

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 111 of 2025

**Union of India and others
Versus
Pijus Kanti Ghorai**

For the Petitioners : Mr. Souvik Nandy,
Mr. Arijit Majumdar

For the Respondent : Mr. Jagadish Ranjan Das

Judgement Delivered On : 18.09.2025

Supratim Bhattacharya, J.:

1. The respondent herein was the applicant before the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal') was an employee of the Gun & Shell Factory, Cossipore, Kolkata (hereinafter to be referred to as the 'Factory').
2. A complaint was lodged by one Subinay Kar against the said respondent which was received by the said Factory alleging that the said respondent had demanded sum of Rs. 1,50,000/- in lieu of providing a job to the said Mr. Kar in the Factory.
3. On receipt of the said complaint, a vigilance inquiry was directed by the competent authority and on the basis of the report filed by

the vigilance authority the said respondent was suspended with effect from 17.07.2015.

4. A disciplinary proceeding was initiated by a Memorandum of Charge dated 21.08.2015 containing the following:

“ ARTICLE OF CHARGE-I

That Shri Pijus Kanti Ghorai, Hy. Skilled Gr. 1 (Machinist), Ticket No.130/ Tool Room, Per. No. 006710 of Gun & Shell Factory, Cossipore, Kolkata - 2 is charged with gross misconduct of illegally making money by giving false assurance of Govt. job in Gun & Shell Factory, Cossipore to the outsiders and tarnishing the image of Factory Management. Thus, the said Shri Ghorai has indulged himself into an act of gross indiscipline and a conduct unbecoming of a Govt. Servant in violation of Rule-3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE OF CHARGE - II

That Shri Pijus Kanti Ghorai, Hy. Skilled Gr. 1 (Machinist), Ticket No.130 / Tool Room, Per. No. 006710 of Gun & Shell Factory, Cossipore, Kolkata - 2 is charged with gross misconduct of unauthorizedly possessing rubber stamps of doctors & headmaster and misusing them with malafide intention for his personal gain. Thus, the said Shri Ghorai has indulged himself into an act of gross indiscipline and a conduct unbecoming of a Govt. Servant in violation of Rule - 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE OF CHARGE - III

That Shri Pijus Kanti Ghorai, Hy. Skilled Gr. 1 (Machinist), Ticket No.130 / Tool Room, Per. No. 006710 of Gun & Shell Factory, Cossipore, Kolkata - 2 is charged with gross misconduct of fraudulently issuing call letters for pre-employment medical examination using pseudonymous name and signature with malafide intention for his personal gain. Thus, the said Shri Ghorai has indulged himself into an act of gross indiscipline and a conduct unbecoming of a Govt. Servant in violation of Rule -3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE OF CHARGE - IV

That Shri Pijus Kanti Ghorai, Hy. Skilled Gr. 1 (Machinist), Ticket No.130 / Tool Room, Per. No. 006710 of Gun & Shell Factory, Cossipore, Kolkata - 2 is charged with gross misconduct of unauthorizedly possessing two EARS-cum-Smart Identity Cards of Gun & Shell Factory, Cossipore with malafide intention for his personal gain. Thus, the said Shri Ghorai has indulged himself into an act of gross indiscipline and a conduct unbecoming of a Govt. Servant in violation of Rule -3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.”

5. Against the aforementioned Articles of Charge the respondent filed his Statement of Defence whereby and wherein he denied all the charges levelled against him.
6. A court of inquiry was constituted through an order dated 06.10.2015 which enquired into the charges and submitted an enquiry report dated 04.06.2016 and held that all the charges have been established against the employee.
7. A copy of the enquiry report was sent to the employee who submitted his representation on 18.07.2016.
8. The Disciplinary Authority imposed major penalty of removal from service upon the employee on 11.09.2016 and also ordered that the employee will be entitled to receive 30% of his pensionary benefits.
9. Against the said order of the Disciplinary Authority the respondent preferred a writ before the Hon'ble High Court without preferring any appeal before the Appellate Authority.

10. The said petition for writ was dismissed as because the respondent had directly approached the Hon'ble Court without preferring an appeal before the appellate authority.

11. Thereafter the respondent preferred an appeal before the Appellate Authority on 13.05.2017 and the Appellate Authority on 19.04.2018 dismissed the appeal and upheld the order of the Disciplinary Authority.

