

\$~4

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

+ **W.P.(C) 9582/2017**

VIR SAIN CHAUHAN

.... Petitioner

Through: Mr. M.K. Bhardwaj,
Advocate.

versus

**NORTH DELHI MUNICIPAL CORPORATION
& ANR**

.... Respondents

Through: Ms. Biji Rajesh, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

05.02.2020

%

Dr. S. Muralidhar, J.

1. This is a petition directed against an order dated 9th January, 2017 of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') dismissing OA No. 1377/2016. By the said OA, the Petitioner prayed for a direction to set aside the Memo of Charges (MoC) dated 20th August, 2010 and the orders dated 19th January, 2015 and 2nd June, 2015 of the Additional Commissioner (Engg.) and the Lt. Governor, Delhi ('LG') respectively, issued pursuant to the inquiry conducted against the Petitioner in respect of the charges framed in the said MoC.

2. The background facts are that the Petitioner was appointed initially as Junior Engineer ('JE') (Civil) in the erstwhile Municipal Corporation of

Delhi ('MCD') [now, the North Delhi Municipal Corporation ('North DMC')]. He was promoted to the post of Assistant Engineer ('AE') (Civil) on a regular basis with effect from 16th July, 2007. The Petitioner was transferred out of the Civil Lines Zone ('CLZ'), where he had been engaged heretofore, on 22nd September, 2009.

3. The Petitioner was issued a MoC on 20th August, 2010 under Rule 8 of the DMC Services (Control & Appeal) Regulations, 1959 for failing to "comply with the directions of senior officers by not returning/handing over the building file No. 99 dated 28.05.09 in respect to property no. 2542 Hudson Lane to OI (B)/C.L. Zone in spite of issuing various reminders." The statement of charges alleged that the Petitioner had booked an unauthorised construction on Property No. 2542, Hudson Lane under Building File No. 99 dated 28th May, 2009 ('the File'). However, he had allegedly failed to turn the File over to the Officer In-charge Building ['OI (B)'], CLZ. In that regard memos dated 26th October, 2009, 25th November, 2009, and 1st December, 2009 were issued to the Petitioner. The Petitioner was alleged to have contravened Rule 3 (1) of the CCS (Conduct) Rules, 1964, as "applicable to the employees of MCD".

4. According to the statement of charges the Petitioner in his reply to the aforesaid memos on 15th January, 2010 "tried to mislead the authorities that show cause notice was not put up to him by concerned JE", which were "not correct because he himself was working as JE (B) in the area and booking was also made by him." The Petitioner was thereafter issued additional memos dated 19th January 2010, 5th February 2010, and 23rd April, 2010

regarding the return of the File.

5. The Petitioner first replied to the memos dated 26th October, 2009 and 25th November, 2009 on 17th November, 2009 and 15th January, 2010, respectively, denying that the File, which consisted of an FIR, a Show Cause Notice ('SCN'), and a Demolition Notice, was in his possession. He explained in the letter dated 15th January, 2010 that the File had been "submitted to me by the concerned JE (B)", and that the possessor of the File could be traced out from the relevant entries in the "*misalband* register of EE (B)."

6. The aforesaid replies were followed by letters dated 23rd and 25th February 2010, and 8th March, 2010 of the Petitioner, written in response to enquiries regarding the papers of several cases he had been involved in during his tenure at the CLZ, addressed to the Executive Engineer ('EE') (B), all of which consistently denied that the Petitioner was in possession of any papers, including the File, related to his tenure in the CLZ, and that he had handed over "complete charge" to his successor in the CLZ upon his transfer. One such letter dated 28th April, 2010 again related specifically to the File in question, in which the Petitioner reiterated his denial as regards the possession of the File.

7. A communication dated 28th April 2010 which, again, relates specifically to the File demonstrates that the Petitioner volunteered to help the EE (B) in locating the File by being physically present at the CLZ office, for which he also sought the permission of the Deputy Commissioner, North DMC on *W.P. (C) 9582 of 2017*

30th April, 2010. A communication dated 15th July, 2010 reveals that the Petitioner presented himself at the CLZ office at the EE (B)'s behest, but the EE (B) happened to be on leave that day. The Petitioner reiterated a similar request by letter dated 18th April, 2012.

