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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5064-2016 (O&M)

Date of Decision: 01.02.2024

A.K. Srivastva

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Animesh Sharma, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Mr. Vishal Gupta, Advocate, for respondents No.2 & 3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing the impugned order dated 24.07.2015 (Annexure P-1) passed by respondent No.2 with a further prayer for *Mandamus* directing the respondents to grant to the petitioner all the consequential benefits.

2. The factual matrix of the present case is that the petitioner was employed as Project Officer with respondent No.2 which is the Haryana Kalyan Nigam which is now known as Haryana Scheduled Castes Finance and Development Corporation. In the year 1991 when he was posted as Project Officer at Common Facility Centre of respondent No.2 at Ambala

Cantt., the petitioner was suspended from duty vide letter dated 23.12.1991. Thereafter, he was served with charge-sheet on 13.01.1992 under the provisions of Haryana Harijan Kalyan Nigam Employees Service Bye Laws and Haryana Civil Services (Punishment and Appeal), Rules, 1987. There were total seven charges against the petitioner and a regular departmental enquiry was held. Vide Annexure P-4, a report was submitted by the Enquiry Officer dated 11.03.1993. Each and every charge was considered by the Enquiry Officer independently and in most of the charges it was found that the petitioner was alone not responsible for the allegations against him because he was not the recommending authority and in this way his sole responsibility was not proved by the Enquiry Officer. However in two of the charges, his sole responsibility was fixed. Thereafter, the Enquiry Officer sent the enquiry report to the Punishing/Competent Authority for further course of action. However after a period of about three years the same Enquiry Officer sent another enquiry report to the concerned Disciplinary/Competent Authority vide Annexure P-6 dated 22.02.1996 in which the findings were different and which had gone to the prejudice of the petitioner. Those charges of which in the earlier report which was three years ago in which the petitioner was found to be not alone responsible for the losses, if any were now depicted as the petitioner being solely responsible for the same. Thereafter, the Punishing Authority passed a punishment order against the petitioner whereby the petitioner was dismissed from service vide Annexure P-9 and an amount of Rs.6,04,919/- was also directed to be recovered from the petitioner. The aforesaid order of penalty of dismissal and recovery was assailed by the petitioner by filing a statutory appeal before the Board of Directors and the Board of Directors

also dismissed the appeal vide Annexure P-11. Thereafter, the petitioner assailed the orders of dismissal and the appellate order by filing a writ petition before this Court on the ground that the Appellate Authority has not passed a speaking order and the said writ petition was disposed of vide Annexure P-12 and a direction was issued to the Appellate Authority to pass a fresh order after hearing the petitioner in accordance with law. Thereafter, the Appellate Authority passed a fresh order vide Annexure P-13 by which the appeal was again dismissed by the Board of Directors. The petitioner again filed a second writ petition before this Court and which was also disposed of vide Annexure P-14 on 08.05.2015. In this petition, the petitioner has also challenged the action of the respondents in passing of the dismissal order on the ground that the Disciplinary Authority has not applied its mind and not considered the reply and submissions made by the petitioner before imposing penalty. Vide Annexure P-14, the order of dismissal was set aside and the matter was remanded back to the Disciplinary Authority for fresh decision after considering the reply filed by the petitioner and after giving opportunity of hearing. The operative part of the aforesaid judgment is reproduced as under:-

“Having gone through the said judgment, I am of the considered view that the exposition of law made therein would apply to the present case. In the circumstances, the impugned orders are set aside. However, that can not mean that the petitioner will get full relief. The matter is remanded back to the disciplinary authority for fresh decision after considering the reply filed by the petitioner. Since a period of 16 years have already elapsed from the dismissal of the petitioner the disciplinary authority is directed to pass a final order within a period of 2 months from the date of receipt of a certified copy of this order. Needless to say that the petitioner would be given an opportunity of hearing. It is further made clear

that in case a final order is not passed within the aforesaid period (subject to the petitioner cooperating with the disciplinary authority) the petitioner would be entitled to all consequential benefits of the order of dismissal having been set aside. Petition stands disposed of in the above terms. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

3. Thereafter, the matter was considered by the Disciplinary Authority again in pursuance of the orders passed by this Court and the impugned order dated 24.07.2015 (Annexure P-1) was passed and the petitioner was dismissed from service and again an amount of Rs. 6,04,919/- was directed to be recovered from the petitioner. In the present petition, the petitioner has challenged the impugned order Annexure P-1.

