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

% *Date of Decision: 29th August, 2024*

\+ W.P.(C) 4011/2012

S.K. JAIN .....Petitioner

Through: Mr. Shanker Raju, Mr. Nilansh Gaur and Ms. Himantika Saini Gaur, Advocates

versus

PUNJAB NATIONAL BANK AND ORS .....Respondents

Through: Mr. Rajat Arora, Mr. Niraj Kumar, Mr. Sourabh Mahla, Mr. Ravi Ranjan Mishra and Ms. Sneh Vardhan, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking quashing of Memorandums dated 11.04.2009, 29.06.2009 and 23.07.2009 and impugned orders dated 22.09.2011 and 30.04.2012, passed by the Respondents, with consequential benefits including terminal benefits payable to the Petitioner for his 30 years of service in the bank and to treat the suspension period from 28.02.2009 to 31.07.2009 as spent on duty for purposes of seniority and pay and allowances.

2. Facts to the extent necessary and as averred in the writ petition are that Petitioner joined Punjab National Bank/Respondent No.1 as Small Scale

Industries Officer on 25.06.1979 and was posted to different branches of the bank from time to time. Petitioner was last promoted to the post of Chief Manager and posted at Krishna Nagar Branch, Delhi. Several commendation letters were issued to the Petitioner followed by appreciation letters by the higher authorities for his exemplary work.

3. On 11.04.2009, Memorandum of Charge was issued to the Petitioner with one Article of Charge alleging that Petitioner had sanctioned/enhanced credit facilities in various borrowal accounts without conducting proper pre-sanction appraisal and failed to observe post-sanction follow-up/control thereby jeopardizing bank's interest as a result of which huge amount of bank's funds plus interest became difficult to recover. Along with the Charge Memorandum, a list of documents was annexed but there was no list of witnesses. During the pendency of inquiry proceedings, supplementary charge sheets were issued on 29.06.2009 and 23.07.2009. Petitioner superannuated on 31.07.2009 on attaining the age of superannuation and the inquiry proceedings were continued under provisions of Regulation 20(3)(iii) of Punjab National Bank (Officers') Service Regulations, 1979 (1979 Regulations). On conclusion of the inquiry proceedings, the Article of Charge was held to be 'proved' by the Inquiry Officer ('IO'). The Disciplinary Authority agreed with the findings of the IO and awarded the punishment of *'removal from service which shall not be a disqualification for future employment',* in terms of Regulation 4(i) of Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 (hereinafter referred to as the '1977 Regulations'), vide order dated 22.09.2011. Appeal dated 16.11.2011 filed by the Petitioner was dismissed vide order dated 30.04.2012, whereafter Petitioner approached this Court.

4. Learned counsel for the Petitioner *inter alia* contends that the most glaring illegality in the conduct of the departmental inquiry, the object of which is to give an opportunity to the charged officer to defend himself and controvert the allegations levelled, is that not even a single witness was produced by the Respondents before the IO to prove their case. In fact, a bare perusal of the Charge Memorandum shows that it was not accompanied by a list of witnesses which was in violation of Regulation 6(3) of 1977 Regulations, which provides that where it is proposed to hold an inquiry, Disciplinary Authority shall frame definite and distinct charges on the basis of allegations against the officer employee and Articles of Charge together with statement of the allegations, list of documents relied upon along with copy of such documents and list of witnesses along with copy of statements of witnesses, if any, on which they are based, shall be communicated in writing to the officer employee. The argument is that not a single witness was produced by the Respondents and copies of the listed documents were simply tendered by the Presenting Officer ('PO'). As per settled law, documents have to be proved by examining witnesses who alone could have exhibited the documents before the IO and thus no reliance could have been placed on the documents as they were not proved through oral testimonies. Reliance is placed for the said proposition on the judgments of the Supreme Court in ***Khem Chand v. Union of India and Others, 1957 SCC OnLine SC 6; State of U.P. and Another v. T.P. Lal Srivastava, (1996) 10 SCC 702***; ***Roop Singh Negi v. Punjab National Bank and Others, (2009) 2 SCC 570;*** and ***State of Uttar Pradesh and Others v. Saroj Kumar Sinha, (2010) 2 SCC 772.***

