

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side**

APO 151 of 2023

IA GA No. 1 of 2023

WPO 487 of 2021

**West Bengal Agro Industries Corporation Limited & Another
Vs.
Avishek Sarkar & Others**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellants : Mr. Jaydip Kar, Sr. Adv.
Mr. Soumya Majumder, Adv.
Ms. Sarmila Das, Adv.

For Respondent No. 1 : Mr. Indranil Chakraborty, Adv.
Mr. Apurba Ghosh, Adv.
Ms. Esha Banerjee, Adv.
Mr. Vaskar Pal, Adv.

Hearing concluded on : August 8, 2024
Judgment on : August 20, 2024

DEBANGSU BASAK, J. :-

1. Appellants have assailed the judgement and order dated July 30, 2023 passed by the learned Single Judge in WPO 487 of 2021.
2. By the impugned judgement and order, learned Single Judge has held that the disciplinary proceeding as against the private respondent herein was contemplated and concluded in a pre-conceived mind, in derogation of the service rules and in violation

of the principles of natural justice. Consequently, the learned Single Judge has set aside the charge-sheet, enquiry report, order of punishment and directed reinstatement of the private respondent with all consequential benefits including back wages.

3. Learned Senior Advocate appearing for the appellants has referred to the events occurring prior to the issuance of the charge-sheet as also events subsequent thereto. He has contended that, the private respondent was appointed as assistant engineer. He had joined the Purshurah office of the appellant No. 1 on September 1, 2024 and became the first officer of such office on February 18, 2015. Private respondent had asked for permission from Project Manager to collect booking for agricultural instruments at the rate of Rs. 500/- from intending purchasers on April 4, 2016. He has contended that, private respondent suppressed from the project manager the fact that the farmers had been mis-represented about payment of Government subsidy against such purchase.

4. Learned Senior Advocate appearing for the appellants has pointed out that, permission as sought for by the private respondent was accorded on May 2, 2016. Thereafter, appellant No. 1 had received a complaint about false promise of Government subsidy on May 31, 2017. A show-cause notice had been issued to the private respondent on August 30, 2017. Private respondent had

submitted a reply on September 4, 2017. Thereafter the private respondent had been suspended on September 8, 2017.

5. Learned Senior Advocate appearing for the appellants has submitted that, on October 23, 2017, newspapers carried reports about illegalities in the subject office of the appellant No. 1. Private respondent had filed a writ petition being WPA 6714 of 2019 challenging his suspension. By an order dated April 4, 2019, the Court had directed expeditious disposal of the disciplinary proceeding. Subsequently, an Enquiry Committee had been formed by the Managing Director on April 9, 2019. Enquiry Committee had issued notice of appearance to the parties on April 12, 2019. Private respondent had appeared before the Enquiry Committee on April 26, 2019. Thereafter, an order of punishment of stoppage of increment for three years had been passed as against the private respondent and the order of suspension was withdrawn on May 3, 2019.

6. Learned Senior Advocate appearing for the appellants has submitted that, private respondent challenged the order of punishment dated May 3, 2019 by way of a writ petition being WPA 18117 of 2019. By an order dated September 27, 2019, such writ petition had been disposed of by directing disposal of the disciplinary proceeding in accordance with law and setting aside

the order of punishment. Subsequent thereto, charge-sheet had been issued along with an order of suspension on October 22, 2019 against the private respondent. Private respondent had submitted a detailed reply to the charge-sheet on November 7, 2019. Appellants had appointed an advocate as the Enquiry Officer on November 26, 2019.

7. Learned Senior Advocate appearing for the appellants has taken us through the minutes of the sittings of the Enquiry Officer. He has contended that, request for being represented by an advocate was declined by the Enquiry Officer as the presenting officer was not an advocate. So far as request for summoning defence witnesses is concerned, he has pointed out that the Enquiry Officer noted that, Enquiry Officer did not possess requisite power to summon a witness. However, Enquiry Officer had permitted the private respondent to call any defence witness to be examined during enquiry.

