$~

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

\+ W.P.(C) 7593/2002

RAKESH MIDHA ....Petitioner

Through: Mr. Mahesh Srivastava with Mr. Vaibhav Manu Srivastava, Advs.

Versus

M/S ORIENTAL FIRE INSURANCE CO. LTD. ...Respondent

Through: Mr. Pankaj Seth, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **JUDGMENT**
29.05.2020

1. The petitioner, who was working as Development Officer in the office of the respondent (Oriental Insurance Co. Ltd.), was issued a charge-sheet, dated 31st March, 1998, proposing to initiate disciplinary action, against him, under Rule 25 of the General Insurance CDA Rules, 1975 (hereinafter referred to as "the CDA Rules"). The charge-sheet contained, essentially, two charges, against the petitioner, dovetailed into a single Article of Charge.

2. The first allegation, against the petitioner, was that he had created a dummy agent, of the respondent, by name Yugal Gupta, with a fictitious bank account, in which agency commission, allegedly payable to Yugal Gupta, was deposited, and subsequently withdrawn by the petitioner, during the period 1991 to 1996. The allegedly fictitious agent Yugal Gupta had been assigned Agency Code 1623. The Savings Bank account of Yugal Gupta, in the Punjab National Bank (PNB) was also found to have been introduced by the petitioner. It was alleged that, on enquiries being made at B-1/30, Model Town, which was the address of Yugal Gupta, as entered in his Agency Renewal Application, it was found that, though one Yugal Gupta was, indeed, residing at the said address, he had nothing to do with the Agency, assigned to the fictitious Yugal Gupta (with Agency Code 1623), or with the aforesaid Savings Bank account in the PNB. The petitioner, on being questioned in this regard, produced, before S. C. S. Bisht, Assistant Manager (Vigilance Cell) of the respondent, one person, who was stated to be the agent of Yugal Gupta. The said person produced a Driving Licence, of Yugal Gupta, r/o B-56, Railway Road, Karnal, and stated that he had been residing at B-1/30, Model Town till March, 1996, whereafter he shifted to Karnal. This fact was, however, refuted by the 'other' Yugal Gupta who was found staying at B-1/30, Model Town. It was alleged, further, that S. K. Samantaray, Branch Manager of the respondent, stated, on 27th November, 1996 and 9th December, 1996, that the Agency Commission, deposited in the aforesaid Savings Bank account of Yugal Gupta, in the PNB, was withdrawn, by the petitioner, using pre-signed cheques, consequent on certification of the identity of the agent by the petitioner, himself, by attesting the signature of the agent. On the basis of these facts, it was alleged that the petitioner had stage-managed a fictitious Yugal Gupta, to camouflage his misdemeanour of creating a dummy agency, with a dummy bank account, in order to wrongfully earn Agency Commission. By this method, it was alleged that the petitioner had wrongfully earned agency commission of 3,57,852.70, during the period November, 1991 to June, 1996. A tabular statement, of the amounts earned on a year-wise basis, also finds place in the Statement of Imputations of Misconduct, forming part of the charge-sheet.

3. The second charge, against the petitioner, was that the paid-up capital of one M/s Tej International, which was also introduced by the petitioner, using the agency of Yugal Gupta, was certified, *vide* certificate dated 30th November, 1995, purportedly on the letterhead of Tej International, as 6,50,000/–, whereas Tej International, on verification, submitted that its paid-up capital, on 31st March, 1996, was 22,00,000/-.

4. By these alleged machinations, the charge-sheet accused the petitioner of having caused wrongful loss to the respondent and wrongful gain to himself and having, thereby, violated Rules 3(1)(i) and (iii), 4(1) and (5) of the CDA Rules.

5. The petitioner responded, to the aforesaid charge-sheet, on 6th May, 1998. It was contended, by the petitioner, that Yugal Gupta had been working as an agent, with the respondent, since 1991 and that, during the period 23rd October, 1990 to 22nd October, 1993, he was also working as an agent with M/s United India Insurance Company (hereinafter referred to as "United India"). It was submitted that, therefore, Yugal Gupta could not be treated as a dummy. Apropos the allegation regarding the paid-up capital of Tej International, the petitioner refuted the letter, of the said firm, contending that the signature, thereon, was unclear. The petitioner submitted that commission, to Yugal Gupta, had been paid by crossed cheques, as the said agent had a valid agreement, subsisting, with the respondent. The petitioner denied having taken any monetary benefits from Yugal Gupta, or encashed any cheque, whereby money was withdrawn from the account of Yugal Gupta.

6. Disciplinary proceedings, consequent on the issuance of the aforesaid charge-sheet, dated 31st March, 1998, commenced. During the course of enquiry proceedings, the petitioner sought to avail the services of Yogesh Kumar, Senior Assistant in the office of the respondent, as his Defence Assistant. However, it appears that Yogesh Kumar refused to act as the Defence Assistant of the petitioner, whereafter, *vide* letter dated 31st August, 1998, the petitioner sought to appoint R. N. Sharma, retired Assistant Manager of United India, as his Defence Assistant. The request was declined, by the Enquiry Officer (hereinafter referred to as "EO"), on the ground that the practice and guidelines, governing the respondent, did not allow the appointment of a retired officer of the industry as a Defence Assistant.

7. The petitioner submitted an application, dated 13th October, 1998, to the EO, requesting for the following documents, for his defence:

(i) a copy of the application for agency, submitted by Yugal Gupta to the respondent,

(ii) a copy of Agents License No. 040800/1/00089 issued by United India, valid up to 22nd October, 1993,

(iii) a copy of the Agency Application submitted by Yugal Gupta to United India,

(iv) a copy of Agents License No. DO/00028/95 issued by the respondent,

(v) a copy of the letter, by the Bhogal Branch of the respondent, recommending renewal of license No 0040800/1/89,

(vi) copies of Commission Payment Voucher, for the months November 1991 to May 1996, of Yugal Gupta and

(vii) a statement of Bank Account No. 29223, of Yugal Gupta with the Bhogal branch of the PNB, for the period November, 1991 to May, 1996.

8. On 27th November, 1998, the petitioner addressed another representation, to the EO, citing the following witnesses, whose evidence he desired to lead in his defence:

(i) an official from United India, along with the documents/record pertaining to Agency No. 3031, License No. 040800/1/00089/90, valid till 22nd October, 1993, of Yugal Gupta,

(ii) an official from National Insurance Company Ltd, along with the documents/record pertaining to the Agency of Yugal Gupta, Agent Code No. 5115, along with a copy of the Renewed Agents License No. 360700/NAT/96/00015, valid till 8th January, 2000,

(iii) Mr. Rajendra Prasad Gupta, r/o A-190, Shastri Nagar, Delhi,

(iv) Mr. Harmohinder Singh Gujral, r/o C-1/51B, Janakpuri, New Delhi,

(v) Mr. Anand Singh Rawat, r/o H. No. 542, Kalyan Vas, Delhi, agent in Life Insurance Corporation of India (LIC) and

(vi) Mr. Baljeet Singh Anand, agent in the respondent-Company.

It was requested, by the petitioner, that he be permitted to produce the aforesaid witnesses, as and when called by the EO.

9. Enquiry proceedings were concluded, by the EO, on 11th January, 1999, whereafter, on 16th March, 1999, the EO submitted her Enquiry Report. Certain salient, and relevant, features of the Enquiry Report, may be enumerated, thus:

(i) The Enquiry Report records the request, of the petitioner, made on 11th September, 1998, for a copy of the statement, dated 27th November, 1996, of Samantaray, on which the charged-sheet placed reliance. However, the personnel Department, *vide* letter dated 24th June, 1998, informed that no such statement was in existence, and that the reference, thereto, in the charge-sheet, was a typographical error.

(ii) Apropos the request for documents, made by the petitioner *vide* his letter dated 13th October, 1998 *supra*, the Enquiry Report records thus:

> "Mr. Midha asked for seven documents to be produced during the enquiry proceedings vide his letter dt. 13.10.1998. The documents were refused as they had no relevance in the present enquiry because the enquiry pertains to a period when the Agency of Shri Yugal Gupta was fully functioning under Shri Midha and there is no base to prove or contest the origin of the agency."

(iii) The EO, *inter alia*, placed reliance on the statements of Samantaray, S. C. S. Bisht (hereinafter referred to as "Bisht") and Yugal Gupta, who deposed as management witnesses MW-1, MW-2 and MW-4 respectively.

(iv) The Enquiry Report observes that MW-1 Samantaray confirmed his statement dated 9th December, 1996, and that the application form, submitted by Yugal Gupta for renewal of the license to act as agent pertained to his branch.