5. It is next contended that the response filed by the Petitioner in his defence was neither taken on record nor considered by the Disciplinary Authority again in violation of Regulation 6(4) by observing that no defence statement was submitted, which was contrary to the record, as the defence statement was filed on 23.05.2009 and this caused grave prejudice to the Petitioner. It is also urged that there is violation of Regulation 6(17) of 1977 Regulations, as the circumstances appearing against the Petitioner as well as the evidence led by the PO were not put to the Petitioner and this was in the teeth of the *binding dicta* of the Supreme Court in ***Moni Shankar v. Union of India and Another, (2008) 3 SCC 484*** and ***Ministry of Finance and Another v. S.B. Ramesh, (1998) 3 SCC 227.***

6. Learned counsel for the Respondent *per contra* contends that the charge against the Petitioner is grave and serious and therefore, merely on the ground that list of witnesses did not accompany the Charge Memorandum and/or no oral evidence was led during the inquiry, the inquiry proceedings and the penalty order cannot be set aside. Strict rules of evidence are not applicable or required to be followed in a domestic inquiry. Plethora of documents was produced by the PO before the IO which clearly established the allegations in the Charge Memorandum and in any case, the evidence was primarily documentary in nature. Moreover, Petitioner was given every opportunity to participate in the inquiry and he voluntarily stated that he did not question the documents relied upon. It is settled law that once documentary evidence comes before the IO and the documents are not denied by the Charged Officer, no oral evidence is necessary to prove those documents. Standard of proof envisaged in the departmental inquiry is preponderance of probability and it is not necessary that the documents

must be exhibited in accordance with the mandate under the Indian Evidence Act, 1872.

7. Heard learned counsels for the parties and examined their rival submissions.

8. In this petition, Petitioner raises *inter alia* a short but an important question as to whether in a departmental inquiry, documents can be relied upon without producing a single witness to prove them to hold the Charged Officer guilty especially when the documents and/or their contents are not admitted by the Charged Officer. Before proceeding to examine this question, it is relevant to recapitulate the well-settled principles of the scope and ambit of exercise of power of judicial review by the High Courts under Article 226 of the Constitution of India, while considering issues arising out of departmental inquiries. These principles were elucidated by a three-Judge Bench of the Supreme Court in ***B.C. Chaturvedi v. Union of India and Others, (1995) 6 SCC 749*** and I may quote the relevant paragraphs as follows:-

> ***"12.*** *Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the*

authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."*

9. These well-settled principles were reiterated from time to time and it is clear that a Constitutional Court cannot assume the role of an Appellate Authority and can only evaluate the decision-making process as also examine if the principles of natural justice or required procedure for conduct of an inquiry were followed so as to ensure that no manifest injustice is caused to the Charged Officer. In ***Pravin Kumar v. Union of India and Others, (2020) 9 SCC 471,*** the Supreme Court observed that the jurisdiction of a Constitutional Court is circumscribed by limits of correcting errors of law, procedural errors and violations of principles of natural justice but judicial review is not analogous to venturing into merits like an appellate authority.

10. It is equally well-settled that in departmental/domestic inquiries, strict rules of evidence do not apply but being quasi-judicial proceedings, IO has a duty to carefully examine the evidence led before him and he cannot merely rely on the documents filed by the PO to hold the Charged Officer guilty.

Inference on facts by an IO must be based on some evidence, which is led before the IO in compliance of the principles of natural justice and IO is expected to ensure that the evidence presented by the department is sufficient to prove the charge. ***[Ref.: Anil Kumar Dhyani v. Union of India & Ors., 2017 SCC OnLine Del 9911*]**.

11. Coming to the present case, the Memorandum of Charge issued against the Petitioner under Regulation 6 of 1977 Regulations contained one Article of Charge, which is as follows:-

> ***"Statement of Article of Charge against Shiri Sushil Kumar Jain (PF-37542), Internal Chief Auditor (U/s), BO: Jamshedpur, Bihar Previously Chief Manager at BO: Krishna Nagar, Delhi***
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> *Shri Sushil Kumar Jain while working as Chief Manager (Incumbent) at BO:Krishha Nagar, Delhi., during the period from 06.06.2005 to 08.03.2008 is alleged to have committed the following lapses/irregularities in various borrowal accounts:*
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> *Article - 1*
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> *He sanctioned/enhanced credit facilities in various borrowal accounts without conducting proper pre-sanction appraisal and failed to observe post sanction follow up / control thereby jeopardizing bank's interest as a result huge amount of bank's funds plus interest thereon are proving difficult of recovery.*
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> *Thus, Shri Jain failed to perform his duties with utmost Integrity, honesty, devotion and diligence which constitute misconduct in terms of Regulation 3(1) read with Regulation 24 of Punjab National Bank Officer Employees' (Conduct) Regulations, 1977."*