8. Learned Senior Advocate appearing for the appellants has drawn the attention of the Court to the cross-examination of the private respondent. He has contended that, private respondent admitted and acknowledged all the charges as against him in the cross-examination.

9. Learned Senior Advocate appearing for the appellants has drawn the attention of the Court to one sample receipt issued by the office of which, the private respondent was in charge. He had submitted that, such receipt contained an endorsement “Government Subsidy” thereby, giving an impression that the instrument sought to be purchased by a farmer attracted Government subsidy. He has contended that, no Government subsidy was available for the sale or purchase of the agricultural instrument. Private respondent had mis-represented such fact to the members of the public.
10. Learned Senior Advocate appearing for the appellants has contended that, private respondent failed to establish any prejudice being caused on the alleged breach of principles of natural justice. He has contended that, a proceeding cannot be vitiated for mere non-compliance of service rule if such alleged non-compliance does not result in any prejudice being caused to the private respondent. In support of such contention, he has relied upon **2010 Volume 5 Supreme Court Cases 349 (Union of India and Others vs. Alok Kumar)** and **2006 Volume 8 Supreme Court Cases 776 (P.D. Agrawal vs. State Bank of India and Others)**.
11. On the issue that, private respondent was not entitled to being represented by an advocate on the ground that the Enquiry Officer

was an advocate, learned Senior Advocate appearing for the appellants has relied upon **2008 Volume 4 Supreme Court Cases 406 (D.G., Railway Protection Force and Another vs. K. Raghuram Babu)**.

12. On the aspect of the parties of a preliminary enquiry and the fact that, the private respondent had participated in the preliminary enquiry without any allegation of bias being raised, learned Senior Advocate appearing for the appellant has relied upon **AIR 1964 Supreme Court 1854 (Champaklal Chimanlal Shah vs. Union of India)**.

13. So far as appreciation of evidence in a disciplinary proceeding is concerned the learned Senior Advocate appearing for the appellants has contended that, where, there is some evidence, a writ Court should not convert itself to a Court of appeal. In support of such contention, he has relied upon **2013 Volume 6 Supreme Court Cases 602 (S.R. Tewari vs. Union of India and Another)** and **2021 Volume 2 Supreme Court Cases 612 (Deputy General Manager (Appellate Authority) and Others vs. Ajai Kumar srivastava)**.

14. On the aspect of interference of a writ Court with regard to a charge-sheet and the quantum of punishment imposed in a disciplinary proceeding, learned Senior Advocate appearing for the

appellants has relied upon **2010 Volume 13 Supreme Court Cases 427 (*Oryx Fisheries Private Limited vs. Union of India and Others*)** and **2019 Volume 10 Supreme Court Cases 449 (*Union of India and Others vs. Lieutenant Colonel Kuldeep Yadav*)**.

15. Learned advocate appearing for the private respondent has submitted that, the private respondent was initially appointed in 2014. Private respondent had been transferred to Purshurah office and appointed as first officer of such office. Private respondent had requested the Project Manager to accord permission to collect Rs. 500/- as booking advance on April 4, 2016. He has contended that, the intention was to help the appellants by way of a security of Rs. 500/-, and insulate the appellant No. 1 from any loss that may occur if large quantity is purchased and surplus stock was not sold at the Purshurah office by securing an advance from the customers. He has pointed out that, permission had been accorded on May 2, 2016.

16. Learned advocate appearing for the private respondent has contended that, another office staff, namely, Mr. Sukamal Mukherjee confessed that, Mr. Mukherjee was responsible and will take all necessary steps so that subsidy may be released. In this

regard, he has drawn our attention to a writing dated April 27, 2017 issued by Mr. Sukamal Mukherjee.