8. It emerges from a reading of the aforementioned communications that the Petitioner's stated position was that after the booking of the Property No. 2542 on Hudson Lane, he had duly handed over the File to a JE (B). However, since there was no JE (B) posted specifically to Ward No. 12, the Petitioner could not recollect the name of the individual to whom he had handed over the File.

9. Thereafter, the Petitioner filed an application under the Right to Information Act, 2005 ('RTI Act') seeking the following information, which was provided by way of a reply dated 20th April, 2012:

Sr. No.	Question	Reply
1.	Please inform as per Misal Bund Register of Building Department Civil Lines Zone, about printed number of FIR, Show Cause Notice U/s 344(1) and 343, Demolition Notice U/s 343, vide which property No. 2542, Hudson Lane was booked vide file No. 99 dated 28/05/2009.	As per Misal band register detail regarding booking No. 99 dated 28/05/2009 is as under: a. FIR No. 53490 – Surinder Singh, JE b. Show cause Notice No. 8285 - Atul Kumar JE(B) c. Demolition notice No. 5350 - Atul Kumar, JE(B)
2.	Please inform about the name of officer, to	Atul Kumar, JE(B)

	whom books containing booking file No. 99 dated 28/05/2009 were issued.	
3.	please inform, whether that officer has submitted these books with record or with OI(B) or he has handed over it to any other officer.	OI(B) has no record of these submitted files.

10. After receiving the said reply dated 20th April 2012, the Petitioner addressed as many as 8 letters to the EE (B) between 23rd April, 2012 and 26th October, 2012 with the identical request that he may either be provided the aforesaid contents of the File to him so that he may forward the same OI (B) or that the transfer may be effected internally by the EE (B). The letters also informed the EE (B) that the Petitioner had contacted to Mr. Atul Kumar, JE (B), to whom the File had been entrusted, who had confirmed to the Petitioner that upon his transfer, he had handed over the File to his successor, one Mr. Raj Pal. Upon receiving no reply from the EE (B), the Petitioner also addressed 3 letters to the Deputy Commissioner, North DMC between 28th September, 2012 and 30th October, 2012, requesting that the EE (B) be directed to act on the Petitioner's aforesaid request. Receiving no reply from the Deputy Commissioner, North DMC either, the Petitioner approached the Commissioner, North DMC by way of a letter dated 14th November, 2012 detailing the proceedings as described hereinabove, and further reiterating his request that he either be supplied the content of the File, or that the papers be obtained by the OI (B) internally.

11. Meanwhile, the inquiry against the Petitioner pursuant to the MoC dated 20th August, 2010 proceeded. The Additional Commissioner was appointed as the Presenting Officer ('PO') on 11th November, 2010. The PO put forth 5 Prosecution Witnesses ('PWs') during the course of the inquiry, whereas the Petitioner examined 1 Defence Witness ('DW') during the inquiry, the aforesaid Mr. Atul Kumar. The PO presented the aforesaid memos dated 16th November, 2009, 25th November, 2009, 1st December, 2009, 19th January, 2010, 5th February, 2010, and 23rd April, 2010 requiring that the File be returned; a letter written by PW-1 to the AE (B), presumably the Petitioner's successor, for the "reconstruction" of the File; and a report of the OI (B) dated 26th October, 2010 stating that the File had not been handed over to him by the Petitioner.

12. Out of the 5 PWs, the Petitioner forewent the cross-examination of PW-3, one Mr. Narender Kumar who had only been posted as the OI (B) after the incident concerning the File, and therefore could not testify in the proceedings for want of knowledge about the incident. The other PWs consisted of Mr. V. P. Dahiya ('PW-1'), the EE (B) at the time of the incident; Mr. D. K. Joshi ('PW-2'), the Lower Division Clerk at the CLZ; Mr. Panna Lal ('PW-4'), the EE (Civil) posted to the CLZ at the relevant time, and Mr. Ashok Kumar ('PW-5'), the Junior Stenographer posted to the CLZ at the relevant time. All the PWs reiterated the case of the North DMC, as encapsulated in the MoC, in their preliminary submissions.

