

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 5042/2016

%

Reserved on: 6th December, 2016

Date of Decision: 27th March, 2017

PAWAN KUMAR GUPTA

..... Petitioner

Through Mr. Dinesh S. Badiar, Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms.Sangita Rai, Central Government
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The petitioner by way of this writ petition under Article 226/227 of the Constitution of India impugns the order dated 15.07.2015 passed by the Central Administrative Tribunal, dismissing Original Application No.4214/2011.

2. The factual matrix of the case is that the petitioner was employed as a Lower Divisional Clerk (LDC) and was thereafter promoted to the post of

Upper Divisional Clerk (UDC) in the Head Quarters of the Intelligence Bureau at New Delhi.

3. The petitioner had submitted an application dated 08.04.2010 seeking cancellation of the casual leave sanctioned but not availed by him on 5th April, 2010. The application was allowed by the Section Officer and was marked to P.N.Goswami, ACIO-II, the Officer responsible for maintaining records of branch members. Thereafter, the petitioner absented himself from work on 12th and 13th April, 2010 without any prior intimation or sanction of leave. 14th April, 2010 was a gazetted holiday. The petitioner joined duty on 15th April, 2010. The Section Officer had then enquired from P.N. Goswami if the petitioner had submitted any application for leave on 12th and 13th April, 2010. It was then noticed that the petitioner had deceitfully interpolated sentences granting him casual leave for 12th and 13th April, 2010 along with Headquarter leave permission vide application dated 08.04.2010.

4. The petitioner was issued a show cause notice No.01/DD(Q)/2010 dated 15.04.2010 by the Deputy Director requiring him to explain why appropriate disciplinary action should not be instituted against him in this regard within 07 days of receipt of the memorandum. In response thereto

the petitioner submitted a representation dated 16.04.2010 wherein he denied any mistake or lapse.

5. The petitioner thereafter absented himself from duty from 16th April, 2010 without any intimation/prior sanction of leave. By the Memo No. 32/(Q)/2010 (1)-325 dated April 23, 2010 the petitioner was directed to join duty immediately, failing which appropriate action would be initiated against him. Instead of joining duty, the petitioner, vide letter dated 17.05.2010 levelled allegations of threats/torture by the Deputy Director/Q and requested for his transfer to some other branch. The allegations were without elucidating to providing any basis or evidence in support.

6. In view the aforesaid circumstances, the memorandum/chargesheet dated 31.05.2010 was issued to the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the following Articles of Charge:-

Article– I

That the said Shri P. K. Gupta, UDC while posted at IB Hqrs., New Delhi unauthorisedly absented himself from duty w.e.f. 12.04.2010 to 13.04.2010 and interpolated sentences unauthorisedly in his application dated 08.04.2010.

Thus, by his above acts of unauthorisedly absenting himself from duty w.e.f. 12.04.2010 to 13.04.2010 and falsifying official records, Shri P. K.

Gupta, UDC had exhibited conduct unbecoming of a govt. Servant thereby, violating Rule 3 (1) (iii) of CCS(Conduct) Rules, 1964.

Article -II

That the said Shri P. K. Gupta, UDC while posted at IB Hqrs., New Delhi has been unauthorisedly absenting from duty w.e.f. 16.04.2010 onwards.

Thus, by his continued unauthorised absence from duty w.e.f. 16.04.2010 onwards, Shri P. K. Gupta, UDC has exhibited conduct unbecoming of a govt. Servant, therefore, violating Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964.

7. Thus, as per the chargesheet, the petitioner was on continued unauthorised absence from duty from 16.04.2010. The petitioner had exhibited conduct unbecoming of a Government servant, thereby violating Rule3(1) (iii) of CCS (Conduct) Rules, 1964.

8. The memorandum/chargesheet was sent to the petitioner at Jaipur for service but could not be served on 7th and 8th June, 2010 and was returned on 15th June, 2010. The petitioner was served the memorandum/chargesheet when he joined duty on 21st June, 2010 pursuant to and in terms of the order dated 4th June, 2010 passed in OA No. 1933/2010. The petitioner submitted his reply on 20th July, 2010 and made an additional representation dated 21st July, 2010 seeking various documents for his

defence. His reply was found to be unsatisfactory and vide the order dated 12th August, 2010, B.K. Singh, Joint Director was appointed as the Inquiry Officer and departmental proceedings were instituted against the petitioner.

