04.1988 when he was on leave. It was only after one of them, namely, Shri R.N. Pathak was caught red handed on 26.04.1988; the enquiry was held against all the staff posted in Paschimpuri and it was found that N.K. Dua, R.N. Pathak and the petitioner were the main culprits in misappropriation of goods.

31. Moreover, in reply dated 29.08.1988 in response to Memorandum dated 09.07.1988, issued by General Manager, Shri Kuldip Singh, stated that he had lodged FIR with the police against Shri R.N. Pathak, Casual Sales Assistant and the petitioner. The petitioner had accepted the charge before the police in a criminal case; accordingly, he was made an approver in the said case.

32. Learned counsel further submitted that the approver is made only when he discloses the offence committed. He can disclose the offence only when he is part of the offence. He admitted his guilt before the police. Thereafter, police made him approver. Moreover, the Enquiry Officer has held charges proved against the petitioner which have been affirmed by Labour Court vide order dated 11.12.2002. If misappropriation is proved, then the removal from service is the only option left with the respondent-Establishment and rightly terminated

from service vide order dated 31.03.1990 along with Shri N.K. Dua and Rajeshwar.

33. The petitioner in his Statement of Defence dated 20.09.1989 has taken the stand that he being a sweeper, his duty was that of sweeping and cleaning in the branch and as such, he had no concern on the sales side. He is an illiterate person and as such, he confined his work simply in sweeping, swabbing and cleaning the toilet, etc. Therefore, he cannot be responsible for any shortage of goods in the Store. However, during his cross-examination, he deposed that he had reached the branch at about 3.00 PM on 30.04.1988. The inspection team reached the branch at about 5.00 PM when he was also present in the branch. The stock taking continued till 1.00 AM late in the night. He admitted that in the morning, the branch opened at 11.00 AM in the presence of all the employees and likewise, it was closed in the evening when all employees were present. The keys of the locks, however, were kept by Shri Kuldip Singh, In-charge. He further deposed that mainly Shri Kuldip Singh, In-charge; N.K. Dua, Sales Assistant; R.N. Pathak, Casual Sales Assistant and Rajeshwar, Helper are responsible for these shortages. The petitioner again summoned for cross-examinations on 18.01.1990, wherein he admitted letter Ex.WW-2/M-1. As per the said letter, he was given duty of sweeper-cum-helper whose main duty was to check cash memos and punched them. Copy of the order dated 06.02.1979 also established that the petitioner was working as sweeper/helper. Moreover, Branch Manager had given

names of the persons responsible for the shortage and the name of the petitioner was also included in the list and as such, proportionate shortage was also directed to be recovered from the petitioner also.

34. Learned counsel further submitted that the law is well settled that the Courts will not act as an Appellate Court and re-assess the evidence led in the domestic enquiry nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of advocacy of the evidence or the reliable nature of evidence will not be grounds for interfering with the findings. Therefore, this Court may not interfere with the findings of the department and of the Labour Court as well.

35. As also submitted by counsel for the petitioner that punishment is not proportionate to the misdemeanor, if any, committed by the petitioner, learned counsel for the respondent submitted that this Court only has to see whether the punishment is shockingly excessive or disproportionate to the gravity of the proved misconduct. In the present case, the embezzlement and misappropriation of the goods and money has been proved in the domestic enquiry, which has been affirmed vide order dated 11.12.2002 by learned Labour Court, stating therein that the enquiry was held legal and proper. In such eventuality, this Court should not interfere with the orders passed by the learned Labour Court.

36. I have heard the learned counsel for the parties.

37. Vide order dated 11.12.2002, the learned Tribunal recorded that the workman failed to prove that he had not been provided an opportunity of being heard. He made bald and general allegations against the Enquiry Officer. In what manner, the Enquiry Officer was biased and how the Enquiry Officer did not maintain the partial attitude has not been established. Moreover, during cross-examination, he did not claim that the Enquiry Officer had not provided him with proper opportunity to cross-examine the Management witnesses. Accordingly, the learned Tribunal held that the enquiry conducted was legal, fair and proper and it does not suffer from any infirmity.

38. It is not in dispute that the Presenting Officer was a Law Graduate, however, not a practicing Advocate. The petitioner requested to provide a lawyer to defend his case, same was refused by the Management. A lawyer can be provided if the Presenting Officer is a lawyer, otherwise the workman has a right to ask for defence assistant of an equal calibre. The petitioner did not ask for defence assistant, thus, there was not a denial of legal assistant to be provided to the petitioner.

