(2012) 02 MP CK 0110

Madhya Pradesh High Court

Case No: Writ Petition No. 1420 of 1996

Pradeep Kumar Chouksey		APPELLANT
	Vs	
Cotton Corporation of India and others		RESPONDENT

Date of Decision: Feb. 10, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Cotton Corporation of India Limited Employees Conduct, Discipline and Appeal Rules, 1975 - Rule 25, 25(2)

Hon'ble Judges: Rajendra Menon, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Hon''ble Shri Justice Rajendra Menon

1. Challenging the order-dated 11.4.1989 passed by the Disciplinary Authority dismissing the petitioner from service and the order-dated 19.1.1996, passed by the appellate authority rejecting his appeal, petitioner has filed this writ petition.

2. Petitioner was proceeded against and the impugned action is taken as a measure of punishment after conducting a departmental inquiry in accordance to the Cotton Corporation of India Limited Employees Conduct and Discipline Rules, 1975 (hereinafter referred to as the ''Discipline and Appeal Rules''). Petitioner was working as a Cotton Purchase Officer and at the relevant time when the impugned action was taken, he was working in the Cotton Purchase Centre at Khidkia, District Hoshangabad. Petitioner remained at Khidkia from November 1985 till October 1986. It seems that due to certain acts of commission and omission committed by the petitioner in the discharge of his duties as Cotton Purchase Officer, while posted at Khidkia during the relevant period, petitioner was suspended vide Annexure P/1, on 16.7.1987 and the suspension order was issued by the then Branch Manager, in

the year 1987 when the petitioner was posted at Khargone. Subsequently, the Branch Manager issued a charge-sheet to the petitioner vide Annexure P/3 on 5.10.1987, and in the memorandum enclosed therewith as Annexure I, four articles of imputation were alleged against the petitioner. Alongwith the charge-sheet a detailed imputation of misconduct was enclosed vide Annexure II; List of documents and list of witnesses were enclosed as Annexures III and IV respectively and as the reply of the petitioner to the charge-sheet was found to be unsatisfactory, one Shri K.D. Dighe, a Former District and Sessions Judge, was appointed as inquiry officer to conduct the inquiry against the petitioner. Shri Dighe conducted the inquiry into the charge-sheet and thereafter submitted his finding vide Annexure P/7 on 11.1.1987. The inquiry officer in his report found Article No.3 to be ''not proved''; with regard to Article No.1, even though the allegation of submitting two incorrect statement was found to be established, but the intention of causing wrongful gain to himself or defrauding the Corporation was found as not established with regard to this charge. With regard to Charge No.2 even though the allegation of making wrongful gain and for defrauding the Corporation was not established, but petitioner was found to have acted in an grossly negligent manner. Charge No.4 was found ''proved'' in its totality. Based on the aforesaid findings recorded by the inquiry officer, the impugned action is taken as is evident from order-dated 11.4.1989 - Annexure P/6 and after the appeal filed by the petitioner had been rejected, the present writ petition has been filed.

3. Shri Udayan Tiwari, learned counsel for the petitioner, took me through the documents, evidence and other material available on record and argued that as per the schedule to the Discipline and Appeal Rules, as contained in Annexure P/2, for persons who are in a pay scale drawing the maximum scale exceeding `1600/-, the appointing authority and the disciplinary authority is the Officer Incharge (Personnel). It is argued that the Branch Manager had no authority either to suspend the petitioner or to initiate the departmental proceedings. Accordingly, the first ground of challenge is to the effect that the entire action initiated by the Branch Manager, who is an unauthorized person, is illegal. The second ground of challenge is on the ground that under the Discipline and Appeal Rules, an inquiry has to be conducted in accordance to the procedure contemplated under Rule 25, and under Rule 25(2), the inquiry is to be conducted by appointing any person, who is a public servant, who is to be referred as an inquiring authority. Referring to the provisions of Indian Penal Code and the definition of ''public servant'' as indicated therein, Shri Udayan Tiwari argued that a Former District and Sessions Judge is not a ''public servant'' and, therefore, conduct of inquiry by an outsider i.e.... a Former District and Sessions Judge, which is not permissible under the Rules, is illegal. Accordingly, the second ground canvassed is that the inquiry conducted by the inquiry officer, who was a Former District and Sessions Judge, stands vitiated, as he is not authorized to conduct the inquiry in accordance to the Rules.