9. On conclusion of the departmental proceedings, the Inquiry Officer submitted his report dated 23rd February, 2011 and vide order dated 28th April, 2011, the petitioner was awarded penalty of compulsory retirement.

10. The petitioner preferred an appeal dated 4th May, 2011 against the penalty order alleging *mala fides* against the Disciplinary Authority, back dating of the charge memorandum dated 31st May, 2010, not providing necessary and sufficient documents, failure to examine him under Rule 14(18) of CCS (CCA) Rules, 1965, disproportionate penalty being imposed compared to the gravity of the offence and that the Disciplinary Authority had not applied its mind when passing the penalty order. The appeal was rejected by the Appellate Authority, vide order dated 20.07.2011.

11. The Appellate Authority in its order dated 20th July, 2011 rejected the allegation of *mala fides* and recorded that the charge-memo had been issued to the petitioner on 31.05.2010 and sent to his permanent address at Jaipur through Registered/AD post. The cover containing the charge-memo was returned to the respondents undelivered, with the remarks that the

petitioner had gone out. Thereafter, the charge-memo was handed over to the petitioner when he resumed duty on 21st June, 2010. The contention that it had been issued from a back date after he had filed OA No. 1933/2010 in the Principal Bench of the Central Administrative Tribunal, was rejected. The petitioner had not specifically mentioned what documents had been denied by the Inquiry Officer and how those documents were relevant to the disciplinary proceedings. It was observed from the inquiry proceedings that the Inquiry Officer vide letter dated 23rd September, 2010 had given the petitioner an opportunity to justify the relevance of documents that he had sought. After considering his reply, the Inquiry Officer supplied two out of the four documents sought. The remaining two documents were not provided as they were not considered relevant. It was held that no prejudice could be said to have been caused to the petitioner. The Appellate Authority opined that the order under challenge was a well thought and considered decision.

12. The contention of the petitioner that he was not examined under Rule 14(18) of CCS (CCA) Rules, 1965 was also found to be incorrect as the petitioner was examined by the Inquiry Officer as required under the said rule on 12.01.2011. Reference was made to Daily Order Sheet No. 8 dated

12th January, 2011 of the inquiry proceedings to hold that the Inquiry Officer had examined the petitioner on the said date. The Appellate Authority held that the contention of the petitioner that he had applied for leave for the period he was absent from duty was not borne from the records. He had not applied for leave in the prescribed format, outlining the nature and period of leave as required under the CCS (Leave) Rules, 1972. Further, a vague intimation could not be construed as a leave application. The Appellate Authority also noticed that the petitioner was directed to report for duty immediately vide memo dated 23.04.2010. But, the petitioner neither reported for duty nor moved a formal application for grant of leave for any specified period. The Appellate Authority observed that the interpolation by adding the sentence in the official records was proved and amounted to falsification of official records. This misconduct was serious in nature and therefore penalty of compulsory retirement from service was commensurate with the gravity of the offence. The appeal of the applicant was thereby rejected.

13. The petitioner thereafter filed OA No. 4214/2011 which was dismissed by the impugned order dated 15th July, 2015.

14. The petitioner had earlier filed OA No. 1933/2010 against the respondents for not allowing him to perform his duty, which was disposed of on 04.06.2010 directing the petitioner to report to respondent No.2 on 16.06.2010, who would arrange for a concerned officer to look into the matter, taking into account any submission in addition to the petitioner's representation dated 16.04.2010 wherein he had made several allegations against the Deputy Director/Q.

15. During the course of arguments counsel for the petitioner submitted that appointment of the Inquiry Officer, as ordered by the Disciplinary Authority, who was superior to the Disciplinary Authority vitiates the departmental proceedings. Learned counsel for the petitioner once again raised the contention that the Inquiry Officer also failed to supply the petitioner with the necessary documents, despite the petitioner's requests to do so, which greatly prejudiced the petitioner. He states that the order of punishment has been passed against the petitioner without any basis and without there being any evidence against the petitioner.

16. As per the Gazette of India Notification, the Assistant Director (Estt.) is the Appointing Authority, and Assistant Director or Joint Deputy Director or Additional Deputy Director (Establishment) are the Disciplinary

Authority and Deputy Director or Joint Director (Estt.) is the Appellate Authority for all Group 'C' posts in Intelligence Bureau, Ministry of Home Affairs.

