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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 7th August, 2023

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W.P.(C) 4474/2017

RAM AVTAR SINGH

..... Petitioner

Through: Mr. Abhishek Swarup,
Advocate.

versus

THE CHAIRMAN AND MANAGING DIRECTOR,
CENTRAL WAREHOUSING CORPORATION & ANR

..... Respondents

Through: Mr. K.K. Tyagi, Mr. Iftexhar
Ahmad and Ms. Garima Tyagi, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. Present writ petition has been filed by the Petitioner seeking quashing of the order dated 03.06.1982 whereby services of the Petitioner were terminated as well as the subsequent order of the Disciplinary Authority dated 15.05.2013 and order of the Appellate Authority dated 23.08.2016. Mandamus is sought directing the Respondents to treat the Petitioner in service from the date of termination and for consequential relief including arrears of salary and other emoluments.

2. Factual matrix to the extent necessary and relevant is that Petitioner was appointed on 26.05.1966 as Technical Assistant-cum-Grader by Respondent No.2 in the pay scale Rs.210-425. Petitioner states that his service record was throughout good from the date of



appointment till 15.08.1980, when a memorandum was issued by Sh. N.S. Shilhotri, Senior Assistant Manager, alleging that Respondents' client M/s R.G. Navgoge had deposited 143 bags of cotton seed cakes by warehouse receipt No.081899 on 01.03.1980 and the entire quantity of the stock was delivered on 10.07.1980 but later a complaint was received that the stock was damaged and 18 bags out of 125 were left behind being damaged. The depositor demanded compensation of Rs.2085/- and threatened legal action.

3. Petitioner submitted his explanation to the memorandum on the same day denying the allegations and stating that the depositor took delivery of all bags in full satisfaction and signed the relevant documents. Not satisfied with the explanation of the Petitioner, disciplinary proceedings were initiated and Inquiry Officer ('IO') was appointed to look into the charges levelled. Department produced 7 witnesses and 6 documents. Inquiry record indicates that Petitioner had initially given names of 6 witnesses he intended to examine in his defence, however, during the proceedings, an application dated 02.12.1981 was filed stating that Petitioner will not examine defence witnesses as they were not directly concerned with the case. Record also shows that no documents were produced by the Petitioner in his defence.

4. In these circumstances, IO recorded the statements of the witnesses produced by the Respondents and finally rendered the inquiry report on 19.04.1982. Based on the findings of the inquiry report, Respondent No.1 passed the termination order dated 03.06.1982, against which Petitioner filed an appeal on 22.07.1982 before the Chairman of the Respondents.



5. As the appeal was not being decided, Petitioner approached the Allahabad High Court in writ petition being W.P.(C) No.4863/1983 and pursuant to order dated 25.10.1983 passed by the High Court, the appeal was decided *albeit* the same was rejected by the Respondents vide order dated 08.02.1985. Petitioner amended the writ petition to seek quashing of the order dated 08.02.1985 passed by the Appellate Authority, however, writ petition was dismissed on the ground of lack of territorial jurisdiction, leaving it open to the Petitioner to file the same in the Court where cause of action had arisen.

6. Petitioner thereafter filed a writ petition being W.P.(C) No.642/1994 in this Court on the ground that neither any show cause notice was issued nor a personal hearing was granted to the Petitioner by the Disciplinary Authority, before passing the order. Writ petition was disposed of on 08.03.2013 with a direction to the Disciplinary Authority to give personal hearing to the Petitioner and pass a speaking order within four months, in accordance with law. Pursuant thereto, the Disciplinary Authority granted a personal hearing and Petitioner was asked to submit his defence in writing, which he did on 03.05.2013. As per the Petitioner, Disciplinary Authority failed to accede to the request of the Petitioner to call for and look into the crucial documents such as stock register, ledger, delivery order, which would reflect delivery of the entire stock of 143 bags of cotton seed cake etc. and establish that the charges were false. Mechanically and without examining the issues raised by the Petitioner, an order was passed on 15.05.2013 reaffirming the penalty of “removal from service of the Corporation”.

7. Aggrieved by this order dated 15.05.2013, an appeal was filed



by the Petitioner on 13.07.2013. Since the appeal was not being decided in a reasonable time, Petitioner approached this Court in W.P.(C) No.1409/2015, which was disposed of vide order dated 13.02.2015 directing the Respondents to decide the appeal within eight weeks. Appeal was considered by the Board of Directors in the 314th meeting convened on 09.03.2015 as Agenda Item No.3 and decision was taken to reject the same. The decision was conveyed to the Petitioner vide communication dated 09.04.2015.

