

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2963 of 2008

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Anil Kumar, No. 904490116, Ex-Constable CISF Unit, PPT Paradeep, son of
Sri Vijoy Kumar, Village & Post Terra, P.S. Karpi, Dist. Jehanabad.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Home Affairs, New Delhi.
2. The Inspector General, ES, Central Industrial Security Force, Boring Road, Patlipura, Patna.
3. The Deputy Inspector General, CISF, Eastern Zone, Headquarters, Patna.
4. The Commandant CISF, CISF Unit, PPT Paradeep, Dist. Jagatsinghpur, Orissa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi, Sr. Adv. Mr. Shashi Shekhar Tiwawry, Adv.
For the UOI	:	Mr. Anjani Kr. Sharan, ASG Mr. Manoj Kr. Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 02-07-2018

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order vide Memo No. 7319 dated 25.11.2005 (Annexure-3) passed by the Commandant, CISF Unit, PPT, Paradip, whereby and whereunder, the petitioner was removed from service by way of punishment holding that the charges are serious in nature, appropriate punishment is removal. Against that, the petitioner filed appeal before the Deputy Inspector General, Central Industrial Security Force and the appellate authority refused to interfere with the order of punishment. Against that order, the petitioner preferred revision before the Inspector General of



Central Industrial Security Force who, vide order contained in Memo No. 2146 dated 10-13.11.2006, refused to interfere with the order passed by the Disciplinary Authority and affirmed the order of the appellate authority.

The short fact of the case is that the petitioner at the relevant time was posted at C.I.S.F. Unit, N.T.P.C., Barh. On two days i.e. 13.2.2005 and 24.2.2005, the incident of misbehavior committed by the petitioner, as per allegation, he used the abusive language as well as threatened for the dire consequences. For that, a charge-sheet dated 2.5.2005 with three articles of charges was issued, first related to the incident dated 13.2.2005 wherein the allegation was made that at about 20-25 Hrs. on 13.2.2005, he entered into the Quarter Guard without bonafide reason, entangled with the hot argument with the Santry, on duty, namely, Jai Ram with the pretext that why he did not he open fire when he had pushed two packet of sands kept at Morcha. Later on, on 20.45 Hrs., the Inspector V.M. Jha entered into the unit line, Constable Anil Kumar, petitioner, entered into and talked with him in a loud and in an arrogant manner while making complain to him against the Constable Jai Ram and he had also threatened Mr. V.M. Jha of the dire consequences if he would delay in conducting the enquiry into the incident. Further allegation has been made that he



misbehaved with one Mr. R.N. Singh, used filthy language, also threatened of dire consequence, at the same time, he also went to the extent of taking out Lathi with an intention to assault R.N. Singh but, was stopped. Second charge with respect to the incident took place on 24.2.2005 interalia an allegation has been made that at 20.05 Hrs. on 24.2.2005, he misbehaved with the Inspector Mr. V.M. Jha, using filthy and unparliamentary language, also threatened to kill him by spraying 100 bullets on him. The petitioner went up to the extent of pushing Mr. V.M. Jha, later on, Inspector V.M. Jha was attending a phone call of the Assistant Commandant, the petitioner snatched the phone from Mr. Jha and, after this incident, on the same night on 24.2.2005, the present petitioner was found absent from the Unit Line at 22.55 Hrs. at the time when Mr. V.M. Jha was conducting the check roll call and he remained absent till 01.00 Hr. on 25.4.2005 without any permission from the competent authority. Third charge is related to refusal to receive the notice served upon him in connection with vacating the quarter at HTPP Kahalgaon and recovery of penal rent with respect to quarter which was in his occupation.