4. Learned counsel appearing on behalf of the petitioner has made the following submissions:-

(i) He referred to para No.9 and 23 of the petition to state that when the second enquiry report was submitted by the Enquiry Officer, the petitioner was not associated with the enquiry nor any notice was issued to him and the same position has not been controverted by the respondents.

(ii) The order by which the petitioner was dismissed vide Annexure P-1 is not only perverse and arbitrary but also contrary to the settled principles of service jurisprudence. He has submitted that the impugned order was passed on the basis of second enquiry report of the Enquiry Officer without associating the petitioner or even without issuing any notice whatsoever with the Enquiry

Officer wherein the findings were changed to the prejudice of the petitioner after a period of three years and it was on the basis of the aforesaid second enquiry report that the order of dismissal has been passed. He has submitted that the same Enquiry Officer after a lapse of three years could not have sent any second report to the Disciplinary Authority without giving any opportunity of hearing or associating him with the enquiry/clarification, if any and therefore, the order of dismissal itself is liable to be set aside on this score alone.

(iii) When this Court vide Annexure P-14 had remanded the case to the Disciplinary Authority for taking a fresh decision, it was the duty of the Disciplinary Authority to have applied its mind afresh on the basis of the record available and the other relevant factors without even being influenced or having considered the earlier order of dismissal which already stood set aside by this Court. He submitted that a perusal of the operative part of the impugned order Annexure P-1 which is an order of dismissal would show that the Disciplinary Authority who is the Managing Director has recorded that he agrees with the earlier order of dismissal dated 03.12.1996 and that he affirmed the same. He submitted that in this way the respondent-Managing Director-Disciplinary Authority has not only abused the process of law but also acted contrary to the directions issued by this Court vide Annexure P-14. He further submitted that instead of so observing that if at all the petitioner was to be dismissed from service, then it would have been done by way of passing a fresh order of

dismissal based upon the documents, record and other relevant factors but he could not have affirmed the earlier order of dismissal which already stood set aside by this Court and therefore, the impugned order Annexure P-1 also deserves to be set aside on this score alone.

(iv) He also submitted that on the same set of charges regarding which disciplinary proceedings were initiated against the petitioner and he was dismissed from service, an FIR was also lodged against the petitioner and the petitioner had faced trial before the Criminal Court and vide P-17, he was acquitted by the trial Court. The order of acquittal was assailed by the respondents and the appeal was also dismissed vide Annexure P-18 and so far as the criminal case pertaining to the same charges is concerned, the petitioner stood acquitted and which has attained finality till date.

5. On the other hand, Mr. Vishal Gupta, learned counsel appearing on behalf of respondent No.2 submitted that the present petition was not maintainable in view of the fact that there was an alternate remedy available with the petitioner for filing an appeal under the Service Rule. He referred to Annexure P-2 which are the relevant rules under which a Statutory Appeal was available under Clause 6.4 and submitted that since the impugned order is an order of penalty, an appeal would lie before the Board which has not been availed of by the petitioner and therefore, the present writ petition is not maintainable. He further submitted that the challenge in the present petition is to the order of punishment by which the petitioner was dismissed