8. Order of the Appellate Authority was challenged by the Petitioner in W.P.(C) No.8823/2015, which was disposed of vide order dated 15.09.2015 directing the Respondents to give an effective opportunity and personal hearing to the Petitioner. Appellate Authority convened a Board meeting on 27.11.2015 in which, according to the Petitioner, he was only permitted to address oral arguments and despite his repeated requests to call for the documents earlier requested, documents were not requisitioned. Appeal was dismissed on 27.11.2015 on the ground that the charges were proved by the department on the basis of oral testimony of 7 witnesses and there was no reason why all would depose falsely against the Petitioner. Request for production of documents was negated on the ground that it was the Petitioner who had failed to produce the documents and department could not be faulted. This order was again challenged by the Petitioner in W.P.(C) No.4464/2016 primarily on the ground that the relevant documents were not produced and considered and thus principles of natural justice were violated.

9. The writ petition was disposed of on 20.07.2016 recording the statement made and assurance given on behalf of the Respondents that



the Appellate Authority shall re-consider the appeal and pass a reasoned and speaking order within eight weeks. Appeal was again rejected vide order dated 15.09.2016, constraining the Petitioner to take recourse to legal proceedings yet again and this is how the present petition came to be filed.

CONTENTIONS ON BEHALF OF THE PETITIONER:

10. Appellate Authority failed to appreciate the prime ground raised by the Petitioner in his appeal that the Disciplinary Authority/IO did not consider the crucial and relevant documents such as the stock registers, delivery orders and depositors' ledgers, etc. despite repeated requests of the Petitioner and in violation of several orders passed by this Court remanding the matter back to the Appellate Authority as well as the assurance given on behalf of the Respondents on 20.07.2016 in W.P.(C) No.4464/2016.

11. Petitioner had requested the IO during the inquiry proceedings, both orally and in the written statement of defence, to produce the stock and delivery registers etc., as these documents would have established that Sh. Navgoge and Sh. Bhagwandas had taken delivery of the entire stock and would have negated the allegations of short delivery, non-issue of shortage certificate, damage to the entire stock etc. It is settled that even though strict rules of evidence may not apply to departmental proceedings but principles of natural justice do and non-production of relevant and crucial documents vitiates the inquiry and consequently the penalty imposed. Documents were in the custody of the department and Petitioner could only request for their production, which he did at all stages.

12. Appellate Authority and the Disciplinary Authority erred in not



appreciating that the depositors namely Sh. Navgoge and Sh. Bhagwandas were hostile towards the Petitioner due to instigation by Sh. N.S. Shilhotri and this is fortified by the fact that there was no complaint in the long tenure of the Petitioner from 50 other depositors. In fact, it was due to the dedication and hard work of the Petitioner that the storage capacity of the warehouse had increased from 1200 MT to 2600 MT and was maintaining 100% occupancy. Petitioner has been falsely implicated and illegally punished on the basis of a charge sheet wherein the charges are vague and unclear and without any evidence.

13. The penalty imposed upon the Petitioner of “removal from service” is very harsh and highly disproportionate. No financial loss was suffered by the Respondents and none has been proved. The allegation of the Petitioner settling with the depositors was not proved as the same was a false allegation. Petitioner served the Respondents since 1966 and discharged his duties efficiently, diligently and honestly. The Disciplinary and the Appellate Authorities ought to have taken this fact into account before imposing the extreme penalty of removal from service.

CONTENTIONS ON BEHALF OF THE RESPONDENTS:

14. It is a settled law that the High Court in a writ jurisdiction under Article 226 of the Constitution of India cannot sit as an Appellate Court over the findings of an IO and/or re-appreciate evidence. In regard to findings of fact and appreciation of evidence, the IO/ Disciplinary Authority is the final authority and adequacy and sufficiency of evidence cannot be gone into by this Court, being the domain of the Disciplinary Authority. The scope of judicial review is



limited to interference in cases where the finding of the IO is based on no evidence or is wholly perverse such that no reasonable person could arrive at the conclusion the IO did. Reliance was placed on the judgments of the Supreme Court in *Syed Yakoob v. K.S. Radhkrishnan*, AIR 1964 SC 477; *Railway Board v. Niranjan Singh*, (1969)1 SCC 502; and *State of A.P. v. Chitra Venkata Rao*, (1975)2 SCC 557.

15. The inquiry proceedings were conducted in a fair manner after following due process of law and complying with principles of natural justice. Full opportunity was provided to the Petitioner to lead evidence in his defence. Petitioner on his own volition chose to give an application stating that he did not want to produce defence witnesses. Insofar as the contention of the Petitioner that stock register, depositors' ledger and delivery orders were not produced, which would have established that the Petitioner delivered the entire stock to the depositors is concerned, the Disciplinary Authority and the Board of Directors looked into the issue and found the contention to be devoid of merit since all charges were proved on the basis of oral testimony of 7 witnesses and other documents.