12. Enclosed with the Charge Memorandum was a list of documents, which were proposed to be proved, however, admittedly there was no list of witnesses. From the reading of the inquiry report, it is evident that finding of the IO that the charge was proved was primarily based on the documents, which were not proved by any oral testimony. It is also evident that neither the documents relied upon in the charge sheet nor their contents were

admitted by the Petitioner and therefore, it was imperative for the Respondents to examine oral witnesses to exhibit and prove these documents before the IO with an equal opportunity to the Petitioner to cross-examine the witnesses, in case the IO wanted to rely on them to render a finding on the charge. The procedure followed by the IO of permitting the PO to only tender the documents and not lead evidence through witnesses is in violation of Regulation 6(3) of 1977 Regulations which provides that where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the officer employee and the Articles of Charge, together with a statement of the allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any, on which they are based, shall be communicated in writing to the officer/employee. For the ease of reference, relevant part of Regulation 6(3) is extracted hereunder:-

> ***"6. Procedure for Imposing Major Penalties :***
> *………….*
> *(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall, frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement of the allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defense;*
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> *Provided that wherever it is not possible to furnish the copies of documents, disciplinary authority shall allow the officer employee inspection of such documents within a time specified in this behalf."*

13. In light of Regulation 6(3) of 1977 Regulations, it can be safely concluded that the procedure followed by the IO was more in breach than in

compliance of the 1977 Regulations. The Supreme Court has time and again held that where no oral evidence is led to prove the documents relied upon by the prosecution, documents cannot be taken into consideration to conclude that the charges are proved against the Charged Officer. I may, at this stage, allude to the judgment of the Supreme Court in ***Roop Singh Negi (supra)***, relevant paragraphs of which are as follows:-

> *"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*
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> *xxx xxx xxx*
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> *17. In Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court held: (SCC p. 492, para 17)*
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> > *"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.""*

14. Reiterating the principle, the Supreme Court in ***Saroj Kumar Sinha (supra)*** held as under:-

> *"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.*
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> *28. An inquiry 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.*
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> *29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.*
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> *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 inquiry 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.*
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> *31. In Shaughnessy v. United States [97 L Ed 956 : 345 US 206 (1952)] (Jackson, J.), a Judge of the United States Supreme Court has said: (L Ed p. 969)*

"... Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.""

15. Relevant would it be to refer to the judgments of the Division Benches of this Court on the same proposition of law. In ***Union of India and Others v. Ritu Chaudhary, 2019 SCC OnLine Del 12063,*** the Division Bench held as follows:-

> ***"13.*** *The Court is not persuaded by any of the above contentions of the Petitioners. The Court notes that under Rule 14(3) & (4) of the CCS (CCA) Rules, it was incumbent, where the Government proposes to hold an inquiry, to draw the substance of imputations which would contain "a list of documents by which and a list of witnesses by whom, the Articles of Charge are proposed to be sustained". The said rule reads as under:*
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> *"14 (3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-*
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> *(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;*
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> *(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-*
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> *(a) a statement of all relevant facts including any admission or confession made by the Government servant;*
>
> *(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.*
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> *(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person".*
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> ***14.*** *Rule 14 (4) also envisages serving upon the Government servant the copy of the Articles of Charge which would include "the list of documents and witnesses by which each Articles of Charge is proposed to be sustained".*
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> ***15****. The following observations in LIC of India v. Ram Pal Singh Bisen, (2010) 4 SCC 491 are relevant in this context:*

"20. Thus, the question that arises, for consideration is whether in absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross examination in the Court, what is the effect of documents filed by appellants and marked as Exhibits.

21. Despite our persistent requests made to the learned counsel appearing for the appellants they have not been able to show compliance of Order XII Rule 1 and 2 of the CPC, meaning thereby that there has not been any compliance thereof.

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26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

27. It was the duty of the appellants to have proved documents Exh. A-1 to Exh. A-10 in accordance with law. Filing, of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do."