17. The Central Administrative Tribunal did not find any force in the petitioner's submission that the appointment of a superior officer as an Inquiry Officer by a subordinate Disciplinary Authority is sufficient in itself to vitiate the inquiry proceedings as being violative of the principles of natural justice. The chargesheet against the petitioner was issued vide memo dated 31.05.2010. It enclosed the set of charges, statement of imputation of misconduct in support of the articles of charges framed, list of documents and the list of witnesses by which articles of charges framed against the petitioner were proposed to be substantiated. The petitioner had not raised this issue/contention before the Inquiry Officer. The inquiry has to be held in a manner provided in Rule 14 (1) and 15 of the CCS (CCA) Rules, 1965. Rule 14 (1) of the CCS (CCA) Rule, 1965 is as under:-

“14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in Clause (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.”

18. It is correctly noted by the Central Administrative Tribunal that the entire provision of Rule 14 (1) stands qualified upon the use of phrase “as far as may be”. In other words it implies that though under normal circumstances, the rules are expected to be followed, it is not necessary that the Rule position is inflexible and would never accept any deviation. Rule 14 (1) accepts that there could be deviation or departure from the rule, depending upon the facts and circumstances or as the situation may be, and that such deviation/departure will not be illegal to vitiate the proceedings, unless prejudice and miscarriage of justice is palpable and established. As noted by the Tribunal, Rule 14(2) of CCS (CCA) Rules gives and accepts play in the joints, vide the expression “as far as may be”. It is rightly held that the Rule does not expect absolute and total adherence to all stipulations, for in some cases such adherence would be difficult and impracticable. Further, Technical lapse may be inconsequential.

19. It is in this backdrop that the provisions of Rule 14(2) of CCS (CCA) Rules, are required to be examined which are as under:-

“14(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the

Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.”

The aforesaid Rule gives a choice and latitude to the Disciplinary Authority as to how the proceedings should be conducted. The Disciplinary Authority can inquire into or appoint a third person as an inquiry officer under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850. Even a retired Government servant can be appointed as an inquiry officer. Rule 14(2) does not provide or stipulate any qualification or hierarchy for appointment as an inquiry officer or that the inquiry officer should necessarily be a Government servant subordinate to the Disciplinary Authority etc. Sections 2 and 3 of the Public Servant Enquiries Act, 1850 read:-

“2. Articles of charge to be drawn out for public inquiry into conduct of certain public servants: - Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the Government, not removable from his appointment without the sanction of the Government it may cause the substance of the imputations to be drawn into distinct articles of charge, and may order a formal and public inquiry to be made into the truth thereof.

3. Authorities to whom inquiry may be committed. Notice to accused:- The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons,

to be specially appointed by the Government, Commissioners for the purpose; notice of which Commission shall be given to the person accused ten days at least before the beginning of the inquiry.”

The afore-quoted sections provide that the inquiry can be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, Commissioner for this purpose. The said provisions make no mention or stipulation as to the qualification, rank, status, pay scale etc. of the officers so appointed under Section 3 of the Inquiries Act, 1850. Any person to whom the officer is subordinate can act as an inquiry officer. In other words, this Act and Rule 14(2) provide a good deal of freedom and flexibility to the Disciplinary Authority in appointment of an Inquiry Officer.

20. In **1996 SCC (2) 145, *Inspector General of Police and Another v. Tha Thavasiappan*** the Supreme Court while enunciating the rules position with regard to Rules 3 (b) (i) and (ii) of the T.MN. Police Subordinate Service (Discipline and Appeal) Rules, 1955 has held:-

“9. As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2-A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to

infer that the rule-making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling authority and confine it to the authorities mentioned in Rule 2-A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3(b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3(b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in clauses (d), (h), (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceeding. This rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3(b)(i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second para of that sub-rule. If it was intended by the rule-making authority that the disciplinary authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority

then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of the case in accordance with law.”

21. In (1993) 1 SCC 419, titled ***P. V. Srinivasa Sastry and Others v. Comptroller and Auditor General***, it was opined:-

“4. Article 311 (1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority?”

