



2024:DHC:6414



\$~14

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 29th July, 2024

+

W.P.(C) 5081/2013

D.P. KALYAN

.....Petitioner

Through: Mr. A.K. Pandey and Mr. Rajat Choudhary, Advocates along with Petitioner in person.

versus

NATIONAL TEXTILE CORPORATION LIMITEDRespondent

Through: Mr. Achal Gupta and Ms. Alizaah Rais, Advocates

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. By this petition, Petitioner assails the charge sheet dated 23.06.2009, inquiry report dated 26.02.2010, order of the Disciplinary Authority dated 13.04.2010 and the order of the Appellate Authority dated 25.06.2012. A writ of *mandamus* is sought for a direction to the Respondent to release the retiral benefits of the Petitioner including gratuity and leave encashment with interest @ 9% from the date of retirement till actual payment.

2. Shorn of unnecessary details, the facts as averred in the writ petition are that:-

- (a) Petitioner joined National Textile Corporation Limited (NTC) in May, 1975 as Senior Assistant and superannuated on 30.06.2009 while working as Deputy General Manager (Commercial).



- (b) NTC is a Government of India Undertaking engaged in the business of supplying textiles to its customers from its own textile mills. To promote its sales, NTC distributes incentive/ commission to sales staff based on certain percentage of wholesale/ institution sales/retail sales.
- (c) NTC (DP&R) Workers Union (Regd.) submitted a demand on 31.05.1989 before Labour Commissioner, Delhi, demanding improvement in the incentive scheme on sales realization and the NTC arrived at a settlement on 14.01.1991 before Conciliation Officer with the Workers Union, which is as under:-

“III. INCENTIVE ON WHOLSALE/INSTITUTIONAL SALE:

The incentive on wholesale /Institutional sales would continue to be paid at the existing rate of 2%. However the modalities of its sharing would be notified separately.”

- (d) Pursuant to the settlement, Circular No.1144 was issued by Divisional Office of NTC on 17.03.1992 specifying the ratio of incentive/ commission payable to the sales employees of Division Office confirming that the commission on net wholesale shall remain 2% of net wholesale and shall be distributed amongst the sales staff as per Clause 1 of the Circular. No other circular was issued modifying this settlement.
- (e) Due to sincere efforts and active participation of the Petitioner, an order was received from Municipal Corporation of Delhi (‘MCD’) worth Rs.11 crores for supply of uniforms during January, 2009. At that time, Petitioner was holding additional charge of Head of Delhi Division Office (‘DDO’). The DDO was involved right from procurement of the order to booking of sale transaction, raising invoices, supply of material and realization of sale proceeds from



MCD. The entire cloth was procured from Coimbatore Murugan Mill ('Mill'), an NTC Unit, with a profit margin of 6.16%.

- (f) On 22.01.2009, an office note was put up to CMD by Mr. V.K.B. Sutaria, Director (Marketing) of the NTC in respect of the invoices raised, delivery of cloth and readiness of the Mill to pay 4% commission to Delhi RMD as a reward for procuring the order from MCD. On a query from CMD, Director (Finance) had replied that since the margin in the bulk order was only 5%, the commission payable to RMD employees was to be proportionately paid considering the normal margin i.e. 12%. However, in a joint discussion held on 17.02.2009, it was thought appropriate to raise the bill on Ex-Mill basis and it was further observed that RMD, Delhi could not be treated as a service agent. Thereafter, there was no modification to this decision of paying 4% commission.
- (g) After the material was supplied and payment was made, Sh. A.K. Nirwani, Deputy Manager (Finance) sent an office note dated 24.04.2009 to the Petitioner, stating that the margin on the procured cloth was 6.16% and the supply of suiting and shirting of small lots average margin came to 12.48% and asked for advice on the commission payable, to which the Petitioner responded by stating that the commission should be paid proportionately. Between 28.04.2009 to 17.05.2009, Petitioner was on medical leave and during this period, cash vouchers were prepared and incentives were paid to the sales staff by the Finance Department on its own, by preparing the list of staff and calculating the incentive, without Petitioner's approval or that of the higher authority.



- (h) Preliminary inquest was carried out by Mr. B.K. Mishra, Director (Finance) into the process of disbursal of commission. Charge sheet dated 23.06.2009 was served upon the Petitioner by Mr. V.K.B. Sutaria, Director (Marketing), the Disciplinary Authority, which is as follows:-

“CHARGE SHEET

.....

National Textile Corporation Ltd., undertook sale of uniform cloth worth Rs. 11.00 crore (Approx.) to Municipal Corporation of Delhi, in the month of February and March, 2009 vide 10 invoices raised by the Central Distribution Depot of NTC between 27.02.09 and 28.03.09. This was an institutional sale, which was organized at the sole initiative of the Marketing Wing of the Corporate Office of the Company. The employees of the Divisional Office or Retail Marketing Division or Central Distribution Depot/Showrooms, had not played any role in obtaining the above mentioned order from the Municipal Corporation of Delhi, from the stage of order booking till completion of the supplies, except routine marketing functions. Booking of the above sale transaction was done through the Divisional Office, Delhi, by raising necessary invoices. This was only a routine administrative exercise and internal channel of supplies. Realisation of the part of sale proceeds from the Municipal Corporation of Delhi is still pending.

2. It has been reported that while working as Dy. General Manager (Commercial) in the Company, you have dealt with the routine functions of execution of the said order. In spite of the stated factual position of the transaction, as an Incharge of Divisional Office, you have made distribution of commission to several sales force employees. The payments made by cheques were also signed by you. This was also done in spite of your personal knowledge that the employees to whom the commission has been distributed, had absolutely no role in the order booking and that they were not eligible for receiving such commission. Shri A.K. Nirwani, Dy. Manager (F&A), Divisional Office, Delhi, vide his handwritten Note dated 08.06.09 intimated that the incentive payment in question was done with your specific permission.

3. In view of the above, the action taken by you for distribution of sales commission to employees is found to be an unauthorized act and without proper delegated authority or sanction of the Competent Authority. A total sum of Rs. 8.55 lakh (Rupees eight lakh fifty five thousand only) is reported to have been distributed to employees as on



30.04.09 by cash and cheques, (details given in Annexure-1) which has caused an unintended loss to the Organization. This Annexure exhibits that employees who received the commission include employees of Retail Marketing Division located in the States of Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Punjab, J&K, Himachal Pradesh and the Union Territory of Chandigarh, who were not concerned in the matter nor eligible for receiving the commission in question. This casual approach and irresponsible behavior resulted in this unauthorized distribution of money and loss to the Company to that extent.

4. It is further surprising to note that the Divisional Office had a substantial liability at the time of distribution of the said incentive as at the end of April'09 in the form of post dated cheques issued to Tata Mill and Finlay Mill. If these cheques were taken into account while distributing the incentive payments, funds would not have been sufficient with the Divisional Office to distribute the said incentive. Due to withdrawal of money for payment of the above incentive on 30.4.09, there was a resultant shortage of funds with the Divisional Office, Delhi, which resulted in dis-honouring of cheque bearing No. 831007 dated 04.05.09. for Rs. 7,27,236/- (post-dated cheque) issued to Finlay Mill, which happened to be presented by the payee on 06.05.09. This is a serious lapse on the part of the Divisional Office, Delhi, causing loss of credibility of the Company, for which you are accountable.