16. *Although, as pointed out by learned counsel for the Petitioners, in disciplinary inquiry proceedings the rules of the CPC and the Evidence Act may not strictly apply, it is basic that the mere production of a document is not sufficient even in a disciplinary inquiry. There has to be some witness to prove such a document. Without a witness to prove the documents, the Enquiry Officer cannot take it on record as a genuine document. In the present case in the absence of any list of witnesses, there was no means by which the documents could have been proved by the Department in the inquiry proceedings.*

17. *In the present cases, if indeed the MoC refer to documents, the originals of which were not available with the Department, and the list of the names of the witnesses who were sought to be examined to prove the above documents, was not appended, clearly, the holding of the enquiry would itself become a mere formality. As rightly pointed out by the CAT, if in the absence of original documents and witnesses, an Enquiry Officer was to find the charges to be proved, such a finding would obviously be perverse and unsustainable in law. In other words, by allowing the disciplinary proceeding to continue on the basis of the subject MoCs, the*

Court or the Tribunal, as the case may be, would be effectively directing a wasteful exercise to be undertaken, which would end up being invalidated on obvious grounds."

16. In ***Union of India v. Shameem Akhtar, W.P.(C) 8726/2015,*** decided on 11.09.2015, the Division Bench, relying on the judgment of the Supreme Court in ***Kuldeep Singh v. The Commissioner of Police and Others, (1999) 2 SCC 10***, held as follows:

> *"15. It is settled law that the charges levelled against a delinquent official is to be proved in the inquiry before any penalty is imposed. Sub-Rule (3) of Rule 14 provides that the Articles of Charge are to be supported with documents and proved by witnesses during the hearing. In our view, this in-built safeguard has been provided to allow a delinquent employee to cross-examine the witnesses and to rebut the allegations against him. In the absence of any witness and in the absence of any opportunity to cross-examine a witness would be against the canon of natural justice and the same cannot be treated as a mere formality."*

17. In ***A.K. Saxena v. Union of India & Ors., W.P.(C) 3127/2014,*** decided on 10.08.2016, the Division Bench was again called upon to decide the legality of a departmental inquiry and one of the issues was that Memorandum of Charge was without a list of witnesses. Relying on the judgments in ***Roop Singh Negi (supra)*** and ***Saroj Kumar Sinha (supra)***, the Division Bench held that mere production of documents was not enough and contents of the documents have to be proved by examining the witnesses as this is the requirement of principles of natural justice *albeit* provisions of Evidence Act may not be strictly applicable to departmental proceedings. To the same effect are the judgments of the Division Benches of this Court in ***Union of India and Others v. Surender Kumar, 2023 SCC OnLine Del 3414; Anil Kumar Dhyani (supra)*** and ***Union of India v. Man Singh, 2018 SCC OnLine Del 7298.*** It would be relevant to refer to some passages from the judgment in ***Anil Kumar Dhyani (supra)*** as under:

*"**16.** We have heard learned counsel for the parties and considered their rival contentions. From the facts noticed hereinabove, it is clear that in the chargesheet itself, the Respondents have clearly stated, that they did not propose to examine any witness. The short question of simple nature, but considerable importance, which arises for our consideration in the present case is as to whether in a domestic inquiry, documents can be relied upon to hold the employee guilty, without producing even a single witness to prove those documents and that too when the delinquent employee does not admit those documents.*

***17.** Though it is well settled that in a domestic inquiry, strict rules of evidence do not apply and the inquiry officer is not expected to write a judgment like a Judge of a Court but it is also equally a well settled proposition, that the domestic inquiry is a quasi judicial proceeding and the inquiry officer, while performing this quasi judicial function, has a duty to carefully examine the evidence led before him and he cannot merely rely on the documents filed by the Presenting Officer to hold the delinquent employee guilty. Inference on facts by an inquiry officer must be based on some evidence, which is led before the inquiry officer in compliance of the principles of natural justice and he is expected to ensure that at least the evidence presented by the management, is sufficient to hold that the charge is proved.*

***18.** Coming to the facts of the present case, we find that the Petitioner had specifically denied the documents on which reliance had been placed by the Respondents, and he had repeatedly requested for production of original documents, so as to enable him to carry out admission/denial of the documents relied upon. It is evident that the documentary evidence relied upon in the chargesheet, was not admitted by the Petitioner employee. In such a situation, in our considered view, it was imperative for the Respondents management to, at least, examine some witness to exhibit those documents before the inquiry officer, and only when the documents were exhibited through a witness, before the inquiry officer, and sufficient opportunity granted to the charged officer to cross-examine the witness, that reliance could have been placed on the same to hold the Petitioner guilty.*

