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

Reserved on: 13.05.2019
Date of Decision: 02.07.2019

+ W.P.(C) 5433/2014

UNION OF INDIA & ORS. Petitioners

Through: Mr. Arun Bhardwaj, Adv.
with Mr. Nikhil Bhardwaj,
Adv.

Versus

LAXMAN PRASAD Respondent

Through: Mr. G.S. Lobana, Adv. with
Mr. Basab Sengupta, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. The present petition under Articles 226 and 227 of the Constitution of India filed by the Union of India, assails the order dated 28.04.2010 passed by the Principal Bench, Central Administrative Tribunal, New Delhi (hereinafter referred to as 'Tribunal') in OA No.2561/2009. The petitioner also assails the order dated 10.03.2014 passed in RA No.80/2013 dismissing the petitioner's application seeking review of the order dated 28.04.2010.

2. The aforesaid original application (hereinafter referred to as 'OA') had been preferred by the respondent impugning the penalty of reduction to lower stage of pay by eleven stages for eight years with cumulative effect, awarded to him by the disciplinary authority. In

his OA, the respondent had also impugned the appellate authority's order dated 22.06.2009 modifying the penalty of reduction in pay, as awarded to him by the disciplinary authority, to that of recovery of Rs.5,80,000/- from his pay in hundred equal monthly instalments.

3. On 17.08.2005, the respondent, while working as a correspondence clerk at the Lalitpur Head Post Office, was served with a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 with the following charge:-

“That the said Shri Laxman Prasad while working as correspondence clerk at Lalitpur HO during the period from 08/01/02 to 06/02/02 got introduced some forgers Shri Kamal Kumar Tiwari and Shri Sanjay Pathak with Shri Abhay Kumar Jain, SAS Agent no.85 Lalitpur who introduced the forgers on SB-3 in opening of SB account no. 527944 and 527946 respectively on 08/1/02 for Rs.500/- each. The said Shri Laxman Prasad also received some forged/manipulated bank drafts directly from the depositors/forgers for clearance and depositing its amount into respective SB a/cs while the bank drafts should be received through SB counter assistant. The said Shri Laxman Prasad also failed to check the overwriting, erasures or corrections on the bank drafts. Yet he accelerated the clearance/collection of bank drafts through State Bank of India Lalitpur Branch with the conspiracy of forgers/depositors. With the conspiracy of forgers/depositors the said Sri Laxman Prasad cheated the department as well as the SBI and succeeded to get cleared and deposited the bank drafts amounting to Rs.781000/- and the department suffered the net loss amounting to Rs.756000/-.

By acting in the above manner the said Shri Laxman Prasad is alleged to have failed to maintain his absolute integrity, devotion to duty and acted in a manner which is unbecoming of Govt. servant and thereby violated the provision of following departmental Rules;

- (1) *Rule 6(a), 6(a)(2) of PO SB Manual Volume-1 read with rules of appendix 1 to the said Manual.*
- (2) *Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rule-1964.”*

4. On 26.08.2005, the respondent submitted his reply denying the charges levelled against him in the aforesaid chargesheet. Shortly thereafter, vide a memorandum dated 31.10.2005, the disciplinary proceedings initiated against the respondent were dropped. The said memorandum, however, clearly stated that the proceedings were being dropped without prejudice to any further action which may be taken against the respondent by issuing a fresh chargesheet. On 02.08.2006, a fresh chargesheet, on the same charges, was issued and upon the respondent denying the charges, a departmental inquiry was held against him wherein he was exonerated by the Inquiry Officer. The Inquiry Officer, in his report dated 07.12.2007, came to the conclusion that there was nothing to show the implication of the respondent in the charges levelled against him, and his findings read as under:-

“1. Presenting officer has not given any documents in this case by which the charges are supposed to be proved. Simply, he has taken the plea that statements presented as documents were got confirmed by the concerned witnesses. He has made the same the basis on which charges are proved. I do not agree to it.

II. As defence has stated that SW-3, SW-5, Shri O.S. Saxena and Shri Y.K. Yagik have confirmed counter Asstt. This proved during inquiry Shri V.K. Yagik (SW-5) has confirmed that drafts were date stamped by him. It shows that C.O. has not taken the drafts directly to S.B.I. for clearance. The charges described in the

charge sheet that he has taken to SBI directly is not proved, No prosecution witness confirmed the same charge. The two witnesses expressed that the said drafts were handed over by the counter.