12. The writ petitioner filed OA NO. 1501 of 2018 before the Tribunal seeking the following reliefs:

“a) An order directing the respondents to set aside (i) the illegal order of suspension, (ii) the undue issue of major penalty charge-sheet, (iii) illegal disciplinary presiding held and enquiry report, (iv) illegal order of imposition of major penalty order issued by the disciplinary authority, (v) the illegal appellate order passed by the appellate authority being the Chairman/DGOF, Ordnance Factory Board, Kolkata

b) To re-instate your applicant in his former service and status at Gun and Shell Factory, Cossipore, Kolkata with retrospective effect from the date of undue suspension.

c) To pass any other order / orders further order / orders as the honorable Tribunal may deem fit and proper.

d) To place all the relevant paper documents before the honorable bench with copies to the Ld. Advocate for applicant for the ends of justice.”

13. The Tribunal after considering the issue took note of the fact that the complaint was not examined in support of the charge. It also found that the conclusions of the disciplinary authority was in absence of a vital witness, namely the complainant Subinay

Kar. In this connection, the Tribunal took into consideration certain precedents that the writer of the complaint was required to be examined. It also took into consideration the legal position based on decisions of the Apex Court in this regard as also on the issue that it was the duty of the inquiry officer to arrive at a finding upon taking into consideration the material brought on record by the parties and after taking note of the settled legal principles requiring the charges to be sustained by some evidence, sufficiency of which cannot be looked into in exercise of judicial review. An issue regarding procedural infirmity was raised by the applicant before the appellate authority who also did not consider this aspect. The Tribunal, therefore, held that the disciplinary proceeding was not conducted as per the procedure laid down in the CCS (CCA) Rules and proceeded to quash the entire departmental inquiry proceedings right from issuance of charge memo till the order passed by the appellate authority. The Tribunal remitted the matter back to the disciplinary authority to conduct a fresh disciplinary proceeding against the appellate *de novo*.

- 14.** Mr. Souvik Nandy, learned Advocate assisted by Mr. Arijit Majumdar for the appellant Union of India submitted that the inquiry proceedings was conducted against the applicant by

serving a Charge Memo. The petitioner submitted his reply thereto, thereafter the inquiry was conducted as per procedural prescription contained in the CCS (CCA) Rules. The petitioner participated in the inquiry. After considering the petitioner's reply and examining two witnesses on behalf of the department, an order has been passed by the inquiry officer holding the charges proved. The charge involved in the proceeding is also a very serious charge of accepting illegal gratification.

- 15.** After submission of inquiry report the employee/petitioner was afforded an opportunity by the Disciplinary Authority to make his representation against the finding of the inquiry officer. The petitioner's representation was considered by the disciplinary authority and thereafter the charges were found to be proved by the order of the disciplinary authority dated 11.09.2016 and the disciplinary authority visited the petitioner with the punishment of "*removal from service*" with immediate effect. The disciplinary authority, however, directed that the petitioner would be entitled with up to (30%) ceiling of pensionary benefits. The order of punishment was assailed by the petitioner before the appellate authority. The appellate authority has passed a reasoned and speaking order on the petitioner's appeal on 19.04.2018. The Appellate Authority has affirmed the order of the Disciplinary Authority.

16. From this sequence of events it is obvious that the proceedings were conducted in accordance with the procedure and after giving due opportunity to the petitioner before the inquiry officer, the disciplinary authority and thereafter by the Appellate Authority. The learned Senior Advocate Mr. Nandy submits that there being no procedural infirmity the Tribunal should not have interfered with the findings of the Disciplinary Authority or the Appellate Authority. The jurisdiction of the Tribunal, as well as the jurisdiction of the writ Court under Article 226 of the Constitution of India is circumscribed and confined to correct errors of law or procedural error if the same resulted in a manifest miscarriage of justice or violation of principles of natural justice. The Tribunal has erred in law by travelling beyond the circumscribed jurisdiction. It has gone into allegations and considered the findings of the Disciplinary Authority and the Appellate Authority, as if it was sitting in appeal over the orders passed by the departmental authorities.

17. The Tribunal has failed to consider that when the applicant did not cooperate and participate in the inquiry he was estopped from complaining that the punishment was in violation of the principles of natural justice. In support of such submissions the learned Senior Advocate for the writ petitioner has relied upon decision of the Apex Court in the case of ***State Bank of India***

and Others vs. Narendra Kumar Pandey reported in **(2013) 2 SCC 740**.