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***23.** In fact, from a perusal of the judgment of the Apex Court in the case of State Bank of India v. Narendra Kumar Pandey (supra), which has been relied upon by the Respondents, it becomes evident that only when the documents are uncontroverted, it is open to the inquiry officer to accept the same, to hold the employee guilty even without examining any witness. In a case where the documents are not admitted by the delinquent employee, the same have to be proved by the management by leading oral evidence and in the absence of any witness, the same cannot be relied* *upon by the inquiry officer while arriving at his finding in respect of the charges."*

18. In view of the aforesaid judgments, there is not a trace of doubt that in the absence of list of witnesses, it cannot be said that the documents were proved by the PO during the departmental proceedings. It is also to be noted that in the present case, Petitioner did not admit the documents or their contents and in the early stage of the inquiry had submitted that the documents relied upon by the Department were unreliable. In ***State Bank of India and Others v. Narendra Kumar Pandey, (2013) 2 SCC 740***, the Supreme Court held that only where the documents are uncontroverted, it is open to the IO to accept the same to hold the employee guilty even without witnesses but where documents are not admitted by the delinquent employee, the same have to be proved by the management by leading oral evidence and in absence of any witness, they cannot be relied upon by the IO to arrive at a finding in respect of the charges. In ***Life Insurance Corporation of India and Another v. Ram Pal Singh Bisen, (2010) 4 SCC 491***, the Supreme Court held that even an admission of document in evidence does not amount to its proof. Mere marking of exhibits on documents does not dispense with their proof.

19. The Supreme Court in ***Saroj Kumar Sinha (supra)*** held that an IO acting as a quasi-judicial authority is an independent adjudicator and his function is to examine the evidence presented and to see whether the unrebutted evidence is sufficient to hold that the charges are proved. Since no oral evidence has been led in the present case, it can be safely held that the documents tendered by the Department were not proved and the charge cannot be held to be established. Consequently, the order of the Disciplinary Authority dated 22.09.2011, imposing the punishment '*Removal from*

service' and the order of the Appellate Authority dated 30.04.2012 cannot be sustained.

20. The question that now arises is what relief can be granted to the Petitioner at this stage considering that the inquiry proceedings have been held to be unsustainable for want of list of witnesses. In the judgments aforementioned, wherever the Courts have interfered with the disciplinary proceedings, only on ground of there being no list of witnesses, Courts have granted liberty to the employers to initiate *de-novo* inquiry from the stage of issuance of charge sheet. Mr. Raju has strenuously relied on the judgment of the Supreme Court in ***Ram Pal Singh Bisen (supra),*** to argue that in the said case, the Supreme Court held that since the Petitioner had superannuated and the question of his reinstatement did not arise and it was only a case of some monetary benefit, it would not be proper to direct a fresh inquiry. This judgment, in my view, does not aid the Petitioner inasmuch as in the said case, apart from there being no list of witnesses, the Supreme Court had found other serious infirmities in the conduct of the inquiry, one of them being that the Charged Officer was not allowed to cross-examine one of the material witnesses i.e. the complainant.

21. In view of the above, the writ petition is allowed, quashing and setting aside impugned Memorandums dated 11.04.2009, 29.06.2009 and 23.07.2009 as well as order dated 22.09.2011, whereby the Disciplinary Authority imposed the penalty of *'removal from service which shall not be a disqualification for future employment',* and order and 30.04.2012, whereby the appeal against the penalty order was dismissed. It is, however, left open to the Respondents to take recourse to *de-novo* inquiry, if so advised, in accordance with law, from the stage of issuance of charge sheet, with a

caveat that if the Respondents are unable to comply with the legal requirement of leading oral evidence to prove the documents relied upon and witnesses are not available, they should not re-open the issue, considering that the charge sheet was issued in 2009 and Petitioner has already suffered prolonged litigation since the year 2012. In case Respondents decide not to follow the path of a *de-novo* inquiry, they will disburse all retiral/terminal benefits due and payable to the Petitioner as a consequence of the penalty order being quashed and set aside, within 3 months from today.

22. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 29, 2024/kks/shivam/*DU*