The Supreme Court held that Article 311 (1) does not mandate that departmental proceedings can only be initiated by the Appointing Authority. In the absence of any rule stipulating that proceedings shall not be initiated by an officer subordinate to the Appointing Authority, the right does not automatically flow from Article 311 as mere institution of departmental proceedings does not cause any detriment to the officer concerned. However, this would not mean that the decision to initiate proceedings can be taken by an officer at the same rank as the officer against whom proceedings are contemplated. Furthermore, it was held that

in the absence of any rule, any superior authority, as a controlling authority, can initiate such proceedings.

22. In ***Transport Commr. v. Radha K. Moorthy***, 1995 SCC (1) 332, it was held:-

"7. So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence, i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision making process. For this reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.

8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal."

23. The meaning of "Inquiry Officer" as defined in ***Service Law Relating to Government & Public Undertakings***, Second ed., 2004 by Samaraditya Pal reads as under:

“Rule 14 (2) of the CCS (CCA) Rules 1965 provides that whenever the disciplinary authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself enquire into or appoint under that rule or under the provisions of the Public Servant (Enquiries) Act, 1850, as the case may be, an authority to enquire into the truth thereof.

It is to be noticed that the disciplinary authority may itself hold the enquiry or delegate the holding of the enquiry to some other authority.

*Since the rules expressly permit such delegation, questions relating to the authority to delegate have to a large extent become academic. But even in the absence of such power, it is well settled that a statutory functionary exercising a statutory power cannot be said to have delegated his functions merely by deputing a responsible and competent officer to enquire the report. Such a functionary can obtain the material on which he is to act in such manner as he thinks proper. What cannot be delegated is the ultimate responsibility for the exercise of such power. The principle laid down by the Supreme Court in **Gullapalli Nageshwar Rao v. Andhra Pradesh State Road Transport Corporation**, AIR 1959 SC 308 that divided responsibility i.e. hearing by one and decision by another is a destruction of the concept of judicial hearing, does not militate against the scheme of departmental proceedings where the enquiry is held by one officer and the ultimate action is taken by another. The position has been explained by a Division Bench of the Delhi High Court [**A.S. Sethi v. Union of India**, AIR 168 Del 26], where S. K. Kapur, J. speaking for the Bench said:*

*“The authority entrusted with the function of coming to a decision could appoint a person to collect the materials. That remains only a matter of procedure. So long as the authority does not abdicate its essential functions of hearing and applying its mind to the material collected and comes to its own conclusion, no objection can, in my opinion, be taken to the appointment of an officer to collect such materials. The heart of the problem is the hearing of the parties concerned and reaching a conclusion on the evidence taken. Whether the deciding officer hears a party audibly addressing him or hears him only through the medium of his written-statement and the evidence recorded by the Enquiry Officer cannot but be a matter of procedure. What has happened here? The Secretary to the Government of India, acting as Government, had to appoint an Enquiry Officer for the purpose of collection of material and report. The Government had ultimately to apply its mind to the materials collected and the report and come to its own conclusion. The latter function was admittedly not delegated as the Government itself did consider the entire materials and the report. If the Secretary, instead of nominating an officer to hold an enquiry, tells someone else to entrust the job of collection of materials to a person selected by him, no exception can be taken. Mr. Misra relied on **Shardul Singh v. State of M.P. AIR 1966 MP 193** and **Pradyat Kumar Bose v. Hon’ble Chief Justice of Calcutta High Court AIR 1956 SC 285**. It is unnecessary to elaborate on these decisions because, as I have said earlier, if the essential functions expected to be exercised by a designated authority are delegated, such delegation may suffer from such a vice as to render the act of the delegate invalid. In this case nothing of that*

kind has happened. Strictly speaking, such entrustment may not be termed as delegation, as collection of material and making of a report are necessarily to be entrusted to someone else. The authority charged with exercising the power of dismissal has to address himself personally to the entire evidence, which has been done. After considering the material collected and the report, the decision was by the Government and constitutionally the essential functions involved in the matter were exercised by and remained those of the Government.”