(v) Bisht, it was observed, while confirming his statement dated 20th November, 1996, produced a blank cheque, No. 044210, purportedly signed by Yugal Gupta and submitted for drawing his agency commission. He further confirmed that, on 20th January, 1998, he (i.e. Bisht) had written to Yugal Gupta, residing at B-1/30, Model Town, to which Yugal Gupta had responded, on 31st January, 1998, confirming that he was, indeed, residing at B-1/30, Model Town, but denying the signature of Yugal Gupta, on the Agency License, as not being his. In the said letter, Yugal Gupta also denied having tendered the statement dated 20th November, 1996, being the holder of any account at PNB, Jangpura, or being a signatory of Cheque No. 044210. He also denied being the holder of the Driving License which was produced by the gentleman, who was introduced by the petitioner as being Yugal Gupta and, instead, produced his own driving license and ration card, as evidence of his identity. MW-2 also produced the Commission Vouchers, evidencing drawing of commission and allegedly bearing the signatures of Yugal Gupta, as verified by the petitioner.

(vi) The EO relied, further, on the statement of Yugal Gupta, resident of B-1/30, Model Town, who deposed as MW-4. MW-4 reiterated that the signatures on the application for obtaining the Agency License were not his, though they were similar to his signatures. He also disowned the signature of Yugal Gupta, figuring on Cheque No. 044210, as well as the signature on the reverse of the payment voucher, whereunder Yugal Gupta had drawn his agency commission. During cross-examination, MW-4 deposed that he was running a car repair shop, and had applied for renewal of his Agency License, with United India Assurance, in April, 1991. His agency with United India Assurance, he informed, was valid till 21st October, 1996.

10. Having thus recorded the evidence, available before her, the EO concluded her Enquiry Report, by holding thus:

> "Based on the evidences is, management witnesses produced and the P.O. brief it is established that Mr. Rakesh Midha wrongfully earned agency commission under the name of Shri Yugal Gupta's account. He put the business of M/s. Tej International under the dummy agency code No 1623 in the

name of Shri Yugal Gupta and when the Audit Team investigated the matter Mr. Midha managed to submit a false certificate on the letterhead of M/s Tej International showing their paid-up capital of 6,50,000/– whereas it was found out by the Audit Team that M/s Tej International paid-up capital was 22,00,000/– and it was informed by them vide their letter dt. 11.9.1997 and thus Mr. Midha has wrongfully earned the agency commission."

11. A copy of the aforementioned Enquiry Report, dated 16th March, 1999, was forwarded to the petitioner, who submitted his response, thereto, *vide* letter dated 1st April, 1999. The petitioner objected to the Enquiry Report, as being unreasoned. Besides, on the merits of the findings, in the Enquiry Report, against him, the petitioner contended thus:

(i) The Enquiry Report did not note the fact that MW-1 Samantaray was unaware of the number of agents working in the Bhogal branch of the respondent, and did not know the agents personally. The report also failed to record the inability, of MW-1 to reply, regarding direct agency of one of the agents, or the nature of business brought by the said agent, etc. These facts indicated that Yugal Gupta might not have been known, personally, to MW-1. Besides, it was a matter of official practice that commission cheques were handed over to the Development Officers, as the agents were independent persons, who were not required to visit the office of the respondent on a daily basis.

(ii) Apropos Bisht (MW-2), the EO failed to take stock of the fact that MW-2 further admitted that no identification, of the agent Yugal Gupta, had been taken, from him, on 20th November, 1996, on the Driving License, the statement and Cheque No. 044210. Further, MW-2 deposed that Cheque No. 044210 had been handed over, to the Vigilance Officer, by Yugal Gupta, on 20th November, 1996, and not by the petitioner, as erroneously alleged in the charge-sheet. The statement of Yugal Gupta was recorded in his absence and could not, therefore, be put to cross-examination. The EO also failed to notice the fact that MW-2 had admitted not having checked the authenticity of the Agents License, expiring on 22nd October, 1993, from United India, and as to whether the said licence had been issued by the said Company. The investigation conducted by MW-2 was, therefore, incomplete and vague. It was also suspicious, contended the petitioner, that the first attempt, to verify the postal address of the agent Yugal Gupta, had been by personal visit, after two years, with no letter, having been addressed, to Yugal Gupta, during the currency of the investigation. The petitioner also drew attention to the admission, by MW-2, that, on being queried in that regard, Tej International did not deny having issued the letter, dated 30th November, 1995, showing its paid-up capital as 6,50,000/-. The petitioner also highlighted the fact that he had never been asked, by the Audit Department, or by the Vigilance Department, of the respondent, to confirm the paid-up capital of Tej International. Reliance was also placed, by the petitioner, on the "admission", of MW-2, that he was unaware of whether the Agency Commission cheque of 3,57,852.70, had been deposited in the PNB account of Yugal Gupta. This, he submitted, indicated that the investigation, undertaken by MW-2, was inconclusive and predetermined.

(iii) Apropos MW-4 Yugal Gupta (residing at Model Town), the petitioner drew attention to the admission, by him, in his cross-examination, that he had applied for an agency, with the respondent, in May, 1991, on the basis of the license, dated 22nd October, 1993, with United India, and that he had started working, as an agent, with the respondent, since May, 1991. MW-4 had further admitted, in cross-examination, pointed out the petitioner, that he had applied for renewal of the said Agents License, to the respondent, and had obtained a renewed license, valid till 21st October, 1996. MW-4 had also admitted the signatures, on the application form, submitted for obtaining the original license (valid till 22nd October, 1993), as well as for renewal application filed in respect thereof. MW-4, he submitted, had also admitted, in cross-examination, that he had availed the Agency Commission paid by the respondent. He also admitted having applied for further renewal, of the Agency License with the respondent, to the National Insurance Co. Ltd., and had obtained a license, valid till 8th January, 2000, and that he was still working as an agent with the National Insurance Company Limited. These facts, submitted the petitioner, clearly established that Yugal Gupta was, in fact, an agent with United India Insurance Co. Ltd., and had worked as an agent with the respondent. He had also received agency commission from the respondent. The allegation that Agency Commission was drawn by a dummy agent, set up by the petitioner was, therefore, it was submitted, false.

(iv) Apropos his defence evidence, the petitioner initially faulted the EO for having allowed only two, out of the six witnesses, whose evidence he desired to lead. Thereafter, he submitted that the evidence adduced by the two defence witnesses, whose evidence was allowed, also established his case, thus:

(a) A letter, dated 17th December, 1998, was received, from United India, in which complete information, regarding the agency of Yugal Gupta, who had applied and obtained License No. 040800/1/00089/90, valid till 22nd October, 1993, issued by them, was provided. The letter also confirmed that the agency of Yugal Gupta was directly attached to the Branch Office, and also provided a copy of the ledger, showing the Agency Commission paid to Yugal Gupta, resident of B-1/30 Model Town, on the basis of the aforesaid Agents License No. 040800/1/00089/90, paid during the period 4th May, 1992 to 31st March, 1993. This, therefore, supported the deposition, of Yugal Gupta, in cross-examination, that he had obtained an Agents License, from United India Insurance Co. Ltd., worked as an agent, with the said Company under the said license, and, on the basis thereof, applied for, and obtained, and Agency License from the respondent.

(b) Similarly, the official from the National Insurance Co. Ltd., who deposed as DW-2, submitted all information, regarding renewal of the Agent License No. 040800/1/00089/90 of Yugal Gupta, valid till 22nd October, 1993, which, *vide* renewed License No. 360700/NAT/96/00015, valid till 8th January, 2000. DW-2 also confirmed that Yugal Gupta was working as an agent, with National Insurance Co. Ltd., till date.

(c) This evidence, it was submitted, clearly indicated that Yugal Gupta was an agent with United India, the respondent, and continues to be an agent with the National Insurance Co. Ltd. The allegation of his being a "dummy agent" was, therefore, false. All these facts had been admitted, by Yugal Gupta, deposing as MW-4, during his cross-examination on 16th December, 1998, but found no mention in the Report, of the EO, dated 16th March, 1999.

In the circumstances, submitted the petitioner, the Enquiry Report was not sustainable, as it had, without due justification, rejected the petitioners request for appointing a Defence Assistant, rejected his request for leading defence evidence, to the extent necessary, and not afforded, to the petitioner, proper opportunity to cross-examine MW-4

Yugal Gupta. The Enquiry Report was, therefore, it was submitted, based on surmises and conjecture, and was liable to be rejected.

12. The Manager of the respondent, as the disciplinary authority of the petitioner, proceeded, on 11th May, 1999, to pass Order No. NR/CDA/43/98, which constitutes the first order impugned in this writ petition and deserves, therefore, to be reproduced, *in extenso*, thus:

"**O R D E R**

WHEREAS the Major penalty proceedings were initiated in terms of Rule 25 of General Insurance (CDA) Rules 1975 against Shri Rakesh Midha Dev. Officer C.B.O. 19, Bhogal New Delhi vide our Charge Sheet 31-03-98 for the following misconduct:

1. He manipulated to have a dummy Agency Code No. 1623 in the name of Sh. Yugal Gupta under his organisation to earn the agency commission and try to camouflage the misdemeanour by producing a person as Sh. Yugal Gupta who is, in fact, not an Agent.

