

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.1551 of 2005**

- Devi Prasad Pandey

---- Petitioner

Versus

- The State Of M.P.

---- Respondent

For Petitioner	:	Shri Rajendra Tiwari, Sr. Advocate with Shri Maneesh Sharma and Shri T. K. Khadka, Advocates
For Respondent/State:		Shri R. K. Gupta, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava**C A V Order****31/07/2017**

The petitioner herein filed Original Application before the State Administrative Tribunal (since abolished) assailing legality and validity of order dated 30-06-1990, by which, extreme penalty of dismissal from service was imposed on the petitioner in a departmental enquiry held against the petitioner and other employees, subjected to joint enquiry.

2. At the relevant time, the petitioner was substantively holding the post of Executive Engineer in the Department of Water Resources, Government of Madhya Pradesh, Bhopal and he was posted as Incharge of Kodar Dam, Mahasamund, District Raipur during the period from 29-08-1980 to 13-07-1981. For the purposes of construction of Dam and due to submergence in the irrigation project, large chunk of agricultural land was to be acquired, for which, proceedings for acquisition of land were initiated. On 15-03-1979, the Collector ordered that in order to speed up the process of acquisition to facilitate

completion of irrigation project and closure of nala, lands be taken by way of private negotiations with the owner of the lands/houses situated in the submergence area. The work of inspection, assessment and valuation of the property was carried out under the supervision of Executive Engineer, Public Works Department (B/R) Mahasamund, with the team of officers, for which purpose, many officers of the irrigation department were associated. Cases were prepared and forwarded to the Executive Engineer, Incharge Kodar Dam (the petitioner). The petitioner was directed to prepare report by applying the rates fixed by the Collector and then forward the proposal to the Land Acquisition Officer. The proposals were forwarded.

In course of time, several allegations surfaced that large scale irregularities were committed in the matter of purchase of land by private negotiations for the purpose of Kodar Dam Project. It was alleged that the Land Acquisition Officer, Officers of Irrigation Department, Officers of Public Works Department and Revenue Department were involved in committing these irregularities. Allegations were that cases of compensation were prepared in respect of lands, houses and wells, which were non-existing, more than actual area, length and breadth of land and building was prepared on papers by increasing their area, compensation cases were prepared in the name of persons other than the actual owners and holders of land as also compensations cases were prepared in the name of dead persons. The petitioner was placed under suspension on 24-04-1982. However, as no charge sheet could be served on him within a period of 90 days, he was automatically reinstated. A charge sheet was later on issued to the petitioner on 05-02-1983 and thereafter, the petitioner was again suspended. As there was delay in conclusion of enquiry and the petitioner was kept under suspension for long time, he approached the Tribunal by filing an Original Application No.167/1989,

in which, order was passed by the Tribunal on 03-05-1989 to take a decision in the departmental enquiry within a period of three months, failing which, suspension shall stand revoked. The enquiry, however, was not concluded and the petitioner was allowed to retire despite suspension on 30-11-1989, upon attaining the age of superannuation. Realizing that the petitioner was wrongly allowed to retire, the order of superannuation was cancelled on 05-01-1990 and the services of the petitioner were extended from 11-12-1989. During this period of extension, the impugned order of penalty came to be passed on 30-06-1990, imposing penalty of dismissal from service. The petitioner without filing the departmental appeal, filed the present original application (O.A.No.2421/1990) before the Tribunal on the statement made in the petition that filing of appeal would only be futile exercise as the Chief Minister and the entire State Cabinet is involved in arriving at the decision, in which, order of dismissal has been passed. On 20-08-1990, the Tribunal, keeping the question of failure of the petitioner to take recourse to alternative statutory remedy alive, admitted the petition. After abolition of the Tribunal, this petition (Original Application) was transferred to this Court and registered as Writ Petition (S)No.1551 of 2005.

3. Shri Rajendra Tiwari, learned Senior Counsel appearing for the petitioner argued in extenso and with vehemence to submit that the entire departmental enquiry against the petitioner and the order passed thereon imposing extreme penalty of dismissal from service are vitiated because, the enquiry was held in utter violation of the mandatory provisions contained in the Madhya Pradesh Civil Services (Control and Appeal) Rules, 1966 (hereinafter referred to as “the Rules of 1966”), proper opportunity of hearing was not afforded to the petitioner, the enquiry was held in most irregular and haste manner, there was no legally admissible evidence to prove the charges against the petitioner even by

application of principles of preponderance of probabilities and the findings are absolutely perverse, based only on conjectures and surmises. Neither the second show cause notice was given with regard to proposed penalty nor copy of report was supplied to him. The disciplinary authority did not apply its mind to the enquiry report and mechanically affirmed the same without discussing much less rejecting for any reason, defence of the petitioner. Elaborating his submissions, learned Senior Advocate argued that the decision to acquire land by private negotiations was taken by the Collector and not by the petitioner, therefore, the petitioner was not responsible. He submits that there was no specific charge on this issue, yet the Enquiry officer has assumed the above fact as important consideration and held the petitioner guilty of charges and thus new undisclosed charge was leveled against the petitioner. It is argued that the charge sheet was extremely vague and without any specific details. It was not clearly stated either in the charges or in the statement of allegations as to how the petitioner could be said to be involved, if any irregularity was found in the spot inspection and assessment and valuation of lands and properties in the area of submergence, because the entire exercise was done under the control and supervision of Executive Engineer, Public Works Department, (B/R), Mahasamund, with a team of officers. True it is that some of the officers of the Department of Irrigation were also sent, the petitioner was never involved in the process of spot inspection, assessment and evaluation and as there was no duty cast on the petitioner to make any spot verification of the reports, which were forwarded from the office of Executive Engineer, Public Works Department, (B/R), Mahasamund, on the basis of which, compensation cases were prepared. He submits that all that was required to be done in the office of Executive Engineer, Incharge Kodar Dam Project was to apply the rate fixed by the Collector, forwarded to him to the measurements of lands, houses and

buildings received from the office of Executive Engineer, Public Works Department, (B/R), Mahasamund. He submits that all the allegations pertained to irregularity in the matter of survey and assessment. Learned counsel for the petitioner further contended that in fact, various meetings were held and the process of assessment, spot inspection and evaluation had already begun before the posting of the petitioner. When the petitioner came to join as Incharge of Kodar Dam Project on 29-08-1980, the decision that the lands have to be acquired by private negotiations was already taken, assessment was almost completed and the only exercise, which was required to be undertaken by the petitioner was to prepare cases of compensation on the basis of reports submitted in his office by applying the rates as directed by the higher authorities. It is argued that it was none of the part of the duty of the petitioner to again go for a spot inspection and verify whether the reports of assessment and evaluation were factually correct or not. He submits that the entire exercise was done by the Executive Engineer, Public Works Department. It is further submitted that the decision that the lands, which are not falling in the actual submergence area, but situated in the peripheral of submergence area, should also be acquired, was not taken by the petitioner, but by other authorities.