16. Central Warehousing Corporation ('CWC')/Respondents is one of the Mini Ratna Public Sector Undertaking of the Government of India, set up in 1957 through an Act of the Parliament with the basic motto of "scientific storage with easy credit facilities". Share capital of the Corporation is subscribed by the Central Government, State Bank of India other Scheduled Banks, Cooperative Societies, Insurance Companies and Companies dealing in agricultural produce or any notified commodity. Corporation is engaged in the business of



warehousing logistics and pest control activities for the last more than 5 decades and is working under the administrative control of the Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Government of India. The activities of CWC are governed by the Warehousing Corporations Act, 1962 and include warehousing of foodgrains, industrial goods, customs bonded goods, operating Container Freight Stations/Inland Clearance Depots, Integrated Check Posts at the international borders, Air Cargo Complexes, tank storage of liquid cargo etc. Besides the existing facilities, CWC has established Railside Warehousing Complexes throughout the country.

17. In a pursuit to manage its warehouses, CWC engages Warehouse Managers, Technical Assistants etc. Petitioner was posted as Technical Assistant at Nandura during 14.11.1978 to 02.02.1981 and worked as a Warehouse Manager. In one of the transactions, M/s R.G. Navgoge deposited 143 bags of cotton seed cakes in the warehouse against Receipt No.081899 and goods were stored in Godown No. E. Due to leakage of water during rainfall, some bags were damaged because Petitioner did not take immediate steps to salvage the damaged stock, though he got the entire stock shifted to Godown No.4. M/s R.G. Navgoge approached the Petitioner to take delivery of the goods after completing the formalities of payment etc. but found that the stock was damaged and refused to take the delivery. Next day, M/s R.G. Navgoge brought empty gunnies and after salvaging the stock, re-bagged and lifted 125 bags as 18 bags were salvaged. Petitioner did not even issue a shortage certificate to the depositor. Finally, a legal notice was issued by the Firm claiming



Rs.2095/- towards loss suffered. Petitioner refused to accept the legal notice and attempted to make settlement with the depositor on his own. Petitioner also segregated the goods stocked from the damaged goods and mixed two bags with the stock of another depositor Sh. Bhagwandas Liladhar.

18. The delinquency of the Petitioner is also evident from the transaction pertaining to Sh. Liladhar. He had deposited 2 lots of cotton seed cakes, one of 72 bags and other of 71. One lot of 72 bags was delivered without any complaint in July, 1980, however, when he came to take delivery of 71 bags, he refused to take delivery of 3 bags on the ground that the 'superior quality stock' had been exchanged with the 'inferior quality of stock' of another depositor. Inquiry revealed that Petitioner had mixed 2 bags of damaged goods in this lot. It was also found that condition of the godowns was unhygienic and unsatisfactory and the Petitioner had neglected to comply with the technical aspects of maintaining and keeping the warehouse and the stock therein such as regular spraying, brushing and fumigating.

19. During the inquiry proceedings, the IO put several questions to the Petitioner to elicit the truth and he admitted that there was heavy rainfall in July, 1980 and on 07.07.1980 there was leakage in Godown No. E where the concerned stock was stored. Petitioner further admitted that some top layer bags were affected by rain water and he shifted the entire stock to another godown but did not segregate the stock because of which part of the stock got damaged. Petitioner cross-examined all the 7 prosecution witnesses which included Sh. R.G. Navgoge and Sh. Liladhar, the depositors. Charges were proved from the oral testimony of these witnesses and on the basis of the



evidence, the IO submitted his report on 19.04.1982, concluding that all the charges were proved, except the charge that Petitioner tried to make a direct settlement with the depositors. Both the Disciplinary and the Appellate Authorities, examined the contentions of the Petitioner and after deliberating on the evidence led by the department before the IO, rejected the contentions.

20. It is incorrect for the Petitioner to argue that none of the concerned competent authorities had examined the plea that crucial documents such as stock register etc. were not produced as these would have established the case of the Petitioner, but found no merit. Petitioner consciously chose not to lead evidence before the IO and made an application that he did not want to examine the defence witnesses. There was no stopping the Petitioner from seeking the production of documents, he now seeks to place heavy reliance on. Record of the inquiry proceedings does not indicate that any request was made by the Petitioner for production of the documents, for which he repeatedly approached this Court seeking directions to the Appellate Authority to consider the said documents.

21. I have heard the learned counsels for the parties and examined their rival contentions.

ANALYSIS & FINDINGS

22. The Statement/Articles of Charges framed against the Petitioner are that he was careless and negligent in the performance of his duties inasmuch as: (a) he did not take immediate steps to salvage the damaged stock; (b) did not issue shortage certificate to the party; (c) tried to make a settlement with the parties on his own without reporting the matter to the higher Authority and seeking guidance; and



(d) threw away the damaged stock out of which 2 bags remained outside the gate initially and were later smuggled into the warehouse. In a nutshell, the allegations were of causing financial loss and disrepute to the Corporation. Statement of allegations is extracted hereunder for ready reference:-

STATEMENT OF ALLEGATIONS LEVELLED AGAINST SHRI R.A.S
B.A. Singh TA, CW, BORIVLI ON THE BASIS OF WHICH CHARGES
HAVE BEEN FRAMED.

