

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

% **Reserved on : 13th July, 2022**
Pronounced on: 18th October, 2022

+ **W.P.(C) 17835/2006**

NARENDER KHANNA Petitioner

Through: Petitioner in-person

versus

CVC AND ORS Respondents

Through: Ms. Tatini Basu, Advocate
for R-1/CVC
Mr. Rahul Ranjan Verma and Mr. N.S.
Tiwari, Advocates for R-2 to 6

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant amended writ petition under Article 226 of the Constitution of India has been filed by the Petitioner, praying *inter alia* as under:

“(a) Issue a writ of certiorari for quashing the charge sheet dated 22.7.2005, termination order dated 11.8.2006 and appellate authorities order dated 28.11.2006;

(b) Issue a writ of mandamus for setting aside Respondent No. 1's non-speaking order dated 6.6.2006 amounting to non-

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compliance, of order dated 16.3.2006 passed by this Hon'ble Court in Writ Petition [C] No. 8805/2005;

(c) Issue a writ of mandamus for initiating action under CDA Rules against the Inquiry Officer who mis-conducted by violating the order dated 16.3.2006 passed by this Hon'ble Court in Writ Petition [C] No. 8805/2005;

(d) Issue a writ of mandamus for parity in treatment by initiating action against Shri M.P. Verma as per recommendation of CVC in Jagir Lai's case and National Commission's order in Malana Power Co. Ltd. and against those officers who cause loss of Rs.8.5 crores to the Oriental Insurance Co. by releasing payment without obtaining bills amounting to public misfeasance and unjust enrichment as per petitioner's complaint dated 21.11.2006 and 25.7.2007;"

FACTUAL MATRIX

2. The matter has arisen out of the facts as detailed hereunder:
 - a. The petitioner herein, Shri Narender Khanna, was posted as Assistant Manager at DO-13, New Delhi with the Respondent in the year 2005.
 - b. Inquiry was proposed and the procedure under Rule 25 of General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (hereinafter referred to as "GI (CDA) Rules, 1975") was initiated. Charges were framed against the Petitioner on 22.07.2005 for insubordination of his

superior, and demand of money from the claimants to settle their claims.

- c. The Inquiry Officer conducted the inquiry and in his inquiry report dated 08.05.2006, upon examination and cross-examination of witnesses and documents arrived at the conclusion that the charge of insubordination as well as the charge of demanding money by the petitioner from the claimant stood proved.
- d. Subsequently, the General Manager vide its order dated 11.08.2006 imposed the penalty of “removal from services which shall not be a disqualification for future employment.”
- e. The Appellate Authority while adjudicating the appeal vide its order dated 28.11.2006 found no reason to interfere with the decision taken by the Disciplinary Authority and upheld the termination.
- f. The petitioner thus being aggrieved by his termination and the subsequent upholding of the same by the Appellate Authority has approached this Court for setting aside the same.

SUBMISSIONS

Petitioner's Submissions:

3. The petitioner appearing in person submitted that Shri D.K.Babuta (DW-5) who headed the Fact-Finding Committee was reporting directly to Sh.O.P.Pandey, AGM cum Disciplinary Authority who later on had issued the charge-sheet dated 22.07.2005. DW-5 had earlier expressed animosity towards the petitioner during meeting dated 05.04.2005 and had also appointed the surveyor, whereas the petitioner was competent authority to appoint the surveyor.

4. It is submitted that the DW-5, having personal bias towards the petitioner, deliberately and maliciously did not record evidence of DW-1, DW-2, DW-3 & DW-4 who had disposed in favour of the petitioner during the inquiry proceedings. He did not record the evidence of CVO who had exonerated the petitioner as per his remarks reproduced in Dept Note dated 10.05.2005. He did not record the statement of PW-2 that he had forged the signature of PW-3 on complaint letters dated 12.04.2005 & 18.04.2005. He did not record the statement of PW-3 as to why she did not sign the complaint letters and also, she was not interested in attending the inquiry proceedings. Thus, it vitiated the preliminary report on the basis of which chargesheet was issued to the petitioner.

