

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Madhuresh Prasad**

And

The Hon'ble **Justice Prasenjit Biswas**

M.A.T.577 of 2020

Jayanta Sarkar

-Versus-

National Jute Board

For the Appellant : **Mr. Victor Chatterjee,**
Ms.Shreya Bhattacharjee.

For the Respondent : **Mr. Surya Prasad Chattopadhyay,**
Mr.Samudraneel Nandi.

Judgment on : **15.06.2026**

Prasenjit Biswas, J:-

1. The writ petitioner/appellant, while serving as an Accounts Officer under the National Jute Board, was proceeded against on the basis of a charge memorandum dated 28th April, 2015 containing two articles of

charge. Those two articles of charge which were required to be established in the departmental proceeding were stated in the charge memo in the following terms:

“Article I

That the said Sri Jayanta Sarkar while functioning as Accounts Officer during the period June’2010 to December’2010 defrauded the Government of India/National Jute Board by Rs. 57,56,400/- by wrongfully releasing subsidy to M/s Nilkanth Jute Processing Private Ltd located at Muragacha, Jugberia, North 24 Parganas which was not due and acted in a manner which is unbecoming of a Government Servant and thereby violated Rules 3 (1)(i),3(1)(ii),3(1)(iii),3(1)(vi),3(1)(ix),3(1)(xii)and

3(1)(xxi)ofCCS(Conduct)Rules1964.

Article II

That the said Sri Jayanta Sarkar while functioning as Accounts Officer during the period 31st March 2014 to 5th December 2014 was about to defraud the Government of India/National Jute Board by Rs. 93,79,200/- by wrongfully recommending release of subsidytoM/sMahabirJutexlocatedatPiaraBagan, Bolkanda Gram Panchayat II, Jugberia, North 24 Parganas which was not due and acted in a manner which is unbecoming of a Government Servant

and therebyviolatedRules3(1)(i),3(1)(ii),3(1)(iii),3(1)(vi),3(1)(ix),3(1)(xii) and 3(1)(xxi)of CCS(Conduct) Rules 1964.”

2. The Enquiry Officer, by his report dated 7th October, 2015, held the charges to be proved. The findings were accepted by the Disciplinary Authority, culminating in the imposition of the extreme penalty of dismissal from service.

- 3.** It is submitted by the learned advocate appearing for the writ petitioner/appellant that the Enquiry Officer, by his report dated 07.10.2015, held both the articles of charge to have been proved against the petitioner. The findings recorded in the enquiry report were thereafter accepted in toto by the Disciplinary Authority, culminating in the imposition of the severest penalty known to service jurisprudence, namely dismissal from service. According to the learned advocate, the enquiry proceeding which formed the foundation of such drastic punishment suffers from grave procedural irregularities and fundamental infirmities, rendering the entire disciplinary process unsustainable in law.
- 4.** The learned advocate contends that the enquiry was conducted in a manner wholly inconsistent with the settled principles of natural justice and fair play. It is submitted that a careful examination of the enquiry proceedings would reveal that the procedure adopted by the Enquiry Officer was not merely irregular but fundamentally unfair, thereby causing serious prejudice to the petitioner in defending himself against the allegations leveled in the charge memorandum.
- 5.** Drawing attention to the records of the enquiry, the learned advocate submits that on the dates when evidence was purportedly considered in the proceeding, namely on 17.11.2015, 24.11.2015 and 22.01.2016, there was no reference whatsoever to the documents enumerated in Annexure-III to the articles of charge. The said documents constituted

the documentary foundation of the allegations and were relied upon by the disciplinary authority while framing the charges against the petitioner. However, despite their obvious relevance and significance, the documents were never produced before the Enquiry Officer, nor were they exhibited or proved through any witness during the course of the enquiry.