from service and recovery was ordered to be effected from him which is based upon facts and the petitioner now wants re-appraisal of the facts on merits by this Court which is also not permissible under the law. He further submitted that when vide Annexure P-14 this Court had set aside the order of dismissal and remanded back the case to the Disciplinary Authority, then the Disciplinary Authority while passing the impugned order Annexure P-1 had considered all the relevant factors and the record of the case and after considering the case and even after hearing the petitioner had passed a detailed order by which the punishment of dismissal was inflicted upon the petitioner alongwith recovery of Rs. 6,04,919/- and therefore no fault can be found with the impugned order. He further while referring to order Annexure P-16 submitted that so far as the second enquiry report Annexure P-6 is concerned, the same has already been upheld by this Court vide Annexure P-16 and therefore now the petitioner cannot turn around and submit that the second enquiry report was bad in law. He further submitted that even otherwise if at all some defect is found in the enquiry or in the order passed by the Disciplinary Authority, then at the most the matter can be remanded back to the Disciplinary Authority for a fresh decision and it cannot be set aside since it is based upon facts.

6. I have heard the learned counsel for the parties.

7. It is a case where it is a third round of litigation filed by the petitioner. The petitioner was working as Project Officer and while he was in service, there was an order of dismissal against him which was affirmed by the Appellate Authority but this Court vide Annexure P-14 had set aside the order of dismissal and the appellate order and thereafter a fresh decision was taken by the Disciplinary Authority by which again the order of

dismissal was inflicted upon the petitioner. The petitioner again challenged the aforesaid order before this Court and vide Annexure P-14, this Court had set aside the order of dismissal and the remanded back the case to the Disciplinary Authority to take a fresh decision in accordance with law.

8. One of the preliminary objections which was raised by the learned counsel for the respondent-Corporation was with regard to the existence of an alternate remedy of appeal and he has submitted that the present petition is not maintainable in that regard. Although an alternate remedy of statutory appeal exists in Rule 6.4 vide Annexure P-2 but it has to be seen as to whether in the facts and circumstances of the present case, it will be in the interest of justice to non-suit the petitioner only on the ground of alternate remedy or not. The first order of dismissal against the petitioner was passed in the year 1996 which is almost 28 years ago and thereafter he has been subjected to various rounds of litigation and the present is the third round of litigation. Twice the earlier petitions were disposed of and Disciplinary Authority was directed to take a fresh decision in accordance with law after affording an opportunity of hearing to the petitioner. It has been so stated by the learned counsels for the parties that the petitioner has already attained the age of superannuation in the year 2006 and he is of about 75 years of age. Earlier the Appellate Authority which is a Board had upheld the order of Disciplinary Authority by which the petitioner was dismissed and the order of the Appellate Authority was set aside by this Court. Although in normal circumstances when there is existence of an alternate remedy of appeal, then the petitioner should be relegated to the alternate remedy but considering the peculiar, exceptional circumstances and background of the present case, this Court is of the view that it will not

be in the interest of justice to relegate the petitioner to the alternate remedy of filing of an appeal particularly in view of the fact that the present is a third round of litigation filed by the petitioner, the petitioner is of the age of 75 years and earlier the Appellate Authority which is the Board had already passed an order affirming the order of dismissal and in case now the petitioner is relegated to the Appellate Authority which is the Board, then the same would not be in the interest of justice. Therefore, the objection which has been taken by the counsel for the respondent-Corporation cannot be accepted and is rejected.

9. On merits, one of the basic arguments which has been raised by the learned counsel for the petitioner is that when the disciplinary proceedings commenced, then the petitioner was subjected to a regular enquiry in which he participated and thereafter vide Annexure P-4, the Enquiry Officer dealt with all the seven charges and in most of the charges it was found that the petitioner was not the sole person responsible and the entire responsibility did not vest with the petitioner and in this way, the charges were proved against the petitioner only to a limited extent for limited liability. However, so far as two out of seven charges are concerned, the petitioner was vested with the sole responsibility. In other words, when the enquiry report was submitted by the Enquiry Officer vide Annexure P-4 in the year 1993, then the allegations against the petitioners were not fully proved pertaining to his role and the extent of his liability at all because only partial role was attributed to the petitioner by the Enquiry Officer. However surprisingly after about three years the Enquiry Officer again submitted another enquiry report in which he stated that all the charges are now proved against the petitioner fully and the petitioner was found to be