- 17.** Learned advocate appearing for the private respondent has contended that, some office staff of the Purshurah office complained to the Managing Director as against Mr. Sukamal Mukherjee. Bank passbook of Mr. Sukamal Mukherjee will establish that he had received money from three customers.
- 18.** Learned advocate appearing for private respondent has referred to the preliminary enquiry conducted on June 5, 2017 and June 9, 2017. He has pointed out that, the preliminary enquiry found Mr. Sukumol Mukherjee was solely responsible for spreading rumors. Preliminary enquiry had also found Mr. Soumen Ghosh, cashier of the office to be responsible for having accepted advances or remitted the same to the head office. Another person, namely, Mr. Gopal Saha who was the second officer was also held responsible. Private respondent had been held responsible since he was negligent in performance of his duties.
- 19.** Learned advocate appearing for the private respondent has submitted that, his client depended upon Mr. Sukamal Mukherjee and lacked understanding of Government working procedure or the subject scheme. Private respondent had been kept in the dark with regard to the office affairs.

- 20.** Learned advocate appearing for the private respondent has contended that, preliminary enquiry found Rs. 3,85,000/- to be received for supplying 1670 instruments of which 529 had been sold to farmers in 2016-2017 and an aggregate amount of Rs. 8,35,000/- have been confirmed through the receipt and payment.
- 21.** Learned advocate appearing for the private respondent has drawn the attention of the Court to the sequence of events occurring between the issuance of the first show-cause notice and the two writ petitions filed thereafter.
- 22.** Learned advocate appearing for the private respondent has contended that, a new charge-sheet was issued on October 22, 2019 which was directed to be answered within 48 hours. This, he has contended, itself shows the vindictive nature of the disciplinary authority. Moreover, no fresh show-cause had been issued after the issuance of the charge-sheet. He has contended that, during the issuance of the charge-sheet, provisions of the service rules had been violated as observed by the impugned judgement and order.
- 23.** Learned advocate appearing for the private respondent has contended that his client approached the High Court by a writ petition being WP No. 180 (W) of 2020 seeking full salary minus the suspension allowance for the period for which the disciplinary proceeding was set aside. By an order dated January 13, 2020 the

High Court had observed that the grievance of the private respondent was genuine and directed the appellant No. 1 to consider the representation by passing a reasoned order. However, the Managing Director of the appellant No. 1 had rejected such representation on the grounds that it was premature and could only be considered at the time of final adjudication.

24. Learned advocate appearing for the private respondent has contended that, his client sought for copy of the manual/service procedure or any other written manual/office order/notification about running an office as an officer in charge. He has contended that, the private respondent was ignorant of the working procedure of the Corporation and as such his client asked for the same.

25. Learned advocate appearing for the private respondent has contended that, his client requested the Enquiry Officer to summon some witness and also requested one person to depose as witnesses as he was the enquiry officer in the preliminary as well as the first formal enquiry. Managing Director of the appellant No. 1 had rejected the prayer for Mr. Konar to be a witness. He has contended that, in the preliminary enquiry report as well as in the order passed in the first formal enquiry it was specifically stated that his client was unaware about the government schemes under which

subsidy was given and was ignorant about the day-to-day running of his office.

26. Learned advocate appearing for the private respondent has contended that, documents sought for by his client were denied in the enquiry. He has contended that the enquiry officer did not act as an independent adjudicator and was unbiased.

27. Learned advocate appearing for the private respondent has contended that the witnesses examined on behalf of the management were tutored. He has contended that, his client was deliberately framed.

28. In support of his contentions, learned advocate appearing for the private respondent has relied upon **2010 volume 2 Supreme Court Cases 722 (State of Uttar Pradesh and Ors. vs. Saroj Kumar Sinha)**, **2006 Volume 4 Supreme Court Cases 713 (Narinder Mohan Arya vs. United India Insurance Co. Ltd.)**, **All India Reporter 2002 Supreme Court 3030 (Sher Bhadur vs. Union of India and Ors.)**, **1986 Volume 3 Supreme Court Cases 454 (Swai Singh vs. State of Rajasthan)**, **1995 Volume 6 Supreme Court Cases 749 (B.C. Chaturvedi vs. Union of India and Ors.)**, and **2007 Volume 3 Calcutta High Court Notes 476 (Asian Leather Limited and Anr. Vs. Kolkata Municipal Corporation and Ors.)**.