III. As defence has stated that SW-1 Shri A.K. Jain has signed SB-3 card as introducer for opening of SB A/c.No.527944 and 527946, the signature on the above documents, were confirmed by the SW-1(Shri A.K. Jain) during inquiry. As he stated that he has introduced the said depositors on the instructions given by the charged official Shri Laxman Prasad, but there is no any written evidence as document by which the involvement of the C.O. is proved. Only say of the witness on oral basis can not taken as evidence to prove the charges. So I do not agree with the say of the prosecution, the charge sheet is based only on say of SW-1, SW-5, SW-3 which is not reliable at all and charges are not tenable at all.

IV. SW-1 Shri A.K. Jain (Agent) had filled in SB-3 cards of SB A/c. No.527944 and 527946, as confirmed by during inquiry on 5-5-07. As he has stated that two said depositors were got introduced by Shri Laxman Prasad, but no any other evidence was presented by which it can be proved only oral statement is a solid proof against the C.O. at all. SW-1 is himself signed, he has admitted his signatures on SB-3 cards, so it is automatically proved, that in the full confidence and faith he has introduced the depositors. No any lame excuse use is maintainable at all.

V. The defence witnesses DW-1 Shri Rasheed Khan and DW-2 Shri Durga Prasad were examined during inquiry on 20.09.07 they have confirmed their signatures on the documents K-5, K-10, KH-18, K-7, K-8. It is also clarified that all the concerned documents were examined by postmaster Lalitpur HO as well as concerned APM (SB). The charge, that C.O. has taken away the drafts directly to SBI, is not proved at all.

VI. *The witnesses SW-1, SW-2, SW-5 Shri A.K. Jain, Shri O.S. Saxena, Shri V.K. Yagik, are themselves involved in this case and having to get interest to get themselves relieved from the charges levelled against them. The say of these witnesses have no any weightage and reality. To rely upon them, will be against natural justice on their witnessing, charges are to be proved at all.*

VIII. *As it has been described, in the charge sheet, that department has faced a loss of Rs.7,56,000/-. As the amount were got credited in the SB A/c No.0527944, 946 after getting clearance list from SBI Lalitpur. It was the duty of the SBI to get scrutinized the concern bank drafts, as they were issued by their branch, not from the post offices. The correct method and procedures are to be followed by the SBI. Post office staff are not well acquainted with the same. As amount has been received from bank, no loss is faced by the post office at all. The charged official can not be held responsible for the correction, overwriting or manipulations because all other are also responsible. The charges are not sustainable at all on this basis.*

So, the charges, levelled vide SS Pos. Memo No.F-4/12/02-03/Disc. Dated Jhansi 02-08-2006 against Shri Laxman Prasad PA Talbehat SO Lalitpur, are not proved at all.”

5. The disciplinary authority, however, did not agree with the findings of the Inquiry Officer and, instead, issued a disagreement note to the respondent on 21.04.2008 thereby granting him an opportunity to submit his representation within fifteen days. The disagreement note reads as under:-

“In connection with above case, I have examined the enquiry report dated 07/12/07 of the Inquiry Officer and all the records related to the case. I do not agree with the conclusion of the Inquiry Officer. Therefore one copy of

the enquiry report dated 07/12/07 of the I.O. is sent herewith the following disagreements.

“1. Sri Abhai Kumar Jain the then SAs Agent No.85 admitted in his written statement dated 05/03/2002 (Exhibit Ka-1) that the charged official Sri Laxman Prasad made acquainted the said forgers with the said Sri Jain and he also got met the said forgers with Sri Jain for opening of TD accounts. The charged official had also got two applications (SB-3) completed and got these applications introduced by Shri Jain for opening of TD accounts in the name of both two forgers. But he (charged official) intentionally had not got opened any TD account and he got opened two SB account No.527944 and 527946 in the name of two forgers by using these applications (SB-3). This fact has also confirmed by Sri Jain in his statement dated 23/05/2007 (SW-1) recorded during the course of oral enquiry by the Inquiry Officer.

2. Sri Om Swaroop Saxena, the then APM (SB Lalitpur admitted in his written statement dated 16/03/2002 (Exh.Ka-3) that the charged official had requested him to issue cheque books to the said forgers after opening of said SB accounts. Sri Saxena also confirmed these facts during the course of oral enquiry in his statement dated 12/07/2007 (SW-2).