fully and solely responsible for the charges and an amount of Rs. 6,04,919/- was recoverable from the petitioner. The main contention of the learned counsel for the petitioner is that once the Enquiry Officer has enquired into the allegations based upon facts, who conducted examination and cross-examination of the witnesses and the findings were arrived at by the Enquiry Officer by which only a partial role was attributable to the petitioner, then no second enquiry report could have been submitted by the Enquiry Officer and if at all it was submitted then it was without the authority of law. During the course of arguments, a specific query was posed to both the learned counsels for the parties as to whether there was any specific order passed by any Competent Authority or any other authority whatsoever asking the Enquiry Officer to re-submit the enquiry report to which both the learned counsels for the parties have submitted that there is no such order available on the record. However learned counsel for the respondent-Corporation has referred to the opening lines of the second enquiry report whereby it has been so stated that the Enquiry Officer was so ordered but there is nothing on the record to show as to by what order or instruction he was directed to submit another enquiry report after a period of three years. Be that as it may be, even otherwise also it is the specific case of the petitioner which is so pleaded by him in para No.9 and 23 of the present writ petition that before the second enquiry report was submitted by the Enquiry Officer to the Competent/Disciplinary Authority neither any opportunity of hearing was given to him nor any notice was sent to him nor was he associated in any respect with the second enquiry to which when reply was filed by the respondent-Corporation, then the same has not been controverted. In other words, when a second enquiry report was submitted

by the Enquiry Officer which was in the nature of taking a U-turn and in the second enquiry report the charges were stated to be proved fully qua the petitioner which caused prejudice to the petitioner without even associating him with the second enquiry and therefore, this Court is of the view that it is a violation of rule of *audi alteram partem* and on the ground of violation of the principles of natural justice itself, the impugned order of dismissal cannot sustain. It is also not coming forth as to why and under what circumstances after a period of three years the Enquiry Officer on its own submitted a second enquiry report by taking a view regarding proving of the charges qua the petitioner which straightway caused acute prejudice to the petitioner and which ultimately resulted in the order of dismissal and recovery. The findings on charges in the first enquiry report and in the second enquiry report which is by the same Enquiry Officer can be compared as follows in a tabulated form:-

Charge No.	1 st Enquiry Report	2 nd Enquiry Report
1.	The Project Officer (P) placed an order for the supply of 5000 pairs of derby shoes vide No. Nil dated 28.12.90 followed by another order of 6000 pairs of derby shoes placed on M/s New Advance Shoe Factory, Sadar Bhatti, Agra. Those orders were placed by the P.O (P) with a copy to Head Officers. Thereafter two more orders were placed by the Head Office on 3.5.91 and 19.1.91 for the supply of 4000 pairs and 4800 pairs of shoes on the firm following rates:	The project officer verified and recommended the payment of Rs. 10/- as labour charges and Rs. 0.91/- as cartage per pair to the fabricator of Police Derby shoes without the permission of Head Office resulting in loss of Rs. 191470.50. In the

i) Closed upper	Rs.59.13
ii) Cut components	<u>Rs.39.96</u>
	Rs.99.09

In the order it was made clear that the total cost should not exceed the above amount and request was made to supply these components to our factory.