Dt. 2.4.81

You, Shri R.A. Singh, were posted as TA at CW, Nandura from 14.11.78 to 2.2.1981. While functioning as WM, CW, Nandura during the aforesaid period, you failed to perform your duties diligently and were rather negligent and careless in the performance of your duties and also failed to maintain absolute integrity as will be evident from the following.

a) That M/s R.G. Navgoge had deposited 143 bags of cotton seed cakes weighing 98.670 quintals in CW Nandura on 1.3.80 vide WR.No.081899 dated 1.3.80. This stock was stored in godown No. E but due to leakage of water through the roof, some bags were damaged. You, as CW did not take immediate steps to salvage the damaged stock though you had got the entire stock shifted to godown No.4

(b) that the depositor M/s N.G. Navgoge had approached you on 10.7.80 to take the delivery of the aforesaid stock and after completing the formalities including sufferings of VE, payment of storage charges etc when he had gone to lift the stock from godown No.4 he had found the stocks damaged and had accordingly refused to take the delivery on the said date. On the next day, he had brought some empty gunnies and after



- 2 -

(b) that the depositor M/s .N.G.Navgoxe has approached you on 10.7.80 to take the delivery of the aforesaid stock and after completing the formalities including suffrenering of WE, payment of storage charges etc. when he had gone to lift the stock from godown No.4, he had found the stocks damaged and had accordingly refused to take the delivery on the said date. On the next day, he had brought some empty gunnies and after salvaging the stocks, he had got the stock re-bagged. On 14.7.80, the party had lifted 125 bags(73 sound bags 52 salvaged bags) on your verbal assurance that the loss of balance 18 bags would be made good. You, however, did not issue any shortage certificate to the party in this regard.

(c) that the party has now issued a legal action and claimed damages for 18 bags of cotton seed cakes amounting to Rs.2095/- It is understood that you had refused to accept this legal notices from the party and tried to make a settlement with the party anyour own without reporting this matter to RD/HO and seeking guidance.

(d) that it has transpired that after the party M/sR.G. Nagvoxe had left the warehouse, after taking delivery of 125 bags, you had got segregated good stock from the heap rejected by the depositor and thre w away the damaged stock after taking out some sound stock out of it. The 2 bags thus made out of the damaged stock which were initially kept outside the gate, were subsequently got amuggled inside the warehouse by you and mixed in the stock of another party.

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- 3 -

(e) that Sh. Shagwan Das Lila Dhar of Nandura had also deposited 2 bags of cotton seed cakes on 8.5.80. One first lot of 72 bags was delivered/issue issued out in July 1980 without any complaint.

On 8.8.80 when the party had come to take delivery of the 71 bags, he had lifted only 63 bags and refused to lift the remaining 3 bags on the ground that the Party's superior quality stock had been exchanged with inferior quality stock the other depositor; some damaged seed cake as also found mixed in this stock. Inquires have revealed that the 2 bags made out of damaged cotton seed cake, bearing mark of deposit made under GR No.081899, were mixed in this lot, stored under G R No. 083386 dated 8.5.80. Apart from this 1 more bag under GR No.083368 dated 8.5.80 was found to be containing damaged cakes. You had verbally assured this party/ also that the loss of balance 3 bags would be made good without issuing any shortage certificate. Now, this party too, has served a legal notice and claimed damages for 3 bags of damaged cotton seed cakes amounting to Rs.270/- you had refused to accept the legal notice and claimed damaged cotton seed cakes amounting to Rs.270/- you had refused to accept the legal notice in this case also and tried to make settlement with the party on your own without any reference to No/SC for guidance in the matter.

You are thus guilty not only of negligence a dereliction but have also failed to report the fact of damaged stocks of cotton seed cakes to the higher authorities and instead tried to suppress the matter by illegally throwing away of the damaged stock and attempted to make settlement on your own with the concerned parties. Four inter-grity in brief, has not been found to be above board.

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- 4 -

In addition, to the aforesaid incidents of damage to stocks and thereby causing financial loss and bringing disrepute to the corporation, You have also been found to be negligent, careless and lacking in devotion to duty in /as much as :-

i) That the condition of the godowns was unhygienic and far from satisfactory, you had totally neglected the technical aspects of the warehouse and kept the stocks without their being properly sprayed, brushed and fumigated, resulting in heavy infestation and consequent deterioration in the quality of the stocks.

ii) that you failed to ensure proper weightment sampling and grading of stock at the time of deposit with the result that wide variations in weightment were noticed at the time of delivery.

if approved, you are liable to be punished for your aforesaid lapses.

LIST OF DOCUMENTS

- 1) statement dt.16.8.80 from Shri R.g.Novgoge trader from Nandura.
- 2) Memo dt.14.8.80 from Shri N.S.Shilotri SW(T) to Shri R.W. Singh, Warehouse Incharge CW, Nandura.
- 3) Reply dt.14-8-80 by Shri R.A. Singh
- 4) Memo dt.10.8.80 from Shri R. S. Shilotri SM(T) issued to Shri R.A. Singh warehouse Incharge, CW Nandura
- 5) Reply to 16.8.80 by Shri R.A. Singh
- 6) statement dt.17.8.80 from Shri Satyanaryan Ram nivas Ranaklal Nandura.