2. He having put the business of M/s Tej International under the said Agency, upon an observation by the Audit, managed to submit a certificate on the letter head of M/s Tej International showing therein a paid-up capital of 6,50,000/– to prove that there was nothing wrong in allowing the Agency Commission since the paid-up capital was less than 10,00,000 /–.

- On verification with M/s Tej International it was confirmed by them vide their letter dated 11.09.97 that their paid-up capital as on 31.03.96 was 22,00,000/–. As such agency commission was not payable. Sh. Rakesh Midha by producing a false certificate of the paid up capital of M/s Tej International caused wrongful loss to the company.

3. He by the above acts wrongfully earned agency commission to the tune of 3,57,852.70 during the period Nov. 91 to June 96 under the name of Sh. Yugal Gupta.

The Inquiry Officer Mrs. Usha Kashyap submitted her report dt. 16.03.99 holding Mr. Rakesh Midha guilty of all the charges. The copy of the report was sent to him vide our letter dt. 17.03.99 for his representation, if any, on the Inquiry Report.

AND WHEREAS the undersigned being the Disciplinary Authority in the matter after having gone through the chargesheet, his reply to the chargesheet and after careful consideration of the entire case records accepts the finding of the Inquiry Officer & observes that the conduct of the Dev. officer is blameworthy as the undersigned has sufficient and good reasons to conclude that he was having a dummy agency under code of 1623 in the name of the Sh. Yugal Gupta and he had a person impersonating as Sh. Yugal Gupta. Further he earned commission in respect of business of M/s Tej International by producing a certificate on their Letter-Head showing therein a paid up capital of 6,50,000/–, when their paid-up capital was 2200000/–, as on 31-03-96. Further he wrongfully earned agency commission to the tune of 3,57,852.70 during the period from November 91 to June 96 in the name of the Sh. Yugal Gupta.

NOW THEREFORE, the undersigned being the Disciplinary Authority in the matter in exercise of power in terms of Rule 26 of General Insurance (CDA) Rules 1975 imposes the following penalties:

1. CENSURE

2. Reduction in existing basic pay by four stages.

3. Recovering the amount of 3,57,852.70– which is the agency commission wrongly earned

during the period November 91 to June 96 in the name of Sh. Yugal Gupta.

The order of penalties comes into effect immediately and Sh. Rakesh Midha DEV. OFFICER, be informed accordingly and a copy of this order may be kept in his personnel file.

-Sd/-
(P. MAHAJAN)
MANAGER
&
DISCIPLINARY AUTHORITY"

13. A statutory appeal, preferred, by the petitioner against the above order of punishment, dated 11th May, 1999, was also rejected, by the Assistant General Manager of the respondent, in his capacity as appellate authority, *vide* order dated 16th May, 2000. The said order, after reciting the facts of the issuance of charge-sheet to the petitioner, submission of Enquiry Report by the EO, and the order, dated 11th May, 1999, of the disciplinary authority and imposition of punishment thereunder, proceeds to recite thus:

" **WHEREAS** Sh. Rakesh Midha has now preferred an Appeal against the Order dt. 11/05/99 of the Disciplinary Authority vide his Appeal dt. 26-05-99, wherein he has stated that besides other contentions he denied having produced any forged letter of M/s Tej International showing the paid up capital of 6.50 lakhs, he was denied the statement of account of Punjab National Bank and he denied having produced any person by name Sh. Yugal Gupta before the investigating officer.

WHEREAS the undersigned being the Assistant General Manager and Appellate authority in exercise of powers under Rule 37 of General Insurance (CDA) Rules, 1975 and after having examined the charges, the representation of Sh. Rakesh Midha, the grounds of Appeal and all other connected records in the matter observes that there is no material evidence brought by the charged employee on record and all the points raised by him in the Appeal have already been considered and taken care of by the Inquiry Officer as well as the Disciplinary Authority. However his conduct is blameworthy as there are various circumstantial evidences available on record to establish on preponderance of probabilities that he was having a dummy Agency in the name of Sh. Yugal Gupta and thereby earned commission to the tune of 3,57,852.70. Hence, the penalties imposed by the Disciplinary Authority are commensurate with the misconduct committed by him. In the circumstances the undersigned finds no reason to interfere with the decision of the Disciplinary Authority.

In view of the foregoing, the appeal of Sh. Rakesh Midha is rejected and in exercise of powers as the Appellate Authority confirms the penalty imposed by the Disciplinary Authority vide his Order dt. 11.05.99 which would meet the ends of justice.

The appeal is thus disposed of and Sh. Rakesh Midha may be informed suitably. A copy of the Order be kept in his personal file."

14. Aggrieved, the petitioner filed a "revision", challenging the aforesaid appellate order, dated 16th May, 2000, which was treated as a memorial and disposed of, by the Chairman-cum-Managing Director (CMD) of the respondent, *vide* order dated 26th February, 2001. To the extent it merits reproduction, the said order, dated 26th February, 2001, of the CMD reads thus:

"**AND WHEREAS** Sh. Rakesh Midha has now preferred a Memorial against the above Order and the undersigned being the Chairman-cum-Managing Director and Competent Authority to dispose of the said Memorial in terms of Rule 40 of General Insurance [Conduct, Discipline & Appeal] Rules, 1975 after carefully having gone through the charges, inquiry findings, grounds of appeal, connected record of the matter and particularly Memorial observe as under: –

1. The plea regarding amendment in the Chargesheet is not tenable. The Disciplinary Authority is at liberty to amend the Chargesheet and as long as an opportunity is being given to the other party to defend the same, the principles of Natural Justice are not violated.

2. The plea regarding defence documents is also not tenable. In Departmental Enquiry the charged Officer is entitled to ask for the defence documents for his defence which are relevant to the charge. He cannot ask for a document which is not related to the charge. The Enquiry Officer after examining the demand for a particular document gives a ruling in this regard after recording the reasons. Simply because the Enquiry Officer denied a document on merits the proceedings cannot stand vitiated.

3. Like-wise the Enquiry Officer allowing two defence witnesses to be produced by the defence out of the six demanded by them is also based on merits. The Enquiry Officer is not expected to allow all the witnesses demanded by the defence and is duty bound to examine the relevancy of the witness to the charge and the defence is allowed to produce only those witnesses. This contention of Shri Rakesh Midha of not allowing all the six witnesses is also not tenable.

4. The plea of the charged Officer that the Disciplinary Authority and the Appellate Authority are biased against him is not tenable. There is enough documentary evidence brought on record by the prosecution to prove the charges, and in the Departmental Enquiries the standard of proof required is that of "Preponderance of Probability" and not "Proof beyond Doubt" as is required in criminal cases.

5. The plea of Shri Rakesh Midha that the Disciplinary Authority cannot impose more than one penalty on him is not tenable since according to Rule 23 of the General Insurance [Conduct, Discipline &

> Appeal] Rules, 1975 "one or more penalties (mentioned in the relevant Rule) for good and sufficient reasons be imposed by the Competent Authority."
>
> In view of the above observations the undersigned does not see any reason to interfere with the Penalty earlier imposed by the Disciplinary Authority and upheld by the Appellate Authority. The Penalty imposed is commensurate with the misconduct committed by Shri Rakesh Midha. The Memorial is disposed of with these observations."

15. Thus did it come to transpire that the petitioner approached this Court, praying that the punishment order dated 11th May, 1999, the appellate order dated 16th May, 2000 and the order, dated 26th February, 2001, of the CMD, rejecting the Memorial of the petitioner, be quashed and set aside, with consequential relief to him.

Analysis

16. I have heard, at length, Mr. Mahesh Srivastava, learned counsel for the petitioner, and Mr Shoumik Mazumdar, learned Counsel for the respondent, at length, and perused the pleadings and documents on record.

17. It is trite and well-established, through a veritable phalanx of judicial pronouncements over the years, that, while reviewing, judicially, decisions taken in disciplinary proceedings, against employees and officers, the writ court does not function as a court of appeal. The jurisdiction of the writ court does not extend to re-analysis, or re-examination of the evidence, as examined and analysed by the disciplinary authority and, later, by the appellate authority and, perchance, by the reviewing authority. The task of the writ court is to ensure that the employee of the concerned gets a fair deal, and that the procedure followed by the enquiry officer, disciplinary authority and appellate/reviewing authority, is in accordance with the statutory prescriptions in that regard, if any, as well as the principles of natural justice and fair play. Once this bridge is crossed, the writ court is to concern itself, with the factual findings, of the authorities below, only with a view to examine whether they suffer from "perversity". "Perversity", if found to exist, would vitiate the findings, and entitled the employee, or Officer, to relief; absent perversity, however, the examination of evidence must begin, and end, with the authorities below, and cannot concern the writ court. The possibility that, on the same evidence, the writ court may feel an alternative conclusion to be more apposite, cannot justify interference, by it, with the decision of the authorities below.