The petitioner suffered serious prejudice, because he was neither given second show cause notice nor a copy of enquiry report was supplied to him. He was thus deprived of a very valuable opportunity to impeach the credibility of enquiry report and therefore, consequent order of penalty was vitiated. It is next contended that common enquiry/joint enquiry was ordered by the government in utter violation of the provisions contained in Rule 18(2) of the Rules of 1966 without specifying procedure to be followed. No specific penalty was against each delinquent. Other submissions are that at the fag end, the Presenting Officer came out with new documentary evidence, which did not form part of the

charge sheet and therefore, the petitioner was prejudiced. It is submitted that new revelations/documents were taken into consideration by the Enquiry Officer to hold the charges proved against the petitioner. It is next contended that a new allegation that the provisions of Land Acquisition Act were not followed and serious irregularity was committed in resorting to the procedure of acquiring land through private negotiations, was leveled and made a strong basis to hold that the process of acquisition suffered from serious irregularities. As far as the petitioner is concerned, this blame could not be fastened upon him, because the decision to acquire the land by private negotiations was taken and instructions were issued by the Collector on 15-03-1979, much prior to joining of the petitioner. Next submission is that the enquiry report is highly defective and not in accord with the statutory requirements of the Rules of 1966 and there is no discussion of the evidence referring to charges against the petitioner much less specific finding of guilt against the petitioner. The Enquiry Officer mixed up all the charges against all the delinquent employees. As far as the present petitioner is concerned, it is argued that all that was stated was that, in view of the findings recorded on charges against the other delinquent employees, Mr. Kamal Agnibhoj and Mr. Y. P. Sharma, charges are held proved against the petitioner. It is argued that the case of the petitioner was different from the other delinquent employees, because Mr. Kamal Agnibhoj and Mr. Y. P. Sharma were Deputy Collectors being Revenue Officers, who acted as Land Acquisition Officer. Therefore, their findings could not be applied in the case of the petitioner mechanically and this shows that without any specific finding of proof of charges against the petitioner, out of 9 charges, Charge No.1 to 4, 7 & 9 have been held proved against the petitioner in a most arbitrary and perfunctory manner. Finding that the petitioner was responsible for delay in payment of compensation, is perverse because the petitioner had joined on 29-08-1980,

whereas the process had been initiated long back. It is also submitted that perverse finding was recorded, relying upon Section 11(2) of the Land Acquisition Act, 1894, because the said provision of the Act was brought in the statute book in the year 1894, only by way of amendment in 1984. The Enquiry Officer relied upon the letter dated 10-01-1979 of the Collector whereas it is not the part of the charge sheet and not included in the list of documents and it was produced for the first time by the Presenting Officer only at the time of final arguments during enquiry proceedings. The Enquiry Officer had committed serious error in relying upon the said letter dated 10-01-1979, ignoring subsequent letter dated 11-03-1979 of the Collector that the lands have to be acquired by private negotiations. Learned Senior Advocate for the petitioner contended that even though, there was no specific evidence available on record to directly involve the petitioner in any irregularities in the matter of survey and assessment of land, houses and building, the Enquiry Officer invented its own theory of conspiracy in the garb of which, he held the charges proved against the petitioner on mere conjectures and surmises. Unless, from the established and proved facts and circumstances, it could be reasonably inferred due to any commission or omission on the part of the petitioner, it was not open for the Disciplinary Officer or the Enquiry Officer to hold the petitioner guilty of conspiracy. Further submission is that the enquiry report was never supplied to the petitioner and the disciplinary authority acted mechanically on the enquiry report and without recording any reasons as to why defence of the petitioner was liable to be rejected, imposed penalty of dismissal, therefore, the impugned order of penalty was liable to be set aside. Lastly, it is submitted that as there is no evidence to prove that the petitioner was involved in alleged conspiracy of preparation of false reports of assessment, the petitioner was not liable for any major penalty, but any minor penalty only, because the petitioner had already

attained the age of superannuation prior to the date of imposition of penalty and his services were extended only to facilitate imposition of penalty. In support of his submission, learned counsel relied upon several authorities i.e. ***Surendra Prasad Shukla vs. State of Jharkhand & Others*¹, *State of M.P. vs. U. K. Khare*², *State of U.P. vs. Moti Ram*³, *Sherimon vs. State of Kerala*⁴, *Vijayan alias Rajan Vs. State of Kerala*⁵, *Nalini vs. State of Tamil Nadu*⁶, *Krishna Kumar vs. Union of India*⁷, *Commissioner of Police, Delhi vs. Jai Bhagwan*⁸, *Jagdish Prasad Saxena vs. State of MB now MP*⁹, *P. C. Kakkar vs. Chairman & M.D. Uco Bank*¹⁰, *Amulya Ratan Mukharjee vs. Dy. Chief Mechanical Eng. Eastern Rly.*¹¹, *State of Orissa vs. Dhaniram Luhar*¹², *Sec. & Curator vs. Howrah Ganatankrik*¹³, *Nagarjuna Construction Co. vs. Govt. of AP*¹⁴, *IIT Bombay vs. Union of India*¹⁵, *Board of Trustees vs. Dilip Ku. Raghavendranath*¹⁶, *Whirlpool Corp. vs. Registrar of trademarks, Mumbai*¹⁷ and *L. Hirday Narayan vs. I. T. Officer, Bareilly*¹⁸.**

4. Per contra, learned Deputy Advocate General for the State supported the order of penalty by submitting that the petitioner was holding a very important and key position of Incharge of Kodar Dam Project as Executive Engineer, therefore, he could not be heard saying that he had no role to play in the large scale of irregularities, which were committed in preparation of compensation

