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

+ **W.P. (C) 4270/2002**

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Date of Judgment: 04th January, 2017

K.G. MOHANACHANDRAN

..... Petitioner

Through: Mr. C.N. Sreekumar, Advocate with
Mr. Amit Sharma, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Shekhar Gelhot, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Rule DB in this matter was issued on 19.07.2002.
2. Challenge in this writ petition is to the order dated 04.04.2002 passed by the Central Administrative Tribunal (in short the 'Tribunal') whereby the O.A. No. 915/2002 filed by the petitioner herein has been dismissed. In addition to the order of the Tribunal, the petitioner has also impugned the penalty order dated 27.01.2001 of the disciplinary authority and the order dated 09.10.2001 passed in review.
3. The necessary facts to be noticed for disposal of this petition are that while the petitioner was working as 'Attaché (Administration)' in the Embassy of India, Belgrade in the year 1992, three Articles of Charge were framed against him, reproduced as follows:

“

Article-I

While Shri K G Mohanachandran was functioning as Attaché (Admn) in the Embassy of India, Belgrade; he made a payment of

DM 8,500/- to Mr. N. Dragan, a Yugoslav national towards the cost of a Seimens Telex Machine installed in the office. The amount was paid through a bank transfer order under the signature of Shri Mohanachandran. Shri Mohanachandran did not seek approval of the Head of Chancery, i.e the sanctioning authority before making the payment nor did he obtain a receipt after making the payment.

By the above acts, the said Shri Mohanachandran has exhibited conduct unbecoming of a Government servant thereby contravening clause (iii) of sub rule (1) of Rule 3 of CCS (Conduct) Rules 1964.

Article II

Shri K G Mohanachandran, while functioning as Attaché (Admn) in the Embassy of India, Belgrade, was entitled to claim reimbursement of medical expenses on himself and members of his family as admissible under AMA scheme. Shri Mohanachandran inflated the amount of two hospital bills by altering the same and claimed the inflated amount from Government thereby defrauding the Government of Dinar.1,200/-

By the above acts, the said Shri Mohanachandran has exhibited lack of integrity and conduct unbecoming of a Government servant thereby contravening clauses (i) and (iii) of sub rule (1) of Rule 3 of CCS (Conduct) Rules 1964.

Article III

Shri K G Mohanachandran while functioning as Attaché (Admn) in the Embassy of India, Belgrade forged the signatures of the then Head of Chancery Shri. Rajeet Mitter and fraudulently claimed taxi charges amounting to Dinar.1,500/-

By the above acts, the said Shri Mohanachandran has exhibited lack of integrity and conduct unbecoming of a Government servant thereby contravening clauses (i) and (iii) of sub rule (1) of Rule 3 of CCS (Conduct) Rules 1964.”

4. The petitioner denied all the charges, resultantly a disciplinary inquiry under Rule 14 of CCS (CCA) Rules, 1965 was initiated against him on 09.03.1993. The inquiry officer submitted his report dated 27.02.1994 holding that all the three charges against the officer were not

established. By an order dated 27.09.1994, the disciplinary authority disagreed with the findings of the inquiry officer and found the petitioner guilty of charges nos. 2 and 3. Accordingly, a show cause notice was issued to the petitioner; which was replied to by a communication dated 05.10.1994. By an order dated 14.10.1996, the petitioner was held guilty of charges nos. 2 and 3 and a penalty of reduction to a lower stage in the time scale of pay for a period of five years with cumulative effect was imposed on the petitioner.

5. On 04.08.1997, the petitioner filed an application, being O.A. No. 1801/1997, before the Tribunal. By an order dated 25.08.2000, the penalty order dated 14.10.1996 was set-aside as the reasons for disagreement with the report of the inquiry officer were not recorded by the disciplinary authority and that the representation of the petitioner herein was not considered while passing the penalty order. Accordingly, the Tribunal directed the respondents to consider the report of the inquiry officer afresh and pass a final order.
6. A fresh show cause notice was served on the petitioner on 13.10.2000, to which a reply was filed on 25.10.2000; and thereafter, by an order dated 27.02.2001, the disciplinary authority once again imposed a penalty of reduction to a lower stage in the time scale of pay for a period of five years. The petitioner also preferred a review petition, which was rejected vide order dated 09.10.2001. This led to the filing of a second O.A. No. 915/2002, which was dismissed by an order dated 04.04.2002, which has been impugned before us.
7. Mr.Sreekumar, learned counsel for the petitioner submits that the disciplinary authority has failed to take into consideration that the charges against the petitioner were vague and baseless. It is contended