6. According to the learned advocate, in a departmental proceeding where the charges are founded substantially upon documentary materials, production and proof of such documents constitute the minimum procedural safeguards required for a fair adjudication. In the absence of such production, the delinquent employee is deprived of an effective opportunity to challenge the authenticity, relevance and evidentiary value of the materials relied upon against him. It is contended that findings recorded without formally bringing the foundational documents on record cannot be said to be based upon legally admissible evidence even on a preponderance of probability, applicable to disciplinary proceedings.
7. The learned advocate further submits that the proceedings disclose another serious irregularity. A perusal of the enquiry records demonstrates that the Enquiry Officer himself undertook the task of examining the management witnesses, namely Sri Susanta Pal, Sri M. Dutta and Sri S. Dutta. The records do not reveal any examination-in-chief conducted by the Presenting Officer. Instead, the Enquiry Officer

appears to have directly questioned the witnesses and recorded their responses.

- 8.** It is argued that such a course of action is wholly incompatible with the role assigned to an Enquiry Officer in a departmental proceeding. The Enquiry Officer is required to function as an impartial adjudicator who evaluates the evidence adduced by the parties. He cannot assume the role of a prosecutor or investigator. By undertaking the examination of witnesses himself and eliciting evidence in support of the charges, the Enquiry Officer effectively stepped into the shoes of the Presenting Officer. Such conduct, according to the learned advocate, destroys the neutrality expected of a quasi-judicial authority and creates a reasonable apprehension that the Enquiry Officer had abandoned his role as an unbiased adjudicator.
- 9.** It is further submitted that the manner in which the evidence of the said witnesses was recorded itself demonstrates the infirmity in the enquiry process. The statements attributed to the witnesses consist of brief and telegraphic answers bereft of any meaningful discussion regarding the documents relied upon in support of the charges. The witnesses were not confronted with the documentary records, nor were they asked to explain the manner in which the petitioner allegedly committed the acts attributed to him. The learned advocate submits that such cryptic recording of evidence cannot be treated as substantive material capable

of sustaining findings of serious misconduct carrying the consequence of dismissal from service.

- 10.** The learned advocate next contends that the enquiry was prematurely and arbitrarily closed on 27.01.2016 without granting the petitioner an adequate opportunity to present his defence. Despite the petitioner's desire to adduce evidence and examine defence witnesses, no effective opportunity was afforded to him by the Enquiry Officer. The right to lead defence evidence, it is argued, constitutes an integral component of a fair disciplinary proceeding and forms part of the reasonable opportunity guaranteed to a delinquent employee.
- 11.** Particular emphasis has been laid upon the fact that immediately after closure of the enquiry, the petitioner addressed a written communication dated 29.01.2016 objecting to the procedure adopted by the Enquiry Officer and protesting against the denial of an opportunity to examine defence witnesses. The said objection specifically highlighted the prejudice caused to the petitioner by the abrupt closure of the enquiry. However, no response was ever furnished to the petitioner, nor was any attempt made to consider the objections raised therein. Instead, the Enquiry Officer proceeded with the matter and ultimately submitted his report. According to the learned advocate, such conduct clearly demonstrates that the petitioner's legitimate grievance regarding denial of opportunity was completely ignored.

- 12.** The learned advocate further submits that an even more serious violation of natural justice became apparent only upon the petitioner receiving a copy of the enquiry report. From the report it transpired that the Enquiry Officer had relied upon a written brief purportedly submitted by the Presenting Officer together with certain documents annexed thereto. However, at no stage of the enquiry was any copy of such written brief supplied to the petitioner. Nor was the petitioner informed that any such written submissions had been placed before the Enquiry Officer.
- 13.** According to the learned advocate, if such written brief was indeed submitted by the Presenting Officer, elementary fairness required that a copy thereof be served upon the charge-sheeted employee so as to enable him to respond to the submissions made therein. The petitioner was completely denied such opportunity. Consequently, the written brief appears to have been furnished directly to the Enquiry Officer behind the back of the petitioner. Any material, submission or document placed before the Enquiry Officer without notice to the delinquent employee and subsequently relied upon for recording findings of guilt, constitutes ex parte material and cannot legally form the basis of a disciplinary finding.
- 14.** Apart from these procedural infirmities, the learned advocate submits that the enquiry report suffers from a fundamental defect on merits. According to him, the Enquiry Officer failed to examine the very charges framed against the petitioner. A reading of both Articles of Charge would reveal that the gravamen of the allegations was that the petitioner had