5. The above incident further exhibits misuse of authority, not within your powers, to give undue favour to the employees concerned. As per Circular No. 1144 dated 17.03.1992 on the subject, commission/ incentive is payable only against wholesale done by the Central distribution Depots and Showrooms. Apparently, this was not a transaction of this kind. If you had maintained absolute integrity and devotion to duty and conducted yourself in a manner conducive in the best interests of the Corporation, the Organization would not have lost the said sum of Rs. 8.55 lakh. Therefore, the stated action of unauthorized distribution of money, is considered to be an act unbecoming of you and an act prejudicial to the interests of the Corporation, being a senior executive in the Marketing Division of the Company. This amounts to negligence in duty, dereliction of duty, resulting in financial loss to the Corporation, exercise of discretion without power and violation of the normal systems and procedures followed in the Organization.

6. In the above narration of the incident, which constitute the statement of imputation of misconduct on your part, you are alleged to be guilty of the following misconducts (Article of Charges), which are misconducts as per the clauses of the Conduct, Discipline and Appeal Rules, 2009, mentioned against each:-



Charge No. 1 *Serious negligence in discharge of duties under Clause 23.1.8.*

Charge No. 2 *Serious dereliction of duty resulting in a loss of Rs. 8.55 lakh to the Corporation under Clause 23.1.8.*

Charge No. 3 *Misappropriation of Corporation's money under Clause 23.1.29.*

Charge No. 4 *Misuse of discretion in authorizing distribution of money without powers under Clause 23.1.8.*

Charge No. 5 *Flagrant violation of systems and procedures under Clause 23.1.8.*

Charge No. 6 *Not maintaining absolute integrity and devotion to duty and conducting in a manner not conducive to the best interests of the Corporation and indulging in an act, which is unbecoming of an employee, prejudicial to the interests of the Corporation, which is also a breach of the General Conduct Clause 22.1 read with Clause 23.1.43.*

7. *The list of documents and list of witness, in support of the above Article of Charges, are given in Annexure-2.*

xxx

xxx

xxx

9. *The relevant clauses of the Conduct, Discipline and Appeal Rules, 2009, mentioned above are reproduced in Annexure-3, for ready reference."*

- (i) On 29.06.2009, Petitioner sent his reply to the charge sheet, however, finding the explanation to be unsatisfactory, Disciplinary Authority appointed an Inquiry Officer ('IO') to conduct an inquiry. NTC also started recovering the commission paid to the sales employees from their monthly salaries including from those who had retired. During the inquiry, Petitioner requested for engaging Mr. B.S. Chopra, retired ADG of Department of Post as Defence Assistant, as per Rule 25.7 of National Textile Corporation Limited (Conduct, Discipline and Appeal) Rules, 2009 ('2009 Rules'), which request was declined and Petitioner himself defended his case and cross-examined the prosecution witnesses.



- (j) Presenting Officer and the Petitioner submitted their written briefs and on 30.01.2010, the IO gave the inquiry report *inter alia* holding that all charges were proved against the Petitioner, save and except, the allegations pertaining to shortage of funds with DDO due to withdrawal of money for payment of the incentive on 30.04.2009, on account of which cheque dated 04.05.2009 for a sum of Rs.7.27 lacs issued to M/s Finlay Mills was dishonoured, causing loss of credibility of NTC.
- (k) Report of the IO was given to the Petitioner on 26.02.2010 seeking his response, which the Petitioner gave on 12.03.2010 and final order was passed by the Disciplinary Authority on 13.04.2010, imposing major penalty of '*dismissal from service*' from a retrospective date i.e. 30.06.2009. Additionally, the gratuity payable to the Petitioner was also forfeited and it was decided to recover from the Petitioner a sum of Rs.6.84 lacs i.e. 80% of Rs.8.55 lacs, the amount disbursed as incentive amongst the Sales Force Staff of Retail Marketing Division in DDO from the leave encashment and other dues payable to the Petitioner.
- (l) Petitioner filed an appeal before the CMD on 10.05.2010 and by order dated 25.06.2012, the Appellate Authority (CMD) modified the Disciplinary Authority's order, setting-aside the penalty of dismissal and forfeiture of gratuity and reducing the amount to be recovered to Rs.3.42 lacs.

CONTENTIONS ON BEHALF OF THE PETITIONER

3. Mr. B.K. Mishra, Director (Finance), who was appointed by the CMD of the NTC for conducting preliminary inquiry and Mr. V.K.B. Sutaria,



Director (Marketing) who was the Disciplinary Authority, were both involved in the processing of the incentives payable to the sales staff and were equally responsible for making payments and therefore, their appointments to deal with this matter in the disciplinary proceedings were illegal, as no person can be a judge of his own cause.

4. Request of the Petitioner to appoint Mr. B.S. Chopra, retired ADG of Department of Post as a Defence Assistant as per Rule 25.7 of 2009 Rules was illegally declined by the IO, on the ground that only another employee of the same office/unit or other unit/office under NTC located in the same place can be appointed as Defence Assistant. There is nothing in the rule which prohibited the Petitioner from engaging a Defence Assistant from outside. In ***Rakesh Singh v. Chairman and Disciplinary Authority and Another, Writ Appeal No.64711/2013***, the Allahabad High Court has held that in the absence of any specific bar in the Regulation, denial of the right to engage a retired employee of the bank as Defence Representative was not justified and this judgment was affirmed by the Supreme Court when the SLP was dismissed.

5. The charge sheet was itself defective and some of the vital documents relevant to the charges levelled were not produced in the inquiry proceedings. In ***State of U.P. & Others v. Saroj Kumar Sinha, AIR 2010 Supreme Court 3131***, the Supreme Court held that departmental inquiry cannot be treated as a casual exercise. Most vital documents such as order placed by MCD on NTC; copies of cheques of incentives to the sales employees; and copies of vouchers prepared for payments were not produced during the inquiry.

6. The main charge is that the order from MCD was procured by



Marketing Wing of Corporate Office of NTC and DDO had no role to play and thus incentive was not payable to employees of DDO. IO observed in the report that in the corporate office, Director (Technical), Director (Marketing) and Deputy General Manager (Commercial) were involved in the procurement as Deputy General Manager (Commercial), Petitioner was also performing his existing duties and it was wrong to allege that DDO had no role in the procurement. In fact, DDO was involved right from the purchaser of tender form from MCD to supply of material and realization of sale proceeds. If DDO was not involved, it is not understood how invoices and bills were raised by the said office. No document was produced by NTC to show that incentive was not payable to DDO employees and the conclusion of the IO supporting this stand was based on a mere oral statement of Director (Finance) with no corroborative evidence.

7. IO completely erred in rendering a finding that noting of February, 2009 had no bearing in the present case, since this noting would show that the DDO played an important role in the supply to MCD. In the note dated 24.04.2009 initiated by Sh. A.K. Nirwani, Deputy Manager (Finance), there was a reference to the February, 2009 noting in which Director (Finance) had mentioned that since the margin in the bulk order was only 5%, the commission payable was to be proportionate considering novel margin of 12%. It was further observed that CMM may raise the bill to RMD on Ex-Mill basis and this cumulatively showed that NTC was contemplating payment of incentives to employees of RMD/DDO proportionately but this important piece of evidence was ignored by the IO.

8. IO has also ignored documents at P-8 and P-17, which showed that incentive was paid to Sales Force Staff in DDO even in the past when orders



were placed on NTC Headquarter by MCD and other organizations. In fact, the margin of incentive was already included in the margin/profit accruing to NTC in this case and NTC had earned a net profit of Rs.58 lacs after making payment of incentive of Rs.8.55 lacs. While the scope and ambit of interference in departmental proceedings by the Courts is limited, however, Supreme Court has repeatedly held that intervention under Article 226 is warranted when Disciplinary Authority's findings are *mala fide* or perverse, not based on evidence or based on irrelevant considerations or are in ignorance of relevant material and/or are such that no reasonable person would have rendered such findings. NTC has already recovered Rs.8.55 lacs, alleged to be the loss on account of disbursement of incentives and therefore, the penalty of recovery of Rs.3.40 lacs from the Petitioner was wholly unjustified.