that charge no.2 pertaining to inflated hospital bills, cannot be sustained as no evidence was adduced and the evidence produced was neither authentic copies nor counterfoils of the original. Counsel also contends that there is no evidence to prove that the petitioner had forged the signature of Sh.Rajeet Mitter, the Head of Chancery. He further contends that the authorities failed to produce certificates from Health Centre Boris Kidric, Belgrade from which the petitioner had got medical treatment and who issued original receipts for payment.

8. Learned counsel submits that the law is well settled that once the signatures are denied, the documents become inadmissible unless proved by a handwriting expert, but in the instant case Sh.Mitter, in his communication dated 18.09.1992, has stated that the signatures on the four taxi claims do not appear to be his and as such, this is not a clear denial and so it cannot be taken that the signatures on the disputed tax claims are not his. He further contends that the disciplinary authority disagreed with the findings of the inquiry officer without any reason or justifiable grounds. It is submitted that the orders passed by the respondent are perverse and contrary to the evidence on record.
9. Learned counsel next contends that the respondent has relied upon documents, which came into existence after conclusion of the inquiry against the applicant. The original hospital from where the applicant had taken medical treatment had ceased to exist as per the record and a new hospital by a different name had come into existence. It is on the basis of certificates issued by the new hospital that charge no. 2 is sought to be established. Copies of these documents produced by the new hospital were not furnished to the petitioner.

10. Mr.Sreekumar further contends that the respondent had never produced the crucial documents relating to the change of the name of the hospital, being Certificate dated 15.03.1995 and Letter dated 09.08.2001, obtained by the respondents at the back of the petitioner, either during the inquiry proceedings of 1993-94 or while issuing show cause notices pursuant to disagreement notes in September, 1994 or October, 2000. It was only on 09.10.2001, i.e. at the time of rejection of petitioner's review petition by the President, that he was supplied copies of the documents. It is also submitted that the respondent has resorted to these correspondences much after the conclusion of the departmental inquiry against the petitioner. Thus, the petitioner was deprived of adequate opportunity for defending himself during the inquiry proceedings of 1993-94 as well as at the time of replying to the show cause notices issued by the respondents in September, 1994 and October, 2000. It is because of the conspicuous absence of these vital and crucial documents that the Inquiry Officer had in his findings, rightly absolved the petitioner of the alleged misconduct of the second charges. The respondent cannot make use and rely on these documents, collected at this late stage. Learned counsel contends that production of additional documents, after completion of the hearings, to prove a charge is not tenable as it vitiates the case and is perverse in law.
11. Learned counsel further contends that the OM dated 28.09.2000 issued by the Government of India has been violated as a copy of the CVC report has not been supplied to the petitioner till date. It is further submitted that the recommendations of the UPSC were forwarded to the petitioner only after imposition of the penalty by the disciplinary authority. This is a violation of the principle laid down in the case of

Union of India & Ors. v. Mohd. Ramzan Khan, (1991) 1 SCC 588.

He further contends that the respondent has denied adequate opportunity to the petitioner by concealing the report of the CVC during the inquiry proceedings or thereafter till October, 2001. Though it is found from the penalty order dated 14.10.1996 and the advice of the UPSC annexed to impugned order dated 27.02.2001, that the disciplinary authority had consulted the CVC in the present case, but a copy of the CVC report was not furnished to the petitioner. Counsel submitted that it is settled law that it is obligatory for the disciplinary authority to provide a copy of CVC report to the charged officer to enable him to defend his case.

12. Mr.Sreekumar, learned counsel for the petitioner, has also relied on the preliminary submissions of the counter affidavit filed by the respondent no.1 to canvass his submissions that although it has been admitted that the advice of the Central Vigilance Commission was received, the respondents did not share it with the petitioner. Counsel submits that the law is well settled that all the documents sought to be relied upon by the respondents, copies thereof were to be supplied to the petitioner, being the delinquent officer. Reliance is placed on ***State Bank of India and Others v. D.C. Aggarwal and Another, (1993) 1 SCC 13***, wherein it has been held that: -

“3. Both the inquiry report and recommendations of the CVC were sent to the disciplinary authority who passed an elaborate order recording finding against the respondent, and coincidentally, agreeing on each charge on which CVC had found against him disagreeing on quantum of punishment. It was observed:

“While the wrongful acts indulged in by the official are no doubt grave, the facts brought out during the enquiry do not show that Bank sustained any monetary loss thereby. There is also no conclusive proof that the official in all the

transactions for procurement of steel, fans, etc. had misappropriated bank's funds or obtained pecuniary gains for himself. Considering the totality of the circumstances, therefore, in my opinion the imposition of the extreme penalty of cessation of service as advised by the Central Vigilance Commission would be too harsh."