either wrongfully released subsidy or wrongfully recommended release of subsidy with the object of “defrauding” the Government of India and the National Jute Board. The allegation of fraud constituted the essence of the misconduct alleged against the petitioner. However, a careful reading of the enquiry report reveals that the Enquiry Officer has not returned any finding whatsoever regarding the alleged fraudulent intention on the part of the petitioner. There is no discussion in the report as to whether the petitioner acted dishonestly, whether he had any ulterior motive, whether he stood to derive any personal benefit, whether there existed any collusion with the beneficiary entities, or whether there was any deliberate intention to deceive the Board. The report is conspicuously silent on the most essential ingredient of the charge.

- 15.** The learned advocate submits that fraud is not a matter of presumption. It is a serious allegation carrying severe civil consequences and must be established by cogent material demonstrating a conscious and deliberate intent to deceive. Mere procedural irregularity, negligence or incorrect recommendation cannot automatically be elevated to an act of fraud. Unless the element of fraudulent intent is specifically established, the charge as framed remains unproved.
- 16.** It is accordingly argued that the Enquiry Officer completely misdirected himself by proceeding to examine matters divorced from the actual charges contained in the charge memorandum. The enquiry report merely refers to the release or recommendation of subsidy allegedly not

due, but does not address the crucial question whether such acts were undertaken with the intention of defrauding the Board. Consequently, the Enquiry Officer failed to adjudicate upon the charge actually framed against the petitioner.

17. The learned advocate therefore submits that the findings recorded in the enquiry report are fundamentally flawed, inasmuch as they do not correspond to the allegations contained in the charge memorandum. Since the charge of fraud was never examined or established, the conclusion that the charges stood proved is wholly unsustainable. The disciplinary authority, while accepting such findings and imposing the punishment of dismissal, failed to notice these glaring defects. The entire disciplinary proceeding, therefore, stands vitiated both on account of procedural unfairness and on account of failure to establish the essential ingredients of the charges leveled against the petitioner.
18. Reliance has been placed by the learned Advocate of the petitioner upon the following decisions rendered by the Hon'ble Apex Court.

- i) **Jai Prakash Saini-vs.-Managing Director, U.P. Cooperative Federation Ltd. & Ors.** reported in **2026 SCC OnLine SC 505 (Para 17)**.
- ii) **Sur Enamel & Stamping Works Ltd.-vs- Workmen** reported in **1963 SCC OnLine SC 97 (para 4)**.

- iii) **Narinder Mohan Arya -vs- United India Insurance Co. Ltd. & Ors.**reported in **(2006) 4 SCC 713 (para 26).**
- iv) **Roop Singh Negi -vs- Punjab National Bank & Ors.**reported in **(2009) 2 SCC 570 (paras 14, 17 and 23).**

- 19.** Per contra, the learned Advocate appearing for the respondent Board emphatically refuted and denied each and every contention advanced on behalf of the writ petitioner/appellant. It was submitted that the disciplinary proceeding had been initiated and concluded strictly in accordance with the applicable rules and procedures and that the findings recorded by the Enquiry Officer, as well as the consequential decision of the Disciplinary Authority, were fully justified on the basis of the materials available on record.
- 20.** The learned Advocate for the respondent Board contended that the charges levelled against the petitioner were grave and serious in nature. The petitioner, while discharging his duties as an Accounts Officer, was found to have wrongfully released funds in one instance and to have recommended and facilitated the release of funds in another case without proper verification and in violation of the established norms and procedures governing financial disbursements. Such acts, according to the respondent Board, constituted gross misconduct and reflected a complete disregard of the responsibilities attached to the office held by the petitioner.