1 2011(8) SCC 538
2 2002(4) MPHT 544
3 AIR 1990 SC 1709
4 AIR 2012 SC 493
5 1999 (3) SCC 54
6 1999 (5) SCC 253
7 AIR 1959 SC 1390
8 2011 (6) SCC 376
9 AIR 1961 SC 1070
10 2003(4) SCC 364
11 AIR 1961 (Cal) 40
12 2004(5) SCC 568
13 2010 (3) SCC 732
14 2008(16) SCC 276
15 1991 (Supp-1)SCC 12
16 1983 MPLJ 1
17 1998(8) SCC 1
18 AIR 1971 SC 33

cases. It is argued that the Land Acquisition Officer/Officers of Irrigation Department including the Officers of Public Works Department and Officers of Revenue Department, all of them were involved in the process of acquisition of land with different roles to play, but all of them acted in concert with each other. He submits that when complaints were made and detailed preliminary enquiry was made, it was found that serious irregularities were committed in the process of acquisition. Without resorting to the normal procedure of acquisition of land under the provisions of Land Acquisition Act, the Officers decided to take the lands by private negotiations, which was wholly unwarranted. The Officers of the Irrigation Department (Water Resources), Public Works Department and Revenue Department together were involved in carrying out the assessment procedure and evaluation of lands, buildings, houses and wells in the area situated in the area of submergence. In the enquiry, it was found that inspection reports were false and fabricated in many ways. It was found that compensation cases were prepared in respect of non-existent lands, buildings, houses and wells as also boundaries. Compensation cases were prepared on the basis of false report of the nature of construction, length and breadth of buildings of area of land. In many cases, it was found that the area of the land or size of the houses and buildings was lesser than what was stated in the inspection report. It was also found that the compensation cases were prepared in the name of dead persons. It was also found that compensation cases were prepared in respect of land and buildings which were either public properties or government properties. Not only this, it is argued that the petitioner was involved in the process of decision that the land in peripheral area of submergence should also be acquired by private negotiations, though it was not at all necessary for the project. In this manner, even those lands and buildings, which were not in the area of submergence, were acquired by private negotiations. It was also found

that excess compensation was computed in respect of private ponds. When detailed preliminary enquiry held by the Commissioner, Bilaspur Division, Bilaspur, charge sheet was issued to the petitioner and other involved officers and employees. Due and proper procedure of enquiry as contemplated under the requirements of Rule 18 of the Rules of 1966 was followed. The petitioner was duly served with the charge sheet and list of witnesses and documents. During the course of enquiry, all the documents of prosecution were supplied to the petitioner. He was given opportunity to cross-examine the prosecution witnesses as also afforded opportunity to lead his oral and documentary evidence. Even if the enquiry report was not supplied, no prejudice was caused to the petitioner because the petitioner had failed to prove that he was not afforded proper opportunity of hearing. The petitioner was duty bound to verify the aforesaid assessment reports, which were submitted in his office while preparing the compensation cases and forwarding the proposal to the Land Acquisition Officer. The petitioner was in full knowledge that the reports were fabricated and false, yet he acted upon these assessment reports and prepared compensation cases to be forwarded to the Land Acquisition Officer. On the basis of these proposals, huge amount of compensation was disbursed and crores of public money was distributed. The petitioner was in full notice and knowledge of the fact that the proposals were made for acquisition of those lands, houses, buildings and wells which were situated outside the submergence area. Even though, there was no need of those lands, the petitioner proposed for acquisition of such lands, thereby causing financial loss of lakhs of rupees to the government. The Enquiry Officer, after detailed enquiry, found the charges proved against the petitioner and other delinquent employees and looking to the gravity of misconduct, large scale irregularity in the matter of disbursement of compensation amount, imposition of major

penalty of dismissal from service cannot be said to be shockingly disproportionate to the gravity of misconduct. Learned State counsel submitted that the petitioner did not choose to file appeal, therefore, his petition was liable to be dismissed only on the ground of existence of alternative remedy. In any case, it is contended, the petitioner could not call upon the Writ Court to act as an Appellate Authority by entering into the exercise of re-assessment of evidence. Once the petitioner has failed to prove violation of mandatory procedure of holding departmental enquiry by the government, violation of principles of natural justice and that there is evidence to support the charges of misconduct of proof of conspiracy, charges being grave in nature, interference with the penalty is not warranted.

5. In the present case, despite repeated opportunities granted to the respondents, original records of departmental enquiry were not produced. An affidavit (IA No.5/2012) was filed, in which, it was stated that information has been received from the Department of Water Resources, State of Madhya Pradesh that no records pertaining to the case of the petitioner could be traced out. Till the matter was heard finally by this Court, despite repeated opportunities to produce the records, last being order dated 07-03-2017, records were not produced.

Except what has been filed by the petitioner along with the petition, the petitioner submitted additional documents on 09-09-2016. The State also placed before the Court a copy of preliminary enquiry report held by the Commissioner, Bilaspur Division. Except this, no other documents were submitted by the parties none other than those filed by them with their respective pleadings. The petitioner has filed a copy of charge sheet issued to him without covering memo as Annexure A-15. The said document contains 9 charges against the

petitioner. However, statement of allegations of Charge No.1 alone are part of record. Covering memo has not been filed. Statement of allegations on charges No.2 to 9 and the list of witnesses and documents have also not filed by the petitioner.

6. Learned State counsel in his reply raised an objection with regard to maintainability of the petition on the ground that the petitioner had a remedy of statutory appeal against the order of penalty but without exhaustion of remedy of appeal, the petitioner directly filed this petition before the State Administrative Tribunal. Accordingly to learned State counsel, where there exists an alternative statutory remedy, the petitioner ought to have filed an appeal, invited order of appellate authority and then, if aggrieved, file petition before the Tribunal. Referring to the first order passed by the Tribunal on 20-08-1990, it is submitted that this issue has been kept open and alive and the petition was admitted subject to keeping that question alive for consideration at the time of hearing.

True it is that the petitioner had remedy of filing departmental appeal against the impugned order dated 30-06-1990, by which, penalty of dismissal from service was imposed upon him. The petitioner, in the petition, has however sought to justify as to why he approached the Tribunal without taking recourse to the remedy of appeal and it has been averred that the remedy of appeal would be futile exercise, because the decision in the case was taken by the entire Cabinet and the files were also placed before the Chief Minister, therefore, the petitioner does not expect fair decision in the appeal and it would be only an empty formality.