5. It is submitted that in the present case, the inquiry officer, the Disciplinary Authority and Appellate Authority violated the basic

requirement regarding observance of the principles of natural justice in the manner as detailed hereunder:

- a. by placing reliance on the complaint letters dated 12.04.2005 & 18.04.2005 that were simply tendered before the inquiry proceedings and no evidence was led to prove its contents.
- b. by placing reliance on hearsay statement of interested and partisan witnesses PW-1, DW-5 and DW-6, who deposed against the appellant and not considering the witnesses DW-1, DW- 2 & DW-4 who deposed in favour of the said appellant.
- c. by not recording reasons for considering calls made on 10.04.2005 (i.e. Sunday) amounted to calling with ulterior motive to demand illegal gratification.
- d. by issuing Charge Sheet with a closed and biased mind, on the basis of vitiated preliminary investigation report conducted by biased Shri D. K. Babuta (Chairman of the fact-finding committee) who had shown animosity towards the petitioner at meeting held on 05.04.2005.

6. It is submitted that the personal bias of the Appellate Authority became evident when he did not adjudicate on the petitioner's request, vide representation dated 03.05.2006, for change of Inquiry Officer who

had misconducted by following the dictates of his superior officer Shri O. P. Pandey/Disciplinary Authority (DW-6) to manipulate the word "Can" into "Can't" after the closure of inquiry proceedings and behind the back of the petitioner. The inquiry officer, at the dictate of his superior officer submitted the inquiry report, on 08.05.2006, without waiting for the reply of Respondent No.3.

7. It is submitted that there is infirmity in appointment of the Inquiry because Shri. G.K. Aggarwal was once charge sheeted by the company and was Respondent No. 14 in W.P. (C) 582 of 1997 wherein his promotion was challenged. Further, the Inquiry Officer who was subordinate to DW-6 (Shri O.P. Pandey AGM I/c of RO2 Delhi). The apprehension of real bias of the Inquiry officer is evident from the fact that he disallowed the examination of the following material witnesses.

8. It is submitted that the Inquiry Report suffered from the following infirmities:-

- a. In letter dated 12.04.200, it was not mentioned that PW-2 was in the process of collecting documentary evidence and during inquiry proceedings, it was not proved that PW-2 & PW-3 had applied for details of calls made from the mobile company yet the Inquiry Officer mentions that PW-2 was going to collect it and that is why demand for illegal money made on 10.04.2005 was not mentioned in letter dated 12.04.2005.

- b. No evidence in the form of call recording, eye witness was led to prove that the calls were attended by PW-2 and the petitioner had demanded 15% commission as alleged by PW-2, on 10.04.2005.

9. It is submitted that the proceedings against the petitioner were in violation of the rules of natural justice - the petitioner represented, vide letter dated 03.05.2006, to Respondent no.3 for change of Inquiry officer and its copy was marked to the Inquiry Officer. The Inquiry officer, at the dictate of his superior officer DW-6, did not wait for the reply from Respondent no.3 and submitted a copy report to the petitioner on 05.04.2006. Thus, the inquiry proceeded upto the stage of inquiry report without acceding to the request of the applicant to change the Inquiry Officer.

10. The punishment imposed by the Disciplinary Authority is discriminatory, grossly disproportionate to the allegations made against the petitioner and therefore, cannot be sustained in law and also vitiated as being opposed to principles of natural justice. The Appellate Authority (Respondent no.6) had already made up his mind vide his letter dated 13.07.2006 wherein he declined to protect the petitioner and, therefore, he did not record reasons, in his order dated 28.11.2006, as to why he did not believe that the entire Inquiry proceeding was not vitiated.

11. It is submitted that the tenor of the Inquiry report dated 08.05.2005, the Disciplinary Authority Order dated 11.08.2006 and the Appellate Authority Order dated 28.11.2006 demonstrate that the Inquiry Officer, Disciplinary Authority and Appellate Authority had made up their mind to find the petitioner guilty as otherwise they would not have discarded evidence in favour of the petitioner. They shifted the burden of proof to the petitioner and held that the petitioner was not able to prove that PW-1 had threatened the petitioner on 09.04.2005 after PW-2 failed to adduce any corroborative evidence to prove the contents of complaint letters dated 12.04.2005 and 18.04.2005 with the ulterior motive of removing the petitioner from service.