13. The cross-examination of the PWs reveals that the PWs concurred with the Petitioner as regards the department's policy that files containing FIRs

W.P. (C) 9582 of 2017 *Page 6 of 22*

and Demolition Notices are issued to JEs (B) and the JEs (B) are the sole custodian of such files. They also agreed that at the time the File was booked, the Petitioner did not have the charge of JE (B) in regard to Ward No. 12 of the CLZ. The PWs pleaded ignorance as regards whether the CLZ had taken concrete steps towards the “reconstruction” of the File. PW-5 confirmed that the circular dated 11th May 1965, which stipulated that the OI (B) was required to bring to the notice of the “ZE (B)” any file which is not received by him “within 12 days of issue of the second notice”, was in force at the time that the File was booked.

14. During the cross-examination of PW-4, the fact of there being multiple copies of the File first emerged. The relevant extracts from the exchange between the Petitioner and PW-4 read thus:

“Q. Did you write any letter to any official during your tenure to search or reconstruct the booking file in question from the carbon copy available in relevant books? Please exhibit if any.

A. This does not relate to the charge-sheet issued to the C.O.

...

Q. Please refer document as per Ex.D-1/42. FIR books and notice books containing booking file No.99 dated 28.5.2009, were in the custody of Sh. Atul Kumar, JE[B]. He handed over FIR book having printed page No.53490 and notice U/S 344 [i] and 343 book having printed page No.8285 to Sh. Rajpal, JE[B] on 22.6.2009. He has handed over demolition order U/S 343. book having printed page No.5350 to record keeper on 22.6.2009. Is it correct?

A. These are the departmental printed books from where field staff used to fill up notices and makes the separate files for separate properties and after complete fill up the book, the office copy is required to return: their book to OI [B]. It is

clarified that these are not the main/original files.

Q. Does it mean that office copy of booking files are contained on FIR book and notice books?

A. These are the printed books and as per matter of record.”

15. As noted earlier, the Petitioner examined the sole DW, Mr. Atul Kumar, the summary of whose testimony, as contained in the Inquiry Report, reads as under:

“Shri Atul Kumar, JE[Civil], office of EE[M]-111, West Zone, while appearing as DW-1 in his statement stated that he has been working as JE (Civil) in South DMC and have worked as JE (B), Building Department Civil Lines Zone during the year 2008 and 2009. The FIR book, Notice U/c 344(1) and 343 book, demolition order U/s 343 book, are issued to JE(B) 'in Building Department and JE(B) is solely the custodian of these books. FIR book having printed page number 53401 to 53500, Notice U/s 344(1) and 343 book having printed page number 8276 to 8300 and demolition order U/s 343 book having printed page number 5326 to 5350 were in my custody. CO borrowed these FIR book and Notice Books from me during May/June 2009 and made booking in these books. CO had returned these books to me after making booking in these books. As per prevailing practice, after making booking, both copies of FIR and two copies of Each Notice are kept placed in relevant books. Only those copies, which are to be served upon the owner/builder, are removed from relevant books for service. Remaining papers are kept in relevant books because these are loose papers and these are safe if kept in relevant books. There are no adequate file covers and almirahs provided for staff to maintain individual files separately. As such, if these papers are removed from books at the time of booking, these may be misplaced because these are loose papers. After stipulated time for demolition given to owner/builder, JE removes one copy of FIR and each notice from relevant books and put up To AE (B) with his report. AE (B) then passes demolition order, if

demolition is not carried out by owner/builder and all the loose papers are tied with tag (without file cover) and submitted to OI (B) for further action. On 12-6-2009, I was transferred and relieved from Civil Lines Zone and I have handed over charge including relevant books to Sh. Rajpal JE (B) and record keeper on 22-6-2009. Copy of FIR and Both Notices regarding booking file No. 99 dated 28-5-2009 were available in relevant books when I handed over the charge.