This aspect would have received much serious consideration had the petition been taken up for hearing within reasonable time. The Tribunal also, while keeping this issue of maintainability on the ground of existence of

alternative remedy, acted on belief that the matter would be decided within a reasonable time. But then, the petition has remained pending firstly before the Tribunal and then before this Court for the last 27 years. This Court is of the opinion that an issue with regard to existence of alternative remedy and maintainability of petition should have been decided at the very first opportunity, rather than keeping this issue alive to come up for consideration at the time of final hearing. It has been repeatedly held by the Supreme Court in catena of decisions that the issue with regard to maintainability ought to be decided at the earliest opportunity before entering into the merits of the case. In the case of ***National Highways Authority of India vs. Ganga Enterprises and another***¹⁹, this legal position has been adumbrated. However, today with passage of long period of 27 years, a different approach has to be adopted by this Court. The settled legal position is that though normally where there exists an alternative remedy, the Writ Court would not enter into the merits of the case and insist upon the parties to exhaust alternative remedy, particularly when such remedy is a statutory one but it is not an invariable rule of thumb. As a matter of law, it is only self-restraint imposed by the Writ Court upon itself rather than any bar of jurisdiction as such. It needs no authority for the settled legal proposition of law that in appropriate circumstances, the Writ Court may not insist on exhaustion of alternative remedy and may itself examine the legality and validity of the action assailed before the Court. Present is one of such case, in which, this Court would not be inclined to throw the petition after a long period of 27 years, reminding the petitioner of his right of statutory appeal and then relegating the matter to the appellate authority. Rather interest of justice demands that this Court examines the merits of the case though within the scope of judicial review, without requiring the petitioner, an old aged retired employee to go and

19 (2003) 7 SCC 410

file a departmental appeal against the order of penalty. There is yet another reason as to why this Court is not inclined to insist on exhaustion of alternative remedy. According to the respondents, entire records of departmental enquiry are missing. Despite repeated orders passed by this Court from time to time, the respondents have expressed their inability to produce the records and on affidavit it has been stated that the records are missing. Therefore, for all these reasons, objection to the maintainability of the petition on the ground of existence of alternative remedy deserves to be rejected and it is accordingly rejected.

7. Before advertng to aforesaid submissions made and ground raised in the petition, to assail the order of penalty, it would be profitable to restate well settled judicially evolved principles in the matter of scope of judicial review and interference in the departmental enquiry. One of the well settled principle is that the Writ Court would not assume to itself, the role of appellate authority while examining the legality and validity of the departmental proceedings and the order passed therein by re-appreciating the oral as well as documentary evidence led by the prosecution and the delinquent employee to reach its own conclusion and substituting its finding of fact in place of what has been recorded by the Enquiry Officer and the disciplinary and appellate authority. It has been succinctly held in plethora of decisions that the Courts can interfere where the authority held the enquiry proceedings in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the ambit and scope of enquiry and imposing punishment or where the conclusion or finding reached by the disciplinary authority is based on no evidence or such that no reasonable person would have ever reached. It has been held that it would be outside the scope of judicial review to re-appreciate the evidence. The High

Court can interfere with the conclusion reached in the departmental enquiry, if there was no evidence to support the finding. If there is some legal evidence, on which, finding could be sustained, then adequacy or reliability of that evidence would not justify interference in exercise of writ jurisdiction under Article 226 of the Constitution of India. Thus, the scope of judicial review is confined to determination as to whether the decision making process suffered from illegality, procedural irregularity or irrationality. The principle of “Wednesbury” unreasonableness and doctrine of proportionality have been made applicable as the grounds on which interference would be permissible in exercise of writ jurisdiction.

8. Historically, the scope and ambit of judicial review of administrative action was set in the case of ***Associated Provincial Picture Houses Ltd. vs. Wednesbury Corpn.***²⁰ and the principle laid down therein came to be known as “Wednesbury” principles, wherein it was held that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited and interference was not permissible unless order was contrary to law or relevant factors were not considered or irrelevant factors were considered or the decision was one which no reasonable person would have taken. “Wednesbury” principle was reiterated by Their Lordships in the Supreme Court in the case of ***Om Kumar vs. Union of India***,²¹. The doctrine of proportionality was explained by Their Lordships of the Supreme Court in the case of ***Union of India vs. G. Ganayutham***,²² to mean that the question whether, while regulating the exercise of fundamental rights, appropriate restrictive choice of measures have been taken by the authority so as to achieve the object or the purpose of

20 (1947) 2 All ER 680 (CA)

21 (2001) 2 SCC 386

22 (1997) 7 SCC 463

administrative order. The principle of proportionality is applicable to find out as to whether the penalty imposed on delinquent employee is shockingly disproportionate to the gravity of misconduct or not. Thus, it is not enough that the decision should be made reasonable, the decision should also not be disproportionate to the gravity of the misconduct. This Court feels it pertinent to refer to the observations made by Their Lordships in the Supreme Court in the case of ***State of Andhra Pradesh and Others vs. Chitra Venkata Rao***²³, wherein the principles relating to judicial review has been summarized as below:

21. “The scope of [Article 226](#) in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in [State of Andhra Pradesh v. S. Sree Rama Rao](#), [1964] 3 S.C.R. 25. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal of Inquiry the High Court in a petition under [Article-226](#) of the Constitution is not competent to declare the order of the authorities holding a departmental inquiry invalid. The High Court is not a Court of Appeal under [Article 226](#) over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226. “

23 (1975) 2 SCC 557

Keeping in forefront the aforesaid judicially evolved principles, I shall deal with various grounds and submissions made by learned counsel for the parties.

9. One of the foremost submission made by learned Senior counsel for the petitioner is that the charges are vague, unspecific and lacking any particular details. Though, there cannot be no quarrel with regard to the settled legal position that the charges must be clear, unambiguous and specific and with complete material particulars, so that the delinquent employee is fully aware of the charges as also the material by which, the charges are proposed to be proved, therefore, in a position to effectively defend himself by leading oral as well as documentary evidence to impeach the credibility of the prosecution case, however, in the present case, the petitioner has failed to come out with proper factual foundation and documents to substantiate the allegations of vagueness of charges. In the petition, the petitioner has only reproduced the charges without reproducing the statement of allegations. The petitioner has not filed complete charge sheet though he was supplied the charge sheet and there is no allegation in the petition that incomplete charge sheet was supplied to him without statement of allegations, list of witnesses and documents. Covering memo of the charge sheet is not filed by the petitioner. While the charges have been filed before the Court, statement of allegations in respect of Charge No.1 alone has been annexed. The petitioner has not even placed on record the list of witnesses and documents. Therefore, in these circumstances, when there is neither any allegation that statement of charges were not supplied, there are no factual foundation to decide the issue of vagueness of charges. In order to come to the conclusion one way or the other, this Court would be required to go through the complete charge sheet which necessarily includes the charges,

statement of allegations, list of witnesses and list of documents. While the petitioner failed to bring on record the complete charge sheet, the respondents have contributed to this failure by not producing the records of departmental enquiry. Both the parties are equally responsible. In that view of the matter, it is not possible for this Court to decide the said issue. In the enquiry report, statement of allegations constituting charge have not been reproduced. Therefore, on this count, the petitioner is not entitled to any relief.