4. The third ground canvassed was that in the list of witnesses, as enclosed with Annexure IV to the memorandum of charge-sheet - Annexure P/3, witness No.9 is shown as Shri Gopal Agarwal, a representative of Narmada Ginning and Pressing Factory, Harda. However, in the inquiry this witness Shri Gopal Agarwal was not examined, instead another witness one Shri K.K. Agarwal was examined. Contending that the witness Shri K.K. Agarwal was produced without notice to the petitioner and contrary to the procedure prescribed and the list of witnesses, submitted by the presenting officer, the entire inquiry is said to be vitiated.

5. Thereafter, it was argued by Shri Udayan Tiwari, learned counsel for the petitioner, by taking me through the charge-sheet issued to the petitioner, the allegations levelled against him, particularly with regard to gross negligence in the discharge of his duties, the statement of two witnesses namely PW-8 Shri Prakash Chand Bapna and DW-2 Hari Singh, with regard to Charge No.4, that the charges against the petitioner with regard to this charge is not at all established. It was tried to be emphasized that the findings recorded by the inquiry officer with regard to Charge No.2 and 4 being proved is a perverse finding and in doing so, the defence statement of the witnesses examined have not been considered in its totality and even the hostile statement of witnesses of the prosecution, particularly Shri Prakash Chand Bapna and PW-10 S.M. Apte have not been given due consideration for holding Charge No.2 and particularly Charge No.4 as proved, it is said that a perverse finding is recorded. It was emphasized by placing reliance on the statement of Shri Hari Singh that it was the duty of Shri Hari Singh, who had made note of the weighment done in the premises of the Factory and he had testified that the correct weighments were forwarded to the office where the petitioner was posted and there was no mistake in recording the weighment as is alleged in the charge-sheet. Emphasizing that the findings recorded ignoring the statement of Hari Singh and other witnesses, particularly Shri Prakash Chand Bapna and Shri S.M. Apte, is nothing but a perverse finding and the entire action taken on the basis of such a perverse finding is unsustainable, Shri Udayan Tiwari prays for interference into the matter. Finally, it was argued by him that the findings of the inquiry officer and the report of the inquiry officer was not forwarded to the petitioner as a result the principle laid down by the Supreme Court, in the case of Union of India and others Vs. Mohd. Ramzan Khan, , has been violated and, therefore, the entire action stands vitiated and the action illegal in view of the above.

6. Accordingly, on the aforesaid five grounds Shri Udayan Tiwari sought for interference into the matter and during the course of hearing took me through the statement of witnesses particularly Shri Hari Singh, Shri Prakash Chand Bapna and Shri S.M. Apte to emphasize that the findings recorded with regard to Charge Nos. 2 and 4 are not correct.

7. Finally, it was tried to be emphasized that even if the entire charges are found to be correct, then Charge Nos. 1 and 2 is only with regard to negligence and,

therefore, for the act of negligence, the extreme punishment of dismissal from service is not warranted. Accordingly, on the aforesaid grounds Shri Udayan Tiwari seeks for interference into the matter and in support of his contentions places reliance on the following judgments:

(i) Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, -to canvass the contention that the disciplinary proceedings initiated by an incompetent person is illegal;

(ii) AIR 1991 SC 475 - Mohd. Ramzan Khan (supra);

(iii) 2003 SCC 633 -Bhupinder Pal Singh Vs. Director General of Civil Aviation - to contend that the principles of natural justice have been violated;

(iv) Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, ;

(v) 2009 SCC 570 - Roop Singh Negi Vs. Punjab National Bank; and,

(vi) M.V. Bijlani Vs. Union of India (UOI) and Others, .

all in support of his contention that if the findings of the inquiry officer is perverse, and it has to be rejected. The finding of the inquiry officer cannot be based on conjectures and surmises and it has to be based on conclusive findings and the inquiry officer must arrive at a conclusion that there has been preponderance of probability to prove the charges on the basis of the material. Consideration of irrelevant fact and refusal to consider relevant fact is said to be illegal. It is stated that in this particular case, departmental witnesses like Shri Prakash Chand Bapna and Shri S.M. Apte, who had turned hostile and who supported the case of the petitioner, their evidence has not been properly considered and, therefore, the findings are perverse.