To understand and appreciate the allegation made against the petitioner, it will be appropriate to quote the statement of three allegations which read as follows:-

“ARTICLE OF CHARGE-I



An act of serious indiscipline and a gross misconduct and insubordination by No. 904490116 Const Anil Kumar (U/S) of CISF Unit PPT, Paradip in that while posted at CISF Unit NTPC Barh at about 2025 hrs on 13.2.2005 he entered the Quarter Guard without any bonafide reason and entangled with hot argument with on duty sentry No. 884657345 Constable Jairam with the pretext that why he (Const Jairam) did not open fire when he (Const Anil Kumar) pushed two sand bags kept on the Morcha. Later on at 2045 hrs when Insp/Exe V.M. Jha entered the Unit Lines Const Anil Kumar (U/S) talked to him in a loud and arrogant manner while complaining to him against Const Jairam. He also threatened Insp/Exe V.M.Jha of dire consequences if he delays in conducting an enquiry into the incident. Const. Anil Kumar also misbehaved with HC/GD R.N. Singh (CHM) using filthy language and also threatened him with dire consequences. He (Anil Kumar) also went to the extent of taking out a lathi with the intention of assaulting HC/GD R.N. Singh but was stopped.

ARTICLE OF CHARGE-II

An act of serious indiscipline act, a gross misconduct and insubordination by No. 904490116 Const Anil Kumar (U/S) of CISF Unit PPT Paradip in that while posted at CISF Unit NTPC, Barh at about 2005 hrs on 24.2.05 misbehaved with Insp/Exe V.M.Jha using most filthy and un-parlimanetary language. He (Const Anil Kumar) also threatened him to kill him by spraying 100 bullets at him. Anil Kumar also went upto the extent of pushing Insp/Exe V.M.Jha. Later on while Insp V.M.Jha was attending a phone



call from the Asstt. Comdt he (Anil Kumar) snatched the phone from Inspector V.M. Jha. After the incident on the same night on 24.2.05 Const Anil Kumar (U/S) was found absent from the unit lines at 2255 hrs when Inspector V.M. Jha conducted a check Roll call. Const Anil Kumar continued to remain absent till 0100 hrs of 25.2.05 without any permission from the Competent Authority.

ARTICLE OF CHARGE-III

An act of gross indiscipline and disobedience of lawful orders by No. 904490116 Const Anil Kumar (U/S) of CISF Unit PPT, Paradip in that while posted at CISF Unit NTPC Barh developed a habit of refusing to receive and acknowledge official letters addressed to him. He refused to receive letter No. C-12019/CISF/QM/NTPC/4/549 dated 24.11.2004 in connection with vacation of quartr which he had retained unauthroisedly at one of his previous units i.e. KhTPP Kahalgaon and recovery of penal rent thereof: letter No. V-15014/CISF/NTPC/37/Disc/2005/01 dated 03.01.2005 in connection with charge memo Under Rule-37, letter No. V-15014/CISF/NTPC/37/Disc/2005/02 dated 05.01.2005 in connection with charge memo Under Rule-37; and order No. V-15014/CISF/NTPC(B)/Disc/AK/2005/167 dated 2/03.02.2005 in connection with placing him on suspension.”

Thereafter, the petitioner was served with the charge-sheet along with records and he was asked to participate in the enquiry. The avenue of enquiry was shifted from Barh to PPT, Paradip. Sudhir Kumar, Inspr/Fire of CISF Unit PPT Paradip and,



later on, Deepak Rawat were appointed as Enquiry Officers with respect to charge-sheet which was served upon the petitioner and M. Biswal was appointed as Presenting Officer. The proceeding was started with effect from 9.5.2005 and it concluded on 24.9.2005. In the enquiry proceeding, altogether 11 witnesses from the side of the prosecution were examined. The petitioner has given the list of altogether five witnesses namely, Sri Sanjay Singh, Sri Jai Singh, Sri Suman Singh and Sri Arun Kumar Gupta who were civilian witnesses and two persons, namely, Sri Pramod Kumar and Sri V.N. Singh who were the official witnesses refused to depose in favour of petitioner during departmental proceeding. After completion of departmental enquiry, the Enquiry Officer submitted the report finding all charges were found proved against the petitioner and, whereafter, the petitioner was given show-cause attaching the enquiry report which was replied by the petitioner and the Disciplinary Authority considered all the defence which were taken by the petitioner and one by one dealt with and passed the order of punishment of removal from service against the petitioner and that has been affirmed up to the revisional stage.