While checking the record 17550 pairs of shoes were got manufactured through cut components and the payment have been made to the firm at Rs.110/- per pair as detailed below:-

i) Upper component (closed)	Rs.59.13
ii) Cut component	Rs.39.96
iii) Labour	Rs.10.00
iv) Cartage	<u>Rs.00.91</u>
	Rs.110,00

Shri A.K. Srivastava intimated that he had sought approval to pay Rs.10/- as Labour charges vide his note dated 10.4.91 addressed to G.M. (P) but on checking the record and the statement of the Presenting Officer no such sanction to pay Rs. 10/- as labour charges has been issued by Head Office. Shri A.K. Srivastava also took plea that cartage is essential and in the costing it comes to Rs.1.39 per pair but no sanction was issued by Head Office to pay cartage as the components were to be supplied to our factory. The under signed tried to check the details of payments in C.F.C. but these could not be made available because all the connected documents have been taken by the vigilance Department. However, a copy of the register given to me in which it is clear that payment of 17550 pairs of derby shoes was made at Rs.111/- per pair.

From the above facts it is clear that payment or

findings it has been proved that payment of labour charges and cartage charges @ Rs. 10.91 made to M/s New Advance Shoe Factory, Agra without obtaining the approval of the Head office. As regards the financial responsibility is concerned, Shri A.K. Srivastava PO(P) is fully responsible for this loss as he had recommended the payment without the approval of the Head of Department. Besides this, there was administrative lapse on the officers/officials who dealt this case without seeing the facts and approval of competent Authority, but responsibility of loss lies with Shri A.K. Srivastava who was the Incharge Project Officer of the unit.

	labour charges and cartage charges as Rs. 10.91 per pair has been made to M/s New Advance Shoe Factory, Agra without obtaining the permission of the Head Office. The undersigned is also of the view that Shri A.K. Srivastava alone cannot be held responsible for this lapse because he had only verified and recommended the payment but it was the duty of the concerned officials working in C.F.C. at that time to pin-point before making the payment that sanction of Rs.10.91 per pair is not available and payment could not be made. If this fact could have been brought to the notice of D.D.O of C.F.C. in the first instance the next payments could have not been released by him until either the sanction is obtained or necessary deductions on this account is made from the bills of the party.	
2.	In this charge it was alleged that Shri A.K. Srivastava verified and recommended the payment of heel at Rs.10.25/- per heel. From the record it has been established that 21550 heels were purchased from M/s S.K. Enterprises, Agra at Rs.5.25 and Rs.10.25 as per statement attached. Shri V.V. Singh P.O (L) in his statement intimated that the cost of heel is available in cut component of sole leather in the costing sheet in which 180 gram sole leather per pair was kept for heel, toe and puff stiffener. Shri V.V. Singh also argued that when the cost of heel is already inducted in the coating sheet separate coat of heel cannot be given. Moreover the P.O. (P) has not obtained the permission of Head Office to allow payments of Rs.5.25 and Rs.10.25. At the time on 23.2.93 Shri A.K Srivastava intimated the Enquiry Officer that	In this charge, it was alleged that Shri A. K. Srivastava recommended the payment of heel @ Rs.10.25 while the Nigam had provided leather heel in the cut component resulting in loss of Rs.179881.50. In this connection, it is submitted that this charge had already been proved. I am of the view that according to my findings Shri A.K. Srivastva is responsibility for the

	will produce the sanction of Head office on or before 2.3.93, but in another enquiry when he attended Head Office on 2.3.93 he could not produce any kind of such sanction but he has given a photo copy of costing in which heel word at Sr. No.4 of cut components was delded. When the Enquiry Officer asked his to produce the same deletion in the office copy he said that it could not be got done inadvertently as such the contention of the PO(P) cannot be considered. Therefore, there is also loss of Rs.1,79,887.50. In this case also I am of the view that this aspect should have also been checked by the concerned person posted in C.F.C at that time before following payments. It is the duty of the accounts branch to check all terms and conditions /sanctions from the Competent Authority before making payments to the private parties. As such Shri A.K. Srivastava alone cannot be held responsible for this lapse. The other officials who were supposed to check all these formalities should also be taken into account in this shortage.	Lapse. It is further submitted that Shri A.K. Srivastva is fully responsible for the financial loss of Rs. 179887.50 whereas the other officers /officials are responsible for administrative lapse.
3.	In this charge it has been alleged that Shri A.K. Srivastava placed order and issued raw material for 5000 pairs to the party for the manufacture of Police derby shoes in the premises of C.F.C., Ambala Cantt. but the party had given 3000 pairs resulting loss of raw material for 2000 pairs. A statement showing the material issued to the party has been prepared by Shri V.V. Singh, P.O.(L) and enclosed herewith for reference. From the statement it transpired that crome leather worth Rs.1,03,367.00 issued excess to the party. Similarly 34782 cms split lining have been issued in excess to the party	This charge has already been proved.