CONTENTIONS ON BEHALF OF THE RESPONDENT

9. It is trite that the scope of interference by the Courts in matters relating to departmental inquiries is extremely narrow. Courts cannot examine or re-appreciate evidence led before the IO as Appellate Authorities as the jurisdiction is only supervisory. Petitioner calls upon this Court to re-appreciate the evidence and come to a finding that Petitioner was not guilty of the charges levelled.

10. Petitioner has acted in violation of Rule 22 of 2009 Rules, which prescribes the general conduct that an employee is required to adhere to and the Rule is as follows:-

"22 GENERAL CONDUCT

Every employee shall at all times:

22.1 Maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests of the Corporation and shall not do any act, which is unbecoming of him or is prejudicial to the



interests of the Corporation.

22.2 Conform to and abide by the provisions of the Rules and regulations made by the Corporation from time to time.

22.3 Comply with and obey all lawful orders, which may be issued to him from time to time in the course of his official duties by the Corporation or by any person or persons to whom he may be subordinate in the service of the Corporation.

22.4 Every employee holding a supervisory post shall take all possible steps to ensure the integrity, devotion to duty of all employees for the time being under his control and authority."

11. The Memorandum of Settlement dated 14.01.1991 between Representatives of NTC (DP&R), Management and NTC Workers Union was at best an agreement between the concerned parties and was in force for 3 years up to 31.05.1992 and is wholly irrelevant for the present case. The incentive/commission was only payable to the staff/employees who had made any contribution in procuring, executing or completing the job or assignment. The order for supply of uniform was an institutional sale, organized at the initiative of the Marketing Wing of the Corporate Office of NTC and employees of DDO or Retail Marketing Division or Central Distribution Depot/Showroom had no role to play in the same and consequently, Petitioner as in-charge of DDO had no role in procuring the order. Further, the order obtained from MCD was at a low margin of 6.16% as opposed to usual transactions targeted at a margin of 12%.

12. The office note dated 22.01.2009, heavily relied on by the Petitioner, only indicated a readiness to pay 4% commission but it was finally decided to raise the bill on Ex-Mill basis as opposed to payment of commission to the staff. Petitioner on his own without any authority sanctioned the distribution of commission. It was irrelevant that Petitioner was admitted in hospital when the cash vouchers were prepared as he had already sanctioned



the distribution of incentives.

13. The request for Defence Assistant was correctly declined, as the same was in violation of Clause 25.7 of 2009 Rules, under which charge sheeted employee can take the assistance only of another employee of same office/unit or other unit/office under NTC located in the same place. Petitioner requested for a retired officer from another Ministry, which was impermissible. He was granted an opportunity to choose another Defence Assistant but he chose to defend the proceedings himself.

14. It is wrong to allege that Mr. B.K. Mishra, Director (Finance) or Mr. V.K.B. Sutaria, Director (Marketing) were involved in the process of incentives. The detailed analysis by the IO would show that Mr. B.K. Mishra (PW-4) had in his note dated 05.06.2009 confirmed that there was no delegation of authority by NTC to the Petitioner to pay incentives to various CDD/RMD employees and the same was made without any legitimate and explicit authority, without approval of the Competent Authority. IO also found that the notings indicated that there was no delegation of authority to the Petitioner to pay incentives to various employees and this was brought out by Mr. V.K.B. Sutaria, Director (Marketing) in his note dated 09.06.2009. In fact, Mr. V.K.B. Sutaria, in the said note Ex.D13 to CMD, also observed that Petitioner had confessed that incentives were distributed with his consent and that as per note of Sh. A.K. Nirwani, Deputy Manager (Finance), cheques were signed by the Petitioner prior to his admission in hospital. The IO has after a detailed analysis of both documentary and oral evidence concluded that the charges save and except, one allegation stand proved and this Court cannot re-appreciate the evidence and come to a different finding.



15. Heard counsels for the parties and examined their rival contentions.

ANALYSIS AND FINDINGS

16. Before proceeding to examine the rival contentions of the parties on merits, it is essential to look into the scope and ambit of judicial review in cases of departmental inquiries. It is a well settled proposition of law that High Court in exercise of jurisdiction under Article 226 of the Constitution of India is precluded from reappreciating the evidence and substituting its view with that of the Inquiry Officer or the Disciplinary/Appellate Authority. In ***R. Mahalingam v. Chairman, Tamil Nadu Public Service Commission and Another, (2013) 14 SCC 379***, the Supreme Court provided guidance on the scope of judicial interference in disciplinary matters and relevant paragraph is as follows:

“11. We have heard the learned counsel for the parties. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the court.”

17. In ***Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759***, the Supreme Court observed as follows:

“16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to



reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141 HL] observed:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.”

17. *Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.”*



18. The Supreme Court in *State Bank of India and Another v. K.S. Vishwanath*, (2022) 15 SCC 190, the Supreme Court observed as under:

“19. In paras 9 to 14, this Court had considered other decisions on the power of the High Court on judicial review on the decisions taken by the disciplinary authority as under :

“9. (N. Gangaraj case [State of Karnataka v. N. Gangaraj, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547] , SCC pp. 426-30, paras 9-14)

“9. In State of A.P. v. S. Sree Rama Rao [State of A.P. v. S. Sree Rama Rao, 1963 SCC OnLine SC 6 : AIR 1963 SC 1723] , a three-Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under : (AIR pp. 1726-27, para 7)

‘7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.’

10. In B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , again a three-Judge Bench of this Court has held that power of 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 eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under : (SCC pp. 759-60, paras 12-13)

‘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 the 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 co-extensive 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 [Union of India v. H.C. Goel, 1963 SCC OnLine SC 16 : (1964) 4 SCR 718 : AIR 1964 SC 364] , this Court held at SCR p. 728, AIR pp. 368-369 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.'

11. In High Court of Bombay v. Shashikant S. Patil [High Court of Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] , this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such



enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under : (SCC p. 423, para 16)

'16. The Division Bench [Shashikant S. Patil v. High Court of Bombay, 1998 SCC OnLine Bom 97 : (2000) 1 LLN 160] of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.'

12. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721], this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under : (SCC pp. 587-88, paras 7 & 10)

'7. It is now well-settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on



record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , Union of India v. G. Ganayutham [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] and Bank of India v. Degala Suryanarayana [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] , High Court of Bombay v. Shashikant S. Patil [High Court of Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

xxx

xxx

xxx

10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.'

13. In another judgment reported as Union of India v. P. Gunasekaran [Union of India v. P. Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] , this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

'13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;



- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.'

14. On the other hand the learned counsel for the respondent relies upon the judgment reported as *Allahabad Bank v. Krishna Narayan Tewari* [*Allahabad Bank v. Krishna Narayan Tewari*, (2017) 2 SCC 308 : (2017) 1 SCC (L&S) 335], wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the writ court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The inquiry officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct."

20. That thereafter this Court has observed and held in paras 7, 8 and 15 as under : (*N. Gangaraj case* [*State of Karnataka v. N. Gangaraj*, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547], SCC pp. 426 & 430)

"7. The disciplinary authority has taken into consideration the evidence led before the IO to return a finding that the charges levelled against the respondent stand proved.