8. Even though the matter was listed continuously for the last one month, none has appeared for the respondents and as the case is of the year 1996, matter is being decided after going through the records.

9. From the return filed by the respondents and from the averments made in the return supported by documents, it is seen that each and every allegation as is stated by Shri Udayan Tiwari is refuted by the respondents. As far as initiation of proceedings by the Branch Manager and the contention that he is an incompetent person is concerned, respondents have brought on record an amendment to the Discipline and Appeal Rules and a perusal of the said amendment, which is available at pages 193 and 194 of the return, indicates that in the meeting of the Board of Directors of the Company i.e.... 147th Meeting held on Tuesday, 31st May, 1988 at Mumbai and even prior to that in the Directors'' Meeting held on 19th August, 1987 i.e.... much before the impugned action was initiated against the petitioner on 5.10.1987, the provisions of the Discipline and Appeal Rules were amended and the

Branch Managers were made the disciplinary authority and with effect from 21.7.1973, the Rule was also amended and as the pay of the petitioner after implementation of the 3rd Pay Commission became more than `1800/-per month, it is the case of the respondents that the Branch Manager is the disciplinary authority. From the return filed by the respondents it is seen that even though petitioner was shown to be in the pay scale `750-1205, but after implementation of the 3rd Pay Commission''s recommendations, petitioner''s pay became more than `1800/-and for employees drawing salary more than `1060/-per month, the appointing authority and the disciplinary authority is the Branch Manager or the Branch Incharge. In that view of the matter, the action of the respondents in taking action through the Branch Manager, who is found to be the competent authority cannot be said to be illegal and accordingly the first ground canvassed by Shri Udayan Tiwari with regard to the competency of the Branch Manager to initiate the disciplinary inquiry or suspend the petitioner is found to be unsustainable and has to be rejected.

10. As far as the power of the competent authority to appoint a Former District and Sessions Judge as an inquiry officer is concerned, available at page 203 of the return is a circular dated 28.2.1984, which indicates that in the meeting of the Board of Directors held on 15th December, 1983, Rule 25(2) of the Cotton Corporation of India Discipline and Appeal Rules, 1975 was amended retrospectively with effect from 21st July, 1979 and the amended provision of sub-clause (2) of Rule 25 reads as under:

Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into or appoint any person (hereinafter called the inquiring authority) to inquire into the truth thereof.

(Emphasis supplied)

From the aforesaid, it is clear that as per the amended provisions, the inquiry officer can be any person and, therefore, the reliance placed by Shri Udayan Tiwari to the unamended Rules, which was existing in the year 1975, prescribing appointment of a ''public servant'' as an inquiry officer was no more in existence after the Rules were amended as indicated hereinabove.

11. Even though Shri Udayan Tiwari during the course of hearing had tried to place reliance on an amendment circulated vide circular dated 23.9.1991, available at page 188, I am of the considered view that in view of the circular dated 28.2.1984 this circular dated 23.9.1991 will have not application, as the contention of Shri Tiwari to the effect that the amendment was made only on 23.9.1991 is not correct.