18. While examining whether procedural requisites have been met, by the authorities below, however, the test of "prejudice" must apply; breach of procedure, which does not result in prejudice, to the officer employee concerned, is not to be treated as fatal. Though, ordinarily, the onus to establish prejudice, is on the officer, or employee so alleging, the writ court may, justifiably, in some circumstances, infer the existence of prejudice – such as inordinate or unconscionable delay in issuance of a charge-sheet, denial of adequate opportunity, to the employee to defend the charges against him, reliance on material undisclosed to the employee, and the like. Whether, in a given case, prejudice has resulted, or not, is not an issue for which straight-jacketed tests are available; ultimately, this is a matter in which the writ court has to exercise its best judgment.

19. In the entire discretionary arena of the disciplinary procedure, the only area in which a limited trespass, by the writ court, has been held to be permissible, is in the matter of quantum of punishment. Here, too, interference, with the quantum of punishment awarded by the authorities below, is permissible only where the punishment, as awarded, is found to be shockingly disproportionate – or, to use a time-worn cliché, "shocks the conscience of the court". In examining this aspect, however, the conscience of the court is expected to tread the Wednesbury pathway; if the quantum of punishment is not "unreasonable" by Wednesbury standards, it merits no interference. Where, however, applying such standards, the quantum of punishment, as meted out to the employee, or official, concerned, is shockingly disproportionate, the writ court enjoys the authority to substitute, in its place, a more befitting punishment.

20. These principles, then, delineate the peripheries of the arena within which this Court may justifiably perambulate, in reviewing, judicially, the decisions, of the disciplinary authority, the appellate authority in the reviewing authority, in the present case, finding the petitioner remiss in the discharge of his duties and, consequently, awarding, to him, the punishment of censure, along with reduction of basic pay by four stages.

21. I may observe, straightaway, that, in the present case, the argument of proportionality is not available to the petitioner. The punishment, as awarded to the petitioner was, if anything, lenient, given the finding of culpability returned by the authorities below. Indeed, Mr. Srivastava, fairly, did not press any such ground, either. Rather, his submission was that the authorities below erred, substantively as well as procedurally, in finding the charges, against the petitioner, to have been proved.

22. Can the finding of culpability, as arrived at, by the disciplinary authority, and upheld, subsequently, by the appellate and divisional authorities, sustain judicial scrutiny?

<u>Disallowance of representation by Defence Assistant</u>

23. Exception has been taken, by the petitioner, to the disallowance, by the EO, to him, of the facility of a Defence Assistant. The facts, as noted hereinabove, disclose that the petitioner had, initially, sought to avail the services of Yogesh Kumar, Senior Assistant, as his Defence Assistant. However, on Yogesh Kumar declining to so act, the petitioner desired to appoint R. L. Sharma, retired Assistant Manager, United India, as his Defence Assistant. This request was declined, by the EO, on the ground that the applicable guidelines did not permit engagement of ex-employees of the Insurance industry, as defence assistants in disciplinary proceedings.

24. The impugned disciplinary proceedings, against the petitioner, were being conducted under the CDA Rules. Rule 25 of the said Rules sets out the procedure, for imposing major penalties. Sub-rule (6), thereof, allows a charged employee to "take the assistance of any other employee", but proscribes engagement of a legal practitioner, as his Defence Assistant. "Employee" is defined, in clause (g) of Rule 2 of the CDA Rules as meaning "any employee of the Corporation and/or its subsidiaries other than casual, work charged or contingent staff". "Corporation" is defined, in clause (e) of rule 2 as meaning "the General Insurance Corporation of India referred to under Section 9 of the General Insurance Business (Nationalisation) Act, 1972". That the respondent was a "subsidiary" of the General Insurance Corporation of India, is apparent from sub-rule (3) of Rule 1 of the CDA Rules, which makes the said Rules applicable "to every person appointed to any post under the General Insurance Corporation of India and/or its subsidiary company/ies …" The invocation, against the petitioner, and the conducting of the impugned disciplinary proceedings, under the CDA Rules, therefore, amounts to an acknowledgement of the fact that, for the purpose of application of the said Rules, the respondent is liable to be treated as a "subsidiary company" of the General Insurance Corporation of India. The petitioner, therefore, qualifies as an "employee", within the meaning of clause (g) of Rule 2 of the CDA Rules.

25. In fact, research, conducted by this Court, reveals that National Insurance, New India Assurance, the respondent and United India Insurance, were the four subsidiaries of the General Insurance

Corporation of India and achieved autonomy consequent to the Insurance Regulatory and Development Authority of India Act, 1999. In 1975, therefore, the respondent, as well as United India, were subsidiary companies of the General Insurance Corporation of India. Employees of both, i.e. of the respondent as well as of United India, therefore, qualified as "employees", within the meaning of clause (g) of Rule 2 of the CDA Rules.

26. To this extent, there is really no dispute. The ground, on which the request, of the petitioner, to engage R. N. Sharma as his Defence Assistant, was turned down, by the EO, was that the CDA Rules did not permit engagement of an "ex-employee" as a Defence Assistant.

27. This, in my view, however, would amount to according, to clause (6) in Rule 25 of the CDA Rules, an unduly narrow interpretation. Admittedly, the CDA Rules do not expressly proscribe the engagement, of a retired employee, as a defence Assistant. The EO – and, later, the disciplinary authority, the Appellate Authority and the CMD of the respondent – have chosen to apply, to sub-Rule (6) of Rule 25, a hyper-technical construction, by interpreting the expression "employee" as a person who was currently, i.e. at the time of conducting of the disciplinary proceedings against the petitioner, an employee. In my opinion, this amounts to hair-splitting, resulting in denial, to the petitioner, due opportunity.

28. While interpreting clauses, in the CDA Rules, providing for technical and procedural requirements in the conducting of disciplinary proceedings against an employee, it must be borne in mind that an individual is pitted against an institution and is, therefore, already severely handicapped. It is the institution which has issued the charge-sheet to the employee, and it is the institution itself that adjudicates it. The EO, as well as the DA, are employees of the very institution which has charged the concerned officer with misconduct, and is adjudicating on the charge. While these may not, legally, be inhibiting circumstances, they admittedly place the employee at a disadvantage, and it is imperative, therefore, that technical and procedural stipulations, governing the conduct of the disciplinary proceedings, are expansively interpreted, with a view to extending, to the employee – who stands alone – maximum possible opportunity to defend himself. Else, there is failure of due process.

29. There is no dispute about the fact that R. N. Sharma, during the tenure of his service with United India, qualified as an "employee", within the meaning of clause (g) of Rule 2 of the CDA Rules. In my considered opinion, and according, to sub-Rule (6) of Rule 25 of the CDA Rules, a purposive interpretation, he could not be treated as having ceased to be an "employee", for the purpose of application of the said sub-Rule, and his engagement, as Defence Assistant, thereunder, in the absence of any such indication, in the body of the Rules, either express or necessarily to be implied, to be vitiated. The principle of purposive interpretation has, in ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla***[1] and ***Richa Mishra v. State of***

[1] **2015 (11) SCALE 84**

Chhattisgarh[2], been held to have, with the evolution of the law, overtaken the principle of "literal construction" as the "golden rule" of interpretation of statutory instruments.

30. I may observe, in this context, that a Division Bench of the High Court of Rajasthan has, in ***D. K. Chaplot v. Regional Manager, National Insurance Co.***[3], taken the same view. I express my respectful concurrence with the said decision.

31. The disallowance, by the EO, of the request, of the petitioner, to engage R. N. Sharma, as his Defence Assistant has, therefore, necessarily to be held to have been infracted Rule 25 (6) of the CDA Rules.

32. A right to due representation is a fundamental facet of due process, and of natural justice and fair play. Where, therefore, the applicable Rules, governing the disciplinary proceedings, permit the engagement of a Defence Assistant, and the EO does not extend, to the employee, the said permission, the proceedings stand entirely vitiated, for want of grant of due opportunity to the charged officer.[4]

33. This submission of the petitioner, as articulated, before me, by Mr. Srivastava, therefore, merits acceptance.

---

[2] **JT 2016 (2) SC 106**
[3] **(2002) 3 SLR 536 (Raj – DB)**
[4] **Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442, C.L. Subramaniam v. Collector of Customs, Cochin, (1973) 3 SCC 542, Govt. of NCT of Delhi v. Ashok Kumar, 2017 SCC OnLine Del 6760; Management of Jhabban Lal Dav Secondary School v. K. M. Yadav, 2018 SCC OnLine Del 9097; Kanhaiya Lal v. UOI; MANU/GH/0104/2018**

On merits

34. Proceeding, now, to the meat of the matter.

35. There are, essentially, two allegations against the petitioner. The first was that, in order to fraudulently enrich himself by agency commission, to the tune of 3,57,852.70, the petitioner created a dummy, or fictitious agent, by name Yugal Gupta, into whose account agency commission was deposited and, subsequently, was withdrawn by the petitioner, using cheques, allegedly signed by Yugal Gupta in advance. The second was that the petitioner had misrepresented the paid-up capital of M/s Tej International as 6,50,000/–, instead of the actual figure of 20,00,000/-, so as to make it appear that Yugal Gupta, as the agent for Tej International, was entitled to agency commission.

