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*** THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

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+ WRIT PETITION No.16288 OF 2004

% 29.04.2016

G.Satyanarayana

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Petitioner

VERSUS

\$ The Eastern Power Distribution Company
Of A.P., Visakhapatnam, rep. by its Chief
General Manager & another.

Respondents

! Counsel for Petitioner : Sri Vedula Srinivas

^ Counsel for the respondents : Sri M.Ravindra, Standing
Counsel for APEPDCL

<GIST:

> HEAD NOTE:

? Cases referred

[1] AIR 1964 SC 477
2 (1955) 1 SCR 1104
3 (1958) SCR 1240
4 AIR 1960 SC 1168
5 (1976) 2 SCC 868
6 (2015) 2 SCC 610
7 1995 (II) SLR 708

- ⁸ 1991 (3) SLR 751
⁹ 2004 (I) LLJ 36
¹⁰ 1995 (I) SLR 451
¹¹ (2002) 7 SCC 142
¹² (2006) 5 SCC 88
¹³ (2011) 5 SCC 142
¹⁴ (1999) 2 SCC 10
¹⁵ 1996 LAB I.C.2595
¹⁶ (2013) 10 SCC 324

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THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

WRIT PETITION No.16288 OF 2004

ORDER:

1 This Writ Petition is filed under Article 226 of the Constitution of India, seeking a writ of Certiorari by calling the records and to quash the Proceedings of the first respondent dated 31.8.2004 by declaring the same as arbitrary and for a consequential direction to the respondents to extend all service benefits to the petitioner as a Junior Accounts Officer.

2 The facts germane to the filing of the present Writ Petition are as follows:

3 The petitioner joined the service of the State Electricity Board as Typist in the year 1971 after due process of selection. By virtue of seniority, the petitioner was promoted as L.D.C in the year 1992 after passing the Accounts Test for Subordinate Officers Part I. In order to get promotion as Junior Accounts Officer, the requisite qualification is graduation in Commerce or Accountancy High Grade Examination. The petitioner appeared for B.Com examination conducted by Andhra University, vide Registered No.10933 but could not get the degree certificate from the University. The petitioner also appeared for B.Com examination conducted by Ranchi University through Study Centre in February 1993 with Registered No.30836. In the year 2000 the petitioner submitted a

copy of B.Com Degree certificate of Andhra University requesting the respondent authorities for making appropriate entries in his Service Register. While being so, on suspicion, the respondents initiated enquiry with regard to the genuineness of the B.Com Degree certificate produced by the petitioner, by placing him under suspension, vide order dated 12.04.2003 and appointed the Divisional Engineer, Enquiries, as enquiry officer. After conducting a detailed enquiry and by affording reasonable opportunity to the petitioner, the enquiry officer submitted a report stating that the charge levelled against the petitioner was proved. The petitioner was given a show cause notice calling his explanation as to why he should not be removed from service for the alleged misconduct to which the petitioner submitted his explanation. Being not satisfied with the same, the second respondent passed final order dismissing the petitioner from service, vide proceedings dated 31.08.2004. Aggrieved thereby, the petitioner filed the present Writ Petition. During the pendency of the Writ Petition, the petitioner preferred an appeal to the first respondent, which was dismissed.

4 The respondents filed common counter denying all the averments made in the affidavit filed in support of the Writ Petition, *inter alia*, contending that the findings recorded by the enquiry officer are based on the letters submitted by the Universities. The petitioner, by producing fake certificates, cheated the organization, which is misconduct under Regulation 4 (xxxix) of APSEB Employees Revised Conduct Regulations as adopted by APEPDCL and warrants disciplinary action as per Rule 6 (xxx) of APSEB & D & A Regulations as adopted by APEPDCL. Therefore, the petitioner is not entitled to any relief in this Writ Petition and hence the Writ Petition is liable to be dismissed.