10. One of the grounds raised in the petition is that while ordering common proceedings in the departmental enquiry, provisions contained in Rule 18 of the Rules of 1966 have been violated. According to the petitioner, proposed penalty should have been specifically mentioned but penalty proposed was general in nature and not specific as required under sub rule(2) of Rule 18 of the Rule of 1966. Therefore, it has been contended that sub rule(3) of Rule 18 of the Rules of 1966 has also been violated, in as much as, there is no express mention in the order instituting common proceedings as required under Rule 18 of the Rules of 1966. In order to decide this issue, it would be appropriate to refer to the provision contained in Rule 18 of the Rules of 1966 which provides for common proceedings. The relevant rule i.e. Rule 18 is reproduced as under :-

18. Common proceedings.-(1) Where two or where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government Servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note: If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceedings may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule(3) of rule 12, any such order shall specify:

- (I) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
- (II) the authorities specified in rule 10 which such disciplinary authority shall be competent to impose ; and
- (III) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding;

A perusal of the rule reveals that where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government Servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

11. In the present case, an order was passed by the Government on 01-02-1983 (Annexure A/19) instituting common enquiry against the petitioner and other 8 employees. The order has been passed by the State Government, which is competent to impose penalty on all the delinquent employees. In para 3 of the said order, it has been clearly stated that the Government has taken a decision to take disciplinary action against all of them in common proceedings. The order also clearly states that the State Government is functioning as disciplinary authority and that it would be competent for the authority to impose any of the penalties specified in Rule 10 of the Rules of 1966. True it is that there is no specific mention in the order whether the procedure laid down in Rule 14 & Rule 15 or Rule 16 shall be followed, service of detailed charge sheet along with statement of allegations, list of witnesses and documents and the opportunity to lead oral as well as documentary evidence coupled with the clear stipulation that the authority would be competent to impose any of the

penalties as provided under Rule 10 of the Rules of 1966, which includes major penalty, leave no manner of doubt that the authority instituted departmental enquiry indicating that the procedure laid down in Rule 14 & Rule 15 shall be followed in the proceedings. Therefore, there is substantial compliance of the provisions contained under Rule 18 of the Rules of 1966. It is not the case where common enquiry was instituted without any order under Rule 18 of the Rules of 1966 passed by the competent authority. The petitioner has failed to show as to what prejudice was caused to him on account of non mention of specific provisions contained under Rule 14 to Rule 16 of the Rules of 1966, therefore, this ground is also not made out to assail the validity of the departmental enquiry.

12. A very serious objection has been taken by the petitioner, not only with regard to violation of provision contained in the rules governing departmental enquiry, but also in violation of the principles of natural justice, inasmuch as, the copy of enquiry report was not supplied to the petitioner either by the Enquiry Officer or by the Disciplinary Officer and without supplying the copy of enquiry report, without obtaining petitioner's reply/comments on the same, the disciplinary authority proceeded to pass the impugned order. This ground has been very specifically pleaded in the petition and the respondents have not specifically denied it nor have placed on record any material document showing acknowledgment of receipt of copy of enquiry report by the petitioner. Therefore, on facts, it has to be held that the copy of enquiry report was not supplied to the petitioner before passing the order of penalty.

Though Rule 14 does not, in terms, cast obligation either on the Enquiry Officer or the disciplinary authority to forward the copy of enquiry report to the petitioner, as early as in the case of ***Union of India and others vs. Mohd.***

Ramzan Khan²⁴, it was held that it was obligatory on the part of the disciplinary authority to supply a copy of enquiry report to the delinquent employee as it is constitutional mandate flowing from the provisions contained under Article 311(2) of the Constitution of India which mandates affording of reasonable opportunity of being heard in respect of the charges.

In a Larger Bench decision of the Supreme Court in the case of **Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others**,²⁵ the settled legal position was restated but then it was made clear that the law laid down in the case of **Mohd. Ramzan Khan** (supra) would be prospective in operation. It was held as below:-

44. “The need to make the law laid down in Mohd. Ramzan Khan's case, (AIR 1991 SC 471) (supra) prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/ managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above.”

In the present case, the enquiry report was prepared as early as on 15-02-1988, the opinion of the Public Service Commission was also sought which was given on 14-06-1990 and thereafter, the impugned order was passed on 30-06-1990. In the case of **Mohd. Ramzan Khan** (supra), the judgment was rendered by the Supreme Court on 20-11-1990 i.e. after the order was passed in the present case. Therefore, on this count also, the enquiry cannot be held to

24 (1991) 1 SCC 588

25 (1993) 4 SCC 727

be illegal and vitiated.

Another ground of non-issuance of second show cause notice proposing penalty has also been raised by learned counsel for the petitioner. The said submission, however, must pale into insignificance after omission of second notice clause under Article 311(2) by the 42nd Constitutional amendment.

13. One of the grounds relating to procedural impropriety is that the Enquiry Officer while preparing enquiry report held the petitioner guilty of charges of misconduct, which did not form part of the charge sheet. It has also been stated that the Enquiry Officer at the fag end of the enquiry, accepted certain documents placed before it, which did not form part of the charge sheet, list of documents and relying upon those new documents, which were produced for the first time before the Enquiry Officer, the charges were held proved. The Enquiry Officer proceeded to hold the petitioner guilty of misconduct and made these documents, basis to impose extreme penalty of dismissal from service.