Learned counsel for the petitioner has raised a point of procedural irregularity. First point has been raised that as on 20.7.2005, the petitioner had fallen ill from 20.7.2005 to 22.7.2005



and, as such, he could not participate in the enquiry and, during that period, six witnesses were examined by the Management and when he appeared on 23.7.2005, on 24.7.2005 i.e. on the next day, he made a prayer for granting two days time to get ready for examination and also requested for supplying the statement of six witnesses for effective cross examination of witnesses but, the enquiry officer asked him to cross-examine and ultimately refused to grant two days time for preparation for examination by the petitioner. Learned counsel for the petitioner submits that the examination of six witnesses was so voluminous and it was not expected from a Constable to be ready in a short period of time to make effective cross-examination of the witnesses. As the cross-examination is a concomitant and part of the natural justice, as only when the effective cross-examination is made, the real truth elicited and, without giving proper opportunity to cross-examine six witnesses, can not be said to have adopted fair procedure as well it depicts the mind of the enquiry officer to deprive the petitioner from the effective participation in the enquiry. He has further submitted that rest of the witnesses were examined thereafter and he had cross-examined those witnesses but, the star witnesses with respect to alleged incident were examined during the period from 21 to 22.07.2005 and denial of their cross-



examination vitiates the entire enquiry proceeding and it falls flat. In respect of his submission, learned counsel for the petitioner has placed reliance on the judgment reported in the case of *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.* reported in *AIR 2013 SC 58*, Para 23, 24, 25 and 27 where the Hon'ble Apex Court has held that without giving a chance for cross-examination, the enquiry is completely farce having no meaning and cannot be said to be a fair treatment was given to the petitioner. Further ground has been taken by the petitioner that he had given the name of five witnesses, some were civilian and some were official witnesses. He has further submitted that it can be understood that if an official witness refuses to depose in favour of the petitioner, he will not have any grievance against them but, the incident of 24.2.2005 was taken place in the temple where official as well as civilians were present, could have given the correct and exact version of the incident but, by order dated 24.9.2005, the Enquiry Officer illegally deprived to issue the summon, calling them to appear and depose as a defence witness. In support of his submission, he has placed reliance in the judgment of *Union of India & Ors. Vs. Prakash Kumar Tandon* reported in *AIR 2009 SC 1375*. Third point has been taken that Sri M. Biswal was/is a legally trained person, though he was not a practicing advocate. In that view of the matter, the enquiry officer should have allowed to



engage some person matching the capability of Mr. M. Biswal but, the petitioner was deprived of the said opportunity. The petitioner is a Constable having no idea of departmental proceeding but, was pitted against the legally trained mind which itself amounts to denial of fair opportunity to present his case effectively during enquiry. In support of his submission has placed reliance on the judgment *J.K. Agarwal Vs. Haryana Sea Development Corporation* reported in 1991 (2) SCC 283, paragraph nos. 8, 9, 10 of the judgment. He has further placed reliance in the judgment *Ramesh Chandra Vs. Delhi University & Ors.* reported in (2015) 5 SCC 549. Further he has drawn attention of this court towards the evidence of Mr. Indrapal Singh, as per the petitioner, he has not deposed anything against the petitioner to have abused and threatened for dire consequences. Further learned counsel for the petitioner has submitted that the witnesses who have been examined on behalf of the prosecution witness to whom he has cross-examined have not supported the case of the management. Inasmuch as, it is a first proceeding initiated against the petitioner and, as such, this Court should take lenient view and to interfere with the order of punishment. Further said that the incident has taken place in Barh but, the enquiry proceeding was conducted at Paradip, thereby, he could not effectively represent the case and



could not produce the witness who could have supported the case of the petitioner.