	resulting loss of Rs.23,304/- besides this sole leather was issued 1995.300 Kg resulting loss of Rs.95714/- thus total loss occurred due to excess material issued comes to Rs.22,22,446/- for which details have been given in the enclosed statement. Shri A.K. Srivastava intimated that he was transferred to Head Office and relinquished his charge in the third week of April, 1991 and by that time M/s Unico foot-wear, Agra issued 3000 pair of shoes thereafter a new transfer sheet was opened which was used by the Supervisor before the material is issued to the Fabricators. I have checked the record but none of the Supervisor could produce me any documents which shows that the remaining 2000 shoes have been received or not whereas 3000 pair of shoes were shown as received on 4.2.92 in the Stock Register. It was essential for the Supervisor also to maintain separate record for the material issued to M/s Unico foot-wear and the details of Shoes received against those material which could easily show the factual position. Since Shri A.K. Srivastava could not produce any authenticate documents any the receipt remaining 2000 shoes nor he handed over of the remaining material to his next incharge before joining Headquarter nor any information is available in record, the entire responsibility for this shortage lies on his Shri A.K. Srivastava.	
4.	Shri A.K. Srivastava issued blank C.S.T. forms to M/s Batra Leather Supply Co., Agra numbering 293703 dated 14.12.90 and number 293702 dated 14.12.90 without assigning any bill no. and date on the forms. Shri A.K. Srivastava in his statement intimated that bill	This charge has already been proved as the Project officer issued blank CST without mentioning bill No. and date which forms

	No.1544 and No. 85 in which amount of Rs. 30,798.96 and Rs. 3812/- were issued to M/s Batra Leather Supply Co., Agra against C.S.T. Form No.293703 and M/s Gulati Shoe Material against form No. 293702 respectively. He further intimated that he could not write these bill nos. in the office copy kept in the office. This is also a lapse on the part of Shri A. K. Srivastava as if he had issued blank C.S.T. forms to these firms, these could have been misutilised by them at the time of submission of their annual return. Since Shri A.K. Srivastava, P.O (P) has intimated the bill no. and date against which these forms were issued a lenient view needs to be taken against him.	could have been mis-utilised by the firm.
5.	In the charge no.5 has been alleged that Shri A.K. Srivastava sold Peshori Chappals to P&T Department at reduced rate. Shri Suresh Chand, Supervisor intimated in his statement that 1715 pair of Chappal were sold at RS.75/- and 889 pair of Chappals at Rs.85/- per chappal. Therefore, there is loss of Rs.79875/- (1775 x 45) and similarly loss of Rs.31,115/- by selling Rs.85/ par chappal (889 x 35), thus there is loss of Rs.1,10,990/-. Shri A.K. Srivastava stated in his statement that the order of Peshori chappal was accepted by the P.O. (L) at Rs.65/- per chappal which was later on enhanced to Rs.75/- but Shri Suresh Chand, Supervisor has given cost of analysis in which the cost works out to be Rs. 120/-. When this fact was brought to the notice of Shri A.K. Srivastava he intimated that this rate was out for applying similar Chappals to Gujrat Circle, but this order was not materialized. Shri A.K Srivastava could not produce any document in which rate of Rs. 65/- was accepted by the Nigam. This loss is also	This charge has already been proved.