14. Perusal of 9 charges leveled against the petitioner does not show that there was any charge against the petitioner that the petitioner was guilty of misconduct for the reason that the provisions of the Land Acquisition Act were not followed and the lands were acquired through private negotiations. This finding has been recorded by the Enquiry Officer in para 25 of its report. The Enquiry Officer did take into consideration that this was not one of the charges levelled against the delinquent employees including the petitioner nor any such objection was raised by the Presenting Officer, but then it proceeds to record that it is proved from the evidence that the provisions of Land Acquisition Act and PWD Manual were not complied with and serious irregularities were committed. In para 26, it has been recorded that private negotiation can be

taken recourse to when acquisition has to be made of small plots on low budget basis as provided under para 415 of the PWD Manual. The Enquiry Officer has also taken into consideration the administrative guidelines contained in Para 416 and Para 418 of the PWD Manual to hold that the sale documents are not valid because instead of it being prepared in the name of Collector, it has been prepared in the name of Executive Engineer. In para 27 and Para 28, the consideration on this aspect is continued on the propriety of taking recourse to the proceedings of acquisition by way of private negotiation rather than following the procedure of acquisition under the Land Acquisition Act.

Thus, without there being any specific charge leveled in the charge sheet, the Enquiry Officer indicted the petitioner for this alleged misconduct, along with all other officers and employees involved in the process of acquisition of lands for the irrigation project. According to the petitioner, had opportunity been afforded to him on this charge, he would have exercised his right of defence to submit that in so far as decision to acquire land by private negotiation is concerned, this decision was taken long back, even prior to the posting of the petitioner. To demonstrate the prejudice caused to him and the perversity in involving the petitioner for such alleged misconduct, it has been averred in the petition and clearly pointed out that the Collector, Raipur vide his letter dated 15-03-1979 had already taken a decision that the lands would be acquired by private negotiation. This fact is corroborated from the challan dated 19-10-1987 filed in Criminal Case No.45/1982 (Annexure A/20). It is not in dispute that the petitioner joined as Executive Engineer, Incharge of Kodar Dam Project only on 29-08-1980. The petitioner has placed on record the minutes of meeting dated 08-02-1979 (Annexure A/6), letter dated 18-04-1979, letter of his predecessor Executive Engineer (Annexure A/7), letter dated 25-02-1979 of the Collector (Annexure A/8), letter dated 12-07-1979 of his predecessor Executive Engineer

and letter dated 31-05-1979 of the Executive Engineer, PWD (B&R) Mahasamund. These documents read conjointly only go to show that much prior to the posting of the petitioner as Executive Engineer in the Kodar Dam Project i.e. on 29-08-1980, not only decision was taken by the Collector to acquire land by private negotiation but the modalities and the manner in which it was to done, was discussed and decided in various rounds of meetings. The Executive Engineer (B&R) Mahasamund had already constituted a team for carrying out survey and assessment and additional staff was sent by the petitioner's predecessor in office, at the disposal of Executive Engineer, PWD (B&R), Mahasamund to speed up and complete the process of survey and assessment. That means, by the time, the petitioner was posted, lot of progress had already taken place towards acquisition of land by private negotiations pursuant to meeting dated 08-02-1979 and the Collector's letter dated 15-02-1979. Thus, by recording a finding that serious irregularity was committed in acquiring land through private negotiations rather than following the procedure under the Land Acquisition Act, without there being any charge leveled on the petitioner in that regard, the petitioner was seriously prejudiced and materials which have been referred to above, have been placed by the petitioner on record only to substantiate how seriously he was prejudiced on that issue and also that as far as the petitioner is concerned, he could not be involved and held guilty for such a decision taken by the Collector on 15-03-1979 to acquire land by private negotiations. As to what should be the procedure for acquisition of land is required to be decided by the authorities under the Land Acquisition Act not by the Officer of the Irrigation Department. The Collector being the competent authority-Land Acquisition Officer under the Land Acquisition Act and and he having taken decision in that regard, which was already implemented, the petitioner, who had joined as late as on 29-08-1980, could not be held

responsible for such course of action adopted in the matter of acquisition. Thus, viewed from any angle, the petitioner could not be held responsible for adopting the process by acquiring the land through private negotiation.

15. Reading of enquiry report makes interesting story. It is a joint enquiry report in respect of 9 officers and employees including the petitioner which includes officers of the Revenue Department, Irrigation Department and PWD Department. The Enquiry Officer reproduced separately the charges leveled in respect of each of the officers including the petitioner. After having reproduced the charges, from para 10 onwards, the Enquiry Officer while extracting the statement of allegations in respect of the petitioner states that the statement of allegations in respect of 9 charges leveled against the petitioner are those which have been stated in respect of other delinquent employee, Mr. Kamal Agnibhoj and Mr. Y. P. Sharma. While dealing with statement of allegations of Mr. Kamal Agnibhoj all that has been reproduced in the enquiry report is as below:-

“श्री कमल अग्निभोज –

इस अभिकथन पत्रक में आरोप से अधिक तथ्य नहीं दिए गये हैं।”

As far as other delinquent employee-Mr. Y. P. Sharma is concerned, statement of allegations reproduced in his case are as below:-

“श्री वाय,पी,शर्मा, आरोपित अधिकारी के आरोपो के संबंध में अभिकथन पत्रक :

आरोप क्रमांक 1,2,3,4,5,6

इन आरोपों के अभिकथन पत्रक ऐसे हैं जिनमें आरोप से अधिक तथ्य नहीं दिये हुये हैं इन आरोपों के संबंध में संलग्न गौसवारा और परिशिष्टों में आंकड़े दिये हुये हैं।

आरोप क्रमांक 7

आरोप में दिये गये तथ्यों के अलावा अभिकथन पत्रक में यह है कि मुआवजा प्रस्ताव

के अनुसार पेड़ों की संख्या 21,066 बताई गई थी। जब कि जांच के अनुसार केवल 878 पेड़ केवल मौके पर पाये गये। इस तरह जो वृक्ष अस्तित्व में नहीं थे उनका भी मुआवजा प्रस्तावित किया गया और निर्धारण किया गया। वृक्षों की गोलाई इत्यादि के बाबत अधिकारियों से जांच पड़ताल नहीं की गई।'

Charge No.7 as levelled against Mr. Y. P. Sharma is same as Charge No.8 levelled against the petitioner, which has not been found to be proved.

In para 17 of the enquiry report, part of the defence has been reproduced. In para 25 to para 32, the Enquiry Officer has only dealt with the procedural aspect of acquiring land through private negotiations instead of adopting the process of acquiring land under the Land Acquisition Act. In para 32, the Enquiry Officer has made a reference of letter dated 10-01-1979 of the Collector written to the Commissioner that it would be proper to acquire the land under the Land Acquisition Act, 1894. The petitioner's allegation that this letter was for the first time produced before the Presenting Officer, has not been denied by the respondents in their return. This letter of the Collector was prior to its own letter dated 15-03-1979, by which, he had later on, issued directions for acquisition of land by private negotiations. Therefore, the findings on a charge which was not even levelled against the petitioner was not only illegal but also in violation of the principles of natural justice, for which, he was not afforded proper opportunity of hearing to rebut the charges, which seriously prejudiced and not made out in so far as the petitioner is concerned.