12. As far as the third ground with regard to examination of Shri K.K. Agarwal, Manager of Narmada Ginning and Pressing Factory, Harda instead of Shri Gopal Agarwal is concerned, it is seen that Shri K.K. Agarwal, Manager of the said Factory, was examined as PW-11 and while this witness was proposed to be examined,

petitioner had raised objection to the effect that in the list of witnesses Shri Gopal Agarwal is shown to be a witness instead of examining him Shri K.K. Agarwal is being examined. This objection was considered by the inquiry officer and rejected and after Shri K.K. Agarwal was examined, the petitioner elaborately cross-examined him and his evidence was thereafter taken on record. During the course of hearing of this petition, the only objection raised was to the effect that instead of Shri Gopal Agarwal, Shri K.K. Agarwal is examined. However, neither any prejudice caused or illegality - statutory in nature, in doing so is pointed out to canvass the aforesaid contention. It is a well settled principle that when procedural irregularity in the conduct of a departmental inquiry is alleged and when it is stated that a particular procedure has not been followed and if the procedure said to have been breached is not a statutory provision, mandatory in nature, then prejudice caused due to following of the said procedure, the effect on the inquiry and the difference it would have made on the final result has to be demonstrated then only interference can be made. Mere allegation with regard to non-compliance with a non-statutory provision without any prejudice being pleaded or demonstrated will not vitiate a departmental inquiry.

13. In the present case also except for contending that the examination of Shri K.K. Agarwal has resulted in inquiry being vitiated, neither any prejudice caused is pleaded or proved nor is it demonstrated before this Court as to how and in what manner examination of Shri K.K. Agarwal in place of Shri Gopal Agarwal materially alters or would have changed the final outcome in the entire proceedings. In that view of the matter, keeping in view the principles laid down by the Supreme Court in the case of State Bank of Patiala Vs. S.K. Sharma, AIR 1986 SC 1669, on the aforesaid ground in the absence of prejudice being pleaded and established, interference into the matter is not called for. Accordingly, the third ground canvassed is also of no assistance to the petitioner.

14. As far as the fourth ground with regard to non-submission of the report of the inquiry officer and breach of the provisions of the law laid down by the Supreme Court in the case of Mohammed Ramzan Khan (supra) is concerned, the principle of law in this regard is again considered by the Supreme Court in the following two cases: Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha, ; and, Union of India (UOI) and Others Vs. Alok Kumar, . In the case of Manoj Kumar Sinha (supra), from 9 paragraphs 33 to 36, the principle is crystallized in the following manner:

33. In Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ,a Constitution Bench of this Court reiterated the ratio of law in Mohd. Ramzan Khan (supra) as follows:

15. As held by this Court in Union of India v. Mohd. Ramzan Khan, when the inquiring authority and the disciplinary authority are not one and the same and the disciplinary authority appoints an inquiring authority to inquire into charges levelled against a delinquent officer who holds inquiry, finds him guilty and submits a report

to that effect to the disciplinary authority, a copy of such report is required to be supplied by the disciplinary authority to the delinquent employee before an order of punishment is imposed on him. It was also held that non-supply of report of the inquiry officer to a delinquent employee would be violative of principles of natural justice. The Court observed that after the Constitution (Forty-second Amendment) Act, 1976, second opportunity contemplated by Article 311(2) of the Constitution had been abolished, but principles of natural justice and fair play required supply of adverse material to the delinquent who was likely to be affected by such material. Non-supply of report of the inquiry officer to the delinquent would constitute infringement of the doctrine of natural justice.

34. The ECIL matter was placed before the Constitution Bench as the attention of the Court was invited to a three-Judge Bench decision of this Court in Kailash Chander Asthana Vs. State of U.P. and Others, , wherein it was held that non-supply of the report would not ipso facto vitiate the order of punishment in the absence of prejudice to the delinquent.

35. Upon a detailed consideration of the entire case law this Court laid down certain principles which are as follows: (ECIL case2, SCC pp. 750-53, paras 18-21 & 23-24):

18. In this view of the matter, the Court dismissed the writ petition. It would thus be clear that the contention before this Court in that case was that the copy of the report of the inquiring authority was necessary to show cause at the second stage i.e. against the penalty proposed. That was also how the contention was understood by this Court. The contention was not and at least it was not understood to mean by this Court, that a copy of the report was necessary to prove the innocence of the employee before the disciplinary authority arrived at its conclusion with regard to the guilt or otherwise on the basis of the said report. Hence, we read nothing in this decision which has taken a view contrary to the view expressed in Union of India (UOI) and Ors Vs. E. Bashyan, , by a Bench of two learned Judges or to the view taken by three learned Judges in Union of India v. Mohd. Ramzan Khan.