5 Sri Vedula Srinivas, the learned counsel for the petitioner, would submit that the petitioner was kept under suspension without

following due process and that itself is sufficient to vitiate the enquiry. He would further submit that the findings recorded by the enquiry officer have no nexus to the charges levelled against the petitioner. It is his further submission that non-supply of the copies of the letters alleged to have been received from the concerned Universities would amount to violation of principles of natural justice. He lastly contended that the findings recorded by the enquiry officer are perverse, therefore, it is a fit case to quash the enquiry report by invoking the jurisdiction under Article 226 of the Constitution of India.

6 *Per contra*, the learned standing counsel for the respondents would submit that the petitioner secured promotion by producing fake Degree certificate and the same was proved in the enquiry. He further submitted that even assuming, but not conceding that there is any defect in the charge sheet, that itself would not be a valid ground to vitiate the whole process of enquiry as no prejudice was caused to the delinquent employee. He further submitted that the findings recorded by the enquiry officer are based on evidence, more so, legally admissible evidence, therefore, it is not a fit case to allow the Writ Petition.

7 At this juncture, this Court also places reliance on the ratio laid down in 1) ***Syed Yakoob vs. K.S. Radhakrishnan***^[1], wherein the Hon'ble apex Court held at para No.7 as follows:

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that 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 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. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (*vide Hari Vishnu Kamath v.*

Syed Ahmad Ishaque^[2] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam*^[3] and *Kaushalya Devi v. Bachittar Singh*^[4].)”

2) ***Swaran Singh vs. State of Punjab***^[5] wherein the Hon’ble apex Court held at para Nos.12 and 13 as follows:

12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings under Article 226. It is well settled that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate court. As was pointed out by this Court in *Syed Yakoob case*,

“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.”

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.

3) ***Union of India vs. P Gunasekaran***^[6] wherein the Hon’ble apex Court held at para Nos.12 and 13 as follows:

12. 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, reappreciating even the evidence before the enquiry officer. The finding on Charge 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation 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 Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate 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.

8 As per the principle enunciated in the above decisions, this Court can interfere with the findings recorded by the enquiry officer

or the Labour Court if they are perverse, or, if there is any error apparent on the face of the record.

9 Let me consider the factual background of the case on hand in the light of the above legal principle. It is the case of the respondents that the petitioner produced fake B.Com Degree certificate, which act of the petitioner, if proved, would amount to misconduct under Regulation 4 (xxxix) of APSEB Employees Revised Conduct Regulations as adopted by APEPDCL. Such misconduct of the delinquent employee enables the respondent to initiate disciplinary proceedings in pursuance of Rule 6 (xxx) of APSEB & D & A Regulations as adopted by APEPDCL. It is the case of the petitioner that he passed B.Com Degree examination conducted by Ranchi University and Andhra University.

10 The petitioner joined the service in 1971 as Typist and got promotions periodically. The petitioner was promoted as Junior Accounts Officer in the year 1996 basing on the B.Com Degree certificate produced by him. The second respondent issued a Memo No.CGM / HRD / DS / AS / PO-DC / J(S) F.36 / 03, D.No.535 / 03, dated 12.4.2003, by placing the petitioner under suspension alleging that he produced bogus B.Com Degree certificate for gaining official favour. The petitioner herein filed Writ Petition No.7743 of 2003 challenging the orders dated 12.4.2003. A learned single Judge of this Court allowed the said Writ Petition observing "On the analysis of the above, the Memo impugned is inoperative as having been passed by an incompetent authority. It is accordingly set aside. The competent authority, is, however, at liberty to take an appropriate decision regarding suspension of the petitioner pending enquiry, accordance with law." Aggrieved by the said order, the second respondent preferred W.A.No.838 of 2004. A Division Bench of this Court in W.A.M.P.No1519 of 2004 in W.A.No.838 of 2004 suspended the order of the learned single Judge, vide order dated

27.04.2004. In the meanwhile, the Divisional Engineer (Enquiries), APEPDCL, Visakhapatnam was appointed as enquiry officer, vide Memo No.DE/ENQ/VSP/F.DOC.F-108 / D.No.350 / 03, dated 22.08.2003. The enquiry officer addressed a letter to the petitioner, intimating him that he was appointed as enquiry officer, along with Annexures I to IV i.e. Charge Memo, Statement of imputation of misconduct, list of witnesses and list of documents.