*The fact that the enquiry officer was not of a higher grade would not be material if there was no injustice caused to the delinquent (**Pankajesh v. Tulsi Gramin Bank**, (1997) 7 SCC 68. The prejudice principle was raised in a case where the disciplinary authority proceeded to nominate an enquiry officer even prior to the framing of charges which was technically in violation of r.11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules 1957. It was held that the proceedings were valid since no prejudice had been caused to the employee due to breach of rule. (**Karnataka Electricity Board v. T.S. Venkatarangaiah**, 1992 (6) SLR 115).*

A departmental enquiry or the punishment imposed will not be vitiated merely because the Enquiry Officer was appointed by the original disciplinary authority subsequent to the appointment of another as an ad hoc disciplinary authority in place of the original authority, when no prejudice is shown to be caused thereby.”

24. It is pertinent to mention here the circumstances under which the order appointing an Inquiry Officer who was higher in rank to the Disciplinary Authority was passed in the instant case. As per the Gazette of

India notification, Assistant Director (Esstt.) is the Appointing Authority and Assistant Director or Joint Deputy Director or Additional Deputy Director (Estt.) are the Disciplinary Authority and the Deputy Director or Joint Director (Esstt.) are the Appellate Authority for all Group 'C' posts in the Intelligence Bureau, Ministry of Home Affairs. The petitioner had earlier levelled serious allegation against one Kundan Krishan, the then Deputy Director/Q and had preferred representation to the Director (IB). As per the petitioner's own admission, he had even sent a representation to the President of India. Taking a serious note of the charges against the petitioner and as allegations were against Kundan Krishan, it was decided that an officer higher in rank than the Deputy Director, should be nominated as Inquiry Officer/Authority to inquire into the charges against the petitioner. Accordingly, B.K. Singh, Joint Director was appointed as Inquiry Officer vide order dated 12th August, 2010 in terms of Rule 14 (2) of CCS (CCA) Rules, 1965.

25. Based upon the inquiry report of the Inquiry Officer, the Disciplinary Authority, i.e. Assistant Director (Estt.), imposed the penalty of compulsory retirement vide his order dated 28.04.2011. Against this order, the petitioner preferred an appeal before the Appellate Authority, S.K.

Sinha, the then Joint Director (Estt.). The Appellate Authority found no reasons to interfere with the order dated 28th April, 2011.

26. As the petitioner had imputed various allegations against Kundan Krishan, the then Deputy Director/Q, the only option left before the Disciplinary Authority was to appoint an officer superior to the Deputy Director as the Inquiry Officer. Thus, the respondents have acted in good faith and in the interest of justice. Hence, we do not find any prejudice caused to the petitioner by the appointment of a Superior Officer as Enquiry Officer by the subordinate Disciplinary Authority. Accordingly, we find no infirmity in the appointment of the Inquiry Officer.

27. So far as, the issue of non-supplying of documents is concerned, we have gone through the impugned order and inquiry proceedings, inquiry report and record that this issue was examined and dealt with thoroughly in the inquiry report, the finding of the Disciplinary Authority and the Appellate Authority. The Enquiry Officer had supplied two out of the four documents sought by the petitioner. The remaining two documents were not supplied as the same were not relevant to the case. Learned counsel for the petitioner has failed to substantiate and show how the non-supply of the remaining documents caused him any prejudice. (See *Uttar Pradesh State*

Textile Corporation Ltd. v. P.C. Chaturvedi, 2006 AIR(SC) 87 and (ii) *Pandit D. Aher v. State of Maharashtra, 2007 (Supp.8) SCR 120*.

Prejudice caused and suffered by the delinquent employee due to the non-supply of documents must be established. Principles of natural justice are not embodied rules and cannot be put in a straitjacket formula. Whether there was adherence or violation of principles of natural justice depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused. The petitioner has been unable to establish relevancy of the two documents and that due to non-supply of the documents sought any prejudice was caused. We do not find any substance in the argument of learned counsel for the petitioner regarding prejudice caused to the petitioner, in any manner, due to the non-supply of documents. Hence, we do not find any reason that the inquiry can be held vitiated on this ground.

28. We also do not find any substance in the submissions of the learned counsel for the petitioner that the decision of the Disciplinary Authority is based on no evidence. Charges levied against the petitioner have been correctly evaluated by the Inquiry Officer, the Appellate Authority and the Tribunal and there is sufficient evidence on record to establish the charges

against the petitioner. This is not a case of no evidence and the respondent authorities have taken into consideration the material on record to prove the charges levied against the petitioner. Dates when the petitioner was on leave, when he had attended the office, etc. are on record and proved.