29. Facts which have been established or admitted are as follows: –

- i.* on June 24, 2014 respondent No. 1 has been appointed as Sub- Assistant Engineer
- ii.* respondent No. 1 had joined the Purshurah office of the appellants on September 1, 2014
- iii.* respondent No. 1 had become the first officer of such office on February 18, 2015
- iv.* respondent No.1 had asked for permission from the Project Manager of the appellants to collect booking at the rate of Rs. 500 from the intending buyers by a letter dated April 4, 2016
- v.* letter dated April 4, 2016 of the respondent No. 1 did not contain any statement of government subsidy
- vi.* appellants had accorded permission to collect booking amount by a writing dated May 2, 2016
- vii.* appellants had received a complaint about false promise of government subsidy by a writing dated May 31, 2017
- viii.* appellants had issued a show cause notice dated August 30, 2017 to the respondent No. 1 to which he replied by a letter dated September 4, 2017 accusing a group D contractual staff of the misdeeds

- ix.* on September 18, 2017 respondent No. 1 had been suspended
- x.* respondent No. 1 had filed WPA 6714 of 2019 challenging his suspension
- xi.* such a writ petition had been disposed of by an order dated April 4, 2019 by directing expeditious disposal of the disciplinary proceeding
- xii.* appellants had constituted an Enquiry Committee on April 19, 2019
- xiii.* such Enquiry Committee had issued a notice of appearance on April 12, 2019
- xiv.* respondent No. 1 had appeared before such Enquiry Committee on April 26, 2019
- xv.* a punishment of stoppage of increment of 3 years from the date of the final order had been passed and the order of suspension was withdrawn as against the respondent No. 1 on May 3, 2019
- xvi.* respondent No. 1 had filed WPA 18117 of 2019 challenging the order of punishment dated May 3, 2019
- xvii.* such writ petition had been disposed of on September 27, 2019 by setting aside the order of punishment and

directing the disposal of the disciplinary proceeding in accordance with law

- xviii.* a fresh chargesheet had been issued on October 22, 2019 along with an order of suspension as against the respondent No. 1
- xix.* respondent No. 1 had submitted a detailed reply to such chargesheet on November 7, 2019
- xx.* a new Enquiry Officer who is an advocate by profession had been appointed on November 26, 2019
- xxi.* 3 management witnesses had been examined in the enquiry
- xxii.* respondent No. 1 had cross-examined each of such management witnesses
- xxiii.* respondent No. 1 had submitted written statement/deposition in the enquiry on March 4, 2020
- xxiv.* respondent No. 1 had been cross-examined on March 18, 2020
- xxv.* request of the respondent No. 1 to summon witnesses had been rejected by the Enquiry Officer on the grounds that he did not have jurisdiction to do the same by an order dated March 18, 2020

- xxvi.* Enquiry Officer had submitted his report on June 16, 2020 holding that all charges levelled as against the respondent No. 1 stood proved
 - xxvii.* Enquiry Report had been forwarded to the respondent No. 1 on June 24, 2020 for his reply
 - xxviii.* respondent No. 1 had submitted his reply to the Enquiry Report
 - xxix.* a 2nd show cause notice had been issued to the respondent No. 1 on November 4, 2020 to which respondent No. 1 gave a reply on November 13, 2020
 - xxx.* order of punishment of dismissal from service had been passed on December 1, 2020
- 30.** Four charges had been levelled as against the respondent No. 1 in the chargesheet dated October 22, 2019. Respondent No. 1 had been charged with the failure to discharge duties honestly and faithfully to the best of skill and ability in not promoting the interest of the appellant No. 1, behaving in a manner unbecoming of an employee and derogatory to the prestige of appellant No. 1, deliberately spreading false information with a view to bringing about disruption of the normal work of appellant No. 1 and intentionally giving false information to superior and misleading superior in obtaining approval.

31. The charges that had been levelled as against the respondent No. 1 centred around his actions as the officer in charge of the subject unit of the appellant No. 1 at the relevant point of time. He had as the officer in charge asked for permission of the Project Manager by a writing dated April 4, 2016 to collect an advance at the rate of Rs. 500 from farmers for sale of agricultural instrument. While obtaining such permission, he had suppressed the fact that, he would be misrepresenting to the members of the public that, government subsidy was involved in such distribution of agricultural instrument. He had as the officer in charge allowed money receipts to be issued for the advance, noting therein the words government subsidy, when actually no government subsidy was involved.