8. We find that the interference in the order of punishment by the Tribunal as affirmed [*State of Karnataka v. N. Gangaraj*, 2011 SCC OnLine Kar 4510] by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

xxx

xxx

xxx

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said



judgment has not noticed the larger Bench judgments in S. Sree Rama Rao [State of A.P. v. S. Sree Rama Rao, 1963 SCC OnLine SC 6 : AIR 1963 SC 1723] and B.C. Chaturvedi [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] as mentioned above. Therefore, the orders passed by the Tribunal and the High Court [State of Karnataka v. N. Gangaraj, 2011 SCC OnLine Kar 4510] suffer from patent illegality and thus cannot be sustained in law.”

21. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has committed a grave error in interfering with the order passed by the disciplinary authority dismissing the respondent delinquent officer from service. The High Court has erred in reappreciating the entire evidence on record and thereafter interfering with the findings of fact recorded by the enquiry officer and accepted by the disciplinary authority. By interfering with the findings recorded by the enquiry officer which as such were on appreciation of evidence on record, the order passed by the High Court suffers from patent illegality. From the findings recorded by the enquiry officer recorded hereinabove, it cannot be said that there was no evidence at all which may reasonably support the conclusion that the Delinquent officer is guilty of the charge.”*

19. It would be also useful to allude to the judgment of the Supreme Court in **Deputy General Manager (Appellate Authority) and Others v. Ajai Kumar Srivastava, (2021) 2 SCC 612**, where the Supreme Court observed as follows:

“24. *It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry 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 or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

xxx

xxx

xxx



28. *The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."*

20. In ***State of Andhra Pradesh and Others v. S. Sree Rama Rao, 1963 SCC OnLine SC 6***, the Supreme Court observed that:

"7. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence....."

21. Reiterating and reaffirming the aforesaid principles, the Supreme Court in ***Union of India and Others v. P. Gunasekaran, (2015) 2 SCC 610***, laid down the parameters which would determine whether interference is called for in matters relating to departmental inquiries and I quote:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting*



the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

22. In *B.C. Chaturvedi v. Union of India and Others*, (1995) 6 SCC 749, a three Judge Bench of the Supreme Court held that 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. Relevant paragraphs are 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.”*

23. The aforesaid principles were once again reaffirmed by the Supreme Court recently in ***Indian Oil Corporation and Others v. Ajit Kumar Singh and Another***, 2023 SCC OnLine SC 647 and ***Chatrapal v. State of Uttar Pradesh and Another***, 2024 SCC OnLine SC 146. It is thus beyond cavil that it is the domain of the disciplinary authority and the appellate authority



to examine the evidence led before the IO and take a decision accordingly and it is not within the scope and ambit of the power of judicial review vested in a High Court to reappraise evidence to arrive at its own conclusion unless the finding of the IO is wholly perverse and based on no evidence.

24. It is in the backdrop of these guiding principles that this Court would have to test the challenge of the Petitioner to the inquiry proceedings and the resultant penalty. Before proceeding to do so, I may extract hereunder relevant passages from the inquiry report for a better appreciation of what weighed with the Inquiry Officer to come to a conclusion that he did:-

“5. Notwithstanding what is mentioned in the preceding paras, I would examine the charges on the basis of documentary and oral evidence adduced by both the sides on the record of this inquiry. The allegations which are required to be examined are :-

(a) The sale of uniform cloth to Municipal Corporation of Delhi (MCD) of Rs.11 crores was an institutional sale which was organized by Corporate Office. Employees of Divisional Depots / Showrooms had not played any role in obtaining the above order from MCD except routine marketing functions. Employees of Divisional Office Delhi had thus no role in the order booking and since the order was procured by Corporate Office, those employees were not eligible to receive incentive commission. As per circular dated 17.03.1992, incentive is payable only against wholesale done by Central Distribution Depots and Showrooms, but sale to MCD was not a transaction of this kind as order was procured by Corporate Office and so incentive was not payable.

(b) Despite (a) above, the CO took action for distribution of sales commission of Rs.8.55 lakhs to employees as on 30.04.2009, which was unauthorized and without proper delegated authority or sanction of Competent Authority. This has caused unintended loss to NTC.

(c) Due to withdrawal of money for payment of above incentive on 30.04.2009, there was resultant shortage of funds with Divisional Office, Delhi, due to which cheque dated 04.05.2009 of Rs.7.27 lakhs issued to M/s. Finlay Mills was dishonoured. This caused loss of credibility of NTC.

6. The above allegations are examined below seriatim:-



Allegations in para 5(a) and (b) above:

In support of this allegation, the management has relied upon circular No. 1144 dated 17.03.1992 at Exb.P3, to say that as per this circular, commission / incentive is payable only against wholesale done by Central Distribution Depots and Showrooms and that this was not a transaction of this kind. A perusal of this circular shows that it was issued by Divisional Office, Delhi and it does not address the issue at point and it does not say anything on incentive payment where order is procured by Head Office. The issue at point through the allegation is that in cases where the order is procured by Corporate Office direct, Commission / incentive to employees / sales staff is not payable. This circular only lays down what percentages of commission is payable to sales staff, against wholesale done by Central Distribution Depots, against wholesale done by showrooms, and commission on net retail sales concluding portion of the circular says that other conditions regarding payment of incentive commission remain unchanged. These / other conditions are not listed as document and are not on the record of this inquiry. Further, Shri BK Mishra, Director(Finance) in his note dated 05.06.2009 at Exb.P1 has observed that since the circular at Exb.P3 was issued way back in March 1992, by an officer of erstwhile subsidiary company, it is not in force and that the memorandum of settlement (at Exb. D1) has also, as per para 4 of it, lost its periodicity on 31.05.1992. The circular does not say that where order is procured by Corporate Office direct, no commission / incentive is payable. Therefore, this circular would not support the prosecution point. Exb. P1 also says that there is no delegation of authority by NTC to DP Kalyan to function as Head of Divisional Office, that payment of incentive has been made without any legitimate and explicit authority as circular dated 17.03.1992 at Exb.P3 and Memo of settlement dated 31.05.10092 at Exb. D3 were not in force on the date of incentive payment i.e. April 2009.

7. Having said as above, I would also see the other evidence on record. Shri BK Mishra, Director(Finance) PW4 has observed, inter-alia in his note dated 05.06.2009 at Exb.P1 contents of which were confirmed by him before me that there is no delegation of authority issued by NTC to Shri DP Kalyan to function as Head of Divisional Office and that payment of incentive to various CDD / RMD employees has been made without any legitimate and explicit authority as the circular dated 17.03.1992 and memorandum of settlement not in force on the date of payment and further that payment of incentive to RMD / CDD employees is based on arbitrary decision without sufficient approval of the Competent Authority. The position has been further amplified by Shri BK Mishra, Director (Finance), PW4 in his deposition in Examination-in-Chief as under:-

"Q.2: In Para iv X) page 3 of your report at Exb.P1, you have stated that since the supply was because of efforts made by the Headquarters executives and not by the RMD / D.O. employees, such payment was not required. Please start why you have recorded it?



Ans. As per my information because the order was placed on NTC (Headquarters) by MCD, in my opinion incentive was not payable to Divisional Office employees.

Q.3: Please state who were the officers of NTC who were involved in the procurement of the order from MCD?

Ans. As per my information Director(Tech), Director(Mktg.), and Dy. General Manager (Comm.) (Headquarters) were involved in procurement of order of MCD.

Q.4: What is the criteria for paying incentive to Retail Marketing Division (RMD) employees?

Ans. In case the order procurement is done by Headquarter and the supplies were made from mill no incentive is payable to RMD / D.O. employees. Infact if, implementation of sale starting from procurement of order till the realization of debtors is done by RMD / DO, the incentive is payable to the employees of those RMD / DO.s. In my opinion this is the criteria for payment of incentive to Sales Staff.