36. Para 1 of the Articles of Charge against the petitioner, which dealt with the first of the above two allegations, read thus:

> "He manipulated to have a dummy Agency Code No. 1623 in the name of Sh. Yugal Gupta under his organisation to earn the agency commission and tried to camouflage the misdemeanour by producing a person as Sh. Yugal Gupta who in fact is not an Agent having Agency Code No. 1623"

37. The corresponding paragraphs, in the Statement of Misconduct, following the Articles of Charge, dealing with the aforesaid allegation, read thus:

“One Sh. Yugal Gupta is working as an Agent under the Organisation of Sh. Rakesh Midha under Agency code no.- 1623. In the name of Sh. Yugal Gupta there is a S. B. A/c. No.- 29223 in PUNJAB NATIONAL BANK, Bhogal which was introduced by Sh. Rakesh Midha. As per the Agency Renewal application of the Sh. Yugal Gupta his Residential address has been shown as B-1/30, Model Town, Delhi-110009. However, upon verification it was found that although one Sh. Yugal Gupta is residing at the said address, neither he has anything to do with the Insurance Agency no.- 1623, nor he has the S. B. A/c. No.- 29223 with Punjab National Bank, Bhogal.

Sh. Rakesh Midha produced a person before Mr. S. C. S. Bisht, A. M., Vigilance Cell, New Delhi who was stated to be Sh. Yugal Gupta, Agent. The said person, as a proof of his identity handed over a Photocopy of his Driving License No.- 56318 indicating therein his Residential Address as B-56, Railway Road Karnal (Haryana). As per the said Yugal Gupta, up to March ‘96 he was staying at Model Town and then shifted to Karnal whereas as stated above this was denied by Sh. Yugal Gupta who is the resident of Model Town. Thus it is clear that Sh. Rakesh Midha stage managed a person as Sh. Yugal Gupta to camouflage his misdemeanour of having a dummy agency and a dummy Bank Account in order to earn wrongful Agency commission.

It is further stated by the Sr. Branch Manager, B.O.- Bhogal, Sh. S. K. Samantaray in his statement dt. 09/12/96 that the Agency commission cheques in the name of Sh. Yugal Gupta were taken by Sh. Rakesh Midha used to give him presigned cheques for withdrawing the amount from Sh. Yugal Gupta. He has stated in his statement dated 27/11/96 that Sh. Rakesh Midha used to give him presigned cheques for withdrawing the amount from Sh. Yugal Gupta’s Account.

Thus Sh. Rakesh Midha, Dev. Officer wrongfully earned agency commission under the name of Sh. Yugal Gupta as detailed below:

Nov ’91 to March ’92	18949.10
April ’92 to March ’93	74941.85
April ’93 to March ’94	63833.30
April ’94 to March ’95	86576.00

April '95 to March '96	98299.65
April '96 to June '96	15252.80
	357852.70

> The Agency Commission was released on the basis of certification of the identity of the agent by Sh. Rakesh Midha by attestation of the signature of the agent. This has been confirmed by the Sr. Branch Manager."

38. The specific ingredients of allegation against the petitioner were, therefore, that (i) the agency commission cheques, in the name of Yugal Gupta, were taken by the petitioner, (ii) the petitioner used to give pre-signed cheques, for withdrawing the amount from the account of Yugal Gupta, (iii) for this purpose, the signature of Yugal Gupta was verified by the petitioner, (iv) the person at the address reflected in the Agency Renewal application of Yugal Gupta (B-1/30, Model Town), however, though bearing the same name (Yugal Gupta), claimed to have nothing to do with the Insurance Agency No. 1623, or with the Savings Bank account No. 29223, held by the alleged agent, Yugal Gupta, with the PNB, and (v) though the petitioner produced, before Bisht, a person, who identified himself as Yugal Gupta and handed over, as proof of identity, a photo copy of his driving license, and who claimed to have been residing at Model Town till March 1996, this fact was denied by the person (Yugal Gupta) actually found residing at B-1/30, Model Town. On the basis thereof, it was alleged that an impersonator had been produced, by the petitioner, as being Yugal Gupta, and that, in fact, the petitioner had created a dummy agent, a dummy agency, and a dummy bank account, so as to wrongfully enrich himself, with the Agency

Commission amount, deposited in the name of the allegedly fictitious Yugal Gupta.

39. The EO has, in her Enquiry Report dated 16th March, 1999, referred to the evidence of the Management Witnesses and the Defence Witnesses, and has gone on to opine that, in view of the said evidence, read with the brief of the Presenting Officer, the charge, against the petitioner, stood proved.

40. As has already been observed, hereinabove, the parameters of judicial review, inherent in this Court by virtue of Article 226 of the Constitution of India, do not permit a re-appreciation of evidence, already appreciated by the EO. At the same time, this Court is bound to examine whether the manner in which the evidence was appreciated by the EO suffers from perversity. ***Triveni Rubber & Plastics v. Collector of Central Excise***[5] contains the following, authoritative, definition of "perversity", applied in the context of discharge of judicial, or quasi-judicial, functions:

> "An order suffers from perversity, if relevant piece of evidence has not been considered or if certain inadmissible material has been taken into consideration or where it can be said that the findings of the authorities are based on no evidence at all or if they are so perverse that no reasonable person would have arrived at those findings."

This definition has, later, been cited, by the Supreme Court itself, in ***Prem Kaur v. State of Punjab***[6].

---

[5] **1994 Supp (3) SCC 665**
[6] **(2013) 14 SCC 653**

41. The person who was, allegedly, produced by the petitioner, before Bisht, claiming him to be Yugal Gupta, Agent, tendered the following statement:

> "This is to bring to your kind notice that I, Yugal Gupta S/o late B. B. Gupta is residence of A-56-59 Railway Road Karnal.
>
> My nature of job previously was of insurance vide agency no. 1623 with Bhogal Branch. Now I am doing my trading business of polythene bags and rolls. I became agent about 4/5 years back. I have opened a SB A/c with PNB no. 29223 at Bhogal. This account was introduced by my Development Officer Shri Rakesh Midha. I am still operating that account myself.
>
> I was earlier living in Delhi till March 1996. I was staying in Model Town. I do not remember the house no. I was helping my father in his business at that time. My father expired in July 5th, 1996. The House at Model Town was on rent. Now I and all my close relatives are in Karnal. No relative is in Delhi. My father and Shri Mr. Midha's father were known to each other therefore I know Mr. Rakesh for many years.
>
> I have opened my account in Bhogal PNB because it was near to Oriental I have no other account in Delhi. This account is operated duly for agency commission. I was collecting the cheques of my commission from the oriental and depositing in PNB. I have issued some cheques in the name of Mrs. Laj Devi (mother of Shri Rakesh Midha) Mrs. Seema Midha (Mrs. Of Mr. Midha) and Shri S. L. Midha also. One cheque was issued in the name of Jupiter consultant. These cheques were issued because I was collecting cash from respected parties from time to time. I have also issued a cheque for 6779 in favour of Oriental which was against some insurance policy, where premium was not received by me from that party. One cheque was issued to Shri Rakesh Midha 12550. I was canvassing the business on behalf of oriental and Shri Rakesh Midha was issuing the Cover notes. I had neither the cover note book nor the authority to issue the cover note. I

have requested Mr. Rakesh Midha to close my agency with oriental, the account is still open but there is no transaction in it.

Perusal of license for Agency renewal dated nil bears my signature. This form was not filled by me. I am signing this form today. This signature (Yugal) is my original signature which is in PNB Account no. 29223.

I am submitting a photocopy of my D/licence 56318 which also I am signing I have also brought the cheque book which has ch. No. 044210 to 044220 as blank. I am giving my once cheque 044210 with my signature as my specimen.

Sd/-
Yugal"

42. On 31st January, 1998, Yugal Gupta, residing at B-1/30, Model Town, responding to certain queries addressed by the respondent, asserted that the signature, on the License No. DO/040800/1/00089, expiring on 22nd October, 1993, was not his, that he was not the deponent to the statement, allegedly made by Yugal Gupta, that he had no Account No. 29223 in PNB, Jangpura, that the signature, on Cheque No. 044210 was not his, that the Driving License No. 56318 was also not his, that he was not a resident of B-56, Railway Road, Karnal, and that he had not received any commission from the respondent.

43. Yugal Gupta, the signatory to the above-mentioned letter dated 31st January, 1998, also deposed as a Management Witness, during the enquiry proceedings. In his examination-in-chief, Yugal Gupta denied the signatures, on the application for renewal of agency license, Cheque No. 044210, of PNB, Jangpura, and on the payment voucher, whereby agency commission was paid to Yugal Gupta on 1st May, 1995, asserting that they were not his. In cross-examination, however, Yugal Gupta admitted (i) having applied, for Agency, with the respondent, on the basis of the Agency License issued by United India Insurance Company limited, (ii) the signatures, on the said application for license, submitted to the respondent, as being his, and (iii) having taken commission, from the Bhogal branch of the respondent.