39. Sh. S.P. Bansal, MW1, in his cross-examination stated that copies of the documents relied upon by the Management had not been supplied to the petitioner in his presence by the Presenting Officer.

The list of witnesses was supplied to the Enquiry Officer and the petitioner as well by the Presenting Officer.

40. In case of ***Jabar Singh and Others*** (*supra*), it is held that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance *Sub silentio*.

41. The present petition under judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice were complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or

conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

42. Shri G.P. Jain, Junior Supervisor, Saraswati Vihar Processing Unit, appeared as a witness, who proved the supply of goods to the Store in question. This witness has not been cross-examined by the petitioner.

43. In addition, Shri Kuldip Singh, Store Incharge, stated that he caught one of his colleagues Shri R.N. Pathak making clandestine sale of items and Shri N.K. Dua, Shri R.N. Pathak and the petitioner were making complaints against him as part of common conspiracy. The maximum theft of goods from the Branch took place during the period 23.03.1988 to 12.04.1988 when he was on leave. He further stated that inquiry was held against all the staff posted in Paschimpuri and it was found that Shri N.K. Dua, Shri R.N. Pathak and the petitioner were the main culprits in misappropriation of goods.

44. It is pertinent to mentioned here that FIR was lodged against the petitioner also. The petitioner accepted his guilt before the police in a criminal case; accordingly, he was made an approver in the said case. It cannot be disputed that approver is made only when one discloses the offence committed. The offence can be disclosed only when he is part of the offence. Moreover, the Enquiry Officer has held charges proved against the petitioner which have been affirmed by Labour Court vide order dated 11.12.2002. If misappropriation is proved, then the removal from service is the proper punishment.

45. The petitioner admitted in his Statement of Defence dated 20.09.1989 that the Branch opened in the morning at 11.00 AM in the presence of all the employees and likewise it was closed in the evening when all employees were present. The petitioner also admitted letter Ex.WW-2/M-1. As per the said letter, he was given duty of sweeper-cum-helper whose main duty was to check cash memos and punched them. Copy of the order dated 06.02.1979 also established that the petitioner was working as sweeper/helper. Moreover, Branch Manager had given names of the persons responsible for the shortage and the name of the petitioner was also included in that list.

46. The staff, including the petitioner, committed misappropriation and embezzlement of stocks of the management to the tune of Rs.1,00,774.25/- along with other co-employees during the period 01.01.1988 to 30.04.1988. Such act of misappropriation committed by

the petitioner is of a grave nature. The power of Labour Court, while dealing with the question of grant of punishment, has been laid down in case of ***Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai) Allahabad Bank and Ors.(2003) 9 SCC 480***, wherein the Hon'ble Supreme Court has held that the power of interference with the quantum of punishment is extremely limited.

47. In case of ***Janatha Bazar Vs. Secretary, Sahakarinoukarara Sanstha, 2000(87) FLR 493 (SC)***, it was held that once the act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service.

48. In case of ***Municipal Committee, Bahadurgarh Vs. Krishnan Behari and Others, 1996(73) FLR 1429 (SC)***, it was held that in cases of misappropriation, there cannot be any other punishment other than dismissal.

49. Law is very well settled that the Courts will not act as an Appellate Court and re-assess the evidence led in the domestic enquiry nor interfere on the ground that another view is possible on the material on record. The learned Tribunal vide its order dated 11.12.2002 has held that the inquiry has been fair and proper, therefore, keeping in view the embezzlement of stocks of the Management to the tune of Rs.1,00,774.25/-, this Court does not feel the punishment is shocking, excessive or disproportionate to the gravity of the proved misconduct.

50. In addition to above, vide order dated 11.12.2002, the learned Tribunal held that the inquiry was legal and proper. Vide award dated 03.09.2005, the learned Industrial Adjudicator held that termination of service of the petitioner was legal and justified. The present petition has been filed in the year 2012, almost after lapse of seven years, thus, hit by delay and latches. The petitioner has not given any cogent reason for delay.

51. In view of the facts recorded above, the present petition is dismissed on merits and barred by delay and latches as well, but with no order as to costs.

**SURESH KAIT
(JUDGE)**

JANUARY 06, 2015
jg/bg/sb