- 21.** It was further argued that the departmental enquiry was conducted in a fair, transparent and impartial manner, ensuring complete adherence to the principles of natural justice. The allegation of denial of reasonable opportunity, as sought to be projected by the petitioner, was categorically denied. The learned Advocate submitted that the petitioner was afforded every opportunity to defend himself during the course of the enquiry. In fact, the request made by the petitioner for engagement of a Defence Assistant was duly considered and allowed by the Enquiry Officer, thereby enabling the petitioner to effectively participate in the proceeding and present his defence.
- 22.** The learned Advocate further submitted that, in order to verify the factual position relating to the allegations levelled against the petitioner, a Joint Inspection Team was constituted by the competent authority. Pursuant thereto, a detailed field investigation was conducted at the relevant sites in the presence of the petitioner himself. During such inspection, the physical status of the machinery, the existence and condition of the assets purportedly financed, and the land and premises of the concerned mill were examined and verified. The findings of such field inspection were duly confronted to the petitioner and incorporated in a detailed inspection report prepared by the authorities. According to the respondent Board, the field verification unequivocally established the irregularities and illegalities committed by the petitioner and substantially corroborated the charges framed against him.

- 23.** It was next contended that all documents sought for and relied upon by the petitioner for the purpose of his defence were supplied to him. The respondent Board denied any allegation regarding non-supply of documents or withholding of materials. The learned Advocate submitted that adequate and sufficient opportunity was granted not only to the petitioner but also to his Defence Assistant to scrutinize the records, participate in the enquiry proceedings and put forward the defence case. Despite such opportunities, the petitioner failed to produce any cogent material capable of disproving the allegations or discrediting the evidence adduced by the management.
- 24.** The learned Advocate for the respondent Board further submitted that the management witnesses were examined in the presence of the petitioner and that full opportunity was afforded to him to cross-examine each of the witnesses. The petitioner availed himself of such opportunity and actively participated in the proceedings. After completion of the examination and cross-examination of the witnesses and after considering the documentary evidence brought on record, the enquiry proceedings were concluded in accordance with law. It was, therefore, contended that there was no procedural irregularity whatsoever which could vitiate the enquiry.
- 25.** It was also argued that the disciplinary proceeding had been conducted strictly in conformity with the principles analogous to those embodied in the Central Civil Services (Classification, Control and Appeal) Rules,

1965. The safeguards ordinarily available to a delinquent employee in a departmental enquiry were fully extended to the petitioner. The enquiry was conducted by a competent Enquiry Officer, the evidence was properly recorded, opportunities of hearing were granted at every stage, and the findings were ultimately arrived at on the basis of evidence adduced during the proceeding.

- 26.** In such circumstances, it was argued that there exists no legal or factual infirmity either in the conduct of the disciplinary proceeding or in the decision-making process adopted by the disciplinary authorities. The respondent Board, therefore, contended that no ground has been made out warranting interference by this Hon'ble Court with the findings recorded in the departmental proceeding or with the punishment imposed upon the petitioner. The writ petition, according to the respondent Board, is devoid of merit and the findings of the learned Single Judge may not be interfered with..
- 27.** In support of his submission learned Advocate placed reliance upon the following decisions of the Hon'ble Apex Court.

- i) **State of Meghalaya &Ors.-vs- Meckensingh N. Marak** reported in (2008) 7 SCC 580 (para 15 and 16).
- ii) **R.S. Saini -vs- State of Punjab & Ors.** reported in (1999)8 SCC 90.

- 28.** We have considered the rival submissions advanced by both the parties.

- 29.** The records indicate that on the dates fixed for enquiry, namely 17th November, 2015, 24th November, 2015 and 22nd January, 2016, the documents listed in Annexure-III to the charge memorandum were neither formally produced nor proved before the Enquiry Officer. The documentary materials which constituted the very foundation of the charges were thus not brought on record in accordance with any recognised procedure. In a disciplinary proceeding where the allegations related to release and recommendation of subsidy, the relevant files, inspection reports, subsidy claims, processing notes and connected records constituted the primary evidence. In the absence of their formal production and proof, the enquiry stood deprived of the evidentiary basis necessary for arriving at a finding of guilt.
- 30.** It is trite law that a departmental proceeding, though not governed by the strict rules of evidence applicable to judicial proceedings, must nevertheless conform to the fundamental principles of natural justice and fair play. The enquiry must be conducted in a manner which inspires confidence and ensures that the delinquent employee is afforded a reasonable opportunity to defend himself against the charges levelled. Any procedure which compromises fairness or creates a reasonable apprehension of bias strikes at the very root of the disciplinary process. A scrutiny of the enquiry proceedings reveals that the procedure adopted by the Enquiry Officer fell substantially short of these settled requirements.