44. Bisht, too, deposed, during the enquiry proceedings, as a Management Witness. In his examination-in-chief, Bisht testified that the petitioner had produced a person, introducing him as Yugal Gupta, on 20th November, 1996, and that he had recorded the statement of the said person, who produced a driving license and Cheque No. 044210, of PNB Jangpura, with his signature. He also confirmed that the Agency Commission voucher No. 00074, dated 1st May, 1995, whereunder agency commission had been paid to Yugal Gupta, contained, on the reverse thereof, the signature of Yugal Gupta, certified by the petitioner. Bisht was cross-examined by the petitioner, and testified, therein, that the person, stated to be Yugal Gupta, had been produced by the petitioner after various requests had been made, to him, by Bisht and other officers. He also drew attention, during his cross-examination, to the statement made by Yugal Gupta, before him on 20th November, 1996, to the effect that he had issued cheques in favour of family members of the petitioner. He confirmed that, on 20th November, 1996, he had obtained the signature of Yugal Gupta on the Agency License No. DO/00020/95. At the same time, he admitted that the statement of Yugal Gupta had been taken, by him, in the absence of anyone else, and that, during the recording of the said statement, the petitioner was seated outside the room.

45. Examining the legality and propriety of the findings against the petitioner, as entered by the EO and upheld, successively, by the disciplinary authority, the appellate authority and the CMD of the respondent, the first feature, which becomes immediately apparent, is the complete lack of reasons, at any stage of the proceedings. The EO, under the heading "Evaluation of C.E.'s Report", in her Enquiry Report dated 16th March, 1999, merely states that, "regarding the remaining points as mentioned in his report every point has been clarified and recorded in the order sheets from 1 to 23 and in my enquiry report now being submitted to the Disciplinary Authority". Thereafter, the "Conclusion", which follows, is, admittedly, "based on the evidences, management witnesses produced and the P.O. Brief". Apparently, therefore, the defence, of the petitioner, to the allegations against him, did not, in the EO's opinion, warrant serious consideration at all. Following this observation, the EO holds that the allegations, against the petitioner, stood established. No evidence of independent appreciation, by the EO, of the material on record, or the contentions advanced by the petitioner, in his defence, are forthcoming in the Enquiry Report.

46. The petitioner submitted his representation, against the Enquiry Report, on 1st April, 1999. The various points, raised by the petitioner that the said representation, already stand enumerated in para 11 *supra*. The Order of punishment, dated 11th May, 1999, passed by the disciplinary authority, however, far from reflecting any appreciation of the aforesaid representation, dated 1st April, 1999, submitted by the petitioner, does not even deign to make reference thereto. The disciplinary authority, admittedly, has passed the impugned Order, dated 11th May, 1999 "after having gone through the chargesheet, his reply to the chargesheet and after careful consideration of the entire case records". No reference, to the representation, dated 1st April, 1999, submitted by the petitioner, finds place in the said order. Neither is there, in the Order, a single word, reflecting independent appreciation of mind, by the disciplinary authority, or any finding that may be treated as having returned by the disciplinary authority. All that the disciplinary authority states is that, after having gone through the charge-sheet, the reply, of the petitioner, to the charge-sheet and considering the entire case records, he "accepts the findings of the Inquiry Officer & observes that the conduct of (the petitioner) (was) blameworthy". What follows, thereafter, in the said paragraph of the Order, dated 11th May, 1999, is merely a reiteration of the allegations in the charge-sheet issued to the petitioner.

47. Equally perfunctory, unfortunately, was the Order, dated 16th May, 2000, passed by the appellate authority, which merely observes that no "material evidence" had been brought on record by the petitioner, and that "all the points raised by him in the appeal (had) already been considered and taken care of by the Inquiry Officer as well as the Disciplinary Authority." Nevertheless, observes the said Order, the petitioner's "conduct (was) blameworthy as there (were) various circumstantial evidences available on record to establish on preponderance of probabilities that he was having a dummy Agency in the name of Sh. Yugal Gupta and thereby earned commission to the tune of 357,852.70”.

48. The Order, dated 26th February, 2001 (also impugned in the writ petition), passed by the CMD, dismissing the memorial, submitted by the petitioner against the aforesaid appellate Order dated 16th May, 2000, merely records findings regarding the challenge to the amendment, by the EO, of the charge-sheet after commencement of enquiry, non-furnishing of defence documents (to which I would allude, in some greater detail, hereinafter), the decision, of the EO to allow only two defence witnesses, and the plea of bias and double jeopardy. No finding, regarding the submissions, by the petitioner, apropos the merits of the allegations, against him, finds place, in the said Order, of the CMD, either.

49. The disciplinary authority, appellate authority and, if so available, the revisionary authority, concerned with disciplinary proceedings against an employee of an organisation, exercise quasi-judicial, not pseudo-judicial, functions. While the law does not require, or even expect, orders, passed by these authorities, which constitute, essentially, part of the administrative hierarchy of the organisation, they cannot afford to be perfunctory, either. The consequences, of a disciplinary proceeding, on an employee, are often more psychosocially, then materially, damaging. The image of the employee gets irretrievably tarnished and, often, even if the employee succeeds before a Court of law, the damage done is irreversible. It is of utmost essence, therefore, that decisions taken by authorities, in the administration, dealing with such issues on a quasi-judicial basis, reflect due awareness, on their part, of the gravity thereof. Among the most fundamental requisites, of such discharge, is the providing of reasons, while holding against the employee, or officer, concerned.

50. A comparison, of the allegations against the petitioner, vis-à-vis the petitioner's defence, and the evidence that emerged, reveals the following:

(i) The charge, against the petitioner, as levelled in the charge-sheet dated 31st March, 1998, could, essentially, be sub-divided into four ingredients, viz.

(a) that the petitioner had created a dummy agency, with Agency Code No. 1623, in the name of a dummy agent Yugal Gupta, in whose name a dummy Savings Bank Account No. 29223 had also been opened with the PNB, Jangpura Branch,

(b) that agency commission, deposited in the said bank account, was withdrawn, by the petitioner, by presenting, to Samantaray, pre-signed cheques, purporting to bear the signature of the fictitious agent Yugal Gupta,

(c) that, when questioned in this regard, the petitioner produced, before Bisht, a person, who claimed to be Yugal Gupta, holding an Agency with the respondent, and also claimed to have been staying in Model Town, before shifting to Karnal, and

(d) that the petitioner submitted a false certificate, dated 10th November, 1995, on the letterhead of Tej International, reflecting its paid-up capital to be 6,50,000/–, so as to illegally avail agency commission, whereas Tej International, in its letter dated 11th September, 1997, intimated that it is paid-up capital, on 31st March, 1996, was 22,00,000/–.

(ii) In his reply, dated 6th May, 1998, to the charge-sheet, the petitioner asserted thus:

(a) Yugal Gupta could not be regarded as a dummy, or fictitious, agent. He had been working as an agent, with the respondent, since 1991, prior to which he was working as an agent with United India, *vide* Agency License No. 040800/1/89/90, which continued from 23rd October, 1990 to 22nd October, 1993. In fact, he had been permitted to work, as an agent, by the respondent, on the basis of the said earlier agency, held by him with United India.

(b) Agency commission, on behalf of agents, was often collected by the concerned Development Officers, in whose branch the agent worked, so that the agent would not have to daily visit the respondent. All agency commission, paid to Yugal Gupta, was duly credited in the account of Yugal Gupta. The petitioner had never withdrawn any amount from the said account, and there was no evidence to justify this allegation.

(c) The allegation, of the petitioner having submitted a false certificate, of Tej international, in which its paid-up capital was wrongly shown, was also denied. The veracity of the letter, dated 11^{th} September, 1997, purportedly written by Tej International, on which the charge-sheet placed reliance, was also questioned.

(iii) In order to establish these assertions, advanced by him in his defence, the petitioner, *vide* letter dated 13^{th} October, 1998, sought for, *inter alia*, copies of

(a) the application for agency, submitted by Yugal Gupta to the respondent,

(b) Agents License No. 040800/1/00089, issued by United India to Yugal Gupta, valid till 22^{nd} October, 1993,

(c) Agents License No. DO/00028/95, issued to Yugal Gupta by the respondent,

(d) the letter, addressed by the Bhogal Branch of the respondent, recommending renewal of the said Agents License issue to Yugal Gupta,

(e) Commission Payment Vouchers, reflecting payment made to Yugal Gupta for the period November, 1991 to May, 1996, and

(f) the statement of Savings Bank Account No. 29223, held by Yugal Gupta with the PNB, Jangpura, for the period November, 1991 to May, 1996.