11 For better appreciation of rival contentions, it is not out of place to extract hereunder the charge framed against the petitioner.

“CHARGE: The Junior Accounts Officer has got employment by producing bogus Provisional Certificate of Graduation in Commerce Certificate of Ranchi University Dt.10.11.03 as per service register. When he was asked to produce the original certificate, he produced Xerox copy of the B.Com decree Dt.9.7.92 of Andhra University when it was referred for genuineness to the Controller of Examinations Andhra University the certificate was confirmed as not genuine and fake. The delinquent has cheated the department and got employment by producing bogus certificate.

Thus the Junior Accounts Officer has committed serious irregularity, failed to maintain integrity, acted dishonestly, exhibited misconduct and violated Regulation 4 (xxxix) (XXIV) of APSEB Employees Revised Conduct Regulations and Regulation 6 (XXX) (V) of APSEB Employees DISCIPLINARY AUTHORITY regulations as adopted by APEPDCL.”

12 It is needless to say that the very purpose of framing a charge in departmental enquiry is to intimate the delinquent employee in advance the imputation made against him thereby to enable him to equip himself to face the enquiry. If the list of witnesses and the documents are supplied to the delinquent employee in advance, that would facilitate the delinquent employee to collect necessary information in order to ascertain the genuineness or otherwise of the contents of the documents or to impeach the credibility of the witnesses if the exigencies so warrant. The enquiry officer has to give a reasonable opportunity to the delinquent employee at every stage of enquiry by strictly adhering to principles of natural justice.

13 I have carefully scanned the report of the enquiry officer in order to ascertain whether the findings recorded by him are based on evidence, much less legally admissible evidence. It is needless to say that if the findings are based on no evidence or based on evidence which is not legally admissible, certainly those findings can be termed as perverse. Suffice it to say, perverse findings have no legal sanctity. It is a settled principle of law that suspicion however strong shall not dispense with the legal proof either in criminal cases or departmental enquiries. Unlike in criminal cases, disciplinary authority need not prove the misconduct beyond reasonable doubt. However, the disciplinary authority has to prove the misconduct of the delinquent by preponderance of probabilities even though the rigour of principles of the Indian Evidence Act is not strictly applicable to domestic enquiry. During the course of enquiry, one Mr.M.V.Ramanaiah (L.W.1 as per Annexure – III) was examined. As per his statement, he verified the service register of the petitioner which clearly discloses that the petitioner submitted provisional certificate bearing No.308386 dated 10.11.1993 of Ranchi University. He further stated that when the petitioner was asked to produce the original Degree certificate, he produced Xerox copies of B.Com Degree certificate dated 09.07.1992 of Andhra University and provisional certificate of B.Com Degree dated 21.7.1991 of Andhra University. If the service register of the petitioner is taken into consideration, he obtained Commerce Degree from Ranchi University.

14 If the enquiry report is taken into consideration, the disciplinary authority addressed letter to the Controller of examinations, Ranchi University and Andhra University in order to ascertain the genuineness or otherwise of the certificates produced by the petitioner. As per the enquiry report, the Controller of examinations, Ranchi University certified, vide letter Lr.No.3750 dated 16.12.2003

that the provisional certificate No.308386 dated 10.11.1993 is a fake one. This clearly indicates that the alleged letter was received from the Controller of examinations, Ranchi University on 16.12.2003 i.e. during the pendency of the enquiry. It is not the stand of the respondents that an opportunity was given to the petitioner to submit his explanation with regard to the letter alleged to have been received from the Controller of examinations, Ranchi University. Admittedly, the enquiry officer has not mentioned in Annexure – IV that the disciplinary authority is intending to place reliance on the letter likely to be received from the Controller of Examinations, Ranchi University. It is not out of place to extract hereunder the findings of the enquiry officer hereunder:

“The delinquent replied during Oral Enquiry that as he was not paid the fee, the institution did not give him the certificates, is only an after thought.”