Q.5: Please see the incentive document at Exb. D1 and state whether this document laid down any condition for payment of incentive.

Ans. The Exb. At D1 is a Memorandum of Settlement signed between the representative of the management and workmen which has various condition for payment of incentive on retail sale, incentive on wholesale, if institutional sale and incentive on controlled cloth sale. This settlement was in force w.e.f. 1st June 1989 up to 31st May 1992. The settlement expired on 31st May 1992."

8. In cross-examination by CO, PW4 Shri BK Mishra was asked (Q. No.7) whether there are any orders / instructions issued by NTC which say that incentive is not to be paid on institutional sales made by NTC, Headquarters to MCD. PW4 deposed that in this particular case (of MCD), as the order was procured by H.O., incentive was not payable to RMD employees.

9. Defence side has relied upon circular dated 17.03.1992 and memo of settlement dated 14.01.1991 at Exb.D1 (circular dated 17.03.1992 is also a prosecution document at Exb.P3). Shri AK Nirwani PW1 in cross-examination deposed that circular dated 17.03.1992 and memo dated 14.01.1991 were being followed in Divisional Office Delhi and that as per Clause III on page 3 of Exb.D1, the incentive on wholesale / institutional sale was to be paid at the rate specified i.e. 2%. Clause III says as under:-

"III. incentive on wholesale / institutional sale:

The incentive on wholesale / institutional sales would continue to be paid at the existing rate of 2%. However, the modalities of it's sharing would be notified separately."



Now firstly, para III does not say that incentive is payable to Divisional Office employees even in a situation where the order is procured by Headquarters. Secondly, as deposed by PW4, above memo of settlement was in force up to 31.05.1992 as per para 4 of it and defence side has given no evidence that it was applicable or extended to year 2009. In the light of deposition of PW4 who is, the Finance Director, the version of Nirwani PW1 as specified above is not tenable. Thirdly, it would appear to me that in the light of the criteria spelt out by PW4 in reply to Q. 4 (see para 7 above), reference to wholesale / institutional sales in Clause III above may be on such sales for which order is procured by Divisional Office.

10. PW4 has categorically stated that Director(Tech.), Director (Marketing) and DGM(C) at Head Office were instrumental in processing order from MCD and that sales force of Divisional Office, Delhi were not entitled for incentives as they had not played any role in procurement "of order from MCD and that eligibility of incentives arises only when they played any role. What emerges is that though the management has not cited any circular / instruction to show that incentive is payable only if employees of Divisional Office, Delhi procure order, it is logical to say based on what is discussed above that employees of Divisional Office, Delhi become eligible for incentive only if they procure order and process it. The position as above deposed by PW4 was accepted by CO as CO did not put any further question to PW4 w.r.t. these replies. Simple logic is that you cannot be paid for what you have not done, it is clearly established that there was no approval from Head Office for payment of incentive to employees.

11. Further, in Exb.D2, Nirwani himself has initiated a note dated 24.04.2009 submitting that Divisional Office, Delhi has supplied 12,25,687 meters shirting @ Rs.36 per meter and 7,90,736 meters suiting @ Rs.79 per meter to Municipal Corporation of Delhi. He has also recorded in that note as under:-

"The commission payable to sales staff may kindly be advised"

Shri DP Kalyan, Dy. GM recorded on 24.04.2009 on Exb.P6 / D2 as under:-

"As suggested and agreed by Director(F) on another file that since the margin in this bulk order is only 6.16%, the commission payable to sales staff is to be proportionately paid considering the normal margin of 12%. In view of above, we may release proportionate incentive to them."

This clearly shows that Nirwani initiated the proposal about the commission payable to staff and Kalyan ordered to release proportionate incentive to staff. The file referred to in Kalyan's above note is the notings of February 2009 at exb.P9. In these notings, a decision was taken after discussions of Shri Mishra PW4 Shri Sutaria, Director(M) and Shri R.



Sharma, Director(T) with CMD, about raising bills to RMD ex-mill. These notings have no bearing on the present case. The CO has in his above note unreservedly ordered to release incentive, in terms of note of Director (Finance) at Exb. P1, Kalyan had not obtained approval of Head Office about this payment. This stands confirmed in the report of Shri BK Mishra at Exb. P1. PW4 Shri Mishra has also said in Exb.P1 that there is no delegation of authority issued by NTC to DP Kalyan to function as Head of Divisional Office and that payment of incentives to various employees has been made without any legitimate and explicit authority as the circular at Exb. P3 and memo settlement at Exb.P10 were not in force on the date of payment. This stands supported by Shri Sutaria, Director(M) in his note dated 09.06.2009 - Para 7 submitted to CMD at Exb.D13. PW4, has also said in Exb.P1 that payment of incentive is based on arbitrary decision without approval of Competent Authority. This is also supported in deposition of Nirwani PW1 (in re-examination), where he has said that Exb.D1 does not say that DGM(RMD) was the Competent Authority to pass orders to pay incentive. Replies of PW1 to the two questions in further cross-examination on 10.11.2009 do not help defence side.

12. Having concluded that payment of incentive was unauthorized, I would also say that the basic responsibility to allow payment in unauthorized manner and for failure to obtain approval of Head Office before payment was that of Kalyan as Dy. General Manager, though it is also true that as Dy. Manager(F&A), Nirwani should have pointed out that this would require approval of Head Office. But then the CO has directed Nirwani in Exb. D2 to release incentive without bothering to check whether he can do so. Shri Sutaria, Director(M) in his note dated 09.06.2009 at Exb.D13 to CMD observed that Shri Kalyan is changing his mind, that the CO has confessed that incentive was distributed with CO's consent, that as per note of Nirwani it is confirmed that cheques were signed by Shri Kalyan prior to his admission to hospital, that incentive was paid without taking prior approval of Competent Authority, that Director(M) was also not informed prior to distribution of incentive and that the agreement (at Exb.D1) had already expired and was neither renewed nor further extended.

13. In his report at Exb.P1, Shri BK Mishra, has also said that as per written and verbal information given to him by Nirwani, an amount of Rs.8.75 lakhs has been paid as incentive to employees. Nirwani's note dated 04.06.2009 at Exb.P2 was addressed to Director(F) and it's enclosures clearly show details of payment of Rs.8.55 lakhs showing names of showrooms, names of employees, designations and incentive distributed. The information given by Nirwani in his note dated 08.06.2009 at Exb.P4 also confirms payment of Rs.8.75 lakhs between 29.04.2009 to 03.05.2009 and that the cheques were signed by Shri Kalyan. Thus the factual position that payment of incentive of Rs.8.55 lakhs was made to employees is established.



14. Invoices / bills at Exb.P5 to MCD by NTC (amounting to Rs.11 crores) were raised by Divisional Office for booking of sale transaction. However, as stated by PW4 S/Shri RK Sharma, Director(Tech.), VKB Sutaria, Director(Marketing) and DP Kalyan, Dy. General Manager(Comm.) in Head Office were instrumental in procuring the order from MCD. The work of invoices was only a routine administrative exercise and cannot be considered as a substantive work to justify payment of incentive. There is nothing on record to show that the employees of Divisional Office or Retail Marketing Division or CDD / Showrooms had played any role in obtaining the order from MCD or from order booking till completion of supplies. Order was procured by Head Office. The argument that Shri Kalyan was working both as Dy. General Manager (C) at Head Office and was holding additional charge of Divisional Office Delhi and so Shri Kalyan's order at Exb.D2 dated 24.04.2009 are orders of Head Office to pay incentive is not correct as Shri Kalyan had not obtained Head Office order in Head Office file. So, for the work of invoices / billing which is a routine affair, the employees of Divisional Office were clearly not entitled to incentive, but still it was paid to them. The simple point is that you cannot be paid for what you have not done. What is still worse is the fact as evidenced by the tabular statement at Exb.P2 that employees who were paid incentives included employees of Retail Marketing Divisions located in Delhi, Haryana, U.P., M.P., Punjab, J &K, H.P. and Chandigarh, etc. who were clearly not concerned in the matter at all and were not even eligible to receive such payment. All this shows that payment of incentive was authorized and paid intentionally and in unauthorized manner resulting in unauthorized distribution of NTC funds and resultant loss to NTC.