The departmental appeal against this order was dismissed. But the order was quashed by the learned Single Judge of the High Court, as it was in violation of the principle of audi alteram partem. It was found that the report of the CVC having not been supplied to the respondent it could not furnish basis for the order passed by the disciplinary authority. Punishment was also found to be disproportionate. The Division Bench dismissed the appeal summarily.

4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment in writ jurisdiction, but we propose to confine ourselves only to the question of effect of non-supply of CVC recommendations and if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settled from a series of decisions of this Court that it leaves one bewildered at times, that such bodies like State Bank of India, who are assisted by a hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment on an employee, on material which is not only supplied but not disclosed to him, has not been countenanced by this court. Procedural fairness is as much essence of right and liberty as the substantive law itself.

5. Reliance was placed on sub-rule (5) of Rule 50 which reads as under: -

"(5) Orders made by the Disciplinary Authority or the Appointing as the case may be under sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any."

It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court

committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the disciplinary authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the disciplinary authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the disciplinary authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the

disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority.”

(Emphasis Supplied)

13. Reliance is also placed on ***Union of India and Ors. v. S.K. Kapoor, (2011) 4 SCC 589***. Relevant paras of the said judgment are as under:

“2. It appears that the respondent had been charge-sheeted for absence without leave and a dismissal order was passed against him on 01.11.2001. The respondent approached the Central Administrative Tribunal, Ahmedabad Bench, which by its order dated 20.07.2004 quashed the dismissal order and directed the authorities to proceed from the stage of making available a copy of the Report of the Union Public Service Commission.

...

5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.

6. Mr. Qadri, learned counsel for the appellant submitted that the copy of the Report of the Union Public Service Commission was supplied to the respondent-employee along with the dismissal order. He submitted that this is valid in view of the decision of this Court in Union of India vs. T.V.Patel. We do not agree.

7. *In the aforesaid decision, it has been observed in SCC para 25 that 'the provisions of Article 320(3)(c) of the Constitution of India are not mandatory'. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V.Patel case is clearly distinguishable.*

8. *There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in S.N.Narula vs. Union of India.*

9. *It may be noted that the decision in S.N.Narula case was prior to the decision in T.V.Patel case. It is well settled that if a subsequent co- ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N.Narula case was not noticed in T.V.Patel case, the latter decision is a judgment per incuriam. The decision in S.N.Narula case was binding on the subsequent bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.*

(Emphasis Supplied)

14. *Per contra* Mr.Shukla, learned standing counsel for the Union of India, has opposed this petition. Mr. Shukla submits that a perusal of the articles of charge would show that the petitioner had acted in a dishonest manner. He submits that the petitioner not only inflated his

hospital bills but also tampered with the same and thus, the disciplinary authority based on the documents placed on record, rightly reached the conclusion that the charge no.2 stood duly proved. He further submits that as far as charge no.3 is concerned, the signatures stand denied by Sh. Rajeet Mitter, who was the alleged author of the said signatures and therefore, the charge no.3 also stands duly proved.

15. Learned counsel also contends that having regard to the nature of the offence the disciplinary authority has passed a well-reasoned order, which has been upheld by the Tribunal and thus no grounds have been made out by the petitioner, which would require interference in proceedings under Article 226 of the Constitution of India. While relying on the counter affidavit, Mr.Shukla submits that in the preliminary submission No.1 the respondent has clearly stated that at the relevant time it was not necessary that the Central Vigilance Commission's second stage advice, which was received on 29.07.1994, was to be shared with the petitioner. Mr.Shukla submits that in fact the Central Vigilance Commission had issued a circular dated 28.09.2000 amending the erstwhile provision for not providing the second stage advice. Counsel contends that these instructions were received by the Ministry on 13.10.2000 by which date action had already been initiated. As per the order dated 25.08.2000 of the Tribunal a memorandum was issued on 13.10.2000. Mr.Shukla submits that the instructions of the Central Vigilance Commission dated 28.09.2000 were not effective retrospectively. Counsel contends that as is evident from the letter dated 29.07.1994, the Central Vigilance Commission merely concurred with the decision of the Department in holding that charges nos. 2 and 3 were proved in disagreement with the report of the Inquiry Officer and