- 31.** More importantly, the proceedings disclose that the Enquiry Officer himself assumed the task of questioning and examining the witnesses. The statements of the witnesses, namely Susanta Pal, M. Dutta and S. Dutta, were recorded in a telegraphic manner, and even on the standard of preponderance of probability, such statements must be considered as supporting the charge. The statements are devoid of any substance and meaningless. The Presenting Officer did not undertake any substantive examination-in-chief of the witnesses. Nor does the record disclose that the witnesses were confronted with the relevant documents on the basis whereof the charges had been framed. Such a procedure cannot be countenanced in law.
- 32.** The Enquiry Officer, while performing a quasi-judicial function, is expected to maintain neutrality and detachment. His role is to adjudicate upon the evidence adduced before him and not to collect evidence or present the case against the delinquent employee. By virtually stepping into the shoes of the Presenting Officer and assuming the responsibility of eliciting evidence in support of the charges, the Enquiry Officer abandoned the role of an impartial adjudicator and assumed the position of a prosecutor. Such conduct gives rise to a reasonable apprehension of bias and renders the enquiry vulnerable to challenge on the touchstone of fairness.
- 33.** The records further reveal that the enquiry was abruptly closed on 27th January, 2016. The appellant was not afforded an effective opportunity

to adduce defence evidence or to examine witnesses in support of his case. The denial of such opportunity assumes significance in view of the fact that the appellant specifically protested against the procedure adopted by the Enquiry Officer through a written communication dated 29th January, 2016. The said objection highlighted the procedural irregularities and sought an opportunity to present the defence case. The record does not disclose any consideration of the said objection nor any reasoned response thereto.

- 34.** The right to lead defence evidence is not an empty formality. It constitutes an integral component of the reasonable opportunity contemplated under the principles of natural justice. Once a delinquent employee expresses his intention to produce defence witnesses, the Enquiry Officer is duty bound to consider such request fairly and permit the defence to be presented unless justifiable reasons exist to the contrary. The denial of such opportunity, particularly without assigning any reason, results in serious prejudice to the delinquent employee and vitiates the enquiry.
- 35.** Another grave infirmity emerges from the manner in which the Enquiry Officer relied upon the written brief allegedly submitted by the Presenting Officer. From the enquiry report it appears that the Enquiry Officer took into consideration a written brief accompanied by documents purportedly filed on behalf of the management. However, the appellant consistently maintained that no copy of such written brief was ever supplied to him.

There is nothing on record to demonstrate that the written brief was served upon the appellant or that he was afforded an opportunity to submit his response thereto.

- 36.** The consequence is obvious. Any material submitted behind the back of the delinquent employee and relied upon by the Enquiry Officer for arriving at a finding of guilt constitutes an ex parte material. Reliance upon such material is antithetical to the principles of natural justice. A delinquent employee cannot be condemned on the basis of submissions or documents to which he had no access and regarding which he had no opportunity of rebuttal. The consideration of such undisclosed material by the Enquiry Officer therefore causes serious prejudice and renders the findings unsustainable.
- 37.** In the case of **Jai Prakash Saini** (supra), the Hon'ble Supreme Court reiterated the settled principles governing the conduct of departmental enquiries and the observance of the principles of natural justice therein. The Apex Court held that the burden initially lies upon the employer or the disciplinary authority to adduce evidence in support of the charges framed against the delinquent employee. The management is required to examine its witnesses in the first instance and afford the charged employee a reasonable opportunity to cross-examine such witnesses. Only upon completion of the employer's evidence and the cross-examination thereof can the delinquent employee be called upon to enter upon his defence, either by leading evidence in rebuttal or by furnishing

an explanation with regard to the materials brought on record against him.