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- 5 -

- 7) Statement dt. 18.8.80 from Shri S.W. Tastode & N.B. Malwand labourers from C. S. Nandura.
- 8) Statement dt. 18.8.80 from Shri B. N. Asolkar
- 9) Statement dt. 17.8.80 from Shri Pramod Pathak Nandura.
- 10) Statement dt. nil of the busting operator.
- 11) Statement dt. 17.8.80 of Shri P. M. Ingale Chowkidar
- 12) Statement dt. 19.8.80 from Shri R. G. Navgale
- 13) Statement dt. 19.8.80 from Shri Bhagwantes Liladhar
- 14) Statement dt. 19.8.80 from Shri D. N. Asolkar WA-II
- 15) Memorandum dt. 17.8.80 from Shri D. N. Asolkar WA-II
- to Shri R. A. Singh Ware housing Incharge of Nandura.
- 16) Reply dt. Nil by Shri R. A. Singh

23. A bare reading of the charge sheet shows that the allegations are vague, unclear and in fact self-contradictory and defeating. In *Anant R. Kulkarni v. Y.P. Education Society and Others*, (2013) 6 SCC 515, the Supreme Court relying on its earlier decision in *Surath Chandra Chakrabarty v. State of West Bengal*, (1970) 3 SCC 548 held that it is impermissible to hold an inquiry on vague charges. It was observed that the charges should be specific, definite and give details of the incident(s) which forms the basis of the charges and no inquiry can be sustained on vague charges. Purpose of holding an inquiry against any person is not only with a view to establish the charges or impose penalty but also to ascertain the truth of the matter. The delinquent employee must be made aware of the allegations clearly, so that he is able to effectively defend them. In *Sawai Singh v. State of Rajasthan*, (1986) 3 SCC 454, the Supreme Court held that charges involving consequences of termination of service must be specific although departmental inquiry is not like a criminal trial.



24. If the charge sheet in the present case is examined in light of the aforementioned judgements, the same does not pass muster. Most of the allegations in the charge memo are far from being 'clear and specific' in addition to the fact that the list of Relied upon Documents along with the charge sheet does not contain documents to support substantial part of the allegations. Allegation (a) is that Petitioner did not take immediate steps to salvage the damaged stock. It is not stated what steps were required to be taken by the Petitioner to salvage the stock in case of a sudden and heavy rainfall and/or if there were any laid down Guidelines or Charter of Duties that were required to be followed in this regard in terms of any Manual or Handbook of Procedure or a SoP. The allegation of negligence is in stark contradiction to the admitted position, which is also noted in the charge sheet itself that Petitioner had taken immediate steps to get the entire stock shifted to Godown No.4. Allegations (c) and (e) are that M/s R.G. Navgoge and Sh. Liladhar, respectively, had served legal notices and claimed damages for the short delivery of bags and the damage caused etc. There is no whisper of the dates of the legal notices or when they were issued/received/refused and none forms part of the List of Documents. In the absence of requisite details, the charges pertaining to claim of damages by the depositors; refusal of the Petitioner to accept the legal notices; making an attempt to settle with the parties on his own and financial loss to the Corporation, allegedly on account of some money claimed in the legal notices, have no legs to stand from the very inception.

25. The serious allegation of causing financial loss is also vague. It is true that a charge sheet is not an inquiry report or a thesis, but the



allegations must contain some details to enable the charged employee to defend effectively. Loss could be caused only if the Respondents had to pay the price of the damaged bags, whose deliveries were allegedly not taken by the depositors. There is nothing in the charge sheet as to when and how much money was paid to the depositors by the Respondents, if at all, leading to the purported loss. Negligence has been alleged for keeping the godown in an unhygienic condition, without proper spraying and brushing, resulting in heavy infestation etc. It is also alleged that the Petitioner failed to ensure proper weightment, sampling and grading of stocks resulting in wide variations in the weights. Charge sheet contains no mention of the dates or months or even the year(s) in which there was alleged deterioration in the quality/damage to the stock and/or even the particulars of the goods damaged. Details/particulars of stocks in respect of which dereliction of duty pertaining to proper weighing, sampling or grading was alleged are conspicuously missing and one wonders how a charged officer would respond and defend his case.

26. Having perused the charge sheet this Court is of the view that the charge sheet is vague and cannot be sustained. *Albeit* this is enough to set aside the inquiry proceedings and the resultant penalty/Appellate order, however, Court takes judicial notice of another glaring illegality in the order of the Disciplinary Authority. Court had directed the Respondent to produce the original record of the disciplinary proceedings and has perused the file. It is significant and rather unfortunate to note that before the matter was placed before the Disciplinary Authority to take a decision on the penalty proposed to be



imposed, there is a noting wherein it is captured that a decision was taken earlier to terminate the services of the Petitioner due to incompetence and having taken this decision, it was decided to draw up a draft charge sheet on the charge of incompetence and forward the same to the Head Office. However, the Head Office had not reverted and thus another charge sheet was approved, i.e. the impugned charge sheet. This indicates that the decision to terminate the Petitioner was already taken and the inquiry was a farce and eye wash and vindicates the stand of the Petitioner that he was falsely implicated at the instance of Sh. N.S. Shilhotri.