On being cross examined by the Presenting Officer, the witness stated that he worked under the C.O for about 10 months. The booking file i.e. FIR Book, show-cause notice book and demolition order book remains under the custody of area J.E[B]. After initiating the action under Section 343/344 of the DMC Act, the FIR is submitted to the AE[B] for taking appropriate order under Section 343/344. The property in question was booked by the C.O Sh. V.S. Chauhan. DW-1 was not the area JE[B] at that time, however, he had provided the blank FIR book, show cause notice book and demolition order book to the CO on his request. He had no concern about the further actions, if any, initiated by the CO or whether the CO had submitted the U/C file in the office or not. The booking booklets were issued in the name of DW-1 and. no permission is required for providing the blank copies to another officials. He was not aware about the missing of U/C file of P. No.2542, Hudson lane, Delhi vide U/C file No.99 dated 28.5.2009. At the time of his transfer from C.L. Zone to West Zone he had handed over the complete charge to Sh. Rajpal, JE and Sh. Pushan Biswas, JE including U/C file in question. He had no personal knowledge about missing U/C file.”

16. The Inquiry Officer (IO) submitted his report on 22nd February, 2013 in which he held the Petitioner guilty of the charge levelled against him. The IO observed that the Petitioner and the DW had failed to show where the “original FIR”, one of the components of the File was, either in their submissions or documents. The Inquiry Report was furnished to the

Petitioner. He was heard in person by the Additional Commissioner, North DMC on 12th June, 2013. Thereafter, the penalty of “stoppage of three increments with cumulative effect” was sought to be imposed on the Petitioner. In that regard another SCN was issued to the Petitioner on 26th August 2013, to which the Petitioner duly replied. The aforesaid penalty of “stoppage of three increments with cumulative effect” was then awarded to the Petitioner on 12th March, 2014, which was communicated to him by an office order dated 9th April, 2014.

17. The Petitioner preferred an appeal against the said order to the Commissioner, North DMC on jurisdictional grounds, claiming that the disciplinary authority in his case ought to have been the Commissioner. The appeal was dismissed and the penalty of “reduction in rank” was sought to be imposed on the Petitioner. In this regard, another SCN was issued to the Petitioner on 17th November, 2014, to which he replied on 4th December, 2014. Thereafter, the penalty of “reduction in rank” was awarded to the Petitioner on 19th January 2015, which was communicated to the Petitioner on 6th February, 2015. The Petitioner filed an appeal before the LG, which was dismissed on 2nd June, 2015. However, the penalty, being not in consonance with an MHA OM dated 10th October, 1962, was modified to reduction to “the lower post of Junior Engineer, until he is found fit, after a period of two years from the date of the order of Disciplinary Authority, to be restored to the post of Assistant Engineer.”

18. The Petitioner received a reply dated 24th September, 2013 from the Record Keeper (B) in response to an application under the RTI Act. It stated

W.P. (C) 9582 of 2017 *Page 10 of 22*

as under:

“During inspection of record, it has been found that **both copies i.e. Original Copy and Duplicate Copy of FIR having printed page number 53490 in respect of booking file number 99 dated 28-5-2009 are found available and intact with the FIR Book.** Similarly three copies i.e. Duplicate Copy, Triplicate Copy and Quadruplicate Copy of Show Cause Notice having printed page number 8285 in respect of booking file number 99 dated 28-5-2009 are also found available and intact with Show Cause Notice Book. The relevant FIR Book and Show Cause Notice Book had been submitted in this office by Sh. Raj Pal JE, i.e. Ex. JE(B) Civil Lines Zone.” (emphasis supplied)

19. The order of the LG dismissing the Petitioner’s appeal noted as follows:

“The evidence of the availability of the relevant FIR Book and show cause notice book, with original FIR and duplicate & triplicate copy of show cause notice respectively, which was to be the enclosures of UC file No. 99, actually establishes the professional misconduct of the appellant, which read with the acknowledgment of prescribed procedure mentioned in the appeal petition, only points towards a preponderance of the appellant having knowingly committed the omission/commission, for reason best known to him.”