16. From Para 15 to 23 of the Enquiry Report, defence of the delinquent employees have been briefly reproduced. Para 25 to 32 of the enquiry report mainly deals with the aspect of propriety of acquiring land through private negotiations and not drawing the proceedings of acquisition under the Land

Acquisition Act, which has also been dealt with hereinabove. From Para 34 to 56 of the enquiry report, the Enquiry Officer has recorded finding with regard to 9 charges against Mr. Agnibhoj and thereafter, it has proceeded to consider charges against Mr. Y. P. Sharma in para 57 to 61. In so far as the petitioner is concerned, all that has been stated in para 63 is that the charges No.1 to 4, 7 & 9 against the petitioner are proved as per the details given in the analysis of evidence and finding recorded against Mr. Agnibhoj and Mr. Y. P. Sharma. It is thus clear that in respect of the aforesaid charges against the petitioner, there is no separate assessment of evidence. What the disciplinary authority has done is that it has drawn a finding of irregularities committed in the matter of acquisition of land and then, without discussing the individual role played by each of the Officers and employees including the petitioner, it has held the charge proved against each of them by treating it to be a case of conspiracy. The delinquent officers included Land Acquisition Officer, Officers of Revenue Department and Officers of PWD Department as also Officers and employees of Irrigation Department. The entire allegations pertain to irregularity in the matter of acquisition of land and not in the matter of construction of dam or civil work connected with the Irrigation Project. The acquisition was essentially a matter to be dealt with by the Land Acquisition Officer and not by the Department of Irrigation as such. However, it is borne out from the enquiry report and the material on record that in order to expedite the process of acquisition, which could be completed only when survey and assessment of the lands, houses and properties done at the earliest, request was made by the Executive Engineer, PWD (B&R), Mahasamund to provide staff from the Irrigation Department to assist the Executive Engineer, PWD, Mahasamund in the matter of survey and assessment. The petitioner joined as Executive Engineer on 29-08-1980, by that time, not only the Collector had issued direction as back as on 15-03-1979

for acquisition of land by private negotiations, but number of meetings were held, communication made amongst the officers of the Irrigation Department, PWD Department, Land Acquisition Officer towards survey and assessment of land, houses, buildings and wells for the purposes of working out compensation payable to owners and holders of such property. The work of survey and assessment which had begun after meeting dated 08-02-1979, was completed after joining of the petitioner on 29-08-1980. A perusal of the minutes dated 08-02-1979 (Annexure A/6) shows that the committee worked out modalities of valuation of properties for acquisition and it was also decided that the valuation will be done by the Executive Engineer, PWD (B & R), Mahasamund. In the minutes of the meeting, it has been recorded that the Executive Engineer, PWD (B & R), Mahasamund accepted to send valuation report and then Executive Engineer, Kodar Dam Project (Predecessor of the petitioner) was requested to forward the evaluation report. Vide letter dated 18-04-1979 (Annexure A-7), the Executive Engineer, Irrigation Department sent two Sub Engineers and one Amin on deputation to assist Sub Divisional Officer, PWD (B & R), Mahasamund for the purposes of survey and assessment. This order was passed by the predecessor in the office of the petitioner. Vide letter dated 22-05-1979 (Annexure A/8), the Collector asked the Executive Engineer, Kodar Dam Project (Predecessor of the petitioner) to communicate Executive Engineer, PWD to ensure early forwarding of valuation report. In this letter, it is clearly stated that in the meeting, it was resolved that the valuation will be done by the Executive Engineer, PWD (B & R), Mahasamund. By the aforesaid letter, the petitioner was asked to get the whole process expedited in coordination with the Executive Engineer, PWD. Vide letter dated 31-05-1979 (Annexure A-10), Executive Engineer, PWD (B & R) requested Sub Divisional Officer, PWD (B & R), Mahasamund for providing additional staff and to expedite forwarding of

assessment report, so that, compensation may be worked out without further delay. Vide letter dated 12-07-1979 (Annexure A/9), Predecessor in the office of the petitioner requested the Superintending Engineer, Irrigation Department, Raipur, informing that as per the directions of the Collector, valuation, survey and assessment of the property likely to come under submergence is being done by the Executive Engineer, PWD (B & R), Mahasamund and for his help, two Sub Engineers and one Amin of Irrigation Department has been deputed and details prepared by the Executive Engineer, Building and Road Construction, Mahasamund, have been forwarded on 07-07-1979, which may be forwarded to the Land Acquisition Officer for necessary action.

17. It would thus be seen from the aforesaid communication and proceedings that even before arrival in the office of the Executive Engineer, PWD (B & R), Mahasamund on 29-08-1980, work of survey and assessment was already taken by the Executive Engineer, PWD (B & R), Mahasamund and for his assistance, some of the officers and employees i.e. Engineers and Amin of the Irrigation Department were already deputed and they were carrying out survey and assessment.

After the petitioner joined in the office of Executive Engineer, PWD (B & R), Mahasamund on 29-08-1980, he at his own level, started supervising the process of survey and assessment which had already been initiated long back and half way through. Joint inspection of the Sub Divisional Officer, PWD and Sub Engineer of Kodar Dam Project was held on 29-08-1980. The petitioner therefore, wrote a letter on 24-04-1980 to the Executive Engineer, PWD (B & R), Mahasamund to expedite the whole process at the earliest.

Earlier, in the meeting dated 06-03-1981 (Annexure A/5), in the presence of the Collector, it was resolved that the work of *nala* closure was to be

expedited as per direction dated 25-02-1981 of the Chief Secretary. On the aspect of Land Acquisition under Clause VIII(c) of the minutes of meeting, it was recorded that the Executive Engineer, Irrigation, Kodar Project should now make detailed conclusion on the basis of per unit cost fixed by the Executive Engineer, PWD (B & R) and submit the same before the Land Acquisition Officer for finalization of the amount of compensation. It was further resolved as under:-

- “1. S.D.O. (Civil) Mahasamund and Land Acquisition Officer, Mahasamund would supply to the Executive Engineer, Irrigation, the proposed per unit rates of Badies, wells and trees.
2. The Executive Engineer, Irrigation will thereafter get detailed calculations made for each individual and submit them to the Land Acquisition Officer at his earliest, who in turn, will finalise the case in accordance with the provisions of the Land Acquisition Act.”