18. The learned Senior Advocate has further submitted that the Tribunal has further committed an error by quashing the charge memo dated 21.08.2015 based on which the applicant was proceeded against. He submits that mere issuance of a charge memo does not by itself infringe any right of a party. The grounds for assailing a charge Memo lie in a very narrow compass and are open to challenge if the charge Memo. suffers from *mala fide*, or contains vague charges, which would deprive the petitioner of an opportunity to appreciating the charges, so as to set up his defence in respect thereof. No such finding has been recorded by the Tribunal. The charge Memo. thus should not have been quashed by the Tribunal. In support of such submissions he has placed reliance on decision of the Apex Court in the case of ***Secretary, Ministry of Defence and Others vs. Prabhash Chandra Mirdha*** which is reported in **(2012) 11 SCC 565**.

19. The learned Advocate representing the respondent (applicant before the Tribunal), on the other hand, submits that Tribunal has rightly quashed the charge Memo. and the entire proceedings founded thereupon. He has drawn attention of the Court towards the allegations forming the basis of the charge. The proceedings is founded on a complaint filed by one Sri Subinay Kar. The

complaint was sent to the General Manager wherein it was alleged that the applicant who was then posted as a highly skilled Grade-I machinist took Rs. 50,000/- from, the complainant on a fake promise of giving him a Government job in the Gun & Shell Factory, Cossipore. The complainant also alleged that he was given a fake call letter for medical examination before joining. Thereafter the applicant's official locker was searched by 18 officers and it is alleged that illegal articles and documents (fake rubber stamps, fake letters, fake certificates, double smart identity card etc.) were recovered. It is under this circumstance that the charge Memo. as noted above was issued.

- 20.** In the inquiry two witnesses namely Sri Kalyan Majumdar and Sri Amarnath Roy have deposed. PW1 Sri Amarnath Roy has supported that the locker of the applicant was searched in his presence. He supported the recovery of rubber stamps, some call letters, some medical certificates written on a letter head of some lady doctor (probably wife of the applicant who is a Homoeopathic doctor), two EARS cards (identity cards) of the applicant were recovered in his presence. The PW1 has further stated that the applicant gave a written statement accepting that the articles recovered belonged to him. Insofar as the deposition of PW1 is concerned, the inquiry officer has rightly recorded in the inquiry report that he is a witness only to recovery of some illegal things

from the locker of the applicant. Insofar as the PW2 is concerned the inquiry officer has recorded that he has also confirmed recovery of articles from the applicant's locker. The evidence of the PWs as per the inquiry officer supports recovery of some articles from the locker of the applicant. There is no material whatsoever to support any misuse of the recovered articles. The search is founded and preceded by a complaint that the petitioner has taken illegal gratification for giving employment to the complainant and issued a fake call letter. However, the complainant namely Sri Subinay Kar has not appeared in support of the allegations before the inquiry officer. Inquiry Officer also found that there is no material whatsoever to sustain the allegation regarding issuance of a fake call letter to the said Sri Subinay Kar.

- 21.** The inquiry officer has proceeded to record a finding regarding Article of Charge-I by concluding that the applicant/charged employee has not "*put up any proof of argument against it*". As regards illegal gratification paid by the complainant the charge has been held to be proved beyond reasonable doubt without any evidence whatsoever in support of such payment. In fact, the complainant was not examined before the inquiry officer. The complaint which forms the basis of allegations against the applicant was one of the documents enlisted in Annexure-III of

the Charge Memo. The Charge of soliciting illegal gratification from the complainant was sought to be sustained by the department in the proceedings by relying upon the complainant dated 11.07.2015 made by Sri Subinnay Kar. The complainant was therefore required to appear before the enquiry officer to support the complaint. In his absence, there is no basis whatsoever to conclude that the complainant had actually made any such allegation, as has been stated in the complaint. Admitted position that emerges from the record is that complainant never appeared before the enquiry officer. We do not propose to hold that in every case where a complainant is not examined in support of the charge, the charge is incapable of being established in a disciplinary proceeding on the standard of preponderance of probabilities. There can be no straightjacket formula to take care of such a circumstance, the same has to be examined in the facts and circumstances which are unique to every case.