12. It is submitted that the findings admit inadmissible evidence like forged complaint letters dated 12.04.2005 & 18.04.2005 and bald statement of PW-2 without any corroborative evidence to prove his allegations made in the aforesaid letters. PW-2 was an unreliable witness as not only he forged the signature of PW-3 but he distorted incident of threat issued by him, on 08.04.2005, which was not mentioned in complaint letter dated 12.04.2005 and 18.04.2005. The order of the disciplinary authority, in view of the statutory provisions, merged with the order of the appellate authority as the appellate proceedings are in continuation of the original proceedings and, thus, the doctrine of merger shall apply. Therefore, there was no inquiry in this case worth the name and the order of termination based on such proceeding disclosing non-

application of mind would be unsustainable. The Inquiry Officer (being biased because his promotion being challenged in WP(C)582/1997 as Respondent No. 14) the Disciplinary Authority (being biased because of Contempt Notice issued in CONT. CAS. No.35/2005 in WP(C)1566/2002) and the Appellate Authority (was influenced by his reply dated 13.07.2005) ventured into surmises and conjectures.

13. It is submitted that thus the petitioner is entitled to 50% of back wages and consequential benefits of service resulting from his reinstatement including seniority and notional promotion(s) with effect from the date on which his juniors were promoted, usual annual increments, revision of scales of pay including re-fixation for the purpose of pension.

Submissions on behalf of Respondent No. 1:

14. *Per Contra*, learned counsel appearing on behalf of the Respondent No.1 submitted that the petitioner's understanding of the roles and functions of the Central Vigilance Commission is misconceived. A complaint to the Commission is required to contain factual details, verifiable facts and related matters pertaining to allegations of corruption against an officer falling under the jurisdiction of the commission and such allegations ought to be having a vigilance angle.

15. It is relevant to note that, under section 15 of the Central Vigilance Act, 2003, any act done or advice provided by the commission in good

faith cannot be subject to prosecution and no legal proceedings can lie against the commission for the same.

16. It is submitted that the petitioner was suspended on 11.05.2005 and he subsequently made a complaint dated 02.06.2005 before the respondent no. 1 seeking his protection against, his alleged victimization. The answering respondent obtained a report from the Chief Vigilance Officer of the Oriental Insurance Co. Ltd. and reached to a conclusion that the so-called protection sought by the petitioner from this respondent was not feasible as he had not furnished any specific information of public interest to the Commission, and therefore, question of his having been victimized by suspension did not arise. The petitioner was accordingly informed of the outcome of the Inquiry vide O M no. Conf/574/05-26721-22 dated 06.06.2006.

17. It is submitted that the Circular No. 16/3/16 dated 28.03.2006 issued by the Government of India was based on the recommendation of the “Santhanam Committee on prevention of corruption”. The said committee had recommended that “those posted to the Vigilance Organisations should not have the fear of returning to their parent cadre with the possibility of facing the anger and displeasure of those against whom they made inquiries.” The committee had also recommended that “those working in Vigilance Organisations should have assurance that good and efficient work in the Vigilance Organisation will enhance their opportunities for promotion and not become a sort of disqualification”.

18. It is submitted that the application dated 14.6.2006 of the petitioner under RTI Act, 2005 was replied to by the Central Public Information Officer of the Central Vigilance Commission vide his letter No. CVC/RTI/06/239-29855 dated 17.7.2006. The CPIO furnished point wise reply to the petitioner. The Appellate Authority of the answering respondent had also disposed of the appeal dated 6.7.2006 of the petitioner vide his letter No.CVC/RTI/APP/06/053-31186 dated 1.8.2006. The findings of the investigation report was conveyed to petitioner vide Commission's letter dated 6.6.2006. If the petitioner had any grievance under the RTI Act, it was open to make appeal before the Central Information Commission under section 19(3) of the RTI Act, which he had not done.

19. It is thus submitted that the petitioner has miserably failed to establish any case that seeks interference of this Court with respect to the Commission. Thus, the Writ Petition is liable to be dismissed qua Respondent No. 1.

Submissions on behalf of Respondents No-2 to 6

20. Learned counsel on behalf of Respondent No. 2 to 6 vehemently opposed the prayers made by the Petitioner and submitted that the petitioner has never been victimized on account of policies followed by the answering respondents. The Malana Power case is neither related to the present case nor related to petitioner. The petitioner is trying to cover

up his own wrong under the grab of allegations of Malana Power which has no connection with the petitioner's case.

21. It is submitted that the W.P. (C) No. 8805/2005 has been disposed of and the Hon'ble Court has observed that the Court does not find any reason to interfere with the decision of the Appellate Authority orders dated 28.11.2006, the same is upheld without any modification and the petitioner has withdrawn the abovesaid Writ Petition. The Petitioner has made a complaint dated 03.04.2006 to the General Manager but the issues were distorted by the Petitioner to the extent he alleged that the inquiry officer obtained the representation from Shri O. P. Pandey after closing of the evidence. In fact Shri O.P. Pandey himself pointed out certain corrections in his cross-examination.