advised imposition of severe major penalty. The petitioner was duly informed about the decision of the Ministry to differ with the findings of the Inquiry Officer in respect of charges no.2 and 3 vide Memorandum dated 27.09.1994. Mr.Shukla contends that, in essence, there has not been denial of reasonable opportunity to the petitioner by not providing a copy of the second stage advice of the Central Vigilance Commission.

16. We have heard the learned counsel for the parties and considered their rival submissions.
17. The submissions of the learned counsel for the petitioner can be summarized as under:-
 - (i) The order passed by the Tribunal is bad in law being arbitrary and discriminatory.
 - (ii) The Tribunal has failed to take into account the settled position in law that in the absence of the petitioner being supplied a copy of the CVC report as well as the advice of the UPSC, the proceedings stood vitiated.
 - (iii) The Tribunal has failed to take into consideration that the disciplinary authority has failed to give cogent reasons for differing with the report of the inquiry officer who has absolved the petitioner of all the charges.
 - (iv) The disciplinary authority has relied upon documents which were procured after the framing of charges and the said documents could not have been relied upon by the disciplinary authority without an opportunity having been granted to the petitioner to rebut those documents and to cross-examine the witnesses who had produced the documents in question.

18. The arguments of the learned counsel for the respondent can be summarized as under:-

- (i) There is no infirmity in the order passed by the Tribunal which would require interference in proceedings under Article 226 of the Constitution of India.
- (ii) The charges framed against the petitioner are grave and serious inasmuch that the disciplinary authority has held that the petitioner had tampered with the documents being bills for treatment of the petitioner and his wife.
- (iii) The disciplinary authority has rightly relied upon the testimony of Sh. Mitter who has categorically stated that the documents do not bear his signatures. Thus, the disciplinary authority has rightly held that the Charges No. 2 & 3 stand proved against the petitioner.
- (iv) The CVC report was not supplied to the petitioner, as the instructions were received from the Ministry on 13.10.2000 whereas the respondent had already initiated action against the petitioner and issued a Memorandum to the petitioner on 13.10.2000 in pursuance of the directions of the Tribunal. The report of the CVC was not mandatorily required to be provided to the petitioner.

19. The first argument raised by the counsel for the petitioner is that a copy of the CVC Report was not supplied to the petitioner, while the case of the respondents is that it was not mandatory for the respondents to have supplied the same. We do not find any force in the submissions made by the learned counsel for the Union of India as in the case of **D. C. Aggarwal (Supra)**, as quoted by us in paragraph 12 foregoing, it has

been held that the CVC recommendations should be communicated to the delinquent officer as the material has been collected behind the back of the officer and failure to provide copies amounts to a violation of the principles of natural justice.

20. Once the Supreme Court had categorically held in ***D. C. Aggarwal (Supra)*** that principles of natural justice cannot be violated and the disciplinary authority which relied on the copies of the enquiry report and the recommendations of the CVC, they were duty bound to supply the copy thereof to the delinquent official before a final order was passed. The Circular dated 28.09.2000 was merely clarificatory in nature. Admittedly, the CVC had vide its letter dated 29.07.1994 agreed with the department, that the second and third charges were duly proved against the petitioner. This was after the judgment of the Supreme Court in ***D. C. Aggarwal (Supra)*** which was pronounced on 13.10.1992. Therefore, when the disciplinary authority proposed to impose a penalty on the petitioner herein by the memorandums dated 27.09.1994 and 13.10.2000, it was obligated to supply a copy of the recommendations of the CVC.
21. Even otherwise, we are unable to accept the explanation rendered by the learned counsel for the Union of India that the CVC report could not be supplied to the petitioner as the circular was issued on 28.09.2000, for the reason, that after the matter was remanded back, the Memorandum was issued to the petitioner post the issuance of circular, i.e. on 13.10.2000.
22. Resultantly, we are of the view that the supply of the CVC report was a mandatory requirement in the facts of the present case and on this ground alone the present writ petition is liable to be allowed.