19. In Mohd. Ramzan Khan case1 the question squarely fell for consideration before a Bench of three learned Judges of this Court viz. that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer''s report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to

make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, , the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the court will decline to be punctilious or fanatical

as if the rules of natural justice were sacred scriptures.

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23. What emerges from the above survey of the law on the subject is as follows.

24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz. when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer''s report since, as held by the courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the ''reasonable opportunity'' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer''s report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer''s report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Forty-second Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

36. The aforesaid ratio of law has been reiterated by this Court in Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, . This Court again critically examined the entire issue and observed as follows: (SCC pp. 38-39, paras 21-25)

21. From the ratio laid down in B. Karunakar (supra) it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer''s report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also

clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

22. In the instant case, it is not in dispute by and between the parties either before the High Court or before us that a copy of the report of the inquiry officer was not supplied to the delinquent writ petitioner. While the contention of the writ petitioner is that since failure to supply the inquiry officer''s report had resulted in violation of natural justice and the order was, therefore, liable to be quashed, the submission on behalf of the Corporation is that no material whatsoever has been placed nor is a finding recorded by the High Court that failure to supply the inquiry officer''s report had resulted in prejudice to the delinquent and the order of punishment was, therefore, liable to be quashed.

23. The High Court, unfortunately, failed to appreciate and apply in its proper perspective the ratio laid down in B. Karunakar (supra), though the High Court was conscious of the controversy before it. The Court also noted the submission of the Corporation that there was ''no whisper'' in the writ petition showing any prejudice to the delinquent as required by B. Karunakar (supra), but allowed the writ petition and set aside the order of punishment observing that in such cases, prejudice is ''writ large''.

24. In our considered view, the High Court was wrong in making the above observation and virtually in ignoring the ratio of B. Karunakar (supra) that prejudice should be shown by the delinquent. To repeat, in B. Karunakar, this Court stated: (SCC p. 757, para 30)

''30.(v) ... Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case.''

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem (hear the other side). But it is equally well settled that the concept of ''natural justice'' is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straightjacket of a rigid formula.

(emphasis in original)

15. If the facts of the present case are analysed in the backdrop of the aforesaid principle, it would be seen that except for contending that copy of the report of the

inquiry officer is not granted, the prejudice caused and the requirement as indicated in the aforesaid judgment are not pointed out. That being so, merely on the ground that the copy of the inquiry report is not granted, now interference into the matter is not warranted as the consequential prejudice caused and the difference it would have made in the final outcome if the copy of the inquiry report was supplied is neither pleaded nor demonstrated before this Court. Accordingly, the fourth ground canvassed is also unsustainable.

16. As far as the ground with regard to perversity in the findings recorded by the inquiry officer is concerned, for considering the aforesaid grievance of the petitioner the allegations levelled in the charge-sheet has to be taken note of. As already indicated hereinabove, in the memorandum of charge-sheet dated 28.9.1987 - Annexure P/3, four allegations are levelled against the petitioner. As far as the first allegation is concerned, it pertains to a series of action undertaken by the petitioner on more than six or seven occasion with regard to submitting incorrect statement showing manipulation in the statement. The statements are dated 26.3.1986 and 10.4.1986 respectively, and it is alleged that while making these statements the petitioner manipulated the figures and the balance lint stocks were not properly reflected. It is alleged that the aforesaid act shows non-maintenance of absolute integrity and devotion to duty. If the findings of the inquiry officer into this charge and the order passed by the disciplinary authority are taken note of, it would be seen that the inquiry officer has recorded a finding that both the statements dated 26.3.1986 and 10.4.1986 were incorrect and in these statements the petitioner did not furnish the correct information, but the findings recorded by the inquiry officer is that there is no evidence to prove that in doing so the petitioner has manipulated or mis-appropriated the lint stock with a view to make wrongful gain for himself or for defrauding the Corporation. Accordingly, if this allegation with regard to Charge No.1 is accepted in its totality, the allegation of willful act with intent to defraud or lack of integrity is not proved. What is proved is that incorrect statements were made, which may be an act of negligence.