22. It is submitted that it is wrong to state that Shri O.P. Pandey, DGM was determined to punish the Petitioner for writing letter to the Chief Vigilance Officer for investigating the fire claim file as the decision imposing penalty was made by General Manager and competent Authority who independently applied his mind on the facts as brought out during the course of inquiry, so the Petitioner has wrongly stated that there was a criminal conspiracy between the inquiry officer and Shri O.P. Pandey, DGM.

23. It is submitted that the Inquiry Officer has acted in consonance with the GI (CDA) Rules, 1975. The order of removal of the petitioner

dated 11.08.2006 was passed after examining Inquiry Report and all relevant records. The said order was issued looking into petitioner's mala fide intentions not solely for the reason of writing letters to outside agency, but also for it being in violation of senior's instructions.

24. It is denied that due to receiving of contempt notice, pressurized Sh. O.P. Pandey to suspend the Petitioner. He, being the disciplinary Authority in the case, is not subject to any pressure. As per the decision of the Hon'ble Court, Sh.O.P. Pandey DGM was examined by the Inquiry Officer Sh. O.K. Aggarwal, who did not manipulate the Inquiry Report as contended by the Petitioner, as one word 'can' and 'cannot' being a writing mistake cannot be treated as conclusion of Inquiry Report and lead to reason of being biased on presumption. It is further submitted that after reading Inquiry Report as whole then it can be very well concluded that Inquiry Officer/Report is not biased.

25. It is submitted that in the course of the Disciplinary proceedings against any employee, the Disciplinary Authority can itself enquire into charges or appoint officer as Inquiry Officer to enquire into the charges as per GI (CDA) Rules, 1975. It is clear from the order of the High Court through order dated 16.03.2006 in W.P. (C) No.8805/2005, that the petitioner never raised the appointment of Sh. G. K. Aggarwal as wrong and illegal and consented to continue with the inquiry proceedings. Sh. O.K. Aggarwal has conducted the inquiry strictly in accordance with the aforesaid order of the Hon'ble Court and GI (CDA) Rules, 1975.

26. It is submitted that the Appellant Authority being the CMD while disposing of the Appeal dated 10.10.2006 has passed detailed order after application of his mind fairly and freely on the outcome of the inquiry report. The inquiry was conducted in accordance with the rules prescribed in GI (CDA) Rules, 1975.

27. In light of the aforesaid, it is submitted that the instant petition is devoid of merits and this Court may be pleased to dismiss the same.

28. Heard learned counsels appearing on behalf of parties at length and perused the record.

ANALYSIS

29. The petitioner by way of the instant petition has challenged his order of termination, alleging that the inquiry is vitiated *inter alia* because, *firstly*, the Inquiry Officer misconducted the inquiry proceedings against the petitioner by converting the word "can" into "cannot" in the testimony of Shri O.P. Pandey and by refusing the testimony of material witnesses; *secondly*, the Disciplinary Authority, being biased against the petitioner, had passed the order of termination vindictively because the petitioner got a notice of contempt issued in an earlier petition; and *thirdly* that the Appellate Authority because of being biased did not examine the case of the petitioner against his termination order appropriately.

QUA RESPONDENT NO. 1:

30. As per the provisions of the Central Vigilance Commission Act, 2003, any action done by the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission cannot be made a subject matter of prosecution when it is done in good faith or under the lawful discharge of one's duty. The relevant provision reads as under:

“15. No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith or intended to be done under this Act.”

31. In the instant case, as is evident from a perusal of the record, the petitioner, subsequent to his suspension dated 11.05.2005, made a complaint dated 02.06.2005 before the Respondent No. 1 seeking his protection against his alleged victimization. The Respondent No. 1 obtained a report from the Chief Vigilance Officer of the Oriental Insurance Co. Ltd. and arrived at the conclusion that the so-called protection sought by the petitioner from the respondent was not feasible due to the reason that the petitioner had not furnished any specific information of public interest to the Commission, and therefore, question of his having been victimized by suspension did not arise. It is also on record that the petitioner was informed of the outcome of the Inquiry vide O M no. Conf/574/05-26721-22 dated 06.06.2006.