15. In his written brief dated 20.01.20010, Shri D.P. Kalyan, CO has given his arguments to show that the charges do not stick to him. Some of the defence points have already been discussed by me earlier. The other points are examined below. The CO says that he has nowhere authorized the distribution of incentive of Rs.8.55 lakhs to the employees that A.K. Nirwani, PW1 has nowhere substantiated that CO has given any permission for distribution of the incentive, that the incentive was released in his absence, that Exb. P6 does not show that CO has passed any order for the payment of incentive of Rs.8.55 lakhs, that the note at Exb.P6 dated 24.04.2009 did not reach A.K. Nirwani and remained in files, and that in the meanwhile the CO received another note dated 27.04.2009 at Exb. D9 from Nirwani seeking his advise about the incentive payable to sales staff.

16. My reaction to the above and other points is as under. As discussed by me earlier in paras 10 & 11, in Exb.P6 the CO has clearly given written directions to release proportionate incentives to the Sales Staff. Nirwani PW1 has also confirmed in his deposition that the CO passed this order to release proportionate incentive to the staff and that accordingly the Finance Department prepared the vouchers and got them signed by Shri



Kalyan and further that the Finance Department prepared the cheques and sent them to Kalyan who was in the hospital and further that Shri Kalyan signed the cheques also in the hospital. In cross-examination by the CO Nirwani, PW1 deposed that the noting at Exb. P6 was not given by PW1 to Ram Kishan but PW1 gave it to Mrs. Kiran. in reply to Q. No.22 which asked whether in Exb.P6 Kalyan has permitted the payment of incentive of Rs.8.75 lakhs, PW1 deposed that in Exb. P6 the CO has permitted to release proportionate incentive to the staff with reference to PW1's note at Exb.P6. In reply to Q. No.23 by the CO, PW1 also confirmed that apart from the permission which the CO gave on Exb. P6, the CO has signed the payment vouchers also and the cheques to the staff for this incentive which were also signed by Shri Kalyan in the hospital. In cross-examination of PW1 an attempt was made by the defence side to project a view that there are two types of sanctions, namely, one the principal sanction and second financial sanction and the attempt of the defence side was to show that these were not complied with by Nirwani on his own. However, Nirwani PW1 replied to Q. No.24 by saying that such dual system is not there in the division office and further that the system was that after approval for payment was given, vouchers were prepared and approval of DGM Divisional Head was obtained before the cheques were issued. However, PW1 also replied to Q. No.25 that DGM Divisional Head was competent to pass orders for payment of incentive as per the agreement with the trade union agreement at Exb.D1. Now Exb.D1 was in force up to 31.05.1992 as confirmed by Shri D.K. Mishra PW4 and Shri Sutaria, Director Marketing in his note at Exb. D13 a point which I have already examined. In reply to q. No.5 in re-examination by the PO, PW1 has confirmed that Exb.D1 does not say that DGM (RMD) is the competent authority to pass orders to pay incentive. It is clear, therefore, that Nirwani acted on written but unauthorized directions of Shri Kalyan.

17. With a view to show that the CO had not given approval for payment of incentive the CO has relied upon notings dated 27.04.2009 at Exb. D9 of Nirwani PW1 and CO himself. According to CO, in his note he had desired Nirwani to work out details of incentive for approval. Nirwani's note at Exb. D9 purports to say the commission payable to the sales staff may be advised on which the CO had recorded, inter-alia that the commission payable to RMD employees is to be proportionately paid considering the-normal margin i.e. 12% and the CO has added in that note to put up complete details of incentive for necessary action for approval. In his Examination-in-Chief, Nirwani PW1 has categorically stated that note dated 27.04.2009 at Exb.D9 was not prepared by him and the signature on it appearing over his name is not his and further that though Exb.D9 shows that it is marked to PW1 by name, PW1 never received this note. In bringing up this note at Exb. D9, the purpose of the CO seems to be to show that he had asked Nirwani to put up details of incentives for the purpose of taking approval from higher authorities. However, since Nirwani has disowned his note, there is reason to say that the note of CO



at Exb.D9 was recorded by him to give the impression that the payment of incentive was yet to be got approved. Kishan Chand, Asstt. NTC Sub-Office, Vandana Building, PW3 deposed that Exb.D9 and D10 are marked to him and that these documents were given to him by Shri D.P. Kalyan and further that he received Exb.D9 and D10 on 18.08.2009, as recorded by him in the margins of these two documents. This supports contention of Nirwani that he did not receive Exb.D9 though it was marked to him. Since, both these notes Exb.D9 and D10 are dated 27.04.2009 and as PW3 confirmed that he received them on 18.08.2009, he further deposed that he had asked Shri Kalyan why he gave these notes to him after so many months and that Shri Kalyan told him that there is nothing in these notes and that PW3 should file them. In cross-examination of PW3 done by the CO and the replies given by the PW3, it is dear that the position deposed by him in Examination-in-Chief, namely, that Shri Kalyan's note dated 27.04.2009 was received by PW3 on 18.03.2009 remains valid. All this also establishes that the CO had tried to create through Exb.D9 academic evidence that approval was to be obtained.

18. Taking into account the above documentary and oral evidence of PW1 and PW3, it does appear that the CO has surreptitiously created the document at Exb.D9 to give an impression that he had directed Nirwani to prepare details of incentive to obtain approval and that payment was made without preparing details. It is also evident that since the CO already passed orders dated 24.04.2009 to release incentive to employees, Nirwani had no reason to put up another note dated 27.04.2009 at Exb.D9 to seek advice on commission payable. Therefore, considering the totality of evidence, namely that Nirwani has denied his signature on Exb.D9 that though CO marked that note to Nirwani. Nirwani never received it, that Kalyan gave that note to Kishan Chand PW3 four months after CO recorded it and that too telling PW3 that there is nothing in these notes which PW3 should file. So a fictional situation was thus created by CO.

19. In regard to the denial of his signature at Exb.D9 by Nirwani, the CO has obtained the opinion of Shri S.C. Gupta, Handwriting expert at Exb.D21 dated 06.11.2009. It seems from that opinion that Shri S.C. Gupta, DW1 has said that the signature of Nirwani appearing on Exb.D9 is a genuine signature. My own reaction is that a disputable situation has been created by the CO by citing Exb.D9 and by obtaining handwriting expert's opinion at such a belated time. It is an after thought to obtain opinion at Exb.D21 because Nirwani deposed in this inquiry on 20.10.2009 and 22.10.2009 denying his signature on Exb.D9 and then since the heat was on CO, and since he realized that his order dated 24.04.2009 at Exb.P6 to release the incentive was not in order, he obtained handwriting expert's opinion on 06.11.2009 to show that approval for incentive was yet to be obtained. Whether Nirwani's signature at Exb.D9 is genuine or not is not so much the point at issue. The point is that the CO who has recorded his own note dated 27.04.2009



at Exb.d9 has done so by engaging himself in a manipulative activity to create an impression that approval of the authorities was yet to be obtained and still the finance people made the payment. All this is an attempt at passing on the buck. I am unable to agree with any of the arguments of the CO.