32. In his cross-examination the respondent No. 1 had admitted that he had sought permission from the Project Manager by the letter dated April 4, 2016 for collecting advance of Rs. 500 from the farmers in respect of sale of agricultural instruments. He had admitted in such cross-examination that, the money receipts issued to farmers noted the words government subsidy. He had also acknowledged the fact that, no government subsidy was involved in the transaction. He had acknowledged that, he did not take any steps against the cashier involved although he knew

about the transaction. He had sought to explain his conduct by saying that he was without any previous training. With regard to his subordinates, he had stated in his cross-examination that, he was aware of office related work of his subordinates while not being aware of the unethical actions of his subordinates outside the office.

33. The money receipt noting government subsidy had been issued by the office of which, the respondent No. 1 was the officer in charge at the relevant point of time. No government subsidy was involved and the respondent No. 1 was aware of the same. Despite his knowledge of no government subsidy being involved and despite his knowledge that, the money receipt issued contained the words government subsidy, he had not informed about the same to his superior officers nor had he taken any steps as against the persons involved in his office.

34. The cross-examination of the respondent No. 1 apart from anything else had conclusively established all the charges against him.

35. Learned Single Judge has referred to Rule 90 (iv) of the Service Rules, 1972 as being violated. Rule 90 (iv) of the Service Rules, 1972 has specified that, simultaneously with the framing of charges, the Disciplinary Authority will appoint an officer other

than the complainant to conduct an enquiry. It has also specified that the name of the enquiry officer shall be stated in the chargesheet.

36. In the facts of the present case, the name of the Enquiry Officer has not been specified in the chargesheet. Enquiry Officer has been appointed subsequent to the issuance of the chargesheet and is not the complainant.

37. In our view, Rule 90 (iv) of the Service Rules, 1972 cannot be construed to mean that, no Enquiry Officer can be appointed subsequent to the issuance of the chargesheet.

38. If such construction is accepted then, in a given case, where the Enquiry Officer named in the chargesheet, suffers any disqualification or is otherwise incapacitated from continuing as the Enquiry Officer during the disciplinary proceedings, then, the entire disciplinary proceeding will come to an end as such Enquiry Officer cannot be substituted. In our view, such a construction will give rise to an absurdity which should be eschewed. Consequently, all that, Rule 90 (iv) of the Service Rules requires is that, the Enquiry Officer should not be the complainant himself and that, ideally the name of the Enquiry Officer should be specified in the chargesheet. We hasten to add that, naming the Enquiry Officer in the chargesheet does not mean that, the management is

incapacitated from changing the Enquiry Officer if the situation so demanded, and in a process known to law.

39. Both ***P D Agarwal (supra)*** and ***Alok Kumar (supra)*** have held that, employee must show that non-observance of principles of natural justice has caused real prejudice to him. In the facts of the present case, rejection of the prayer for being represented by an advocate, alleged refusal to summon witnesses for the defence and alleged non-grant of documents have been cited as breach of principles of natural justice which has caused prejudice to the respondent No. 1.

40. Respondent No. 1 had requested the Enquiry Officer for being represented by an advocate at the first sitting of the enquiry. Enquiry Officer had rejected such prayer on such date on the ground that the management was not being represented by an advocate.

41. ***K Raghuram Babu (supra)*** has held that, there is no vested or absolute right in any chargesheeted employee to representation either through a counsel or through any other person unless the statute or rule/standing orders provide for such a right. It has also held that, refusal to grant representation through an agent does not violate the principles of natural justice.