18. From the aforesaid material facts and documents which have been pleaded by the petitioner and not specifically denied by the respondents in their return, what is borne out that as far as the land acquisition part was concerned, the process of survey and assessment was handed over to the Department of Executive Engineer, PWD (B & R), Mahasamund and he along with his team was required to carry out survey and assessment and prepare the report and submit to the petitioner, whereafter the petitioner was required to carry out calculation work in his office by applying the rates which were already fixed and sent to the petitioner. There is no material on record nor any other document produced before the Court by the respondents nor reflected from the enquiry report that in the matter of survey and assessment, the petitioner himself had gone on the spot along with the Executive Engineer, PWD and his team to carry out survey and assessment and prepare reports regarding identification of the owner, nature, extent and area of the property or its valuation. This exercise

was to be done by the entirely different team, which was to forward its report to the office of the petitioner and thereafter, the petitioner was required to make proposal of compensation by applying the rates already fixed and forwarded to him and then forward the compensation proposal to the Land Acquisition Officer. The sale documents were prepared on the basis of survey and assessment reports forwarded to the office of the petitioner. If that was the role played by the petitioner in the process of acquisition, the Enquiry Officer ought to have minutely scrutinized the evidence on record to find out as to how the petitioner was responsible, if later on, it was found that there were several irregularities committed in the matter of preparation of survey and assessment reports. Charge No.1 to 4, 7 & 9 against the petitioner are that he acting in conspiracy with other delinquent officers and employees; (1) got the sale deed executed in respect of houses, wells and boundaries which were not in existence and thereby caused financial loss to the government ; (2) got prepared sale deeds for payment of compensation in respect of those properties which were public properties I.e temple, school buildings wrongly shown as private properties; (3) that while preparing the cases of compensation, wrong description and excess area was shown in the sale deed causing financial loss to the government; (4) excess compensation in respect of private properties was got prepared and sale deed executed causing financial loss to the government; (5) government lands were shown as private lands and sale deed was executed and thereby causing financial loss to the government and (6) those lands, which were situated outside the area of submergence and were unnecessary for acquisition, were also got purchased and thereby caused financial loss to the government.

In all these charges, the petitioner and all other employees are alleged to have conspired. While recording a finding of guilt of Mr. Kamal Agnibhoj and Mr.

Y. P. Sharma, there is no discussion at all as to what individual role was played by the petitioner in getting the survey and assessment done and reports prepared. All these charges related to objectionable survey and assessment reports for reasons stated hereinabove in clauses 1, 2, 3, 4 & 5. There is no allegation that the petitioner was in the team of officers and employees, who had carried out work of survey and assessment by spot inspection. From the discussion made hereinabove, it is clear that the entire work of survey and assessment for the purposes of purchasing land through private negotiations, was entrusted to the Executive Engineer, PWD (B & R), Mahasamund, who had constituted a team of his own Officers and later on, upon his request, some of the Engineers and Amin of the Irrigation Department, were also sent on deputation to join the team which was to carry out survey and assessment of lands, buildings, houses, wells and boundaries, so that on the basis of survey and assessment report, compensation is paid to the owners. The Enquiry Officer has not discussed any material whatsoever to indicate that the petitioner had any role to play in the preparation of survey and assessment report. The minutes of meeting and communication which have been referred to hereinabove, only show that the before joining of the petitioner, his predecessor in office, had entered into various correspondences with the Land Acquisition Officer and the Executive Engineer, PWD (B & R), Mahasamund for expediting the work of survey and assessment and even before arrival of the petitioner in his office, his predecessor had sent on deputation, some of the Engineers and employees of the Irrigation Department to the PWD Department to facilitate early completion of work of survey and assessment. There is no discussion in the enquiry report or any material evidence or circumstances to reach to a conclusion that the petitioner having full notice and knowledge that the survey and assessments were incorrect and yet he, acting in conspiracy with the

members of the survey team and Executive Engineer, PWD, accepted those assessments and executed sale deeds on behalf of the Irrigation Department in favour of identified land and house holders. The Enquiry Officer, without any evidence on record discussed by him, jumped to the conclusion of conspiracy, merely because at the relevant point of time, the petitioner happened to be the Executive Engineer in the Irrigation Department. True it is that in the departmental enquiry, the degree of proof is not beyond reasonable doubt, even though, there has to be some evidence to arrive at conclusion of guilt on preponderance of probability. There is no material on record much less any discussion in the enquiry report that the petitioner was duty bound to carry out any random inspection of surveyed lands and houses or had actually carried out any random survey and assessment of land, houses and thereby also became party to preparation of survey and assessment report so as to draw an inference of he being involved in any conspiracy. There is no material much less any discussion in the enquiry report that the petitioner accepted any proposal of purchase of land, contrary to the assessment report or of his own assessment that he applied his own source of knowledge in respect of the nature and quality area of the lands, buildings, wells and boundaries proposed for purchase. There is no discussion at all in the enquiry report that the petitioner applied any rate other than the rate which was proposed and submitted to its office.

It appears that when there was lot of outcry and insistence to hold departmental enquiry and submit the report at the earliest, the Enquiry Officer hurriedly concluded the enquiry and prepared report, holding all the delinquent officer guilty of preparation of false, fabricated and exaggerated survey and assessment reports, without discussing the oral and documentary evidence on record by fixing individual responsibility with regard to role played by them in the entire process of acquisition of land. That is how, there is no discussion at all in

respect of the charges and evidence appearing against the petitioner during enquiry, but charges have been found proved on the basis of findings recorded on the charges against Mr. Kamal Agnibhoj and Mr. Y. P. Sharma. Each of these officers were posted and working in different offices in different capacities and had played different role in the entire process. Therefore, without discussing oral and documentary evidence with regard to individual role played by each of the Officers, on mere conjectures and surmises, it was recorded that the petitioner was also involved in the conspiracy. The findings against the petitioner are grossly irrational, perverse and it can be said to be a case of no evidence.

The disciplinary authority, however, without discussing any thing, accepted the report of the Enquiry Officer and penalty was imposed on the petitioner.

19. In the result, the petition has to be allowed and is accordingly allowed. The impugned order of penalty is therefore, quashed. The petitioner shall be entitled to all the consequential benefits, as if he had retired upon attaining the age of superannuation.

SD/-
(**Manindra Mohan Shrivastava**)
Judge