20. The trust of the defence brief of the CO also seems to be that it is the responsibility of Nirwani as Financial Head to ensure payment only after obtaining approval of competent authority and further that the CO was on medical leave from 29.04.2009 to 17.05.2009 and that the cash vouchers of incentive were prepared and paid during this period. As per Exb.P6 the note was put up by Nirwani to the CO to advise the quantum of commission payable to the Sales Staff. On this the CO has unequivocally passed an order to release proportionate incentive to the staff. Against this hard fact, it would not be proper for the CO to pass on the responsibility to Finance for payment. As DGM, it was also CO's responsibility to obtain the approval of the Competent Authority. PW4 has deposed that action of CO was incorrect. Shri Sutaria in his note at exb.D13 has also taken exception to CO's action in giving green signal for payment without authority. It appears that when the CO got wind of the position that this matter relating to unauthorized payment is being investigated then he seems to have created a note at Exb.D9 for obtaining the approval and that note was neither received by Nirwani nor by anybody else till 18.08.2009 when it was handed over to PW3 by the CO. I am not saying that Nirwani comes clear in this affair but the basic responsibility for passing orders to pay the incentive was that of the CO when he had no authority to do so. PW1 confirmed in his cross-examination that as per Exb.D12, the CO was sanctioned leave from 29.04.2009 to 17.05.2009 and the leave was sanctioned on 20.05.2009. PW1 also confirmed that the cheques were signed by the CO when he was in the hospital and further that Ramesh Kumar Guran Salesman working at Divisional Office, Delhi brought those cheques to the CO in hospital on 28.04.2009 for signature. Therefore, even if the CO was on leave during the period mentioned above, the fact that the CO signed the cheques while in hospital is borne out by the deposition of PW1. So he is a party to wrong payment. This also shows that notes of C.O dated 27.4.09 at Exb. D9 are inconsequential and fictional as he had signed the cheques. In his note dated 27.04.2009 at Exb.D10, R.S. Bhandari, Cashier PW2 had requested the CO to sign blank cheques as the CO was proceeding on medical leave on 28.04.2009. This note shows that CO has signed it on 27.04.2009 and the CO also has signed the blank cheques. PW2 also deposed that it is not a practice in NCT Divisional Office to get the blank cheques signed because the procedure is that after the vouchers are prepared on the basis of computer sheets, then the cheques are prepared and then they are signed by Dy. Manager(F&A) and DGM(RMD). What is more disturbing in the deposition of PW2 is the position given by him that the note at Exb.D10 was prepared by him on 10.06.2009 but Shri D.P. Kalyan asked him to put



the date as 27.04.2009. This position is not disturbed in the cross-examination of PW2. Further disturbing position is the fact given by Kishan Chand PW3 who stated that the note at exb.D10 was received by him on 18.08.2009 as recorded, by him in the margin. Therefore, both the documents at Exb.D9 and D10 do not come to the rescue of the CO and on the other hand they put the CO in bad light. This shows that CO put pressure on PW2 to write Exb.D10 with back date. PW 2 added in cross-examination that he gave a written note to Nirwani, Dy. Manager(F) w.r.t. this matter. He also confirmed that he received computerized sheets of incentive, payable to employees along with acquaintance in the month of April 2009. In his written brief the CO says that computer sheets of incentive, vouchers photo copies of cheques etc. were not produced in the inquiry by the P.O. to show that CO signed the cheques. It is true that management has not listed these documents in the Charge Sheet. But the other evidence on record earlier analysed shows that cheques were signed by CO. CO has not demanded computerized sheets / cheques as defence document. Had he demanded, photo copies of these documents they (cheques) would have shown CO's signatures. That may be why he not demand cheques copies as defence documents. Further, Shri Sutaria in his note dated 09.06.2009 at Exb. D13 has said, inter-alia that

"On page No.3, as per point No.2(ii), DGM(C) [i.e., CO], has confessed that the commission / incentive to showroom employees is distributed with the consent of Divisional Manager, i.e. as per his consent only, whereas in his note dated 08.06.2009, DGM(C) has expressed his, ignorance about payment of incentive, stating he was on medical leave on 30.04.2009. Thus the statement / reply from DGM(C) is not satisfactory, in response to O.M. from the undersigned given to him dated 01.06.2009 and 04.06.2009...."

As CO has relied upon Shri Sutaria's note at Exb.D13 as above, I would go by it. That note implicates the CO and does not help him. Moreover, another defence document at Exb.D14 implicates the CO. In that, Nirwani has said that

"The vouchers are prepared and signed by Dy. Manager(F&A) and Divisional. Manager before payments are made by cheque / cash. Similarly, the cheques are prepared and signed by authorized signatory and during the period Shri D.P. Kalyan had been functioning as Divisional Manager and he was one of the two authorized signatories in the Divisional Office, Delhi. As per practice no separate sanction / approval were taken for the cash withdrawal. Since the cheques and vouchers for withdrawal of cash were signed by the Divisional Manager, the withdrawal of cash is deemed to be approval by the Divisional Manager."

In cross examination of Nirwani PW1, CO does not seem to have asked any question w.r.t. above. Now voucher No. 260 at Exb. D3 is



towards staff commission on sales of Rs.9.14 lakhs. In cross examination Nirwani PW1 deposed that CD's signature on the vouchers at Exb.D3 was not taken as CO does not sign the vouchers. In re-examination PW1 stated that voucher No.260 dated 31.03.2009 at Exb.D9 was prepared after 31.03.2009, on the instructions of CO and that in respect of this voucher CO's instructions were obtained because it involved sale to MCD and PW1 was not sure about percentage payable.

In para 34 of his written brief the CO says that according to reply of Nirwani, PW1 to Q. No.25, CO was Competent to pass orders for payment of incentive as per Agreement at Exb. D1. I have not agreed with this contention vide my earlier analysis. The CO also says in para 34 of his brief that as per delegation of powers page 3 of Exb. D20 (it should be D19), the CO was competent to release Incentive, Page 3 of Exb.D19 does not say so. It is odd to note that while CO's professed case is that he wanted to obtain approval as per Exb.D9, he is now saying that he had powers to approve such incentive. He is inconsistent in his defence. If he had such powers, there was no need for him to record note at Exb.D9 I am also unable to see any document of defence side in which the CO has stated that he had such powers. Shri Mishra PW4 has said in Exb.P1 that there is no delegation of authority to CO to function as Head of Divisional Office and that payment of incentive was made without any legitimate and explicit authority. The fact that emerges on the basis of evidence analysed by me is that CO had no such powers.

21. My finding on allegations in para 5(a) and (b) is that they are established.

22. **Allegation in para 5(c) above:**

As per letter dated 04.06.2009 of Nirwani to Director(Finance) at Exb.P2, post dated cheque No. 831007 dated 04.05.2009 of Rs.7.27 lakhs (issued to Finlay Mills) which appears at Page 3, S. No.6 of the statement prepared by Nirwani at Exb.P2 was dishonored. Shri Mishra PW4 has also confirmed this position in his note at Exb.P1. Contents of which were confirmed by him before me. The CO has not disputed the fact that this cheque was dishonoured.