(iv) These documents were, *ex facie*, necessary, in order to enable the petitioner to defend the charges against him. The Agents License No. 040800/1/00089, issued by United India, may have established that Yugal Gupta had, in fact, been a registered Agent with United India, even before joining as an agent with the respondent. The actual fact of agency, of Yugal Gupta, with the respondent, may have been established by the Agency Application, submitted by him to the respondent, Agents License No. DO/00028/95, issued to him by the respondent and the letter, of the respondent, recommending the renewal thereof. The statement of the Savings Bank account, held by Yugal Gupta with the PNB, Jangpura, for the period November 1991 to May, 1996, may have indicated whether any amounts, as allegedly withdrawn by the petitioner had, in fact, so been withdrawn (though this would, even if established, not have proved the allegation that the petitioner had withdrawn the amount and misappropriated it). I use the expression “may” studiedly, as this Court does not intend to enter into any examination of the evidence, thereby donning the mantle of the EO, or of the DA; the relevance of the documents, sought by the petitioner cannot, nevertheless, be gainsaid.

(v) The Enquiry Report, dated 16th March, 1999, of the EO, rejected the petitioners request for being provided copies of the above mentioned documents, not on the ground that the documents did not exist, but because "they had no relevance in the present enquiry because the enquiry pertains to a period when the Agency of Shri Yugal Gupta was fully functioning under Shri Midha and there is no base to prove or contest the origin of the agency". To my mind, this finding of the Enquiry Officer, and the decision of the Enquiry Officer to deny, to the petitioner, the documents sought by him, are manifestly violative of the principles of natural justice, and also suffer from perversity. The observation, of the EO, that "the enquiry pertains to a period when the agency of Shri Yugal Gupta was fully functioning under Sh. Midha and there is no base to prove or contest the origin of the agency", in fact, itself negates the allegation, in the charge-sheet, that Yugal Gupta was a dummy agent. In observing thus, the EO impliedly accepts the fact that an agent, by name Yugal Gupta was, in fact, working with the respondent. This observation, in fact, takes the wind away from the sails, as it were, of the most fundamental allegation in the charge-sheet, as levelled against the petitioner. Besides, the observation is clearly perverse, as it fails to notice – intentionally or otherwise – the fact that the charge-sheet against the petitioner was premised on the assumption that Yugal Gupta, into whose account agency commission was paid and, subsequently, misappropriated by the petitioner, was a dummy/fictitious agent. It is impossible to understand, therefore, how the EO held that there was "no base to prove or contest the origin of the agency". The EO had, therefore, either not even understood the Government of the allegations against the petitioner, or was determined not to allow documents to the petitioner, on one ground or the other.

(vi) The inequity inherent in the above approach of the EO is underscored by the fact that as many as ten documents were permitted to be produced by the respondent-Management. The EO, thereby, ensured that the petitioner would *not* be provided with a level playing field, which is the *sine qua non* of due process and fair play.

(vii) In the opinion of this Court, ordinarily, documents sought by a charged officer, the providing of which lies within the power of the management/establishment, ought to be provided to him. The EO is not, ordinarily, expected to sit in appeal over the decision of the charged officer, regarding the documents which, according to him, are necessary for his defence. Of course, if it does not lie within the province of the management, to provide the said documents, or if the request for documents is found to be manifestly unreasonable, or a deliberate attempt to protect, or otherwise frustrate, the disciplinary proceedings, the request for providing documents may be denied. In such an event, however, the precise reason for denying the said request would necessarily have to find place in the Enquiry Report. The reasons cited by the EO, in the Enquiry Report, dated 16th

March, 1999, in the present case, i.e., that the documents, requested by the petitioner, were not relevant to the enquiry, conveniently omits to notice the fact that the documents were, in fact, extremely necessary, for the petitioner to be able to establish the points raised, by him, in his defence. They cannot, therefore, sustain.

(viii) Insofar as the rejection, by the EO, of the request, of the petitioner, to lead the evidence of as many as four, out of six defence witnesses named by him, is concerned, the Enquiry Report records that the "remaining witnesses were not relevant to the present enquiry". I am unable to appreciate this finding. The very substratum of the charge, against the petitioner, was that he had set up an impersonator, representing him to be an agent of the respondent. Reliance has been placed, in the Enquiry Report, on the statement, allegedly tendered by the said impersonator, before Bisht, as well as the statement of Yugal Gupta, stated to have been found residing at B-1/30, Model Town. When, by leading the evidence of these witnesses, the respondent was permitted, by the EO, to support its allegation that the gentleman, produced by the petitioner and stated, by him, to be Yugal Gupta was, actually, an impersonator, it stands to reason that the petitioner had to be given adequate opportunity to establish otherwise. The proposed witnesses at S. Nos. 3 to 6 of the letter dated 27th November, 1998 *supra*, especially Anand Singh Rawat, agent, LIC and Baljeet Singh Anand, agent of the respondent itself, could have confirmed, one way or the other, whether the person, produced by the petitioner, and alleged to be an impersonator was, in fact, an impersonator. The EO has not condescended to provide any justification for her finding that the persons, named at S. Nos. 3 to 6 of the letter, dated 27th November, 1998, were not relevant to the enquiry against the petitioner. In ***Hardwari Lal v. State of U.P.***[7], the Supreme Court declared the entire disciplinary enquiry, against the appellant, before it, to be vitiated on the sole ground that two relevant witnesses had not been produced in the witness-box. There is no reason why this principle would not apply, even in a case in which the charged officer is prevented from producing evidence, of witnesses relevant for his defence. The wholesale rejection, by the EO, of the request, of the petitioner, to lead the evidence of the said persons, with no reason, therefor, being forthcoming, has also, therefore, necessarily to be regarded as arbitrary and violative of the principles of natural justice.

(ix) Proceeding to the evidence that emerged during the course of the enquiry, the following aspects are significant:

(a) <u>Regarding the allegation that the petitioner had created a dummy agent, a dummy agency, and a dummy bank account, and had withdrawn agency commission, from the said bank account, deposited in the name of the dummy agent Yugal Gupta</u>:

---

[7] **(1999) 8 SCC 582**

(i) This allegation was based, essentially on the alleged denial, by Yugal Gupta, residing at B-1/30, Model Town, of any connection with Agency Code No. 1623, or with the Savings Bank account No. 29223, with PNB, Jangpura, and on the statement, of Samantaray, to the effect that the petitioner was withdrawing the agency commission, deposited in the name of the alleged dummy agent Yugal Gupta, in the aforesaid Savings Bank account, using cheques, pre-signed by Yugal Gupta.

(ii) In his reply to the charge-sheet, the petitioner denied the allegation that Yugal Gupta was a dummy, or fictitious, agent, set up by him in order to earn unlawful agency commission. He pointed out that Yugal Gupta had, in fact, been working as an Agent which the respondent, since 1991, prior to which he was an Agent with United India, with Agent's License No. 040800/1/89/90, which was valid from 23rd October, 1990 to 22nd October, 1993, and that he had, in fact, been permitted to work as an agent, by the respondent, on the basis of the said license, held by him with United India from a prior point of time. Insofar as collection of Agency Commission was concerned, the petitioner contended that it was a matter of normal practice for Agency Commission to be collected by Development Officers, on behalf of the Agents, so as to obviate the requirement of the Agents visiting the respondent's office. The petitioner categorically denied having ever misappropriated any amount, from the account of Yugal Gupta, and pointed out that there was no evidence to support this allegation.

(iii) MW-4 Yugal Gupta admitted, during cross-examination,

(a) that he was the holder of Agents License No. 040800/1/89/90, of United India, which was valid till 22nd October, 1993

(b) having applied for agency, with the respondent, on the basis of the earlier Agents License No. 040800/1/00089/90, issued by United India and held by him,

(c) consequent to the application having been allowed, having started working, as an Agent, with the respondent, from May, 1991, and

(d) having applied, to the respondent, for renewal of agency, whereupon he was issued License No. DO/00028/95, by the respondent, valid till 21st October, 1996, and

(e) having availed agency commission, from the respondent.

(iv) The petitioner, too, produced a letter, dated 17th February, 1998, issued by United India, acknowledging that Agents License No. 040800/1/89/90 had been issued to Yugal Gupta, resident of B-1/30, Model Town. A copy of the application, submitted by MW-4 Yugal Gupta, for renewal of the said Agency with United India, was also produced by R. K. Gupta, who testified as a defence witness on behalf of the petitioner. He was not cross-examined.

(v) Bisht, testifying as MW- 2 during enquiry, also admitted that Agency License No. DO/00028/95, valid till 21st October, 1996, had been issued to MW- 4 Yugal Gupta, on the basis of the Agents License No. 040800/1/00089/90, issued to him by United India.

(vi) MW- 1 Samantaray, in cross-examination, confirmed that, as a matter of practice, payment of agency commission was given to Development Officers, except where the agent concerned himself visits the office of the respondent. The petitioner's submission that collection of the agency commission of Yugal Gupta, by him, was not irregular, was therefore, supported by the evidence, during enquiry, of the witness of the management itself.