In reply, learned counsel for the Union of India has submitted that holding of enquiry at Paradip cannot be said to be ineffectively giving opportunity to participate in the enquiry in view of the fact that he participated all through in the enquiry proceeding, when everything has gone against him, now he cannot turn around and challenge the holding of proceeding at Paradip. Further said that there is no law that the enquiry would be conducted at the place where the incident had taken place. Further submitted that in the question answer on 23.7.2005, he was asked as to whether he wanted to take assistance of any defence assistance whereupon he had replied that he was not required for the same and, in such circumstances, the question which the petitioner has raised that he was pitted against the legally trained person has no meaning in view of the fact that he had refused to take assistance of any person and the judgment placed by the petitioner in the case of J.K. Aggarwal (supra) is not at all applicable to the present case. Learned counsel for the Union of India has drawn attention of this court towards the order-sheet dated 22.7.2005 from where he has pointed out that Anil Kumar appeared in the enquiry proceeding, he was requested to



participate in the same but, after five minutes of participation, he left the venue and he submitted that his claim that he was not given opportunity to cross-examine the witnesses has no substance. Actually, in fact, he had taken a posture of non-cooperation in the proceeding and somehow or the other he wanted to protract the enquiry and, as such, he had taken a wrong plea of his illness. Further said that Paradip has well advanced hospital better than the Government hospital, if the petitioner was ill, he should have approached to the hospital at PPT instead of going to the Government Hospital as the same was available to the employee of the PPT as well as to the employee of the CISF. Further said that, the petitioner had also produced the voucher of medicine dated 19.7.2005, when he was fallen ill on 20.7.2005 which itself shows that in what manner the certificate of illness was obtained. Further submitted that when he had appeared, he was asked to cross-examine the witness which he had refused, so he cannot take a plea that proper opportunity was not given to him. Learned counsel for the Union of India has further submitted that it is the petitioner who has to plead and prove that how non-examination of civilian witness had caused prejudice to the petitioner in making effective representation in the enquiry proceeding. Further said that the charges are grievous in nature as



he had not only abused but, has also threatened to spray 100 bullets in the body of his superior. It is not the first incident but, the incident has taken place on two occasions and, in both the occasions, he has acted most indisciplined cannot be conceivable in the disciplined force and further said that the witnesses who have deposed before the enquiry officer have specifically made a statement of the incident and all the witnesses have supported the case of the management with respect to misbehavior with the superior as well as other Constable and it requires no interference. In support of his submission, he has placed reliance in the case of *Chairman & Md V.S.P. & Ors. Vs. Goparaju Sri Prabhakara Hari Babu* reported in *2008 (5) SCC 569* and further said that there are sufficient material evidence connecting the culpability in the action of the petitioner of highest degree, abusing in most filthy language which cannot be used by the civilized person and, as such, the claim made by the petitioner that it will be substituted by another punishment has no leg to stand.

In view of the submission made by the parties, primarily the question has been raised by the petitioner as to whether he was given a fair treatment in cross-examine the witnesses, as six witnesses were examined on three days and the statement of Mr. Jha was recorded in six pages during the period of his illness, but refused to grant time for preparation of cross examination. So this



Court has to decide as to whether the petitioner was given the fair opportunity in the departmental enquiry as the natural justice cannot be fitted in a straight jacket formula but, it depends upon the fact and circumstances.

The issue that has been raised by the petitioner that he was not given proper opportunity to cross-examine the prosecution witness is to be seen in the backdrop of the fact that whether he himself has not taken up the opportunity to cross-examine the witnesses or he was deprived to cross-examine the witnesses who were brought before the departmental enquiry.

The power and jurisdiction of judicial review in the matter of departmental enquiry has been gone into by the Hon'ble Apex Court in a number of judgments on its scope and contour for interference and how far the High Court under the judicial review can make forensic examination of the departmental enquiry. It is not res integra that the power of judicial review cannot be exercised as forum of appeal but, area has been delineated under which the power of judicial review can be exercised. In one of the celebrated case of the Hon'ble Apex Court in the case of *B.C. Chaturvedi Vs. Union of India & Ors.*; AIR 1996 SC 484 wherein the Hon'ble Apex Court in paragraph no.12 of the said judgment has said that the Judicial review is not an appeal from a decision but a



review of the manner in which the decision has been taken. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily be correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. If the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of



certiorari could be exercised. To understand the contour, it is relevant to quote paragraph nos. 12 & 13 of the aforesaid judgment which reads as follows:-