17. Similarly, as far as Charge No.2 is concerned, this is also co-related to Charge No.1 and the main allegation pertains to making certain corrections in the stock register and various other statements. The inquiry officer has dealt with Charge Nos. 1 and 2 together and with regard to Charge No.2, the finding is that even though the allegations with regard to obliteration in the stock, over-writing etc on certain bales and lots are established, but in support of the fact that the petitioner was aware of these over-writings and obliteration and it came to his notice, he did not take any action and it is found that he was grossly negligent in performance of his duty. The finding is that for this Charge also petitioner is only negligent in performance of his duty and the allegations of making wrongful gain for himself or defrauding the Corporation is not established.

18. As far as Charge No.3 is concerned, this charge is not found to be proved. It is, therefore, clear that with regard to Charge Nos. 1, 2 and 3, the allegations originally in the charge-sheet with regard to defrauding the Corporation and causing wrongful gain and the question of integrity is not established. What is established against the petitioner is that he is responsible for having been grossly negligent in performing his duty.

19. Now, as far as Charge No.4 is concerned, this Charge is found to be fully proved against the petitioner. The allegation with regard to Charge No.4 contemplates that with regard to Lot No.31 of A-51/9 variety consisting of 100 Bales, weighment was done on 29.4.1986 and the total net weight of the quantity was recorded as 163.95 Quintals. This weight was signed by the petitioner and verified by the representative of M/s Narmada Ginning and Pressing Factory, Harda. This weight note originally prepared on 29.4.1986 together with certificate and pressing bills were forwarded to the Branch Office, but subsequently it is alleged that with regard to the same Lot No.31 of A-51/9 variety, another weighment note was prepared and in this revised weighment note the total net weight was 169.91.5 Quintals. As a result there has been manipulation in the weighment and an inflated lint weight was prepared for making the overall result appear to be normal and this was done for the purpose of concealing certain fraudulent dealings. This Charge is found to be proved by the inquiry officer and the disciplinary authority has also accepted this finding. It is with regard to this Charge that during the course of hearing of this writ petition the allegations were made with regard to non-consideration of the statement of PW-9 R.K. Thakkar and DW-2 Hari Singh. If the finding of the inquiry officer in this regard appearing in paragraph 21 of the report is taken note of, it would be seen that the inquiry officer has analysed the evidence of PW-9 R.K. Thakkar, PW-10 S.M. Apte, PW-12 K.K. Agarwal - Manager of M/s Narmada Ginning and Pressing Factory, Harda, documents - Ex.P/31 to P/34, which are the certificates, the bills and the weighment notes prepared with regard to this Lot and a detailed analysis of these documents; and, finally after examining the evidence and the statement of Hari Singh, a daily wage employee, who was examined as DW-2, his statement is discarded on the ground that he cannot be believed. In paragraph 24, a detailed analysis is given and it is found that the petitioner having once prepared the weighment sheet showing the weight at 163.96 Quintals, the subsequent weighment note prepared showing the weight 169.91.5 Quintals is not correct and it is found that this weighment note prepared by Hari Singh is an afterthought only to somehow help the petitioner. Detailed analysis of the evidence and the reason is given by the inquiry officer in this regard in paragraphs 23, 24 and 25. That being so, the question is as to whether the finding with regard to this Charge can be termed as perverse. If the proceedings of the inquiry and the manner in which the inquiry is conducted is taken note of, it would be seen that in the inquiry about 12 witnesses were examined as PW-1 to PW-12. Two witnesses DW-1 Tejraj Bapna and DW-2 Hari Singh were examined as defence witnesses and petitioner gave his own statement.