- 22.** In the present case the complainant was an alien to the establishment. He was not a member of the service. He was a member of the general public outside the office and had lodged a complaint that the applicant solicited illegal gratification from him. Apart from the complaint dated 11.07.2015 there is no other material in support of the allegation of soliciting illegal

gratification. There is no other material whatsoever in the list of documents on the basis of which the department proposes to establish the submission of complaint dated 11.07.2015, let alone bring home the Charge. The list of witnesses in Annexure-IV otherwise contains names of employees working within the establishment. Out of them only two persons have deposed, but only in support of the subsequent search and seizure of the locker allegedly belonging to the applicant from which the above noted materials have been recovered. Under these circumstances we have no hesitation in concluding that there is not even an iota of evidence/material on record before the enquiry officer in support of the allegation made in the complaint dated 11.07.2015 regarding soliciting of illegal gratification by the applicant. As regards the Article of Charge No.-II is concerned the enquiry officer has recorded a finding which reads:

“As far as defence is concerned, during this enquiry on the day of first hearing, the charges has been simply denied by the AGS without offering any defence by him or his defence assistant subsequently. So in the eyes of court of enquiry this denial does not weaken the allegation and the admittance by the AGS as made on 17-07-2015 may be taken as not disputed.”

- 23.** The same finding have been recorded in support of the Article of Charge No.-III as well as Article of Charge No IV. These remaining charges have also been held proved by the enquiry

officer on the ground that the defence offered by the applicant does not weaken the allegations.

24. An issue whether a charge can be said to be proved on the ground of weakness of evidence on the part of the defence, is no longer *res integra*. The law is very well-settled in this regard that it is for the department to bring home the charges, not by applying the strict rules of evidence and proof beyond doubt as applicable in a criminal trial; but on the preponderance of probability. The law does not countenance that when there is no material /evidence in support of the charge then it can be proved by shifting the burden of proof on the charged employee, as has been done in the present case which is apparent from the finding in respect of Article of Charge II, III and IV, extracted above. The Inquiry Officer cannot shift the burden of proof on the charged employee as held by the Apex Court in the case of ***M.V. Bijlani vs. Union of India and Others*** reported in **(2006) 5 SCC 88** which reads:

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a

preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

- 25.** The findings of the enquiry officer in respect of all the four charges were not founded on any material whatsoever. The law is well-settled as enunciated by the Apex Court in the case of ***Union of India Vs. P. Gunasekharan*** reported in ***(2015) 2 SCC 610*** that in exercise of judicial review normally the Tribunal/Court shall not reappreciate the evidence to examine the relevance and sufficiency of the evidence. When there is some material on record before the Disciplinary Authority, and relying upon the same an order is passed, interference is normally eschewed. The situation, however is different where the finding of the Disciplinary Authority is based on no evidence, as in the instant case, where there was no material /evidence whatsoever to sustain the foundational fact of even the complaint being allegedly filed by one Subiunay Kar. Even the alleged complainant did not appear to support the charge of the appellant having solicited any illegal gratification for giving employment to the Complainant. Therefore

the findings of the enquiry officer that all the charges were proved are clearly unsustainable in law.

- 26.** It is not in dispute that the petitioner objected to the findings of the enquiry officer by way of a representation dated 18.07.2016, when the opportunity was granted by the Disciplinary Authority. The consideration of the disciplinary authority in the order of punishment dated 11.09.2016 is as follows:

“The undersigned has carefully considered the facts of the instant disciplinary case, all the evidences on record and the representation dated 18-07-2016 submitted by Shri Pijus Kanti Ghorai, Hy. Skilled Gr. 1 (Machinist), Ticket No. 130 / Tool Room, Per. No. 6710. After careful consideration and dispassionate study of the merit of the case in the light of the relevant rules, the undersigned has come to the conclusion that Shri Pijus Kanti Ghorai, Hy. Skilled Gr. 1 (Machinist). Ticket No. 130 / Tool Room, Per. No. 6710 is guilty of the charges ...”

- 27.** The disciplinary authority apparently has accepted the decision of the enquiry officer without considering the representation filed by the applicant and also without considering the records of the enquiry. The order does not manifest any consideration. On the contrary the order manifests non-application of mind. The Disciplinary Authority has also not assigned any reason whatsoever in support of its conclusions, before rejecting petitioner’s representation. He has not even taken

note of the points urged by the applicant in his representation. The disciplinary authority has mechanically affirmed the findings of the enquiry officer. The order of the disciplinary authority is therefore unsustainable.