23. As far as the other grounds which have been urged by the learned counsel for the petitioner are concerned, we find that although the articles of charge are serious in nature, but the Health Centre from where the documents were procured bore a different name and format. While the documents relied upon by the petitioner bore the name 'Boris Kidric', the documents relied upon by the respondents were issued from one, 'Sevaski Venac'. Before the inquiry officer, the stand of the petitioner was that the amounts on the receipts were overwritten by the hospital authorities themselves.
24. Owing to the discrepancy in the names and formats of the documents, the inquiry officer had concluded that the "[t]wo set of receipts, which pertain to the same transaction show that they bear no relationship to one another either as authentic copies or as counterfoils." The inquiry officer continued on to hold that "one set or both of the receipts are obviously fake" and gave the benefit of the doubt to the petitioner/charged officer.
25. Since the disciplinary authority was of the view that charges no. 2 and 3 were proved, a memorandum dated 27.09.1994 was issued which was duly replied to by the petitioner herein vide his letter dated 05.10.1994. In his representation dated 05.10.1994, the petitioner had specifically mentioned that the name of the Health Centres were different.
26. After the conclusion of the enquiry, the respondents procured a Certificate No. 333 dated 15.03.1995 stating that Health Centre 'Boris Kidric' had changed its name to 'Saviski Venac'; this Certificate was not supplied to the petitioner herein. The petitioner has contended that the said document was only provided at the time of rejection of his review petition on 09.10.2001. It may also be noted that the fresh

memorandum dated 13.10.2000 was issued after the matter being remanded by the Tribunal, the disciplinary authority had relied upon the Certificate dated 15.03.1995 to hold the second charge as proved. In his reply to the memorandum, the petitioner again objected to the reliance on the document at this belated stage. On 27.02.2001, relying upon the Certificate dated 15.03.1995, held the second charge was held to be proved against the petitioner herein.

27. Once again, while submitting his review petition dated 09.04.2001, the petitioner objected to the reliance upon the certificate. The review was rejected by an order dated 09.10.2001. In the order dated 09.10.2001, another document surfaced, being Letter bearing No. Bel/943/1/91 dated 09.08.2001 of the Embassy of India, Belgrade. The petitioner has contended that the reliance on the documents dated 15.03.1995 and 09.08.2001 is unlawful and vitiates the proceedings as the same were not supplied to the petitioner/charged officer.
28. It is settled law that all relevant and material documents must be supplied to the delinquent officer, if they are to be relied upon to sustain the charges. If they are not supplied, it amounts to a violation of the principles of natural justice or denial of reasonable opportunity of defence. As held in **D.C. Aggarwal (Supra)**, the “[p]urpose of supplying document is to contest its veracity or give explanation.” In **S.K. Kapoor (Supra)**, the Supreme Court had observed as under:

“5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same. ...”

29. One may also refer to the judgments in **Chandrama Tewari v. Union of India (UOI) (through General Manager, Eastern Railways)**, AIR

1988 SC 117 (paragraph 9); *Union of India v. Mr. R.K. Rastogi and Anr.*, **2002 (1) SCT 988 (Delhi)** (paragraphs 4 and 6); *South Bengal State Transport Corpn. v. Swapan Kumar Mitra and Ors.*, **(2006) 2 SCC 584** (paragraph 11-15); and *State of U.P. and Ors. v. Saroj Kumar Sinha*, **AIR 2010 SC 3131** (paragraphs 27-36).

30. The question which arises is as to the nature of the Certificate No. 333 dated 15.03.1995 and the Letter bearing No. Bel/943/1/91 dated 09.08.2001 of the Embassy of India, Belgrade, i.e. whether they were relied upon to prove the charges. Upon the reading of the impugned orders dated 27.01.2001 of the disciplinary authority and the order dated 09.10.2001 in review, it is clear that the said documents were heavily relied upon to show that the name of the Health Centre was changed from 'Boris Kidric' to 'Saviski Venac'. We may note that it was owing to the difference in names and format of documents before the inquiry officer, that he had come to the conclusion that charge no. 2 was not proved. In this background, it is clear that the documents dated 15.03.1995 and 09.08.2001 were relied upon by the respondents to prove the charges. Both the documents were not supplied to the petitioner herein prior to passing of the impugned orders. Therefore, the same is a clear case of violation of principles of natural justice as the petitioner/charged officer was denied of adequate opportunity to meet the charges against him.
31. In respect of the third charge, we notice that the inquiry officer had noticed that the processing of taxi claims "*was not followed "too rigidly"*". We may also notice that the signatures on taxi claims were claimed to be those of Sh. Rajeet Mitter, who had evasively denied the signatures. He had claimed that "*the signatures on the taxi claims*

submitted by Shri K G Mohanachandran do not appear to be mine.”