15 Admittedly, the disciplinary authority has not examined any person from either of the universities to substantiate the contents of the letters alleged to have been issued by the universities. Those two letters were not marked as exhibits in the enquiry nor did they were given to the petitioner. The findings of the enquiry officer are based solely on the letters received from the universities. As observed above, the disciplinary authority has not supplied the letters alleged to have been received from the universities to the petitioner either before commencement of the enquiry or during the course of enquiry. If the findings of the enquiry officer are based on certain documents, which were not supplied to the delinquent employee, undoubtedly, the same would cause prejudice to the delinquent employee. Placing reliance on a document, which was not supplied to the delinquent employee, certainly amounts to violation of principles of natural justice, leave apart, non - examination of the competent person related to any of the universities. Mere production of provisional certificate from Andhra

University by the petitioner in the year 2003 by itself is not a valid ground to initiate disciplinary proceedings against him as the petitioner was neither appointed nor promoted basing on the said certificate. It is not out of place to extract hereunder the findings of the enquiry officer on this aspect.

“Thus the delinquent has cheated the department twice by producing the fake and forged B.Com Degree certificates of Andhra University and Ranchi University. The delinquent acquired the benefit of promotion as Junior Accounts Officer in the department by virtue of the fake certificate of Ranchi University produced by him.

Even though the delinquent did not get employment by producing bogus certificates in the department as stated in charge, he acquired the promotion to the post of Junior Accounts Officer by producing bogus educational qualification certificates duly cheating the department.”

16 Let me consider whether the finding recorded by the enquiry officer is in consonance with the charge levelled against the petitioner or not.

17 It is an admitted fact that the petitioner was promoted as Junior Accounts Officer in the year 1996 and continued as such till 2003 without any complaint whatsoever from any corner. It appears, some of the employees of the respondent organization have obtained certificates from Ranchi University in order to get promotion. This created some sort of suspicion in the minds of the respondents with regard to the genuineness of the certificate produced by the employees of the respondent Corporation, more particularly, certificates alleged to have been issued by Ranchi University, which is the genesis for initiation of disciplinary proceedings against the petitioner and some other employees of the Corporation. Whether the material available on record is sufficient to arrive at a conclusion that such suspicion is based either on anonymous or pseudonymous letters or based on material, which is legally admissible. Be that as it may, the respondents initiated disciplinary proceedings and put the petitioner under suspension on 12.4.2003 wherein it was stated that

“Whereas it has come to the notice of the undersigned who is the competent authority alleging that Sri G.Satyanarayana, JAO/IA/Rajahmundry has produced a bogus B.Com Degree certificate for gaining official favour cheating the organization.” It is not mentioned in the said suspension letter that the petitioner has got appointment or promotion by producing fake or bogus Degree certificate from Ranchi University. If the suspension notice is taken into consideration, the allegation against the petitioner is that he produced fake and bogus Degree certificate for gaining official favour. This suspension letter is silent how the petitioner gained official favour. Any action on the part of an employee to gain official favour cannot be equated with getting employment or promotion. If any ordinary prudent man peruses the charge levelled against the petitioner, he would certainly come to the conclusion that the petitioner produced bogus certificate to get employment. The gist of the charge is that the petitioner got employment by producing fake Degree certificate. The petitioner is expected to face the enquiry as if he got appointment by producing fake Degree certificate. Mr. M.V.Ramanaiah, the only witness examined during the enquiry, did not state that the petitioner got employment by producing a fake Degree certificate. A perusal of the enquiry report reveals that the enquiry officer has not given a specific finding that the petitioner got employment by producing fake and forged B.Com certificate. On the contrary, the enquiry officer gave a finding that the petitioner got promotion by cheating the department. Even if the finding of the enquiry officer is taken into consideration, nowhere it was mentioned in the charge that the petitioner cheated the department by producing fake certificate in order to get promotion. Admittedly, the petitioner joined the service of the respondent organization in the year 1971 after due process of selection. He was promoted as L.D.C in the year 1992. The respondents are very much aware of the said fact. Undoubtedly, the enquiry officer traversed beyond the scope of