32. Regarding the RTI application dated 14.6.2006 filed by the petitioner, the same was replied to by the Central Public Information Officer of the Central Vigilance Commission vide his letter No. CVC/RTI/06/239-29855 dated 17.7.2006. The Appellate Authority of the Respondent No. 1 had also disposed of the appeal dated 6.7.2006 of the petitioner vide his letter No.CVC/RTI/APP/06/053-31186 dated 1.8.2006. In any case, if the petitioner had any grievance under the RTI Act, it was open to make appeal before the Central Information Commission under section 19(3) of the RTI Act, which, as per the record, was not done. In view of the aforesaid, it is evident that there is nothing *qua* the Respondent No. 1 that merits an adjudication in the instant matter. Therefore, the prayers against Respondent No. 1 are not being entertained by this Court.

QUA RESPONDENTS NO. 2 TO 6:

Relevant Provisions of GI(CDA) Rules, 1975

33. The relevant provisions of the GI(CDA) Rules, 1975 are reproduced hereunder:

"4. Misconduct :-

Without prejudice to the generality of the term (Misconduct), the following acts of omission and/or commission shall be treated as misconduct :-

(1) Theft, fraud or dishonesty in connection with the business or property of the Corporation/Subsidiaries or of the property of

another person within the premises of the Corporation/ Subsidiaries;

(2) Taking or giving bribes or any illegal gratification;

(3) Possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another person which the employee cannot satisfactorily account for;

(4) Furnishing false information regarding name, age, father's name, qualifications, ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment;

(5) Acting in a manner prejudicial to the interest of the Corporation/subsidiaries;

(6) Willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior;

(7) Absence without leave or over-staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation;

(8) Habitual late or irregular attendance;

(9) Neglect of work or negligence in the performance of duty including malingering or slowing down of work;

(10) Damage to any property of the Corporation/Subsidiaries;

(11) Interference or tampering with any safety devices installed in or about the premises of the Corporation/Subsidiaries;

(12) Drunkenness or riotous or disorderly or indecent behaviour in the premises of the Corporation/Subsidiaries or

outside such premises where such behaviour is related to or connected with the employment;

(13) Gambling within the premises of the Establishment;

(14) Collection without the permission of the competent authority of any money within the premises of the Corporation/Subsidiaries accept as sanctioned by any law of the land for the time being in force or rules of the Corporation;

(15) Sleeping while on duty;

(16) Commission of any act which amounts to a criminal offence involving moral turpitude;

(17) Absence from the employee's appointed place of work without permission or sufficient cause;

(18) Smoking within the premises of the establishment where it is prohibited;

(19) Purchasing properties, machineries, stores etc. from, or selling properties, machineries, stores, etc. to the Corporation/Subsidiaries without express permission in writing from the competent authority;

(20) Commission of any act subversive of discipline or of good behaviour;

(21) Abetment of or attempt at abetment of any act which amounts to misconduct.

NOTE :- The above instances of misconduct are illustrative in nature, and not exhaustive.

23. Penalties :-

Without prejudice to the provisions of other rules, any one or more of the following penalties may for good and sufficient reasons, and as hereinafter provided, be imposed by the competent authority on an employee who commits a breach of discipline, or who is guilty of any other act prejudicial to good conduct :-

Minor Penalties :-

- (a) *censure;*
- (b) *withholding of one or more increments for a specified period;*
- (c) *recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation/Subsidiary by negligence or breach of orders;*

Major Penalties :-

- (d) *withholding of one or more increments permanently;*
- (e) *reduction to a lower service or post or to a lower time-scale, or to a lower stage in a time-scale;*
- (f) *compulsory retirement;*
- (g) *removal from service which shall not be a disqualification for future employment;*
- (h) *dismissal.*

24. Disciplinary Authority :-

The Disciplinary Authority as specified in these Rules or in the Schedule or any authority higher than it may impose any of the penalties specified in Rule 23 on an employee.