20. In his OA before the CAT, the Petitioner contended that the File “had never remained in existence in proper shape” and that it merely consisted of “three loose papers i.e. one copy of FIR, one copy of Show Cause Notice and one copy of Demolition Notice”. He further averred that prior to and after the passing of the Demolition Order, the concerned JE (B) and the OI (B), respectively, are the concerned custodians.

21. According to the Petitioner, a complete Unauthorized Construction File

ordinarily consists of a copy of the FIR, SCN and the Demolition Notice under Section 343 of the Municipal Corporation of Delhi Act, various reports of the area JE (B) as well as a Demolition Order. A Demolition Order is passed only in instances of non-compliance with the Demolition Notice and as per the RTI replies received by the Petitioner, a Demolition Order pursuant to the Demolition Notice had not been passed at the relevant time. The Petitioner could not therefore be proceeded against for not handing over an Unauthorized Construction File that had in fact not come to be wholly constituted.

22. On the question of the person who was in possession of the File at the relevant point, the Petitioner contended that the “u/c file had remained available and intact in relevant FIR Book and Notice Books under the custody of Sh. Atul Kumar JE(B) up to 21-6-2009”. The Petitioner further pointed out that the File was handed over by JE (B) Atul Kumar to JE (B) Raj Pal on 22nd June, 2009. Thereafter, the Petitioner did not receive any information regarding the File having gone missing. It was only 6 months subsequent to his being transferred to another area that the North DMC informed him that the File had gone missing. The Petitioner referred to the statement of JE (B) Atul Kumar before the IO to contend that there was nothing on record to suggest that the Petitioner was at any stage the custodian of the File and that on the contrary, it had been “successfully proved” that it was JE (B) Atul Kumar who had the file till 21st June, 2009 and that he handed it over to his successor on 22nd June, 2009. Panna Lal, who was the EE at the time, and had been examined by the PO had “failed to prove” that the File remained in the possession of the Petitioner.

23. In addition to the RTI reply dated 11th May 2012, the Petitioner referred to the RTI replies dated 24th September, 2013 and 12th June, 2015 to contend that the North DMC had “admitted” that there existed “intact” the original and duplicate of the FIR and the Demolition Notice, in the FIR and the Notice book respectively.

24. The North DMC filed a reply to the said OA before the CAT, wherein it is stated that the subsequent to the demolition notice issued on 4th June, 2009 neither did the Petitioner take “any further action in the file” nor did he hand over the same to the OI (B), and that it was for these reasons that the MoC was issued to the Petitioner. It is stated that the Petitioner had “committed gross misconduct” in failing to comply with the directions of senior officers to hand over the File. After tracing the trajectory of the departmental proceedings against the Petitioner culminating in the order of the LG dated 2nd June 2015, the North DMC in support of its averment that the CAT had “limited jurisdiction” in interfering with the findings that emerged out of the disciplinary proceedings, referred to the decisions of the Supreme Court in *Union of India v. Upender Singh (1994) 2 SCC 77*; *Union of India v. S.L. Abbas AIR 1993 SC 444*; *Bank of India v. Jagjit Singh Mehta AIR 1992 SC 519*; *Union of India v. Naga Maleswara Rao AIR 1998 SC 111*, *Parmanand v. State of Haryana (1989) 2 SCC 177*. In its para-wise reply to the OA, the North DMC summarily denied each of the Petitioner’s averments.

25. In his rejoinder to the reply of the North DMC, the Petitioner contended that the Respondents had “admitted all the contents of the O.A.” as they

W.P. (C) 9582 of 2017

“failed to produce any Documentary Evidence to rebut the contents of the O.A.” The Petitioner also placed reliance on an Office Order dated 9th June, 2010, to urge that he was not required to submit the File to the OI (B) when a formal Demolition Order had not been issued and that therefore the charge levelled against him “was contrary to law and liable to be quashed straightaway”.

26. In response to the stand in the counter affidavit that the Petitioner had not responded satisfactorily to all the memos demanding the File from him, the Petitioner states that he had furnished an unequivocal reply that he was not in possession of the File. He further contended that the PWs had “admitted during cross-examination” that the Petitioner had duly complied with the memo dated 23rd April, 2010 issued to him.