(vii) Bisht, testifying during the enquiry proceedings as MW- 2, acknowledged that the Agency Commission cheques had been submitted, not by the petitioner, but by Yugal Gupta himself.

(viii) The petitioner categorically denied having withdrawn any amount, from the account of the agent Yugal Gupta. Bisht, in cross-examination, also admitted never having checked the account of Yugal Gupta, to ascertain whether the amount of 3,57,852.70 had been deposited in the said account, and had, or had not, been withdrawn therefrom.

Cumulatively seen, the above evidence could, *prima facie*, lead to an inference that, in fact, MW-4 Yugal Gupta, resident of the B-1/30, Model Town, was working as an agent, with the respondent, and that he had been permitted, initially, to work as an agent on the basis of Agency License No. 040800/1/00089/90, issued to him by United India, whereafter he applied for renewal of agency, and was issued Agents License No.

DO/00028/95 by the respondent, valid till 21st October, 1996. It also appears that MW-4 Yugal Gupta had, indeed, availed agency commission from the respondent. Insofar as the allegation of the agency commission cheques, payable to the agent Yugal Gupta, having been handed over to the petitioner, while the correctness of this allegation is doubtful on facts, Samantaray confirmed that this was part of normal practice in the respondent-institution. No evidence, of any amount having been withdrawn, by the petitioner, from the agency commission deposited in the account of Yugal Gupta, came on record and, rather, Bisht, testifying on behalf of the respondent during enquiry, acknowledged that he had not checked the account of Yugal Gupta, *inter alia* regarding the amount of 3,57,852.70.

(b) Re. the allegation that the petitioner had produced an impersonator as Yugal Gupta:

The petitioner categorically denied this allegation and, in fact, in his various representations and appeal, consequent to the decision of the disciplinary authority, pointed out that there was no evidence, supporting this allegation. The submission merited consideration. In fact, the only material, to support the said allegation, was the statement of Bisht, who testified that the petitioner had produced the "fictitious" Yugal Gupta before him, and that he had recorded his statement. Strangely, however, the statement was recorded in the absence of the petitioner, with the petitioner being made to sit outside the room, as admitted by. There is no explanation therefor. Even more significantly, there is no explanation for why the respondent did not choose to lead the evidence of the said allegedly "fictitious" Yugal Gupta, as a Management Witness. In ***Hardwari Lal***[7], as already noted hereinabove, the Supreme Court declared the entire disciplinary enquiry, against the appellant, before it, to be vitiated on the sole ground that two relevant witnesses had not been produced in the witness-box.

(c) Re. Allegation pertaining to M/s Tej International:

There is substance in the submission, of Mr. Srivastava, that the very allegation, in the charge-sheet issued to his client, with respect to Tej International, is difficult to understand. The certificate, dated 30th November, 1995, submitted by the petitioner on the letterhead of the Tej International, reflecting its paid-up capital to be 6,50,000/–, is sought to be castigated as a misrepresentation, on the ground of a subsequent communication, dated 11th September, 1997, allegedly by Tej International, reflecting the paid-up capital, of the said Company, as 22,00,000/–, on 31st March, 1996. Mr. Srivastava submits that, even if it were to be assumed that, on 31st March, 1996, the paid-up capital of

Tej International Private Limited was 22,00,000/–, that, by itself, did not indicate the paid-up capital of 6,50,000/–, as on 30th November, 1995, to be a misrepresentation. That apart, the respondent did not choose to lead the evidence of Tej International, and the petitioner specifically drew the attention, of the EO, the disciplinary authority, the appellate authority and the CMD of the respondent, to the fact that Tej International had never specifically disowned the letter dated 30th November, 1995.

51. I have already observed, hereinabove, that the jurisdiction of a writ court, exercising judicial review over disciplinary proceedings, and the decisions taken therein by the competent authority/authorities, is not appellate in character. This Court does not, therefore, revisit the evidence, or sit and wait to arrive at any conclusion, this way or that, regarding the correctness of the charges against the employee, or official, concerned. The jurisdiction exercised by this Court, in such cases, is essentially of the nature of *certiorari*, concerned more with the manner in which the authorities below have acted, rather than with the merits of their decisions. At the same time, perversity, as also noted hereinabove, vitiates the acts of the authorities below. A decision is to be treated as perverse, where it does not consider relevant aspects, or takes, into account, irrelevant considerations. I have, in para 50 *supra*, referred to the evidence forthcoming before the authorities below, and the submissions of the petitioner, advanced in his defence, only to underscore the aspects, which, in due and inexorable succession, the EO, the disciplinary authority, the appellate authority, and the CMD, have *failed to address*, thereby rendering their decisions perverse in law. In the present case, the recital, hereinbefore, makes it clear that several issues arose for consideration, before the EO, the disciplinary authority and, subsequently, the appellate authority and the CMD. The charges, against the petitioner, involved disputed issues of fact. The onus to establish that the petitioner had committed misconduct was, unquestionably, on the respondent. Absent discharge of such initial onus, the petitioner could not be burdened with the responsibility of defending himself against the allegations. The petitioner was also entitled to be extended all due opportunity, and to the benefit of the principles of natural justice and fair play.

52. In the present case, the proceedings stand vitiated at nearly every stage. Documents, sought by the petitioner, and necessary for his defence, were denied to him, without any reason whatsoever. The request, of the petitioner, to lead the evidence of seven defence witnesses, was also substantially rejected, with the evidence of only to defence witnesses being allowed. The evidence of the said two defence witnesses, clearly, supported the case of the petitioner. There is complete absence of reasons, or of any application of mind, by the disciplinary authority, the appellate authority and the CMD, to the merits of the allegations against the petitioner, and his defence thereto. Some application of mind is apparent, if at all, only in the order, dated 26th February, 2001, of the CMD which, at least, condescends to return certain findings on the petitioner's submissions, albeit only regarding preliminary issues, without adverting to merits. These findings, too, are unsustainable. The CMD has held that, in a departmental enquiry, the denial, by the EO, of the request, of a charged officer, to documents, would not vitiate the proceedings, without any application of mind as to whether, in the present case, the documents sought were, or were not, necessarily for the petitioner's defence. Again, on the aspect of allowing of defence witnesses, the CMD has contended himself by making a general observation that the EO had the discretion to decide whether to allow, or disallow, any particular defence witness. No evidence of application of mind, by the CMD, to the issue of whether, in fact, the disallowance, by the EO, in the present case, of as many as four, out of the six defence witnesses, whose evidence the petitioner desired to lead, was, in fact, justified. On merits too, to reiterate, there is no finding, whatsoever, even by the CMD.

53. This Court is constrained to observe that, in the present case, there has been clear denial of due process, to the petitioner. In fact, merely lip-service, to the principles of natural justice, has been made, and the Court is left with the distinct impression that the respondent was intent on deciding against the petitioner, and holding the charges against him to be proved, any which way. The court notices, with some discomfiture, that even the EO, whose Enquiry Report is the only document which makes any observations, regarding the merits of the allegations against the petitioner, has also been economical with the manner in which the evidence, available before her, has been set out, choosing to make selective reference to the deposition, of the

Management Witnesses in cross-examination, especially MW-2 Bisht and MW-4 Yugal Gupta.

54. Twenty-two years have passed, since the issuance, to the petitioner, of the charge-sheet, on 31st March, 1998, and twenty-one years have elapsed, since the petitioner was punished, on the basis thereof. Remanding the matter for reconsideration, at this stage, is bound to be an exercise in futility, and would inevitably result in unnecessary multiplicity of proceedings. In the circumstances, this Court is of the view that the matter deserves to be laid at rest, at least at this stage.

Conclusion

55. Resultantly, the impugned proceedings against the petitioner, commencing with the charge-sheet, dated 31st March, 1998, and culminating in the order, dated 26th February, 2001, of the CMD of the respondent, are quashed and set aside. It is averred, in CM 12917/2002 (whereby stay of the impugned order of punishment was sought) that deductions, from the petitioner's salary, had commenced. The record reveals that no order, staying the operation of the punishment imposed on the petitioner, was passed by this Court. Accordingly, in case any amount has been recovered, from the petitioner, consequent to the impugned Order, dated 11th May, 1999, passed by the disciplinary authority, the said amount would be refunded to the petitioner. The petitioner would also be entitled to differential payment, to which he would be entitled, had the order of punishment, dated 11th May, 1999, reducing his basic pay by four stages, never been passed. The differential amount, to which the petitioner has consequently become entitled, would also be disbursed to him, by the respondent.

56. Payments, in accordance with para 55 *supra*, would be disbursed to the petitioner, by the respondent, within a period of four weeks from the date of uploading, of the present judgment, on the website of this Court. In view of the present situation, in which Courts are functioning by video-conferencing, the Registry/Court-master shall intimate, to the learned Counsel who represented the parties before me, of the uploading of the present judgment on the website.

57. The writ petition stands allowed accordingly, with no order as to costs.

C. HARI SHANKAR, J.

MAY 29, 2020
HJ