- 42.** In the facts of the present case, the management was not being represented by an advocate in the enquiry proceedings. No service rule has been placed before us establishing a right to the charged employee to be represented by an advocate in the enquiry proceedings. Consequently, contentions as to violation of principles of natural justice on the rejection of the prayer for being represented by an advocate in the enquiry proceedings cannot be upheld.
- 43.** Request for issuance of summons to persons who would be defence witnesses had been made to the Enquiry Officer on March 18, 2020 by the respondent No. 1. Enquiry officer had recorded that, he did not have any power to issue summons to any witnesses in an enquiry proceeding. However, he had allowed the respondent No. 1 to produce any witness during the enquiry proceedings in his defence.
- 44.** This action of the Enquiry Officer cannot be termed to have violated the principles of natural justice causing any prejudice to the respondent No. 1. Respondent No. 1 had been permitted to produce witnesses in his defence if he chose to. Respondent No. 1 did not produce any defence witness during the enquiry proceeding other than himself. He had examined himself on behalf of the defence.

45. Documents that the management had relied upon in the enquiry proceedings had been made over to the respondent No. 1. Request of documents made by the respondent No. 1 had been dealt with by the enquiry officer on January 17, 2020 in details. Essentially, all documents sought for by the respondent No. 1 had been made part of the enquiry was available with the respondent No. 1. Respondent No. 1 cannot be said to have been prejudiced by the decision of the enquiry officer dated January 17, 2020.

46. Another aspect of the breach of principles of natural justice that the respondent No. 1 has alleged is that the presenting officer had acted as the enquiry officer in the earlier round of the enquiry proceedings. ***Champaklal Chimanlal Shah (supra)*** has held that, a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the employee concerned to the enquiry necessary under Article 311 for inflicting one of the 3 major punishments mentioned therein. A preliminary enquiry may be held ex-parte for it is merely for the satisfaction of the government, though usually for the sake of fairness, explanation is taken from the employee concerned. The allegation of the respondent No. 1 is directed against one person who had acted as

the enquiry officer in the preliminary enquiry as against the respondent No. 1. Such preliminary enquiry officer had acted as the presenting officer in the regular disciplinary proceedings initiated against the respondent No. 1. Again, respondent No. 1 has not established any prejudice is being caused to him by such an action.

47. *SR Tiwari (supra)* has held that, findings of fact are perverse if arrived at by including or excluding relevant material, or by taking into consideration irrelevant/inadmissible material, or if findings of fact are against the weight of evidence, or if they outrageously defy logic or suffer from vice of irrationality, or where decision is based on evidence which no reasonable person would act upon. It has gone on to say that, where there is some acceptable and reliable evidence, conclusions cannot be termed as perverse and consequently findings cannot be interfered with.

48. *Ajai Kumar Srivastava (supra)* has held that, there are limits to judicial review of administrative action. It has held that, strict rules of evidence are not applicable to departmental proceedings and only requirement is that allegations against the delinquent must be established by such evidence acting upon which reasonable person acting reasonably and with objectivity arrive at such finding.

49. A delinquent employee facing a disciplinary proceeding and claiming breach of principles of natural justice has to establish not only breach of any of the principles of natural justice but also that such breach has caused him prejudice.

50. Judicial review of administrative order can be successfully had if it is established that, such as administrative order was perverse. The writ petitioner who has alleged perversity of the impugned administrative order needs to establish that, the order was issued by taking into consideration extraneous/inadmissible materials or ignoring relevant materials or the findings return were against the weight of evidence or such findings outrageously defy logic or suffer from the vice of irrationality or where the decision is based on evidence which no reasonable person could act upon. However, judicial review of an administrative order is not available when, there is some evidence to support the conclusion arrived at. Moreover, a writ court is not called upon to re-appreciate or re-evaluate the materials taken into consideration while passing the administrative order and substitute the findings of the administrative order by its own finding. A writ court is not called upon to function as a Court of Appeal against an administrative order when there is some material to support the conclusion arrived at in the administrative front.

51. *Oryx Fisheries Private Limited (supra)* has held that, object of show cause notice is to give the noticee a reasonable opportunity of making objection against proposed charges indicated in the notice. It has noted that, reasonable opportunity includes an opportunity to deny guilt and establish innocence. In the facts of the present case, the respondent No. 1 had responded to the chargesheet by electronic mail stating that, the standard mail would take time to reach the employer. Contemporaneously, respondent No. 1 did not allege that, time given for response to the chargesheet was inadequate. Rather, he had submitted a detailed response. Moreover, respondent No. 1 has not alleged that, he did not understand the contents of the chargesheet. Nor has he alleged that, employer noted the decision in the chargesheet itself. Respondent No. 1 has failed to establish that, the appellants acted with a closed mind in issuing the chargesheet and continuing with the disciplinary proceedings.