27. In its order dated 9th January 2017, the CAT upon recording at some length the several stages resulting in the order of the LG dated 11th February, 2015, referred to the following observations in ***B.C. Chaturvedi v. Union of India (1995) 6 SCC 749***:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted

with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

28. Thereafter, the CAT reproduced the findings of the IO and held:

“The above observations/findings are based upon evidence/materials, and it cannot be said that there was no evidence before the Special Inquiry Officer to substantiate the charge.”

Reproducing paragraph 8 of the order of the LG, the CAT found as under:

“Perusal of the above observations recorded by the Appellate Authority reveals that the points urged by the applicant before this Tribunal were also raised by him in his appeal petition, and the Appellate Authority duly considered those points on the basis of materials available on record, but did not find any substance therein.”

In light of the aforesaid observations, the CAT dismissed the OA as “being

devoid of merit”.

29. Thereafter, the present petition came to be filed challenging the aforesaid order of the CAT. When the petition was first listed for hearing on 31st October, 2017 the North DMC was directed to produced the original record “pertaining to booking file No. 99 dated 28.05.2009 in respect of property No.2542, Hudson Lane” for the Court’s perusal. Thereafter, adjournments were obtained by learned counsel for the Respondents to produce the relevant records before the Court.

30. The Petitioner has impugned the order of the CAT dismissing his OA primarily on the ground that there was no material that was brought to bear before the IO that demonstrated that he was at any point the custodian of the File. More specifically he has averred that the IO erred in failing to recognize that in order to “connect” him with the charge in the MoC, the following material needed to be produced during the inquiry:

“three original documents were required to be brought on record i.e. document containing signature of Petitioner in token receipt of the concerned file of Hudson Lane, the order of higher authority to depute the petitioner as the custodian of the said u/c file along-with receiving of such order by the Petitioner and denial of JE (B) about receiving of the concerned file.”

31. The Petitioner emphasizes that his case was one where not only was there nothing evidencing him as being in possession of the File, but, in complete contrast, there was evidence to show that he could not have been the custodian of the File. In support of this plea, he refers to the statement of JE (B) Atul Kumar, who had been examined as a DW as to the whereabouts

W.P. (C) 9582 of 2017 *Page 16 of 22*

of the File, as well as the replies of the North DMC received in response to his RTI applications, which in his telling, clearly pointed to the location of the original and duplicate of the FIR and the Demolition Notice. He contends that all authorities, including the CAT, entirely overlooked this material and proceeded on a mere presumption that could have held no water in the complete absence of documentary or oral evidence substantiating the charge in the MoC.

32. It is also the case of the Petitioner that one of the bases on which he has been proceeded against i.e. demolition action could not be taken on account of the missing file, was completely erroneous as there had been a failure to “refer to any document showing violation of demolition notice by the concerned owner/builder, which warrants demolition action to be taken by the department”. The Petitioner also highlights as significant, the fact that the File never came to be reconstituted and that this showed that “no demolition action was required to be taken by the department”. In any event, the Petitioner argues, he had made numerous attempts to trace out the File, but that he was constantly “turned down”.

33. The Court has heard Mr. M.K. Bhardwaj, learned counsel for the Petitioner, and Ms. Biji Rajesh, learned counsel for the Respondents. The Court has also perused the original record brought by learned counsel for the Respondents. For the reasons detailed hereafter, the Court is of the view that the CAT erred in declining to interfere.

34. At the outset, the settled legal position on the scope of interference with
W.P. (C) 9582 of 2017

orders of disciplinary authorities in a writ petition under Article 226 of the Constitution requires to be recapitulated. The Supreme Court in *Union of India v. P. Gunasekaran* (2015) 2 SCC 610 after analysing the case law extensively held as under:

“12...In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings

can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

35. Subsequently in *Allahabad Bank v. Krishna Narayan Tewari (2017) 2 SCC 308* while dismissing the Allahabad Bank’s appeal against the judgment of the Allahabad High Court which had set aside the orders of the authorities inflicting the penalty of removal of service on the Respondent therein, the Supreme Court held as under:

“7. We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the disciplinary authority and the appellate authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the disciplinary authority does not appear to have properly appreciated the evidence nor recorded reasons in

support of his conclusion. To add insult to injury the appellate authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the disciplinary authority. All told, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the disciplinary authority and the appellate authority.”