enquiry by giving a finding that the petitioner got promotion by producing fake Degree certificate. Knowing fully well all these facts, the first respondent issued charge memo as if the petitioner got employment by producing fake Decree certificate.

18 Now the crucial question that falls for consideration is “whether the findings recorded by the enquiry officer withstand the judicial scrutiny or not?”

19 The predominant contention of the learned counsel for the petitioner is that the findings recorded by the enquiry officer are not sustainable either on law or on facts. He further contended that if the enquiry is conducted in violation of principles of natural justice and contrary to the regulations certainly this Court can interfere by invoking jurisdiction under Article 226 of the Constitution of India and can quash the enquiry proceedings. To substantiate the arguments, the learned counsel for the petitioner has drawn my attention to the ratio laid down in

1) ***Vishwanath Mishra vs. U.P. Public Services Tribunal***^[7], wherein the Allahabad High Court held as under:

“9. As seen earlier there was no charge in the charge sheet, issued to the petitioner, that he had not maintained absolute integrity. Therefore, the finding of the Enquiry Officer, which appears to have been affirmed by the Managing Director about the lack of integrity on the part of the petitioner, was beyond the charge framed against the petitioner and cannot be sustained.”

2) ***Sri Bishnu Prosad vs. Union of India***^[8], wherein the Calcutta High Court held as under:

8. It is then contended the petitioner was charged with an offence but he was found guilty altogether on a different count. I have already set out hereinbefore the charge sheet as well as the finding of the Enquiry Officer. The charge was gross neglect of duty in as much as the petitioner failed to detect and prevent the theft of sugar weighing about 25 kgs, whereas the finding of the Enquiry Officer is that the theft took place in connivance with ASL, Senior Rak-shak and others on duty or near patrol. He concluded that "S R was responsible for theft and the finding is".

9. It is now well-settled that the finding cannot be at variance with the charge. The petitioner was not charged with the theft, but for neglect of duty as he failed in detecting the theft, whereas the Enquiry Officer found him guilty of a new charge not levelled against him that he himself was responsible for theft. According to the Enquiry Officer such theft took place in connivance inter alia with him.

10. Accordingly the findings of the Enquiry Officer are liable to be set aside and quashed. If the findings cannot be sustained subsequent proceedings based on such findings cannot survive or be sustained.

3) *Aswathanarayana G.V. vs. Central Bank of India, by Chairman,*

Bombay^[9], wherein the Karnataka High Court held as under:

8. It is trite that charge-sheet is the charter of disciplinary action. The domestic/departmental enquiry commences with the service of the charge-sheet. In other words, before proceeding with the departmental or domestic enquiry against a delinquent official, he must be informed clearly, precisely and accurately of the charges levelled against him. The charge-sheet should specifically set out all charges which the delinquent is called upon to show-cause against and should also state all relevant particulars and details without which he cannot defend himself. The object of this requirement is that the delinquent employee must know what he is charged with and have the adequate opportunity to meet the charge and to defend himself by giving a proper explanation, after knowing the nature of the offence or misconduct with which he is charged; otherwise, it will amount to his being condemned unheard. Fair hearing pre-supposes a precise and definite catalogue of charges so that the person charged may understand and effectively meet it. If the charges are imprecise and indefinite or vague or unintelligible, the person charged could not be able to understand them and defend himself effectively and in those circumstances, the subsequent enquiry would not be a fair and just enquiry. The charged official ought to be informed of the charges levelled against him as also the grounds upon which they are based. Charge of misconduct should not be vague. The charge-sheet must be specific and must set out all the necessary particulars and details irrespective of the fact whether the delinquent knows it or not; he must have told about the charges and it was not his duty to connect the charge-sheet with his alleged understanding or knowledge of the charge. However, it is true that the charge need not be framed with the precision of a charge in criminal proceeding. But, at the same time, it must not be vague or so general as to make it impossible of being traversed. Therefore, the test is whether the charge conveys to the delinquent employee, the exact nature of the alleged misconduct in a way that would enable him to meet the charge effectively. It is well established that if a vague charge is given to a delinquent, it is a fatal defect, which vitiates the entire proceedings. It is also relevant to notice that the vagueness in the charge is not excused on the plea that the employee concerned should be deemed to have known the facts correctly. It should not be left to the delinquent official to find out or imagine what the charges against him are and it is for the employer to frame specific

charges with full particulars. (underlined by me)

10. Judgment of the Supreme Court in **Transport Commissioner vs. Radha Krishna Moorthy**, {(1995) 1 SCC 332} can also be noticed in that regard. The Supreme Court dealing with a charge levelled against certain officials alleging that they indulged in misappropriation by falsification of accounts without giving full particulars held:

"Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned Counsel for the respondent that except the memo of charges dated 4.6.1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned Counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part is the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to G.O.Ms.928 dated 25.4.1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf.

We are, therefore, of the opinion that the judgment of the tribunal is right insofar as it holds that the charges communicated to the respondent are vague".

11. Further, the Supreme Court in **Surath Chandra Chakravarty vs. The State Of West Bengal**, {(1971) 1 LLJ 293 SC} speaking about the requirement of a valid charge memo held that if a delinquent is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. The Supreme Court in Para - 4 has observed:

"4. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders as also to be stated. This Rule embodies

a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. By the way of illustration one of the grievances of the appellant contained in his letter dated March 24, 1950, to the Enquiry Officer may be mentioned. This is what he said though the language employed is partly obscure and unhappy:

"Regarding the first charge I beg to submit that the allegation is vague. In the charge it has not been specifically stated as to where, when and before whom I circulated false rumours, regarding retrenchment policy of the Government and thereby spread insubordination. In fact, if one goes through the statements of the P. Ws. made to D.F.S. as submitted before my suspension, it will appear that no specific case could have been made with all the material particular as to date, time and person. Having been able to take deposition and to conduct enquiry keeping me in dark and finally put me out of office. Sri S.Bose was able to win over the witnesses and was able to shape his case to suit his purpose."

Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason, the Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges."

4) ***Jagdish Kumar vs. The State of Punjab***^[10], wherein the Punjab and Haryana High Court held as under:

3. The Petitioner has challenged the legality of order passed by the Punishing Authority on various grounds set out in the Writ Petition. His plea is that the punishing authority has traveled beyond the scope of charge sheet in recording the finding of guilt against the petitioner. Another plea of the petitioner is that the punishing authority has not recorded his conclusion on the basis of evidence adduced during the course of inquiry and instead it has proceeded on pure conjectures and

surmises. Yet another submission of the petitioner is that no real opportunity of personal hearing was afforded to him by the disciplinary authority because the officer who heard him had not passed the order of punishment and the one who had passed the order of punishment had not heard him. The last ground of challenge to the order of punishment is that the very intimation of inquiry is vitiated on account of predetermination of the guilt of petitioner and non-application of mind by the punishing authority. Appellate order has been assailed on the ground that the appellate authority has also travelled beyond the scope of the charges and has recorded findings adverse to the petitioner without affording him by any opportunity of hearing. The petitioner has also questioned the action intimated against him on the ground that one D.C.Kashyap, Inspector of the Department was awarded similar punishment but the appellate authority quashed the order of punishment vide order dated 20.6.1991 and although his case was more or less identical to that of Mr. B.C. Kashyap, the punishment awarded to him has been sustained by the appellate authority with slight modification.