27. Case of the Petitioner was placed before the Disciplinary Authority with a noting that the charges were proved in the inquiry report and the 'integrity' of the Petitioner was not found to be above-board. Taking note of the inquiry report, the Disciplinary Authority took a decision to impose the penalty of removal from service but while doing so it took into account Petitioner's past performance, which in the perception of the Disciplinary Authority was unsatisfactory. Reliance was placed on some adverse records of 1979 and 1980 though it is not spelt out what those records were. Notice is also taken of Petitioner's suspension in 1977-78; his confidential report for the year 1973 with some adverse entries, though not spelling what they were. Reference is also made to a separate report received from the Regional Manager, Bombay vide his letter dated 30.06.1981 bringing forth unsatisfactory standard of preservation and quality control at Borivali and purportedly pointing to the incompetence of the Petitioner. None of these issues/documents formed part of the charge sheet and/or the inquiry proceedings and Petitioner was not put



to notice calling upon him for his inputs or rebuttal in defence. It needs no gainsaying that it was on a holistic and cumulative consideration of all these extraneous records, allegations and reports that the Disciplinary Authority took a decision to impose the extreme penalty of removal from service to the Petitioner, behind the back of the Petitioner.

28. It is trite that if the Disciplinary Authority wants to consider the past conduct of the charged employee before taking a decision on the punishment, the delinquent employee must be put to notice. This procedure is also by way of an exception and the general rule is to include the allegations pertaining to past conduct, if the employer desires to take into account, in the article of charge so that the charged officer can respond and effectively defend. [Ref. *Mohd. Yunus Khan v. State of Uttar Pradesh and Others*, (2010) 10 SCC 539 and *State Bank of India and Others v. Mohammad Badruddin*, (2019) 16 SCC 69]. It is an admitted position that none of the documents taken into account by the Disciplinary Authority, as referred to above, were either forming a part of the Article of Charge or were put to the Petitioner, before imposing the punishment of removal and this vitiates the order of the Disciplinary Authority.

29. Having perused the record, this Court agrees with the Petitioner that vital documents, which were crucial to his defence and may have led to his exoneration were not provided despite repeated requests and orders of this Court to reconsider the matter in compliance of the principles of natural justice. There is no doubt on the proposition of law that the scope of interference in disciplinary matters under Article 226 of Constitution of India is limited and much more in re-



appreciating the evidence led before the IO. It is equally settled that strict rules of evidence as provided under the Indian Evidence Act, 1872 do not apply to departmental inquiries, however, what cannot be disputed is that principles of natural justice apply and are required to be followed strictly. Inquiry must be conducted in a fair manner and not at the whims and fancies of the Disciplinary Authority or the IO. [Ref. *Mohd. Yunus Khan (supra)*]. In this context, I may refer to a very recent judgment of the Supreme Court in *Aureliano Fernandes v. State of Goa and Others, 2023 SCC OnLine SC 621*, where the Supreme Court has emphasised and highlighted the importance of following principles of natural justice. Providing relevant and vital documents during the inquiry proceedings to the charged employee, has been held to a facet of fair inquiry and part of principles of natural justice and non-supply has been held to be fatal. In the present case, there is a complete violation of principles of natural justice as well as the settled law that relevant documents relied upon by the Presenting Officer and/or sought by the charged officer must be provided for an effective defence. *Audi Alterem Partem* is the foundation and ethos of any inquiry proceeding which has been given a complete go-by in the present case, for the reasons that follow.

30. The main allegation against the Petitioner was that there was short delivery of about 18 bags to M/s R.G. Navgoge. From the very initial stage when the Petitioner filed his reply to the memo of charge, he took a categorical stand that as soon as the heavy rain and the storm stopped, he immediately shifted the entire stock to another godown and the depositors lifted their stock, thereby causing no deficiency in the deliveries. The best evidence to establish the alleged deficiency in



the stock by the Respondent or for the Petitioner to establish complete delivery, were the documents such as the stock card, stock register, ledger, weightment check memo, etc. From the time of filing the written statement of defence before the IO, Petitioner repeatedly requested for production of these documents, which were in the custody of the Respondents. However, no one paid any heed and the documents were not produced. Petitioner made herculean efforts for production of the records by taking this plea even in his appeal before the Appellate Authority and in several writ petitions filed in this Court. The first writ petition was disposed of by this Court on 08.03.2013 on the ground of violation of principles of natural justice, permitting the Respondent to pass a speaking order after personally hearing the Petitioner. While passing the order on 15.05.2013, the Disciplinary Authority did not look into the documents despite noting the contentions of the Petitioner that he had delivered the entire stock; there was no complaint from the party; stocks were delivered after due inspection by the depositor; immediate efforts were taken to shift the stock to another godown and that since 1966, he had discharged his duties efficiently and diligently. The issue of production of the stock register etc. was sidetracked by noting that there was nothing on record in the inquiry proceedings to show that IO had ignored Petitioner's request for production of stock register, depositor's ledger, delivery order etc. The matter was remanded back to the Competent Authority in subsequent writ petitions several times, however, at no stage the Disciplinary Authority considered it necessary to look into these crucial documents despite the fact that each order of remand by this Court noted this grievance of the