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



based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

To buttress this proposition, the petitioner has submitted that the cross-examination is the inseparable part of the natural justice. Cross-examination should not be an eyewash but, it should be effective opportunity to cross-examine the prosecution witness. In the event the delinquent is not given an opportunity for an effective cross-examination, the entire proceeding of disciplinary enquiry vitiates as the delinquent does not get the chance to properly elicited the real truth from the mouth of the prosecution witness. In support of his submission, he has placed reliance on the judgment in the case of *Ayaubkhan Noorkhan Pathan vs State Of*



Maharashtra & Ors reported in ***AIR 2013 SC 58***, in paragraph nos. 25 to 30 whereof, the Hon'ble Apex Court has, in nutshell, enunciated that right of cross-examination is unalienable right, is a part of principle of natural justice, should be held to be indefeasible right. The Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. In the ultimate paragraph no.30, the Court has declared that the opportunity of cross-examination should be made available, but it must be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice. Paragraph no.30 of the aforesaid judgment reads as follows:-

“30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.”



In conclusion, there cannot be denial of right of effective cross-examination to the delinquent and it is the duty of the prosecution to give fair treatment in the departmental enquiry i.e. the opportunity of effective cross-examination. In this background, it is necessary to examine whether the enquiry officer had given an opportunity of cross-examining the witnesses by the petitioner as he has claimed that on 2.5.2007 to 22.7.2005, six witnesses were examined though he was ill and abruptly he was asked to cross-examine the witness without providing the earlier recorded statement and getting himself prepared for the cross-examination. For that, it will be apt to examine the departmental enquiry proceeding. As it appears that the disciplinary enquiry was started on 2.5.2005, right from the very beginning, the delinquent has shown posture of non-cooperation. The order sheet dated 12.7.2005 shows that for the examination of prosecution witnesses, the date of was fixed from 20.7.2005 to 23.7.2005 but, on 20.7.2005, the petitioner remained absent without any information to the enquiry officer and, accordingly, the evidence of the witness was recorded. Again on 21.7.2005, the prosecution witness was present, the evidence of the witness was examined but, when on 22.7.2005, the disciplinary proceeding was initiated, the petitioner appeared with a certificate that he was ill, was



suggested for rest and produced the fitness certificate, verbally shown his intention to participate in the enquiry. He was asked to participate in the enquiry but, he left the place of disciplinary enquiry proceeding after a while without any rhyme or reason voluntarily, but failed to avail the opportunity to cross-examine the prosecution witness. Again the enquiry was conducted ex-parte, the evidence of the witness was recorded in absence of the petitioner. The next date was fixed on 23.7.2005. On 23.7.2005, the petitioner appeared, he was allowed to participate and filed his written statement of defence. The witnesses of the management were examined. All the evidences, which were earlier recorded, were read over to him and was asked if so like may cross-examine the prosecution witnesses on 24.7.2005. On 24.7.2005, again the evidence of witnesses were read over to him and he was asked to put his signature of previous proceeding but, he refused to do the same. He was handed over the evidence of all the prosecution witnesses and asked him to cross-examine the prosecution witness whereupon he made a prayer for two days time which was not allowed ultimately the petitioner did not cross examine the witnesses. So the claim has been made by the petitioner that the fair treatment or fair opportunity was not given to him for cross-examination of the witness.



Firstly, it appears that when the petitioner had fallen ill, he should have informed the enquiry officer properly and ought to have filed proper application, secondly, when he had appeared before the enquiry officer on 23.7.2005, he, without taking leave of the enquiry officer, left the venue of enquiry. The order-sheet shows that when he appeared on 23.7.2005, the evidences which were recorded was read over to him, on the next day i.e. on 24.7.2005, again the evidence was read over to him, the copy of the evidences was given to him and he was asked to cross-examine the witnesses, but refused.