52. *Kuldeep Yadav (supra)* has held that, quantum and nature of punishment is in the domain of the employer and that, judicial review can be invoked only in exceptional and rare case where punishment shocks the conscience of the court and is unreasonable. In the facts and circumstances of the present case, it cannot be said, with the charges being proved as against the

respondent No. 1 that, the quantum of punishment imposed is disproportionate.

53. *Saroj Kumar Sinha (supra)* has held that, an enquiry officer is a quasi-judicial authority and is in the position of an independent adjudicator. He is not supposed to be representative of the department/disciplinary authority. He is required to be wholly unbiased and should not act as a prosecutor as well as a judge. In the facts of the present case, the enquiry officer which had submitted the enquiry report on the basis of which, the order of punishment was imposed by the disciplinary authority, did not act as the prosecutor. The earlier enquiry officer who conducted the preliminary enquiry had acted as the presenting officer. Ratio laid down in the judgement cited does not disqualify such enquiry officer in the preliminary enquiry to act as the presenting officer. The presenting officer has not decided on the merits of the charges and the defence raised.

54. *Narinder Mohan Arya (supra)* has held that, on judicial review of a departmental enquiry, court ought to examine as to whether the evidence adduced before the enquiry officer had nexus with the charge and could or could not lead to the guilt of the employee. In the facts and circumstances of the present case, apart from the evidence led by the management, the respondent No. 1 in

his cross-examination admitted all the charges levelled against him. Consequently, it cannot be said that, the enquiry officer had based his finding as against the respondent No. 1 on no material evidence at all.

55. *Sher Bhadur (supra)* has in the facts of that case where the enquiry officer stated that in view of the documentary and circumstantial evidence as adduced in enquiry the charges stood proved, did not satisfy the rule of sufficiency of evidence. Such is not the case here.

56. *Swai Singh (supra)* has held that, where the charges are vague and evidence are not sufficient to connect the charged officer with the alleged misconduct, such departmental enquiry stood vitiated by non-compliance with the principles of natural justice. Again, in the facts and circumstances of the present case, it cannot be said that the charges levelled are vague or that, such charges have not been proved in the enquiry.

57. *BC Chaturvedi (supra)* has held that where findings of the disciplinary authority are based on some evidence, court cannot re appreciate the evidence and substitute its own findings.

58. *Asian Leather Ltd and another (supra)* has dealt with provisions of the Kolkata Municipal Corporation Act and the right to obtain a sanctioned building plan without paying for the

Drainage Development Fees. The facts and circumstances of the present case are absolutely different.

59. The Enquiry Officer had on appreciation of the facts established during the enquiry arrived at the finding that the charges as against the respondent No. 1 stood proved. Such decision of the Enquiry Officer as accepted by the disciplinary authority has not been established to be perverse.

60. In view of the discussions above, we set aside the impugned judgement and order of the learned single judge and restore the order of punishment imposed as against the respondent No. 1.

61. APO 151 of 2023 is allowed without any order as to cost.

[DEBANGSU BASAK, J.]

62. I agree.

[MD. SHABBAR RASHIDI, J.]

Later :-

Learned advocate appearing for the appellant submits that, pursuant to order dated February 29, 2024 appellant deposited 50% of the amount receivable by the respondent No. 1 with the Registrar, Original Side.

In view of the appeal being allowed, it would be appropriate to permit the appellants to withdraw the amount deposited with the Registrar, Original Side.

The Registrar, Original Side will refund the entire amount lying to the credit of the proceedings, to the appellant No. 1 forthwith. The Registrar, Original Side will encash fixed deposit, if made, prematurely, if necessary.

[DEBANGSU BASAK, J.]

I agree.

[MD. SHABBAR RASHIDI, J.]