Later while issuing memorandum dated 13.10.2000, the disciplinary authority had deviated from the findings of the inquiry officer stating that the Sh. Rajeet Mitter had “*stated in unambiguous terms*” that the signatures on the claims were not his, as the petitioner himself had failed to detect the forgery and as no one else would forge the signatures, as such, forgery was to the sole benefit of the petitioner/charged officer only. In the impugned order dated 27.02.2001, again the same reasons were cited while holding that the charge was proved on the basis of principle of preponderance of probability.

32. We see no cogent reason for the disciplinary authority to have deviated from the findings of the inquiry officer. The statement of Sh. Mitter shows that there was no unequivocal denial of the signatures upon the taxi claims. He had merely stated that the signatures did not appear to be his. Such a denial is neither here nor there. Basis of such a denial, it cannot be held that the signatures were not of Sh. Mitter. Further, the disciplinary authority failed to take into consideration the findings of the inquiry officer, i.e. the sanctioning of claims was not followed “*too rigidly*”. The only reason for holding the finding to be proved was that the sole beneficiary of the forgery was the petitioner and nobody else. Such a finding cannot be drawn without any evidence to back the same and the disciplinary authority erred in holding the charge to be proved based upon the principle of preponderance of probability.
33. It is settled law that the Courts should be hesitant in interfering with a finding of facts, but at the same time, in cases of ‘no evidence’, i.e. where there is no evidence to sustain the findings or the findings are such that no man acting reasonably and with objectivity could have

arrived at that finding. We may take note of the following observation of the Supreme Court in ***Bank of India & Anr. v. Degala Suryanarayana***, (1999) 5 SCC 762:

“11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

(Emphasis Supplied)

34. In order to avoid prolixity, we may only mention ***B.C. Chaturvedi v. Union of India and Ors.***, (1995) 6 SCC 749 (paragraphs 12 and 13); ***Kuldeep Singh v. The Commissioner of Police and Ors.***, (1999) 2 SCC 10 (paragraphs 8 and 9); ***Sher Bahadur v. Union of India and others***, (2002) 7 SCC 142 (paragraph 7); ***Government of A.P. and Ors. v. Mohd. Nasrullah Khan***, (2006) 2 SCC 373 (paragraph 12); and ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya***, (2011) 4 SCC 584 (paragraph 6). We may also take note of the following observations of the Supreme Court recently in ***Allahabad Bank and Ors. v. Krishna Narayan Tewari***, 2017 SCC OnLine 2 decided on 02.01.2017:

7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. ...”

(Emphasis Supplied)

35. Applying the foregoing principles to the present case, we are of the view that the present case is also a case of ‘no evidence’. Without any denial of the signature and the sanctioning procedure admittedly being lax, no person acting reasonably could come to a conclusion that the third charge was proved against the petitioner herein. Even the principle of preponderance of probability does not allow the disciplinary authority to return such a finding in the absence of any evidence. Therefore, in our view, the impugned orders are liable to be set-aside on this count as well.
36. To conclude, we find that the impugned orders are liable to be quashed as being in violation of principles of natural justice, i.e. the failure to supply vital documents relied upon to prove the charges, and as being a case of ‘no evidence’. Ordinarily, at this juncture, the courts would remand the matter back to the disciplinary authority for fresh orders;

but, in the present case, in view of the charges pertaining to the year 1991-92 and the petitioner already having endured three rounds of litigation, we are not inclined to remit the matter back to the disciplinary authority and deem it appropriate to put a *quietus* to the matter.

37. Resultantly, the writ petition is allowed. The orders of the Disciplinary Authority and the order passed by the Tribunal are quashed. Any increment which has been withheld shall be released in favour of the petitioner. However, in the light of the facts of the present case, the petitioner would not be entitled to any interest.

G. S. SISTANI, J.

VINOD GOEL, J.

JANUARY 04, 2017

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