One fact is clear from the order of the disciplinary authority that the petitioner got himself examined at a Government Hospital for his ailment whereas the PPT hospital is a well equipped hospital better than the Government Hospital and having extended the facility of treatment to the employees of company as well as for the staff of the CISF. Rremarkable finding has been recorded that he was ailing on 20.7.2005 and 21.7.2005 but, the medicine was purchased by one day earlier i.e. 19.5.2007. So it itself creates a strong and serious doubt to the claim of his illness made by the petitioner. Inasmuch as when he had appeared on 23.2.2005, he was read over the evidence recorded by the prosecution, on that day, he should have asked the copy of the



evidence of the prosecution witnesses. On the next day, he was handed over the evidence, at least he should have started the cross-examination of prosecution witnesses and, later on, he could have asked for the time but, he has flatly refused to cross-examine the witness and the enquiry officer has refused to grant two days time. Merely because he was not given two days time, he cannot be said that he was not given a fair treatment to cross-examine the witness.

In that view of the matter, this Court is of the view that the claim of the petitioner that he was not given fair opportunity of cross-examination is not correct as this Court cannot act as the Court of appeal. At three stages the scrutiny of departmental proceeding has been made, this Court is not inclined to accept contention of the petitioner that he was not given fair opportunity of cross examination of prosecution witness and, accordingly, this point is decided against the petitioner.

Another point has been raised that the presenting officer was a law graduate and, as such, he should have been given an opportunity to engage a lawyer and trained person as he was pitted against the legally trained mind and he could not match the presenting officer in the enquiry proceeding and, as such, it was the duty of the enquiry officer to have given an opportunity to engage a legal practitioner or take effective steps so that the



petitioner would have opportunity to defend his case during the departmental enquiry properly and effectively, in support of his submission placed reliance on the judgment in the case of ***J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. & Ors.*** reported in ***(1991) 2 SCC 283***. There is no dispute on principle which has been referred if the presenting officer is a highly trained person and the delinquent is a layman, in that circumstances, the enquiry officer will be obliged to exercise his discretion in favour of the delinquent, allow him to engage a legal practitioner to protect his interest during the departmental proceeding. It will be relevant to quote paragraph nos. 5 to 9 of the aforesaid judgment which reads as follows:-

*“5. But the learned Master of Rolls, however, reiterated his earlier view in **Pett case in Enderby Town Football Club Ltd. v. Football Association Ltd.** [1971 Ch D 591, 605-06]:*

“ Is a party who is charged before a domestic tribunal entitled as of right to be legally represented? Much depends on what the rules say about it. When the rules say nothing, then the party has no absolute right to be legally represented. It is a matter for the discretion of the tribunal. They are masters of their own procedure: and, if they, in the proper exercise of their discretion, decline to allow legal representation, the courts will not interfere.... In many cases it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done in them better by a good layman than by a bad



lawyer.... But I would emphasise that the discretion must be properly exercised. The tribunal must not fetter its discretion by rigid bonds. A domestic tribunal is not at liberty to lay down an absolute rule: *“We will never allow anyone to have a lawyer to appear for him.”* The tribunal must be ready, in a proper case, to allow it. That applies to anyone in authority who is entrusted with discretion. He must not fetter his discretion by making an absolute rule from which he will never depart.... That is the reason why this Court intervened in **Pett v. Greyhound Racing Association Ltd.** Mr Pett was charged with doping a dog – a most serious offence carrying severe penalties. He was to be tried by a domestic tribunal. There was nothing in the rules to exclude legal representation, but the tribunal refused to allow it. Their reason was because they never did allow it. This Court thought that that was not a proper exercise of their discretion. Natural justice required that Mr Pett should be defended, if he so wished, by counsel or solicitor. So we intervened and granted an injunction. Subsequently Lyell, J. thought we were wrong. He held that Mr Pett had no right to legal representation. But I think we were right. Maybe Mr Pett had no positive right, but it was case where the tribunal in their discretion ought to have allowed it. And on appeal the parties themselves agreed it. They came to an arrangement which permitted the plaintiff to be legally represented at the inquiry. The long and short of it is that if the court sees that a domestic tribunal is proposing to proceed in a manner contrary to natural justice, it can intervene to stop it. The court is not bound to wait until after it has happened.”