25. Procedure for imposing Major Penalties :-

(1) *No order imposing any of the major penalties specified in Clauses (d), (e), (f), (g) and (h) of Rule 23 shall be made except after any inquiry is held in accordance with this rule.*

(2) *Whenever the competent authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into, or appoint a retired Officer or any Public Servant (hereinafter called the inquiring authority) to inquire into the truth thereof.*

(3) *Where it is proposed to hold an inquiry, the competent authority shall frame definite charges on the basis of the allegations against the employee. The charges together with a statement of the allegations on which they are based, a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the competent authority (not exceeding 15 days), a written statement whether he admits or denies any of or all the Articles of Charge.*

Explanation : *It will not be necessary to show the documents listed with the charge sheet or any other document to the employee at this stage.*

(4) *On receipt of the written statement of the employee, or if no such statement is received within the time specified, an enquiry may be held by the competent authority itself, or a retired Officer *or by any Public Servant appointed as an inquiring authority under sub-clause (2).*

(5) *Where the disciplinary authority itself inquires or appoints an inquiring authority for holding an inquiry, it may, by an order appoint a retired Officer* or any Public Servant to be known as the "Presenting Officer" to present on its behalf the case in of the articles of charge.*

(6) *The employee may take the assistance of any other employee but may not engage a legal practitioner for the purpose.*

(6A) *No employee while on duty shall act as Defence Assistant in any disciplinary proceeding conducted outside the regional office area where he is posted; nor shall he act as Defence Assistant in more than two cases at a time.*

An employee acting as Defence Assistant in breach of this rule shall not be entitled to any TA/DA in connection with the disciplinary proceedings.

(7) *On the date fixed by the inquiring authority, the employee shall appear before the inquiring Authority at the time, place and date specified in the notice. The inquiring authority shall ask the employee whether he pleads guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the employee concerned thereon. The Inquiring Authority shall return a finding of guilty in respect of those articles of charge to which the employee concerned pleads guilty.*

(8) *If the employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence:*

- (i) inspect the documents listed with the charge-sheet;*
- (ii) submit a list of additional documents and witnesses that he wants to examine; and*

be supplied with the copies of the statements of witnesses, if any, listed in the charge-sheet.

***Note :** Relevancy of the additional documents and the witnesses referred to in sub-clause 8 (ii) above will have to be given by the employee concerned and the documents and the witnesses shall be summoned if the inquiring authority is satisfied about their relevance to the charges under inquiry.*

The inquiring authority shall ask the authority in whose custody or possession the documents are kept, for the production of the documents on such date as may be specified.

(10) The authority in whose custody or possession the requisitioned documents are, shall arrange to produce the same before the inquiring authority on the date, place and time specified in the requisition notice.

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the Corporation/Subsidiary. In that event, it shall inform the inquiry authority accordingly.

(11) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the competent authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the Inquiry Authority. The Inquiry Authority may also put such questions to the witnesses as it thinks fit.

(12) Before the close of the prosecution case, the inquiry authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or may itself call for new evidence or recall or re-examine any witness. In such case the employee shall be given opportunity to inspect the

documentary evidence before it is taken on record; or to cross-examine a witness, who has been so summoned.

(13) When the case for the competent authority is closed, the employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally; it shall be recorded and the employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(14) The evidence on behalf of the employee shall then be produced. The employee may examine himself in his own behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiry authority according to the provision applicable to the witnesses for the competent authority.

(15) The Inquiring Authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

(16) After the completion of the production of the evidence, the employee and the Presenting Officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence.

(17) If the employee does not submit the written statement of defence referred to in sub-rule (3) on or before the date specified for the purpose or does appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provision of these rules, the inquiring authority may hold the Inquiry ex-parte.

(18) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(19)(i) After the conclusion of the inquiry, report shall be prepared and it shall contain :-

(a) a list of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) a gist of the defence of the employee in respect of each article of charge;

(c) an assessment of the evidence in respect of each articles of charge;

(d) the findings on each article of charge and the reasons therefor.

Explanation :-

If in the opinion of the inquiry authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge.

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the

facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the competent authority, shall forward to the competent authority the records of inquiry which shall include :-

(a) the report of the inquiry prepared by it under sub-clause (i) above;

(b) the written statement of defence, if any submitted by the employee referred to in sub-rule (13);

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs referred to in sub-rule (16), if any, and

(e) the orders, if any, made by the competent authority and the inquiring authority in regard to the inquiry.

26. Action on the inquiry report :-

(1) The competent authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 25 as far as may be.