	due to negligence on the part of P.O. (P). Besides above, Shri Suresh Chand also brought out that material of Rs.17,784/- is still lying un-used with him nor it can be used anywhere. Therefore, there is also loss of Rs.17,784/- for the material lying un-used.	
6.	In this charge it has been mentioned that proper record has not been maintained by the P.O. (P) Shri A.K. Srivastava intimated that it is the duty of the Supervisor to complete the job books and to put up the same to the P.O. (P). Moreover it was also the duty of the staff posted in C.F.C.. The undersigned is of the view that although it is a serious matter, not to maintain the record properly which could lead excess payments but the entire responsibility cannot be put on Shri Srivastava. Moreover, the accountant General (Audit) has already completed their audit of C.F.C. up to 1991-92.	This charge pertains to non-maintenance of proper record. It is a serious lapse on the part of Shri A.K. Srivastava not to get the proper record maintained. The undersigned recommended that the entire responsibility cannot be put on Shri A.K. Srivastava only with the contention that the other staff is also responsible for the maintenance of record. Moreover, the audit of Accountant General have been completed upto the year 1991-92, as such, it was not recommended to put the entire responsibility on the project officer alone.
7.	In this charge Shri A.K. Srivastava, P.O. (P) has been found negligent in performing his duty as he did not inform the Head Office regarding missing of electrical motor. Shri A.K. Srivastava intimated that he has left the charge on 25.4.91 and he had no knowledge for the missing of electric motor. Moreover, the report of the	This charge could not be established due to non-availability of record.

missing of said motor were sent to Head Office by the P.O. (L) on 16.10.91. The record of C.F.C. does not indicate the cost of motor, even they have not having the cost of original machinery from which these Motors have been removed. However Shri Suraj Parkash enquired from the market and given the rates of motors a Rs.1932/-, Rs.1650/- and Rs.3275/- for different quality of Motors. The loss due to remove of the motor cannot be as curtailed at this belated stage but it can be presumed that there is loss of about Rs.4000/- if we take the cost of the motor at the prevailing market rate. Therefore, this charge could not be established. In addition to above, it is submitted that most of the relevant record could not be produced to me for reference. This enquiry has been completed on the bases of relevant record available with the Presenting Officer, as most of the record could not be produced by the Presenting Officer, due to non-availability of record in the office or most of the records have been taken by the Vigilance Department as initiated by the incharge of C.F.C. The above report is submitted to the worthy M.D. for further orders please.	
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10. A perusal of the aforesaid would show that when the charges were considered in the first enquiry report, the petitioner was not fastened with any liability to be solely responsible but in the second enquiry report, he was held to be solely responsible. Such kind of procedure adopted by the Enquiry Officer either on his own or if at all some directions were issued by any other authority which are obviously not available on record is unknown to service jurisprudence especially in view of the fact that the second

enquiry report was sent at the back of the petitioner even without affording any opportunity of hearing to him and without associating him in any further enquiry. Such second enquiry report was submitted on the basis of which the impugned order of dismissal was passed. On this aspect so far as the argument raised by the learned counsel for the respondent-Corporation that the entire enquiry report and the order of Disciplinary Authority is based upon facts and cannot be gone into by this Court in writ jurisdiction is not sustainable in view of the fact that when on the face of it and *ex facie* some illegality and perversity can be found especially pertaining to the violation of the principles of natural justice, then the writ Court can always exercise its powers under Article 226 of the Constitution of India and can interfere and cannot shut its eyes to the illegalities being committed.

11. So far as the another argument raised by the learned counsel for the petitioner that the petitioner was rather on the same set of charges tried by a criminal Court after an FIR was lodged against him and he has been acquitted vide Annexure P-17 and the order of acquittal has since been affirmed by the Appellate Court and has also attained finality also carries weight. Although the order of acquittal itself may not become a ground *per se* for setting aside the order of dismissal based upon disciplinary proceeding but surely it is a relevant factor for considering the rights of the petitioner wherein he has challenged the order of dismissal before this Court.