- 28.** These infirmities were subjected to another scrutiny by the applicant, who preferred an appeal against the findings of the disciplinary authority. The appeal filed by the applicant was considered by an appellate authority namely Additional DG OF/member of the Ordinance Factory Board, Ministry of Defence, Government of India, by an order dated 19.04.2018. The appellate authority has passed a twelve page order. After taking note of the entire sequence of events, leading to filing of the appeal, upto page 11 of the order, he has concluded as follows:

“23. AND WHEREAS the undersigned has gone through the entire-documents and details available on record: It is noted that the charges imputed against the appellant were of grave nature involving moral turpitude. The appellant has failed to bring out any cogent and reasoned justification in rebuttal of the charges.

24. AND WHEREAS the penalty of Removal from service" is found to be justified and commensurate with the misconduct considering the facts and circumstances of the case. However, the Disciplinary Authority has allowed 30% ceiling of pensionary benefits to the appellant, As such, there is no cause to interfere with the orders of the Disciplinary Authority, at the appellate stage.

25. AND WHEREAS in the instant case, the penalty has been imposed after following the laid down

procedures under the CCS(CC&A) Rules, 1965. There was no violation of principles of natural justice throughout the disciplinary proceedings. Also, there was no technical flaw throughout the disciplinary proceedings. The appellant had not brought out any new facts in the instant appeal necessitating interference in the decision of the Disciplinary Authority at the appellate stage.

26. AND THEREFORE in view of the foregoing, the penalty imposed on the appellant which is under appeal, is found to be justified and warranted and there is no need to interfere with the same. As such, the appeal dt. 13.05.20174 is concluded to be devoid of merit and is hereby, rejected.”

29. It is discernible from the order of the appellate authority that he has also failed to take into consideration the infirmities in the enquiry conducted by the enquiry officer, or the order passed by the Disciplinary Authority, which we have taken note of above. The order of the Appellate Authority is also suffering from the same vice of being based on no evidence, as also non-application of mind. The Appellate Authority's order is therefore also found to be unsustainable.

30. The orders passed by the Disciplinary Authority as well as the Appellate Authority both are required to be considered within the contours of judicial review available to a Tribunal /Writ Court which has been summed up by the Apex Court recently in its decision rendered in the case of ***Union of India Vs. Subrata***

Nath reported in **2022 SCC Online SC 1617**. In Paragraph 14 the Apex Court has held :

“14. It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.”

31. In Paragraph 15 of the same judgment, the Apex Court has taken note of earlier decision in the case of **B. C. Chaturvedi Vs. Union of India and Ors.** reported in **(1995) 6 SCC 749** as also the decision in the case of **Union of India vs. H C Goel** reported in **1964 4 SCR 718** and taken note of the position of law founded thereupon. Relevant extracts reads:

“15.

12..... 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. Goel⁶ 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.”

32. We are guided by the above noted precedents and have recorded our finding on a consideration of the order of the Disciplinary Authority which is not founded on any evidence/material whatsoever. The Appellate Authority has also mechanically accepted the findings without reference to any material whatsoever.

33. Therefore, the conclusions of the Tribunal insofar as the enquiry report, the order of the Disciplinary Authority and the Appellate Authority’s order, requires no interference.

34. However, before parting with the judgment we must take into consideration whether the Charge Memo. was liable to be quashed by the Tribunal in exercise of judicial review. We do not approve of quashing of the Charge Memo. by the Tribunal. No grounds whatsoever was made out within the limited contours for assailing a charge Memo. The fact that the complainant did not turn up or that no material was produced in support of the complaint does not in any way vitiate the charge Memo. We therefore do not agree with the conclusions of the Tribunal that the Charge Memo be quashed. Once the Charge Memo is quashed, there was no occasion for the Tribunal to remit the matter back to the disciplinary authority "*de novo*". It is only if the Charge Memo was allowed to be sustained then there would be a possibility to conduct the proceedings "*de novo*". The findings as regards the invalidity of the Charge Memo. recorded by the Tribunal are clearly unsustainable and to this limited extent we interfere with the order passed by the Tribunal.

35. We leave it open to the authorities to proceed in accordance with law.

36. The writ petition No. **WPCT 111 of 2025** is accordingly **disposed of.**

37. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

38. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)