38. The Hon'ble Court further observed that this requirement is not dispensed with merely because the case is founded predominantly or exclusively on documentary evidence. Unless the authenticity and contents of the documents relied upon are expressly admitted by the delinquent employee, the employer is under an obligation to prove such documents through competent witnesses. Such witnesses, after proving the documents, must be made available for cross-examination by the charged employee. The right of cross-examination constitutes an integral facet of a fair enquiry and cannot be denied on the ground that the charges are sought to be established through documentary materials alone. The judgment thus underscores that proof of documents through witnesses and the corresponding right of cross-examination are indispensable safeguards to ensure fairness and compliance with the principles of natural justice in disciplinary proceedings.

39. In the case of **Narinder Mohan Arya** (supra) the Hon'ble Apex Court held at paragraph 26 as follows:

“26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case

where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See *State of Assam v. Mahendra Kumar Das.*) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See *Khem Chand v. Union of India and State of U.P. v. Om Prakash Gupta.*) (3) Exercise of discretionary power involves two elements-(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See *K.L. Tripathi v. State Bank of India.*) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See *Sawai Singh v. State of Rajasthan.*) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. [See *Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra.*] (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain

circumstances. (See Central Bank of India Ltd. V. Prakash Chand Jain, Kuldeep Singh v. Commr. Of Police.)

- 40.** The principles and safeguards enunciated by the Hon'ble Apex Court in the aforesaid decision were not duly taken into consideration while examining whether the disciplinary proceeding against the petitioner had been conducted in conformity with the requirements of fairness and the principles of natural justice. The fundamental tests laid down by the Hon'ble Supreme Court for ensuring a fair enquiry appear to have been overlooked, resulting in serious prejudice to the petitioner in defending himself against the charges levelled against him.
- 41.** A careful scrutiny of the enquiry proceedings reveals that the management witnesses were neither confronted with the documentary records relied upon by the disciplinary authority nor were they called upon to explain the contents, relevance and evidentiary value of such documents. The witnesses merely made telegraphic statements without establishing the nexus between the documentary materials and the allegations leveled against the petitioner. Consequently, the documents relied upon by the management remained formally unproved in accordance with the requirements of a fair departmental enquiry. Therefore, the findings of the Enquiry Officer and the Disciplinary Authority are based on no material.

- 42.** It further appears that the witnesses were not asked to depose as to the specific role allegedly played by the petitioner in the commission of the acts constituting misconduct. No attempt was made to elicit from the witnesses the manner in which the petitioner was responsible for the alleged irregularities or the precise circumstances under which the purported acts of omission or commission were committed by him. In the absence of such evidence, the charges against the petitioner were left unsupported by any substantive oral testimony explaining how the petitioner could be connected with the alleged misconduct.
- 43.** The failure to confront the witnesses with the relevant documents and the omission to obtain evidence explaining the petitioner's alleged involvement in the transactions in question deprived the petitioner of an effective opportunity to challenge the case sought to be made out against him through cross-examination. Such a course of action strikes at the very root of a fair enquiry and renders the findings vulnerable to challenge on the ground of violation of the principles of natural justice.
- 44.** In the case of **Roop Singh Negi** (supra) the Hon'ble Apex Court held at paragraph 14, inter alia that:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a

finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

- 45.** In the aforesaid decision, the Hon'ble Apex Court unequivocally held that the mere production or marking of documents does not, by itself, amount to proof of the contents thereof. The Court emphasized that documents relied upon in a disciplinary proceeding must be duly proved through competent witnesses who can speak to their authenticity, contents and relevance. Such witnesses are also required to be made available for cross-examination so as to afford the delinquent employee a fair opportunity to challenge the evidence sought to be relied upon against him. The underlying principle is that documentary evidence cannot be treated as substantive proof unless its contents are established in accordance with the requirements of a fair enquiry.
- 46.** Applying the aforesaid principle to the facts of the present case, it becomes evident that the procedure adopted by the management suffers

from a far more fundamental defect. In the instant proceeding, the management did not even formally tender the documents upon which reliance was purportedly placed for establishing the charges against the petitioner. Consequently, there was no occasion for any witness to prove the said documents, explain their contents, or establish their nexus with the allegations levelled against the petitioner.