12. So far as the argument raised by the learned counsel for the petitioner that the impugned order Annexure P-1 which is order of dismissal is not only perverse but also against the order passed by this Court vide Annexure P-14 is concerned, the same is also having force. A perusal of the earlier judgment passed by this Court vide Annexure P-14 which has been

reproduced above would show that the order of dismissal and the order of Appellate Authority were set aside by this Court and the matter was remanded back to the Disciplinary Authority for 'fresh decision' after considering the reply of the petitioner. However, a perusal of the dismissal order would show that after although referring to the entire documents and the submissions of the parties, the Disciplinary/Punishing Authority has come to the conclusion that the earlier order of dismissal which was already set aside by this Court would remain affirmed. Such kind of approach of the Disciplinary Authority is also unwarranted and is unsustainable. It was the duty of the Disciplinary/Competent Authority to have taken a decision as to whether the petitioner in the light of the facts and circumstances was liable to be punished or not but there was no occasion for the Disciplinary Authority to have simply affirmed the order of dismissal which was already set aside by this Court and, therefore, the impugned order was also in violation of the judgment passed by this Court vide Annexure P-14.

13. So far as the argument which has been raised by the learned counsel for the respondent-Corporation that the second enquiry report Annexure P-6 has already been upheld by this Court vide Annexure P-16 is concerned, the same is not sustainable in view of the fact that a perusal of Annexure P-16 would show that an application was filed for clarification of the order dated 08.05.2015. The order of 08.05.2015 is the aforesaid judgment of this Court Annexure P-14. The contentions of the counsel for the applicant and that of the State counsel were noted. In the contention which was made by the learned counsel for the petitioner it was so stated by him that the additional report was also set aside in the impugned order but the State counsel had contended that it has not been set aside and this Court

vide Annexure P-16 had only observed that it finds favour with the argument of the learned Additional Advocate General and therefore, the application was dismissed. A perusal of the aforesaid order dated 15.01.2016 would show that this Court dismissed the application only but it cannot be said that the second enquiry report has been upheld.

14. So far as another argument which has been raised by the learned counsel for the respondent-Corporation that if at all assumingly any illegality has been found in the order of dismissal (Annexure P-1), then the matter can still be remanded to the Disciplinary Authority for taking fresh decision is concerned, the aforesaid argument raised by the learned counsel for the respondent-Corporation also does not hold good in the eyes of law considering the peculiar facts and circumstances and factual background of the present case. This is a third round of litigation by the petitioner and almost 27 years have elapsed since the first order of dismissal was passed against him and this Court is already of the view that the second enquiry report which was given by the Enquiry Officer to the Competent Authority vide Annexure P-6 was an arbitrary exercise of power and without jurisdiction especially in the absence of any specific order from any authority, then such kind of prayer at this stage and especially when the petitioner is stated to be of 75 years of age would not be in the interest of justice and, therefore, the argument raised by the learned counsel for the respondent-Corporation is not sustainable.

15. In view of the aforesaid totality of the facts and circumstances of the present case, the present petition is allowed. The impugned order dated 24.07.2015 (Annexure P-1) is hereby set aside. The petitioner is stated to have already attained the age of superannuation in the year 2006.

Therefore, he cannot be directed to be re-instated in service. However, he shall be entitled for the benefits which ought to have accrued to him at the time of his demitting from office on attaining the age of superannuation had he not been dismissed. The petitioner shall not be entitled for any financial benefit for the period from the date of his dismissal till the date of his age of superannuation because he has not worked for that period but he will be entitled for the grant of retiral benefits which are otherwise admissible to him in accordance with law. Consequently, respondent No.2 is directed to pay all the admissible retiral benefits to the petitioner w.e.f date of his reaching superannuation within a period of three months from today alongwith interest @ 6% per annum (simple). In case the aforesaid amount of retiral benefits is not paid to the petitioner within a period of three months from today, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple).

01.02.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No