(2) The competent authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) *If the competent authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 23 should be imposed on the employee it shall, notwithstanding anything contained in rule 27 make an order imposing such penalty.*

(4) *If the competent authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned."*

Scope of Writ Jurisdiction in Service Matters

34. In the case of *Union of India v. P. Gunasekaran*, (2015) 2 SCC 610, the Hon'ble Supreme Court delineated the scope of jurisdiction of the High Court while dealing with the finding of the Disciplinary Inquiry, 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) reappraise 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.*

14. *In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)*

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the

enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.””

35. These principles have earlier been succinctly summed up by V.R. Krishna Iyer, J. in *State of Haryana v. Rattan Singh* (1977) 2 SCC 491 as under:

“4. ... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.”

36. Recently, in **UCO Bank v. Krishna Kumar Bhardwaj, 2022 SCC OnLine SC 201**, the Hon’ble Supreme Court has again held as under:

“17. So far as the scope of judicial review in the matters of disciplinary inquiry is concerned, it has been settled that the constitutional courts while exercising their power of judicial review under Articles 226 or 227 of the Constitution would not assume the role of the appellate authority where jurisdiction is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. At the same time, the power of judicial review is not analogous to adjudication of the case on merits as an appellate authority.”

37. It is also a settled law that it is not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of

India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court.

38. Applying the aforesaid principles to the case at hand, it is evident that this Court cannot enter into appreciation of the departmental proceedings against the petitioner, as an appellate court rather it would only satisfy itself to evaluating whether any errors of law or procedural errors apparent on record have been committed thus leading to manifest injustice or violation of principles of natural justice.

Test for Bias in Service Matters

39. Having delineated the scope, it is now pertinent to examine the substance of allegations of bias levelled against the authorities by the petitioner. It is necessary to peruse the law settled *qua* the apprehension of bias in disciplinary proceedings. Rules of fairness and the rules against fairness require that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding must inspire confidence in the mind of those who are subject to it.

40. As held in various cases including ***Gamini Dissanayake v. M.C.M. Kaleel*, 1991 SCC OnLine SL SC 82; Ridge v. Baldwin**, 1964 AC 40 : (1963) 2 WLR 935; ***Gullapalli Nageswara Rao v. A.P. SRTC***, AIR 1959 SC 308, the Principles of Natural Justice are of wide application, applying to every tribunal or

authority while adjudicating upon matters involving civil consequences. It is also a well-settled law that violation of either of the rules of natural justice renders a decision void, as held as early as in *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 (United Kingdom). Fairness of procedure is thus sacrosanct to any administrative or departmental proceedings.

41. The rule against bias ensures fair procedure by excluding the authority who are tainted by bias. Moreover, certain interests, whether financial [*Dimes v. Grand Junction Canal*, (1852) 3 HLC 759 (United Kingdom)] or non-financial, [*R. v. Bow Street Metropolitan Stipendary*, (2000) 1 AC 119 (HL)] can automatically lead to disqualification of an authority to decide upon cases where their interests are involved.

42. In the case of *S. Parthasarathi v. State of A.P.*, (1974) 3 SCC 459, the Hon'ble Supreme Court held as under:

“14. The test of likelihood of bias which has been applied in a number of cases is based on the “reasonable apprehension” of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R. v. Huggins [(1895) 1 QB 563] ; R. v. Sussex, JJ., ex. p. McCarthy [(1924) 1 KB 256] ; Cottle v. Cottle [(1939) 2 All ER 535] ; R. v. Abingdon, JJ. ex. p. Cousins [(1964) 108 SJ 840] .) But in R. v. Camborne, JJ. ex. p. Pearce [(1955) 1 QB 41 at 51] the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made

to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

15. The question then is: whether a real likelihood of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.

16. The tests of “real likelihood” and “reasonable suspicion” are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon [(1968) 3 WLR 694 at 707]] We should not, however, be understood to deny that the Court might with greater propriety apply the “reasonable suspicion” test in criminal or in proceedings analogous to criminal proceedings.”

43. The decision of this Court in the *State of Uttar Pradesh v. Mohammad Nooh* [AIR 1958 SC 86] makes it clear that if an inquiring officer adopts a procedure which is contrary to the rules of natural justice, the ultimate decision based on his report of inquiry is liable to be quashed.

44. The Apex Court in *Ratan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School*: (1993) 4 SCC 10, held that the real likelihood of bias means at least a substantial possibility of bias. While adjudicating the fact as to whether there was a real likelihood of bias, the relevant consideration is not upon what actually was done but upon what might appear to be done. The test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias.