- 47.** The omission on the part of the management to bring the relevant documents on record in accordance with law constitutes a serious procedural infirmity and goes to the very root of the enquiry. When the documents forming the foundation of the charges were neither tendered nor proved through witnesses, the petitioner was effectively deprived of his valuable right to challenge the authenticity, correctness and evidentiary value of those materials through cross-examination. Such a course of action is wholly inconsistent with the principles of natural justice and the settled legal position governing disciplinary proceedings.
- 48.** We also find that a plain reading of both articles of charge demonstrates that the central allegation was not merely the release or recommendation of subsidy. The essence of the accusation was that the appellant had acted with the intention of “defrauding” the Government of India/National Jute Board. The allegation of fraud constituted the foundational ingredient of both charges. It was the alleged fraudulent conduct which elevated the matter from a mere administrative

irregularity to an act of grave misconduct warranting major penalty proceedings.

- 49.** However, a careful reading of the enquiry report reveals that the Enquiry Officer did not undertake any analysis whatsoever regarding the existence of fraudulent intent. There is no discussion concerning any dishonest motive, ulterior purpose, personal gain, collusion, mala fide conduct or conscious design on the part of the appellant to deceive the Board. The report is conspicuously silent regarding the essential ingredient of fraud.
- 50.** In the present case, while the charge alleged fraudulent release or recommendation of subsidy, the Enquiry Officer appears to have shifted focus and examined only whether subsidy had been released or recommended in circumstances where it was allegedly not due. Such an approach effectively substitutes the original charge with a different and diluted allegation. The appellant was never called upon to defend himself against a charge of mere erroneous recommendation or administrative lapse divorced from the allegation of fraud. Findings recorded on a charge not framed are legally unsustainable.
- 51.** The Court is therefore confronted with a twofold infirmity. First, the charge as framed was never properly examined and established with reference to any material. The findings therefore are not based on any material and therefore liable to inference by the writ court. Secondly, there is no finding whatsoever regarding the charge of fraudulent

intention. Therefore, the findings ultimately returned relate to matters which do not constitute the charge contained in the memorandum. Such findings cannot legally form the foundation of a punishment order.

- 52.** The matter may also be viewed from another perspective. Even assuming that subsidy was released or recommended in circumstances subsequently found to be erroneous, the question would still remain whether such conduct, in the absence of any finding regarding fraud, dishonesty, mala fide intention or extraneous consideration, could justify the imposition of the severest penalty of dismissal from service. The answer undoubtedly would be in the negative.
- 53.** Viewed cumulatively, the procedural violations, the denial of reasonable opportunity to defend, the reliance upon materials not disclosed to the appellant, findings without any basis, the assumption by the Enquiry Officer of the role of the Presenting Officer, and the complete failure to record any finding on the essential ingredient of fraud, strike at the very foundation of the disciplinary proceeding. The enquiry cannot therefore be regarded as fair, impartial or legally sustainable.
- 54.** Accordingly, this Court is of the considered view that the enquiry report, the consequential findings recorded therein and the punishment imposed on the basis thereof stand vitiated in law. The learned Single Judge failed to adequately appreciate these fundamental infirmities.
- 55.** The appeal therefore deserves to be allowed, the impugned judgment is set aside and the disciplinary action founded upon the vitiated enquiry is

quashed. The order of dismissal dated 25.05.2016 and the order passed by the appellate authority dated 27th February, 2017, being the direct consequence of such defective proceeding, cannot be sustained, is liable to be interfered with, and is hereby quashed. As a result of quashing of the punishment, the petitioner is entitled to all consequential benefits.

- 56.** There will be no order as to costs.
- 57.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)