Petitioner. There is thus a glaring violation of principles of natural justice in not furnishing or even producing the relevant documents, as perhaps production of these documents may have shed light on the stand of the Petitioner that he had delivered the entire stock.

31. Petitioner is also right in his contention that time and again, Respondent has taken a stand that M/s R.G. Navgoge and Sh. Liladhar had issued legal notices which led to financial loss to the Corporation apart from loss of reputation. Interestingly and factually, legal notices were not a part of the relied upon documents and were never produced during the entire inquiry proceedings. Allegation of financial loss can only be sustained when one party demands the money and the other party pays. There is no evidence on record to show that the Respondent ever paid any money pursuant to a demand by the depositors, assuming there was any. Petitioner has taken a categorical position that the legal notices never saw the light of the day and in the absence of the legal notices the charge of loss of reputation or the alleged refusal of the Petitioner to accept the notices fails.

32. Another glaring illegality in the conduct of the inquiry proceedings is that the IO acted as a Presenting Officer and questioned the Petitioner, which is amply clear from the Inquiry proceedings and vitiates the entire inquiry and consequent penalty. Supreme Court has held time and again that Inquiry Officer is a quasi-judicial authority and must act as an independent adjudicator and cannot act as a representative of the department/disciplinary authority. Where the IO acts as a prosecutor, it has been held to be an element of bias and I may in this regard refer to a few passages from the judgment of the Supreme Court in *Union of India and Others v. Ram Laxhan*



Sharma, (2018) 7 SCC 670:-

“27. In State of U.P. v. Saroj Kumar Sinha [(2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675] , this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/ Government. In paras 28 and 30 the following has been held: (SCC p. 782)

“28. An Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence



to punish an employee, the principle of bias comes into place.

29. *M. Rama Jois, J. of the Karnataka High Court had occasion to consider the above aspect in Bharath Electronics Ltd. v. K. Kasi [1986 SCC OnLine Kar 30 : ILR 1987 KAR 366] . In the above case the order of domestic inquiry was challenged before the Labour and Industrial Tribunal. The grounds taken were, that inquiry is vitiated since Presenting Officer was not appointed and further Enquiry Officer played the role of prosecutor. This Court held that there is no legal compulsion that Presenting Officer should be appointed but if the Enquiry Officer plays the role of Presenting Officer, the inquiry would be invalid. The following was held in paras 8 and 9: (SCC OnLine Kar)*

“8. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry (see: Gopalakrishna Raju v. State of Karnataka [1980 SCC OnLine Kar 18 : ILR 1980 KAR 575]). It is true that in the absence of Presenting Officer if the inquiring authority plays the role of the Presenting Officer, the inquiry would be invalid and this aspect arises out of the next point raised for the petitioner, which I shall consider immediately hereafter.

9. The third ground on which the Industrial Tribunal held that the domestic inquiry was invalid was that the Enquiry Officer had played the role of the Presenting Officer. The relevant part of the findings read:

‘The learned counsel for the workman further contended that the questions put by the enquiry officer to the management's witnesses themselves suggest that he was biased and prejudiced against the workman. There has been no explanation as to why no Presenting Officer was appointed and as to why the enquiry officer took upon himself the burden of putting questions to the management's witnesses. The enquiry proceedings at Ext. A-6 disclose that after the cross-examination of the management's witnesses by the defence, the enquiry officer has further put certain questions by way of explanation, but from their nature an inference arises that they are directed to fill in the lacuna. The learned counsel for the management contended that the enquiry officer has followed the principles of natural justice and that the domestic enquiry is quite valid. I am of the view that the fact that the enquiry officer has himself taken up the role of the Presenting Officer for the management goes to the root of the matter and vitiates the enquiry.’