29. The only question now left for determination by this court is whether the punishment imposed upon the petitioner by the respondents is disproportionate to the gravity of the petitioner's misconduct.

30. In ***Onkar Prasad Tiwari & Ors. v. Central Railway, 1960 Vol. I LLJ 167***, the Supreme Court had elucidated:-

“The quantum of punishment should not be interfered with merely on the ground that the concerned workman has rendered long period of service. This principle is amply borne-out from the judgment of Calcutta High Court in the case of Wimco Shramik Union v. Industrial Tribunal & Ors., reported as 1987 LIC 77.”

31. The Intelligence Bureau is an organization dealing with and responsible for the internal security of the country. It is the premier internal intelligence agency in the country and enjoys the protection of Article 34 of the Indian Constitution. The Intelligence Bureau is entitled to evolve its own norms and protocols to prevent security leakages. Deviant behaviour of employees, of a disciplined force of this nature is unacceptable. The Supreme Court has, in several cases, warned that in a departmental inquiry

once the charges are held to be proved the quantum of punishment to be imposed is within the province of the Disciplinary Authority. In (2009) 4 SCC 225, *Praveen Bhatia v. Union of India* it has been held as follows:-

“Power of Court to interfere with the quantum of punishment is extremely restricted. Court can direct reconsideration only when relevant factors have not been considered. In very rare cases, Court may also indicate punishment which ought to be imposed.”

32. The Tribunal has rightly observed that in the present case the question was whether the proportionality of punishment as imposed shocks the judicial conscience. Considering the sensitivity of the organization, i.e. the Intelligence Bureau and gravity of the act, i.e. of interpolation and tampering of official records, we are of the view that our judicial conscience is certainly unshaken by the order of punishment. Had it been the case in some other organization or another set up where these attending circumstances were absent, it may have been a different matter. Given the circumstances as enumerated above, we feel that the respondents are under the obligation to protect the organization from such deviant behaviour. We would not like to interfere with the decision of the Disciplinary and Appellate Authorities.

33. Service law jurisprudence has evolved to recognise that the award of punishment for misconduct, if any, is a matter for the competent Disciplinary Authority to decide. If there is justification for the punishment imposed, the Court should not interfere. The validity, legality and severity of the punishment have to be determined considering the circumstances of each case and the nature of the offence committed. The punishment imposed for the same act or misconduct may not necessarily be identical in different organisations and at all times. Severity or adequacy of the punishment has several facets and would include responsibility of the worker, employees' and employer's obligations and duties to third parties. The Court is expected to interfere with the decision of the management/respondent, only when it is satisfied that the punishment imposed by the management/respondent is highly disproportionate to the degree of fault of the employee. In the present case, the petitioner held an office of trust. His acts and any leniency were bound to have an impact on the efficiency and working of the Intelligence Bureau. Misguided sympathy is no more than a maudlin sentiment. To say that the punishment was not commensurate with the gravity of the offence, either meaning that the offence was not grave, or meaning that the punishment was harsh, does not

appear to be correct. We do not think that the order of punishment against the petitioner can be said to be absolutely unfair or unjustified. The misconduct, which is proved against him, is of serious character and we think that the punishment awarded to the petitioner is warranted. Hence, taking in view the misconduct and the gravity of the charge, the punishment awarded is not disproportionate.

34. The petitioner has failed to point out any error in the decision-making process. It is found that the principles of natural justice were not violated in this case and the petitioner was given sufficient and adequate opportunities to defend himself. There has been proper application of mind by the Disciplinary Authority. There is no error apparent on the face of the record. The punishment awarded is not arbitrary. We hold that the enquiry cannot be held to be vitiated. There is no merit in the writ petition filed by the petitioner. Judicial review by the Court, while exercising its writ jurisdiction, is very limited. We are of the view that the findings arrived at in the enquiry are those that any reasonable person would have concluded.

35. The inquiry cannot be quashed unless the delinquent official has material to show and establish to the contrary. The proceedings/inquiry report as well as material on the record demonstrate that the relevant

aspects were taken into consideration while reaching the findings and deciding the charges against the petitioner.

36. The Writ Petition is accordingly dismissed with no orders as to costs.

**(CHANDER SHEKHAR)
JUDGE**

**(SANJIV KHANNA)
JUDGE**

**March 27, 2017
b**