10. It is clear from the above noted cases that an employee cannot be punished for a charge which is not levelled against him. Employer's action of punishing an employee in respect of the charge which is not levelled against him results in breach of the principles of natural justice and it has the effect of rendering the order passed by the employer is nullity. It is an elementary rule of natural justice that a man whose civil rights are going to be affected by an action of a public authority he must know the basis on which the action is being taken against him and must have an opportunity of defending himself. Unless specific charge of misconduct is levelled, the employee cannot be penalised. He cannot be punished for a charge which is not made subject matter of enquiry.

5) ***Sher Bahadur vs. Union of India***^[11], wherein the Hon'ble apex Court held as under:

"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....."

6) ***M.V.Bijlani vs. Union of India***^[12], wherein the Hon'ble apex Court held as under:

23. Evidently, the evidences recorded by the Enquiry Officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without

framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

24. Mr. Verma, when questioned, submitted that the Appellant might have utilised the same on unsanctioned works. If that be so, a specific charge to that effect should have been framed.

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. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the Enquiry Officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the appellate authority which are based on the said Enquiry Report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the Appellant. The Tribunal also, thus, failed to discharge its functions properly.

7) *Chairman-cum-Managing Director, Coal India Limited vs.*

Ananta Saha ^[13], wherein the Hon'ble apex Court held as under:

32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In **Badrinath v. Govt. of Tamil Nadu and Ors.** {AIR 2000 SC 3243}, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. (See also **State of Kerala v. Puthenkavu N.S.S. Karayogam and Anr.** (2001) 10 SCC 191; and **Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors.** AIR 2010 SC 3745).

34. As in the instant case, there had been no proper initiation of disciplinary proceedings after the first round of litigation, all other consequential proceedings stood vitiated and on that

count no fault can be found with the impugned judgment and order of the High Court.

8) *Kuldeep Singh vs. Commissioner of Police and Others* ^[14]

wherein the Hon'ble apex Court held as under:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

9) *Ananda Chndra Prusty vs. Orissa Mining Corporation Ltd* ^[15]

wherein the Hon'ble apex Court held as under:

7. The burden of proof to establish the charge rested with the department. In order to prove the charge it was obliged to prove that the concerned persons had loans outstanding against them and the petitioner knew about it but made false notings that there were no loans outstanding against them. The department having brought the petitioner before the Enquiring Officer for trial, it must rely on its own strength for success of the charge and not on the weakness or failure of proof of innocence of the petitioner. When the burden of proof lies on the department and it does not discharge it by adducing evidence, the charge must fail. From the discussion made by the Enquiring Officer, as extracted above, it would appear that instead of placing the burden of proof to establish the charge on the department, he threw it on the petitioner. He was apparently toying with the impression that the petitioner was to establish his denial of charge and on his failure to do so, the charge should be taken to have been proved. This illegal casting of burden of proof on the petitioner has resulted in arriving at wrong conclusion when the Enquiring Officer held that in absence of evidence in support of defence the charge is proved. The Enquiring Officer having proceeded on a wrong hypothesis which is not permissible in law, the finding of guilt reached by him cannot be supported and is liable to be quashed.

20 The material placed before the Court clinchingly establishes that the disciplinary authority framed the charge as if the petitioner got employment by producing a fake Degree certificate. The finding of the enquiry officer is that the petitioner got the promotion by

producing a fake Degree certificate. The finding recorded by the enquiry officer is not in consonance with the charge. If the finding recorded by the enquiry officer has no nexus to the charge, the same is not sustainable. Securing employment is altogether different from getting promotion as the qualification for both is not one and the same. Having regard to the facts and circumstances of the case and also the principle enunciated in cases 7 to 15 cited supra, the enquiry report is not sustainable either on facts or in law, consequently the proceedings issued by the first respondent dated 31.08.2004 are liable to be set aside.