3. Sri Vinod Kumar Yagyik the then SB counter Asstt Lalitpur HO admitted in his written statement dated 04/02/2002 (Exh.Ka-4) dated 16/03/2002 (Exh.Ka-5) and 25/08/2005 (Exh.Ka-2) that the charged official gave him the said bankdrafts to make impressions of date stamps and he (charged official) himself prepared Cheque collection lists of these bankdrafts. Sri Yagyik also stated that the said bankdrafts were not produced at the counter either by the forged depositors or by the forgers. The said bankdrafts were obtained by the charged official from the forgers directly and got them cleared from SBI Lalitpur. Sri Yagyik also admitted that the charge official transferred him the said bank drafts alongwith pay in slip (SB-103) for making impression of date stamp after getting them cleared from the bank. These facts were also confirmed by said Sri Yagyik in his statement dated 01/08/07 (SW-5) recorded by the enquiry officer during the course of oral enquiry.

4. Sri R.S. Suryavanshi, Dy. SPOs Jhansi (SW-4) confirmed Exhibits Ka-3, Ka-4, Ka-5, Ka-6, Ka-9 and Ka-10 in his statement dated 01/08/07 recorded during the course of oral enquiry by the Inquiry Officer. He also told that there were over writings/manipulations in the bankdrafts under reference.

5. It is also evident from Cheque collection list dated 02/02/2002 (Exh.Ka-06) of SB counter Asstt. Cheque clearing summary (Exh.Ka-7) dated 04/02/02 that the bankdraft No.717904 was directly received by Sri Laxman Prasad because there is no entry of draft No.717904 in Cheque collection list of SB counter Asstt. Dated 02/02/02.

You are hereby given an opportunity to submit your representation/defence statement if any within 15 days of receipt of this letter.”

6. Upon receipt of the said disagreement note, the respondent submitted his representation reiterating his case that, in fact, it was Shri A.K. Jain, the concerned SAS agent, who had signed the SB forms as the introducer, and that the bank drafts in question—when received by him, did not contain any manipulation or overwriting on them. However, the disciplinary authority did not accept the respondent’s defence and, vide its order dated 14.05.2008, held the charges against him as proved and, consequently awarded him the penalty of reduction to lower stage of pay, by eleven stages for eight years, with cumulative effect.

7. Aggrieved by the order dated 14.05.2008, the respondent preferred a statutory appeal before the appellate authority on 25.06.2008. The appellate authority, instead of allowing his appeal, issued him a show cause notice dated 20.11.2008, proposing to enhance the penalty awarded to him by the disciplinary authority. The respondent submitted his reply to the said notice and upon consideration thereof, the Appellate Authority, while concurring with

the findings of the disciplinary authority, modified the penalty as imposed by the disciplinary authority to that of recovery of an amount of Rs.5,80,000/- from the respondent's pay in hundred equal monthly instalments. The order as passed by the Appellate Authority reads as under:-

“7. Though the plea that the punishment awarded by the disciplinary authority is very harsh is not tenable but I feel that the punishment of reduction to lower stage of pay by 11 stages for 8 years with cumulative effect awarded vide SSPOs Jhansi No.F4/2/02-031 Disc dated 14.05.2008 is not commensurate in view of Govt. loss.

Therefore, I Umesh Verma in the capacity of Director Postal Services Agro Region, Agra under the powers conferred in Rule 27 of CCS (CCA) Rules 1965 hereby modify the punishment of reduction to lower stage of pay by 11 stages for 8 years with cumulative effect awarded by vide SSPOs Jhansi No.F4/2/02- 03/Disc dated 14.05.2008 to that of recovery of Rs.5,80,000/- from his pay in 100 equal monthly instalments.”

8. Aggrieved by the orders of the disciplinary authority and the appellate authority, the respondent preferred the aforesaid OA wherein he assailed the issuance of the fresh chargesheet dated 02.08.2006, which was with respect to the very same charges forming the subject matter of the earlier chargesheet dated 17.08.2005. In support thereof, the respondent contended that as the petitioners, while withdrawing the earlier chargesheet, had failed to state their reasons for withdrawal, they were estopped from issuing a fresh chargesheet on the same charges. The respondent also urged that there were no findings in the orders passed by both the disciplinary authority and the appellate authority explaining their basis for arriving at the loss claimed to have been caused to the department, by his alleged misconduct. On the other hand, the petitioners opposed the

OA by contending that the respondent, with the help of forged depositors, had played the key role in manipulating the bank drafts for withdrawing an amount of Rs.8,80,000/-; it was the case of the petitioners that this action had caused a loss of Rs.7,89,000/- to the Government as the bank authorities were demanding the return of the said amount.