6. In *C.L. Subramaniam v. Collector of Customs, Cochin* [(1972) 3 SCR 485], this Court did not accept the enunciation in *Pett* case. Referring to *Pett* case it was observed:

“The rule laid down in *Pett* case has not commended itself to this Court. In *Kalindi v. Tata Locomotive and Engineering Co. Ltd.* [AIR 1960 SC 914], a question arose whether in an enquiry by management into misconduct of a workman, the workman was entitled to be represented by a representative of the Union. Answering this question this Court observed that a workman against whom an enquiry is being held by the management has no right to be represented at such an enquiry by a representative of the Union though the employer in his discretion can and may allow him to be so represented.”

7. In the present case, the matter is guided by the Provisions of Rule 7(5) of the Haryana Civil Services (Punishment and Appeal) Rules, 1952 which says:

“7.(5) Where the punishing authority itself enquires into any charge or charges or appoints an enquiry officer for holding enquiry against a person in the service of the government, it may, by an order, appoint a government servant or a legal practitioner to be known as a —presenting officer to present on its behalf the case, in support of the charge or charges.

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a government servant, if he so desires, in order to produce his defence before the enquiring officer. If the charge or charges are likely to result in the dismissal of the person from the service of the government. Such



person may, with the sanction of the enquiry officer, be represented by counsel.”

8. *It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include —whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser¶. In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question —whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner¶ which was kept open in **Board of Trustees of the Port of Bombay v. Dilipkumar** [(1983) 1 SCR 828]. However, it was held in that case:*

“---In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted



against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated....”

*9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in **Pett** case that in defending himself one may tend to become —nervous‡ or —tongue-tied‡. Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.”*

And the same principle has been reiterated in the case of **Ramesh Chandra Vs. Delhi University & Ors.** reported in (2015) 5 SCC 549, in the same vein, the Hon’ble Apex Court has said that in the event of engagement of well trained enquiry officer or the presenting officer, refusal to engage legal practitioner by the delinquent will be deprivation of fair participation in the enquiry. In that case, a retired High Court Judge was the Enquiry Officer, he had the best legal acumen and experience, in that background, the Hon’ble Apex Court has said that the delinquent employee should have been granted permission to be represented through



legally trained and qualified lawyer. It will be relevant to quote paragraph nos. 67 to 70 which reads as follows:-

“67. The enquiry officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The Presenting Officer also would be a person who had sufficient experience in presenting case before Inquiry Officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not.

68. In Port of Bombay vs. Dilipkumar Raghvendra Nath Nandkarni and others, (1983) 1 SCC 124, this Court observed:

"10.....Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex [pic]or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.....

** * **

12.....In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a



reasonable request to defend himself and the essential principles of natural justice would be violated....."

69. In *J.K. Aggarwal v. Haryana Seeds Development Corporation*, (1991) 2 SCC 283, this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows:

"8. It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are [pic]for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal



practitioner" which was kept open in Board of Trustees of the Port of Bombay v. Dilipkumar⁸. However, it was held in that case (SCC p. 132, para

'12) ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.'

70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair."

But, the proposition that has been laid down by the Hon'ble Apex Court is not applicable in the present case as is to be seen in the backdrop of the fact as to whether the enquiry officer had acted fairly and properly or deprived the petitioner of fair opportunity to defend himself. It will be relevant to mention excerpts from the preliminary enquiry conducted by the enquiry officer wherein the enquiry officer had specifically put a question as to whether he need an engagement of Defence Assistant or not wherein he has answered that does not require any Defence Assistant which is as follows:-



“प्रश्न:— क्या आपके सहायता के लिए कोई बल सदस्य को आपका Defence Assistant के रूप में रखना चाहते ?