23. There is an allegation that due to withdrawal of money for payment of the incentive on 30.04.2009, there was resultant shortage of funds with Divisional Office, Delhi, which resulted in dishonoring of cheque No. 831007 dated 04.05.2009 for Rs.7.27 lakhs (post dated cheque) issued to Finlay Mills. Shri Mishra PW4 in his report at Exb.P1 has confirmed this position. In his examination-in-chief PW4 also confirmed that due to withdrawal of money from bank for payment of this incentive on 30.04.2009, the post dated cheque of Rs.7.27 lakhs issued to Finlay Mills was dishonoured that the act of dishonouring of the cheque was a serious lapse on the part of Shri Kalyan, CO, who was heading Divisional Office, Delhi. In Cross-examination, PW4 stated that as per page 3 of exb.P2,



payment of Rs.7.27 lakhs, was made on 18.05.2009. Thus though payment was made later on, on 18.05.2009, the fact remains that cheque earlier issued was dishonoured for want of funds which was due to payment of incentive amount.

24. Having concluded that the factual position of the dishonouring of cheque is established, one needs to see whether CO as Divisional Manager is responsible or not. It is on record that Nirwani was Head of Finance in Regional Office, Delhi. The financial management of the office was basically the responsibility of Nirwani and it was for Nirwani to ensure that post dated cheques do not get bounced for want of funds. I would, therefore, take a view that Nirwani was primarily responsible, as he should have instructed Finlay Mills, when to deposit cheque in their bank account depending on adequacy of funds in NTC bank account. Shri Kalyan cannot be held responsible directly, though his action in ordering release of incentive caused depletion of funds.

25. Findings:

(a) Allegations in para 5(a) and (b) are established.

(b) Regarding allegations in para 5(c), the primary responsibility was that of Nirwani and Shri Kalyan cannot be held responsible directly, though his action in ordering release of incentive caused depletion of funds."

25. From the IO's report, it is evident that the IO examined the charges on the basis of documentary and oral evidence adduced by both sides. IO divided the allegations into 3 sub-heads: 5(a), (b) and (c). In support of allegations in 5(a) and (b), IO relied on evidence of PW-4 Mr. B.K. Mishra, Director (Finance), who in his note dated 05.06.2009 Ex.P1 had stated that there was no delegation of authority by NTC to the Petitioner to function as Head of DDO and the payment of incentive was made without any legitimate authority since the Circular dated 17.03.1992 and Memorandum of Settlement relied on by him were no longer in force. This position was amplified by PW-4 in his deposition in examination-in-chief, which the IO extracts. In cross-examination, PW-4 deposed that as the order was procured by Head Office, incentive was not payable to RMD employees. IO examined Clause III of Ex.D1, the Circular dated 17.03.1992 and concluded that it did



not state that incentive was payable to DDO employees even in a situation where the order was procured by Headquarters and moreover, the Memorandum of Settlement was not in force at the relevant time. PW-4 categorically deposed that Director (Tech.), Director (Marketing) and DGM(C) at Head Office were instrumental in processing the order from MCD and therefore sales force of DDO were not entitled for incentive as they played no role in the procurement. Basis this, the IO rendered a finding that employees of DDO were not entitled to incentive having played no role in the procurement on the simple logic that “..... *you cannot be paid for what you have not done*”.

26. IO examined Ex.D2, which reflected that Nirwani had himself initiated a note dated 24.04.2009 submitting that DDO had supplied some material to MCD and commission be advised. Petitioner recorded on the note “.....*since the margin in this bulk order is only 6.16%, the commission payable to sales staff is to be proportionately paid considering the normal margin of 12%. In view of above, we may release proportionate incentive to them.*” IO observed that from this noting, it was clear that Nirwani initiated the proposal for the commission and Petitioner ordered the release. He referred to several subsequent notings of Mr. B.K. Mishra and Mr. V.K.B. Sutaria, which according to the IO reflected that they never supported this proposal and objected by noting that Petitioner had no authority to direct release of the commission to the sales staff of DDO. On the basis of the evidence, IO concluded that payment of incentive was unauthorized and the basic responsibility to allow payment and failure to obtain approval of Head Office before payment was made, rested on the Petitioner *albeit* Sh. A.K. Nirwani should have pointed out that the proposal required approval. The



report reveals that IO has minutely examined the entire evidence brought on record including documents and oral depositions and has come to a finding that the charges, save and except one charge, were proved. Petitioner was unable to demolish the case of the NTC, which it proved through evidence. The findings of the IO met with approval of the Disciplinary Authority and the Appellate Authority. Insofar as sub-head 5(c) is concerned, the IO rendered a finding in favour of the Petitioner holding that Petitioner could not be held responsible for the alleged actions directly and the prime responsibility was of Mr. Nirwani, though the action of the Petitioner in ordering release of incentive caused depletion of funds. This Court finds no reason warranting interference in the findings of the IO which are well-reasoned and based on evidence led before him.

27. Learned counsel has subtly contended that vital documents, such as order placed by MCD on NTC; copies of cheques of incentives to the sales employees and copies of vouchers prepared for payments, were not produced during the inquiry. This argument cannot be accepted as there was nothing that prevented or precluded the Petitioner from requesting the IO to produce the documents if the Presenting Officer had failed to do so. Secondly, it is not brought forth as to what prejudice has been caused to the Petitioner's case if these documents were not produced on behalf of NTC and/or how the case of the Petitioner would have been materially different if the documents were produced.

28. Coming to the contention of the Petitioner that he was not permitted to engage a Defence Assistant of his choice, NTC rightly argues that Clause 25.7 of Rules, 2009 does not permit the charged officer to take assistance of an Officer from another Ministry. Rule 25.7 is extracted hereunder for ready



reference:

“25.7 Defence Assistant: The Disciplinary Authority or the Enquiry Officer may permit the charge-sheeted employee to take the assistance of another employee of the same Office/Unit or other Unit / Office under the Corporation located in the same place in the enquiry as Defence Assistant, provided that such employee is not under suspension and is not a representative in more than two cases and no disciplinary / vigilance case is pending against him. The charge-sheeted employee is not entitled to engage a Legal Practitioner as Defence Assistant in normal circumstances. However, management may consider the request of the employee to engage a Legal Practitioner if the Presenting Officer is a Law Graduate or is a substantially trained person in handling disciplinary matters in the interest of justice to the employee.”

29. Reading of the Rule supports the stand of NTC that the charge-sheeted employee can take the assistance of another employee of the same office/unit or other unit/office under NTC, located in the same place. It is the stand of NTC that an opportunity was given to the Petitioner to choose another Defence Assistant, which he failed to do and chose to defend himself without a Defence Assistant. No infirmity can be found in this action of the IO. Insofar as the contention that Mr. B.K. Mishra and Mr. V.K.B. Sutaria acted as judges of their own cause is concerned, Petitioner was unable to point out the role played by the two officers in initiating the proposal for disbursement of incentives to the sales staff of DDO or in sanctioning the incentive/commission and this contention is thus devoid of merit.

30. Petitioner has been unable to point out any violation of principles of natural justice or of rules of procedure for conducting Departmental Inquiries. This is not a case where there is no evidence before the IO to come to a conclusion that the charges are proved. Sufficiency or insufficiency of evidence is a domain in which this Court cannot enter. In the limited jurisdiction of this Court exercising power of judicial review



2024:DHC:6414



under Article 226 of the Constitution of India, the evidence led before the IO cannot be re-appreciated to come to a finding that Petitioner is not guilty of the charges leveled against him, which the Petitioner calls upon this Court to do. No interference is thus warranted in the impugned order of the Disciplinary Authority dated 13.04.2010 and the order of the Appellate Authority dated 25.06.2012.

31. Writ petition is accordingly dismissed being devoid of merit.

JYOTI SINGH, J

JULY 29, 2024/kks