45. In the case of *Oryx Fisheries (P) Ltd. v. Union of India*, (2010) 13 SCC 427, the Hon'ble Supreme Court held as under:

“34. A somewhat similar observation was made by this Court in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant [(2001) 1 SCC 182 : 2001 SCC (L&S) 189] . In that case, this Court was dealing with a show-cause notice-cum-charge-sheet issued to an employee. While dealing with the same, this Court in para 25 (SCC p. 198 of the Report) by referring to the language in the show-cause notice observed as follows:

“25. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the officer

concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete.”

After para 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in para 35 (SCC p. 201 of the Report), the true test of bias is:

“35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom—in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained:”

46. In view of the aforesaid discussion, it is evident that apprehension of bias must have a substantial basis and there must exist reasonable probability of bias. This Court while adjudicating upon such apprehension must see as to whether there was a real likelihood of bias based on the conduct of proceedings. The test of bias is whether a reasonable and prudent person, aware of all the facts and circumstances, would feel a serious apprehension of bias.

47. Before applying the aforesaid principles to the instant case, it is pertinent to refer to the proceedings before the concerned authorities at various stages.

Impugned Proceedings

48. The articles of charge framed against the Petitioner dated 22.07.2005 reads as under:

"Shri Narender Khanna, Assistant Manager while posted and functioning at DO 13 New Delhi during the year 2005 has committed the following misconduct:

Sh. Narender Khanna disobeyed the lawful and reasonable instructions given by his superior Sh. M.P. Verma, Senior Divisional Manager while dealing with the Fire claims of M/s Ankush Dying and Printing works and M/s Ankush Trading Company and also demanded money from the clients to settle the claims in question.

Sh. Narender Khanna by his above acts, failed to maintain absolute integrity, exhibited conduct which is unbecoming of a public servant, wilful insubordination and disobedience, disobeyed the lawful and reasonable instructions of his superiors, exhibited dishonesty in connection with the business of the Company, acted in a manner prejudicial to the interest of the Company as per/in contravention of Rule 3(1)(i)(iii)(iv), 4(1)(5) and (6) of General Insurance (CDA) Rules 1975."

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49. The charges that were thus alleged on the Petitioner are as under:

(i.) Whether the act of writing letter to various outside Government Agencies on 19/03/2005 by the petitioner tantamounted to insubordination of his superior.

(ii.) Whether the petitioner demanded money from the claimants to settle their claims in question.

50. The Inquiry Officer in his inquiry report dated 08.05.2006, upon examination and cross-examination of witnesses and documents arrived at the conclusion that the charge of insubordination as well as the charge of demanding money by the petitioner from the claimant stood proved.

51. On the basis of the findings of the Inquiry Officer, the General Manager being the competent authority vide its order dated 11.08.2006 imposed the penalty of “removal from services which shall not be a disqualification for future employment.” The Appellate Authority subsequently in its order dated 28.11.2006 found no reason to interfere with the decision taken by the Disciplinary Authority and upheld the same, accordingly the appeal was disposed of.

CONCLUSION

52. This Court has perused the Appellate Order passed by the Appellate Authority. In the said order, the Appellate Authority has

included all the ground pleaded by the petitioner and laid down its reasons at length. This Court has also gone through the Inquiry Report.

53. The Appellate Authority has rightly held that there was no legal error apparent in the Charge Sheet, Inquiry Report or the Termination Order, that would have led to miscarriage of justice. The two charges levelled of insubordination by way of disobedience of instructions of his superior while dealing with the said fire claims and that of demanding of unlawful money from the clients to settle the claims in question.

54. Allegations made against the Inquiry Officer as well as the Disciplinary Authority have already been dealt with by the Appellate Authority. As far as the question of bias of Respondent No. 2 is concerned, because of the contempt notice dated 4.5.2006, it is on record that the contempt petition was subsequently withdrawn on 29.11.2006. In the instant case, there is nothing on record to suggest that there is a reasonable basis to the allegations of bias against the officials, as levelled by the petitioner.

55. In view of the aforesaid, the petitioner has failed to make out either a case of bias or a case of violation of principles of natural justice that would require the interference by this Court. As such, this Court is not inclined to exercise its writ jurisdiction to entertain the prayers made by the petitioner.

56. The instant petition is accordingly dismissed in the aforesaid terms.

57. Pending applications, if any, also stand disposed.
58. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 18, 2022
@j/Ak