उत्तर:— मुझे किसी भी बल सदस्य को Defence Assistant (कार्य सहायक) के रूप में नहीं चाहिए।”

In view of the fact that when he was asked thereby he was given an opportunity to engage a Defence Assistant but, he refused to take the Defence Assistant, the question of deprivation of an opportunity of engaging someone to defend his case does not arise. So in view of this factual background, when the petitioner himself had refused to take assistance of any Defence Assistant then the judgment that has been placed reliance has no bearing in the present case and, as such, the issue raised by the petitioner of deprivation of opportunity to engage Defence Assistant or lawyer has no leg to stand and the same is not acceptable.

Third point has been raised by the petitioner that he had given the list of five defence witnesses, three were the civilian witnesses and the two were official witnesses. The Enquiry Officer had issued summon to the official witnesses but, he did not issue summon to the civilian witnesses, official witnesses had shown their unwillingness to depose in favour of the petitioner did not issue summon. The enquiry officer has taken a plea that as the civilian has no role in the present proceeding, he could not have



been summoned. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment in the case of ***Union of India & Ors. Vs. Prakash Kumar Tandon*** reported in ***AIR 2009 SC 1375***, wherein in paragraph no.17, the Court has held that the principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is relevant to quote paragraph no.17 of the aforesaid judgment which reads as follows:-

“17. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice.

18. In *M.V. Bijlani v. Union of India & Ors.* [(2006) 5 SCC 88], this Court has held :



"Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

19. If the disciplinary proceedings have not been fairly conducted, an inference can be drawn that the delinquent officer was prejudiced thereby.

20. In S.L. Kapoor v. Jagmohan & Ors. (1980) 4 SCC 379, this Court has held that non-compliance of the principles of natural justice itself causes prejudice. We are not oblivious of the fact that the said principle has since been watered down but in a situation of this nature, we are of the opinion that the concurrent findings of the Tribunal, as also the High Court cannot be said to be unreasonable or suffering from any legal infirmity warranting interference."

This judgment has no application in the present case.

The reason is that the Enquiry Officer in the present case has passed the order with respect to summoning the witnesses but, he



refused to issue summon to the civilian witnesses, the reason has been assigned that the civilians had no role in the present case whereas the Delinquent has taken a plea that the second charge of misdemeanor is related 24.2.2005 and alleged misbehavior was committed in the public view i.e. at temple where the civilians were available. It was an internal domestic enquiry, at the same time, the Enquiry Officer has not found fair to call the civilian witnesses to participate and depose in the enquiry proceeding. Inasmuch as, when the Enquiry Officer has refused to issue summon to the civilians then he himself was required to produce the witnesses for recording the evidence but the petitioner had not acted so. So, it does not lie to his mouth to make a complaint against the enquiry officer to deprive him for deposition of the defence witness and the Hon'ble Apex Court has held that if the application is filed to the Enquiry Officer, it is the duty of the Enquiry Officer to dispose of the same but, it does not show that in all circumstance even the civilian defence witnesses be allowed to be summoned in the departmental proceeding when the allegation is made against the petitioner is of very serious nature of abusing and threatening to kill the superior authority, not only once but, in quick succession, on two occasions. So this Court does not find favour with the plea of refusal to issue summon to the civilian



witnesses will vitiate the enquiry proceeding does not cut much ice.

Another point that has been taken by the petitioner is that the incident had taken place at NTPC, Barh whereas the enquiry was conducted at Paradip (Orissa), so he was deprived to participate in the enquiry effectively.

As there is no Service Rule or there is any law that the enquiry will be conducted only at the place where the misconduct was committed but, the Court has to see whether the fair enquiry has been conducted or not and that too only it has to be seen that the fair treatment has been given to the delinquent. He cannot dictate the management or the Disciplinary Authority to ask him to hold the enquiry at the place of incident had taken place or the desired place. So this contention can not be accepted and, accordingly, the same is rejected.

In the matter of quantum of punishment, as the allegation is of very serious nature, that too, firstly he had misbehaved with his colleagues and higher officials and, secondly, he had also abused in most filthy language which cannot be accepted in any civilized society as filthy abusive language was of highest order against higher officials and, that too, he had threatened to kill him by spraying 100 bullets in the body of the



superior. In such circumstances, this Court does not find any merit in the present case to be interfered with.

Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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