21 The contention of the learned counsel for the petitioner is that when reinstatement is not possible, the Court can grant appropriate relief to the charged officer basing on the facts and circumstances of the case.

22 In ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak***

Mahavidyalaya ^[16] the Hon'ble apex Court held as under:

38. The propositions which can be culled out from the aforementioned judgments are:

38.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar

emoluments.

38.4 The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5 The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6 In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

38.7 The observation made in **J.K. Synthetics Ltd. v. K.P. Agrawal** {(2007) 2 SCC 433} that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

above legal principle. The petitioner was kept under suspension on 12.4.2003. The final order was passed on 31.8.2004. In normal course, the petitioner attains the age of superannuation on 31.10.2004. The petitioner would not have been deprived of the legitimate salary and the retiral benefits if no disciplinary proceedings were initiated against him. Because of the suspension, the petitioner was deprived of his legitimate salary with effect from 12.4.2003 to 31.8.2004. The petitioner was also deprived of the retiral benefits having served the respondent Corporation for a period of more than 35 years. It is not brought to the notice of this Court that the petitioner was subjected to any departmental enquiry followed by imposing of any punishment in his entire service except the present one. A perusal of the record reveals that one R.Srinivasa Rao also faced the similar type of enquiry and was found guilty. Whereas the respondents imposed punishment of reduction of one stage of pay for three years besides treating the period of suspension as suspension only and the period will not be counted for any purpose.

This also clearly demonstrates the discrimination shown by the respondents towards the petitioner while imposing the punishment, even if the enquiry is sustainable. The petitioner cannot be penalised for the fault of the respondents who framed a defective charge and forced the petitioner to face the rigour of enquiry at the fag end of his service.

24 It is a known fact that at the fag end of service, every employee may be shouldered with a responsibility to perform the marriages of his children. Due to stoppage of retiral benefits, the petitioner might have faced lot of financial constraints and social problems to discharge his domestic responsibilities. The mental agony undergone by the petitioner, while facing the enquiry, cannot be compensated in any manner whatsoever. Facing enquiry by an employee, would certainly, give a scope to his colleagues and

relatives to make comments on him. In such circumstances, granting retiral benefits to the petitioner is only a solace and not a substitute for the mental agony and torture faced not only by him or his family members.

25 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is a fit case to exercise power under Article 226 of the Constitution of India and set aside the impugned proceedings i.e. dismissal order dated 31.08.2004 passed by the first respondent.

26 In the result, the Writ Petition is allowed and the rule nisi is made absolute, setting aside the dismissal order dated 31.08.2004 passed by the first respondent. The respondents are hereby directed to pay all the monetary benefits to the petitioner as if he continued in service with effect from 12.04.2003 till the date of his retirement, including his retiral benefits. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 29th April 2016

***L.R. Copy be marked
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[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) (1955) 1 SCR 1104

[\[3\]](#) (1958) SCR 1240

[\[4\]](#) AIR 1960 SC 1168

[\[5\]](#) (1976) 2 SCC 868

[\[6\]](#) (2015) 2 SCC 610

[\[7\]](#) 1995 (II) SLR 708

[\[8\]](#) 1991 (3) SLR 751

[\[9\]](#) 2004 (I) LLJ 36

[\[10\]](#) 1995 (I) SLR 451

[\[11\]](#) (2002) 7 SCC 142

[\[12\]](#) (2006) 5 SCC 88

[\[13\]](#) (2011) 5 SCC 142

[\[14\]](#) (1999) 2 SCC 10

[\[15\]](#) 1996 LAB I.C.2595

[\[16\]](#) (2013) 10 SCC 324