9. The Tribunal, finding merit in the contentions of the respondent, allowed the OA vide its order dated 28.04.2010 by observing as under:-

“13. A plain reading of Annexure A-5 whereby the disciplinary proceedings initiated against the applicant pursuant to memo dated 17.8.2005 have been dropped, reveals that no reasons are mentioned for dropping the said proceedings and issuing a fresh charge sheet though intention to do so has been indicated therein. The issue of second charge sheet on the same set of allegations is thus open to objection for being not conformity with the instructions on the subject which warrant that when the intention is to issue a subsequent fresh charge sheet, the order canceling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge sheet appropriate to the nature of charges on which the same is based on. In the present case, though the intention to issue charge sheet is shown but the reasons to do so are not indicated. To that extent, there is clear infraction of the administrative mandate.

14. The impugned action is open to a more serious objection to the extent that there is no recording of findings as to the loss actually caused to the department by the applicants misconduct. The penalty of recovery under Rule 11 (iii) of CCS (CCA) Rules, 1965 can be legitimately imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss. The penalty of recovery of loss is a special type of penalty which cannot

be awarded in all types of misconducts. This penalty can be awarded only in a case where it has been established that the negligence on the part of employee concerned or breach of orders or rules caused loss to the department. Once such a penalty is proposed to impose, the charge sheet needs to be quite elaborated indicating not only the breach of orders on the part of employee concerned but also indicating as to how it has led to the loss to the department. The concerned authorities are required to assess in a realistic manner the contributory negligence on the part of employee concerned. These principles are duly imbibed in the administrative instructions as contained in D.G. P &T No.114/176/76/78-Disc. II dated 13th February, 1981 on which strong reliance has been placed by the applicants counsel. We find force in this contention of the applicant's counsel. The Disciplinary Authority has not recorded any findings regarding loss caused to the department by the applicant's misconduct. No such finding either has been recorded by the appellate authority. The charge sheet issued to the applicant is also devoid of necessary particulars to be required in the cases where penalty of recovery of loss is proposed to be made. Though the charge sheet refers to the loss suffered by the department as Rs.7,56,000/-, it is not clear on what basis the appellate authority ordered recovery of Rs.5,80,000/- from the pay of the applicant.

15. In these circumstances, the impugned order of the appellate authority dated 22.6.2009 as at Annexure A-2 is not sustainable and accordingly quashed and set aside. The order of the Disciplinary Authority that has been merged in the order of the appellate authority also fails.”

10. Aggrieved by the Tribunal's order allowing the respondent's OA, the petitioners approached this Court by way of WP(C) No.7078/2010 which petition was permitted to be withdrawn on 20.11.2012 with liberty to the petitioner to approach the Tribunal by way of a review petition. Pursuant thereto, the petitioner preferred a review application before the Tribunal, being RA No.80/2013, which came to be dismissed vide order dated 10.03.2014. Consequently, the

petitioner has now preferred the present petition impugning the Tribunal's order dated 28.04.2010—allowing the OA, as also the order dated 10.03.2014 dismissing the review application.

11. In support of his contention that the impugned order allowing the OA is not sustainable, learned counsel for the petitioners has raised two contentions. Firstly, he submits that the Tribunal has erred in accepting the respondent's plea that since no reasons for withdrawal were mentioned in the order dated 31.10.2005, the issuance of a subsequent chargesheet on the same charges would be impermissible and amount to an infraction of the administrative mandate. He submits that this finding of the Tribunal is not only contrary to the record, but is wholly perverse and overlooks the fact that while withdrawing the initial chargesheet, specific liberty had been reserved by the disciplinary authority for initiating fresh action against the respondent on the same grounds. He further submits that the Tribunal has ignored the vital fact that the initial chargesheet had been withdrawn only because it was found that it contained some clerical errors. He submits that when it was realised that the particulars of the statutory rules—violations of which had been alleged, were wrongly noted in the memorandum dated 17.08.2005, the disciplinary authority had withdrawn the same without prejudice to further action being taken against the respondent on the same charges. He further submits that it could not be said that there were no valid reasons for withdrawal of the initial chargesheet. He, thus, contends that once the record clearly showed the reasons for the withdrawal of the initial chargesheet, the Tribunal was wholly unjustified in coming to the conclusion that there was an infraction of the administrative mandate.