36. Recently, this Court by its judgment dated 29th January, 2020 in W.P.(C) 8097/2002 (*S.K. Gupta v. Union of India*) after referring to the decisions in *State of Haryana v. Rattan Singh (1977) 2 SCC 491* and *P. Gunasekaran (supra)* set aside the order of the CAT, holding the IO to have erred in the following terms:

“68. Unfortunately, the IO’s report itself is not a detailed one, analysing the testimonies of the witnesses, 20 in number, who deposed before the IO. The testimony of the sole defence witness, who explained how the process of issuance of a number of NMICs worked, material evidence in the form of the policy documents and what is borne out in the Annual Reports and correspondence referred to hereinbefore have been overlooked by the IO. The conclusion reached is therefore that which no reasonable person would arrive at in the circumstances.

69. In the considered view of the Court, the conclusions drawn by the IO, in relation to the overwhelming evidence before him, which he plainly overlooked can only be said to be perverse. The question required to be answered was whether the Petitioner had made any false and misleading statement that would have enabled the issuance of the NMIC. The evidence on record in fact indicates to the contrary.”

37. In light of the legal position outlined hereinabove, the Court proceeds to

examine the impugned order of the CAT as well as the various authorities. A perusal of the Inquiry Report dated 22nd February, 2013 reveals three crucial aspects: first, it may be noticed that none of the PWs controvert the Petitioner's stand that he could not have been in possession of the File on account of the policy of the North DMC that made the JE (B) responsible for the handling of such files. At best, the PWs have made no affirmative statements pointing towards the Petitioner's guilt, instead, in fact, supporting the Petitioner's case at several instances. Secondly, the IO has, in drawing his conclusions, ignored the crucial exculpatory evidence of the DW, who admits to having been in possession of the File and having passed it on to his successor upon his transfer. Thirdly, it is only at the level of the inquiry proceedings that a distinction between the original and copies of the papers constituting the files is drawn; the MoC itself is silent on this aspect. Moreover, the Petitioner has been able to demonstrate, through the replies received him in response applications under the RTI Act, how the 'original' FIR is in fact available in the File. Therefore, the Court is of the considered view that the assessment of the evidence at the inquiry suffered from infirmity of the gravity that merits this Court's interference, on account of the fact that the conclusions drawn by the IO could not have been reached by any reasonable person; neither could the IO have overlooked a crucial piece of evidence i.e. the statement of the DW.

38. The order dated 3rd February, 2015 of the Commissioner, North DMC and that dated 2nd June 2015 of the LG, appear to have sidestepped these crucial errors that underpin the findings of the IO. They also fail to note the position that emerged from the replies dated 24th September, 2013 and 12th September, 2013.

W.P. (C) 9582 of 2017 *Page 21 of 22*

June, 2015 of the North DMC, which in no uncertain terms made it clear that the original and duplicate of the FIR, SCN and the Demolition Notice were to all be found in the respective books of the CLZ. Viewed in this background, both the Commissioner, North DMC as also the LG, ought not to have affirmed the finding of the Petitioner's guilt.

39. As far as the impugned order of the CAT is concerned, it merely referred to the findings of the IO and the orders of the Commissioner, North DMC and the LG, without discussing the contentions put forth by the Petitioner.

40. For all the aforesaid reasons, the Court sets aside the impugned order of the CAT. The orders dated 12th March, 2014, 19th January, 2015 and 2nd June, 2015 of the Additional Commissioner (Engg.), Commissioner, North DMC and the LG, respectively are also hereby set aside. The report dated 22nd February, 2013 of the IO is quashed.

41. The Respondent is directed to issue the consequential orders as a result of the impugned penalty order being set aside and make payment to the Petitioner the amounts due to him as a result thereof within twelve weeks. The petition is allowed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 05, 2020/abc