*As far as the position in law is concerned, it is common ground that if the inquiring authority plays the role of a prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. But the question for consideration in this case is: whether the Enquiry Officer did so? It is also settled law that an inquiring authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long the delinquent employee is permitted to cross-examine the witnesses after the inquiring authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair. (See *Mulchandani Electrical and Radio Industries Ltd. v. Workmen* [(1975) 4 SCC 731 : 1975 SCC (L&S) 429] .)”*

30. This Court had occasion to observe in *Workmen v. Lambabari Tea Estate* [(1966) 12 FLR 361 : (1966) 2 LLJ 315 (SC)] that if the Enquiry Officer did not keep his function as Enquiry Officer but becomes prosecutor, the inquiry is vitiated. The following was observed: (FLR p. 362)

“The inquiry which was held by the management on the first charge was presided over by the Manager himself. It was conducted in the presence of the Assistant Manager and two others. The enquiry was not correct in its procedure. The Manager recorded the statements, cross-examined the labourers who were the offenders and made and recorded his own statements on facts and questioned the offending labourers about the truth of his own statements recorded by himself. The Manager did not keep his function as the enquiring officer distinct but became witness, prosecutor and Manager in turns. The record of the enquiry as a result is staccato and unsatisfactory.”

31. A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of vitiation of the inquiry when the Enquiry Officer starts himself acting as prosecutor in *Union of India v. Mohd. Naseem Siddiqui* [ILR 2004 MP 821]. In the above case the Court considered Rule 9(9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognised facets in para 7 of the judgment which is to the following effect:

“7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well-recognised facets:

(i) The adjudicator shall be impartial and free from bias,



- (ii) *The adjudicator shall not be the prosecutor,*
- (iii) *The complainant shall not be an adjudicator,*
- (iv) *A witness cannot be the adjudicator,*
- (v) *The adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,*
- (vi) *The adjudicator shall not decide on the dictates of his superiors or others,*
- (vii) *The adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.*

If any one of these fundamental rules is breached, the inquiry will be vitiated.”

32. *The Division Bench further held that where the Enquiry Officer acts as Presenting Officer, bias can be presumed. Para 9 is as follows:*

“9. A domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject-matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Enquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Enquiry Officer is in position of a judge or adjudicator. The Presenting Officer is in the position of a prosecutor. If the Enquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Enquiry Officer conducts the examination-in-chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Enquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Enquiry Officer does not have an open mind.”

33. *The Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect:*

“16. We may summarise the principles thus:

- (i) *The Enquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.*
- (ii) *It is not necessary for the disciplinary authority to*



appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

xxx

xxx

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36. *Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.*



37. The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.

33. Petitioner has been able to point out other glaring lacunas in the evidence led by the Respondents. Presenting Officer was unable to prove what immediate steps Petitioner was required to take or could have taken to salvage the damaged stock or to prevent it from being damaged in the sudden and heavy rainfall, save and except, immediately shifting the stock to a nearby godown, which the Petitioner admittedly did. No evidence in the form of Manuals/ Handbook of procedure or SOPs were produced detailing the procedure to be followed.

34. While the charge memo has allegations that Petitioner made attempts to settle the matter on his own with the parties, the witnesses did not support the charge and this charge was held as 'not proved' by the IO. Once this charge, which bordered on moral turpitude, touching upon the integrity of the Petitioner was not proved and Respondent was unable to support the charge of financial loss of Rs.2095/- *albeit* this figure varies between the charge memo and the earlier memorandum dated 14.08.1980, it is not understood how the Disciplinary Authority concluded that an extreme penalty of removal from service was justified, in the absence of the extraneous past record, which was illegally taken into consideration and even today, Respondent has failed to justify imposition of a harsh and extreme penalty of removal, leading to loss of livelihood.



35. For all the aforesaid reasons, the order dated 15.05.2013 passed by the Disciplinary Authority and order dated 23.08.2016 passed by the Appellate Authority cannot be sustained and are quashed and set-aside. Petitioner had superannuated even before the decision of the first writ petition on 08.03.2013 and cannot be reinstated at this stage. Therefore, it is directed that the Petitioner will be entitled to notional reinstatement from the date of his termination till the date of superannuation. Petitioner has undergone a great deal of ordeal from 14.08.1980, the date when the first memorandum was issued to him, till date. He has been constrained to file several writ petitions to get the Disciplinary and the Appellate Authorities to give him a fair hearing and crucial documents but remained unsuccessful. On the basis of vague, uncertain allegations, Petitioner has suffered an inquiry from 02.04.1981 and was inflicted with harshest punishment of removal from service by taking into account extraneous facts, documents and records, without putting him to notice, as the Disciplinary Authority was conscious that the allegations in the charge sheet could not be substantiated and/or were too trivial to justify the penalty imposed. In these facts and circumstances of this case, the Court holds that the Petitioner is entitled to 50% of the back-wages from the date of removal from service till the date of reaching the age of superannuation. Respondents shall release the retiral benefits of the Petitioner along with interest @ 6% p.a. from the date of retirement till actual payments. This direction is being passed following the judgment of the Supreme Court in ***Mohd. Yunus Khan (supra)***.



36. Writ petition is allowed in the aforesaid terms with costs of Rs.25,000/- to be paid by the Respondents to the Petitioner within 8 weeks from today.

37. The original inquiry records are being returned to the counsel for the Respondents.

JYOTI SINGH, J

AUGUST 07, 2023/ck/ka