12. The next submission of Mr.Bhardwaj, learned counsel for the petitioner, is that the Tribunal has failed to appreciate that the disagreement note, in itself, gave categorical reasons to explain the reason why the disciplinary authority had come to a conclusion that the respondent was guilty of misconduct thereby causing a loss to the department. He submits that it was for this purpose that recovery of an amount of Rs.5,80,000/- from the respondent was deemed necessary and, therefore, the appellate authority had rightly passed an order to that effect. In support of his contention that the direction for recovery of the said amount from the respondent was based on valid and cogent reasons, he draws our attention to the averments in the petitioners' review application filed before the Tribunal stating that the net amount of loss suffered by the department was Rs.7,56,000/- and, since a sum of Rs.1,76,000/- had already been recovered from the salary of the Counter Assistant, Shri Vinod Kumar Yagvik, who was also accused of manipulating the bulk drafts, the balance amount of Rs.5,80,000/- was recoverable from the respondent. He, therefore, prays that the impugned order be set aside.

13. Conversely, Mr.Basab Sen Gupta, learned counsel for the respondent while supporting the impugned orders, submits that the respondent has been made a scapegoat and that there is nothing to show any misconduct on his part with respect to the allegations levelled against him. He submits that neither was there any loss caused to the petitioners, nor was anything brought on record before the Tribunal to show that any action was taken against the SAS Agent, who was the introducer, or against the other officials posted along with the respondent in the same post office at the time of the alleged incident. Without prejudice to his aforesaid submission that the respondent is not guilty of any misconduct whatsoever, he

contends that the disagreement note clearly shows that the disciplinary authority had already made up his mind to hold the respondent guilty, which decision was in the teeth of various decisions of this Court as well as those of the Supreme Court. In support of his contention, Mr. Sen Gupta has placed reliance on the decision of the Supreme Court in *Yoginath D. Bagde Vs. State of Maharashtra & Anr. (1999) 7 SCC 739* and the decision of this Court in *Union of India & Ors. Vs. Anokhey Lal* passed in WP(C) No.742/07. He further submits that the appellate authority's direction to recover Rs.5,80,000/- from the respondent is without any basis and does not clearly reflect as to how the petitioners had come to the conclusion that out of the alleged loss of Rs.7,56,000/-, the respondent was liable to pay a sum of Rs.5,80,000/- to the petitioners. He, therefore, submits that the Tribunal was fully justified in quashing the orders of the disciplinary authority and the appellate authority.

14. We have considered the submissions of learned counsel for the parties and with their assistance perused the record.

15. Insofar as the first submission of the learned counsel for the petitioner is concerned that the Tribunal has erred in coming to the conclusion that there was an infraction of the administrative mandate in the act of issuing the second charge sheet, we find that the intention to take fresh proceedings against the respondent was made clear while withdrawing the earlier charge sheet itself, and the reasons therefor were available on record and were, infact, produced before the Tribunal. The respondent did not challenge the withdrawal of the first charge memorandum on any ground. He was, therefore, estopped from questioning the same subsequently. The withdrawal of the first charge memorandum had to be read and taken as a whole. It could

not be bifurcated and only the withdrawal be said to be good and the reservation to issue a fresh one be said to be bad. In these circumstances, we fail to appreciate as to how it could be said that there was any infirmity in the petitioner's action. Nothing has been placed on record to show that there is any such requirement to set out the reasons for withdrawing a defective chargesheet in the withdrawal order itself. In our view, once the withdrawal order made it explicit that the charge sheet was being withdrawn without prejudice to any further action being taken against the respondent by issuing a fresh charge-sheet, the mere absence of reasons in the withdrawal order would not, in any manner, affect the legality of the subsequent charge sheet. Thus, the finding of the Tribunal that there was an infraction of the administrative mandate in issuing the second charge sheet is wholly unsustainable and is set aside.

16. As noted hereinabove, the second submission of the petitioner is that the Tribunal has erred in coming to the conclusion that there were no findings recorded with respect to the loss actually caused to the department by the respondent's misconduct. Having perused the orders passed by the disciplinary authority and the appellate authority, we find that there is absolutely no reason as to why the petitioners decided to recover an amount of Rs.5,80,000/- from the respondent, out of the total alleged loss of Rs.7,56,000/- claimed by the petitioners when, admittedly, it is not only the respondent but also one Shri Vinod Kumar Yagvik who was held responsible for the alleged loss caused to the petitioners. Undoubtedly, in its review application filed before the Tribunal, the petitioners have attempted to explain their reason for ordering the recovery of such amount, i.e., Rs.5,80,000/- by contending that as only an amount of Rs.1,76,000/- could be recovered from the

Counter Assistant, Shri Vinod Kumar Yagvik, the balance amount of Rs.5,80,000/- had to be recovered from the respondent. We are unable to appreciate this explanation. In our view, before ordering recovery of any amount from the respondent, it was incumbent on the petitioners take a considered decision about apportioning the loss claimed to have been suffered by them, between the respondent and Shri Yagvik. We also note that neither the disciplinary authority, nor the appellate authority have recorded any specific findings qua the loss claimed to have been suffered by the petitioners. We are, therefore, of the view that the Tribunal was fully justified in coming to the conclusion that the orders passed by the disciplinary authority and the appellate authority were unsustainable. The order of the Tribunal, on this aspect, is upheld.

17. At the same time, there is yet another aspect to this matter. Even though we concur with the Tribunal that the orders passed by the appellate authority and the disciplinary authority were flawed, nevertheless we cannot lose sight of the fact that the charges against the respondent are of a serious nature relating to forgery and fraud. Therefore, it would be against public interest to let the matter rest by merely quashing the penalty orders, as has been directed by the Tribunal. Before determining the course of action which should be adopted in the facts of the present case, it would be apposite to refer to the respondent's submission that since the disagreement note issued by the Disciplinary Authority contained conclusive findings and was not at all tentative in nature, the order of the Disciplinary Authority is liable to be quashed. Having given our consideration to this submission, we find merit in the same. A perusal of the disagreement note issued by the disciplinary authority leaves no manner of doubt that it had already made up its mind and taken a final

decision in the matter and it is, thus, evident that the disciplinary authority had concluded the guilt of the respondent in the disagreement note itself, thereby rendering the opportunity granted to the respondent to make a representation, an empty formality. Despite the settled legal position that the disciplinary authority is supposed to record only his tentative reasons for disagreeing with the findings of the Enquiry Officer while issuing a disagreement note, in the instant case, there is a clear breach of the said rule and, in fact, the disagreement note even fails to state that the findings therein are tentative. We also find that though this ground was urged by the respondent before the appellate authority, the same was not even considered by the appellate authority. We have, thus, no hesitation in holding that the disagreement note issued by the disciplinary authority and all other consequential orders are unsustainable and liable to be quashed. In this regard, reference may be made to the decision in ***Yoginath (supra)*** on which reliance has been placed by the learned counsel for the respondent wherein the Supreme Court had observed as under:

“In the instant case, we have scrutinised the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer. We have also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by the A.C.B., Nagpur against the appellant had failed and was held by the Enquiry Officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non-consideration of the statements of defence witnesses, namely, Dr. Naranje and Mr. Bapat, advocate, by the Disciplinary Committee. This factor in itself was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the Enquiry Officer.”

18. In view of the foregoing, while affirming the Tribunal's orders qua the unsustainability of the orders passed by the disciplinary authority and the appellate authority, we modify the same by quashing the disagreement note dated 21.04.2008 also. We remand the matter back to the disciplinary authority who will afresh examine the enquiry report and proceed from that stage. In case the Disciplinary Authority proposes to disagree with the report of the Enquiry Officer, it would take note by taking note of the present decision as also the decision of the Supreme Court in *Yoginath (supra)*. The final order shall be passed in accordance with the law by providing the respondent an adequate opportunity to make his representation. It is made clear that in case the respondent is aggrieved by the final order, which may be passed by the disciplinary authority, it would be open for him to challenge the same on all available grounds as per law.

19. The writ petition is partially allowed in the aforesaid terms with no order as to costs.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

JULY 2nd, 2019

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