More than 46 documents were exhibited as documentary evidence and the inquiry officer - a Former District and Sessions Judge, has analysed each and every Charge and has given his report that - Charge No.3 ''not proved''; Charge Nos. 1 and 2 to be proved with regard to ''gross negligence'' and exonerated the petitioner as far as causing wrongful gain to himself and loss to the establishment is concerned. With regard to Charge No.4 also, the inquiry officer in paragraph 23 onwards has given cogent reasons for not believing the evidence of the petitioner and on the basis of the documents, particularly Exhibits D/40, D/41 and D/44, so also the totality of the evidence, has recorded a finding that the petitioner has manipulated the weighment note and tried to defraud the Corporation to the extent of 5.95 Quintals of Lint Stock. In a Departmental Inquiry, the jurisdiction of an inquiry officer is to analyse the evidence and record a finding based on the evidence that comes on record. A writ court exercising jurisdiction in a petition under Article 226 of the Constitution does not sit over this finding as if it is exercising further appellate jurisdiction. So long as the finding of the disciplinary authority is supported by some evidence, the High Court is not required to reappreciate the evidence and come to a 17 different and independent finding or conclusion on the said evidence. The position of law has been laid down in a series of judgments and recently the Supreme Court in the case of State Bank of India Vs. Ram Lal Bhaskar and another, (2011) 10 SCC 249, after taking note of certain principle laid down earlier in the case of State of Andhra Pradesh Vs. Sree Rama Rao, , in paragraphs 12 and 13 has crystallized the principle in the following manner:

12. This Court has held in State of Andhra Pradesh Vs. Sree Rama Rao (supra), in paragraph 7, as under:

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.

13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the

conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct.

(Emphasis supplied)

20. In the present case also the petitioner wants this Court to accept the defence version of the petitioner and discard the other findings recorded by the inquiry officer, which is based on due appreciation of the totality of the evidence and the material available on record. In this regard the principle laid down in the following cases wherein the scope of judicial review in such matters is laid down, has to be taken note. B.C. Chaturvedi Vs. Union of India and others, ; Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another, ; Union of India and others Vs. A. Nagamalleshwar Rao, AIR 1998 SC 111 ; and, The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, .

21. Even a Division Bench of this Court in the case of State of M.P. and another Vs. Jagdish Prasad Yadav and another, , in paragraphs 7 to 9, has laid down the following principle.

7. It is settled law that the Administrative Tribunal cannot sit as a Court of appeal over a decision based on the finding of the inquiry authority in disciplinary proceedings, as has been held in the case of Government of Tamil Nadu and another Vs. A. Rajapandian, . Where there was some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority it is not the function of the Administrative Tribunal to review the same and reach on a different finding than that of the disciplinary authority.

8. In the case of B.C. Chaturvedi (supra), it was held that where findings of the disciplinary authority/appellate authority are based on some evidence, Court/Tribunal cannot reappreciate the evidence and substitute its own findings. Again in the case of Union of India and another Vs. G. Ganayutham (Dead) by LRs., , it was held that unless the Court/Tribunal opines in its secondary role, that the administrator was on the material before him, irrational according to wednessbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases that the Court might, to shorten litigation think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority can interfere.

9. Again in the case of Union of India Vs. A. Nagamalleshwar Rao, AIR 1998 SC 111 , it was held that the Tribunal cannot examine the witness produced before the inquiry officer as if it is an Appellate Court. In the case of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, , it has been held that the disciplinary authority is the sole judge of facts if the enquiry

has been properly conducted. If there is some legal evidence on which findings can be based, then adequacy or even reliability of that evidence is not a matter to be canvassed before this Court.

(Emphasis supplied)

22. Accordingly, it is clear that while examining the question of perversity of finding in a departmental inquiry, this Court does not exercise appellate jurisdiction nor is the sufficiency or otherwise of the evidence a subject matter of judicial scrutiny. If a reasonable finding based on the evidence that has come on record is recorded, then further indulgence into the matter is not warranted. If the case in hand is analysed in the backdrop of the aforesaid principle and the evidence available on record, and the analysis of the same by the inquiry officer is taken note of, I am of the considered view that the findings of the inquiry officer cannot be termed as perverse of illegal to such an extent that it has to be rejected. The judgments relied upon in the case of Mohammed Ramzan Khan (supra), Roop Singh Negi (supra) and M.V. Bijlani (supra) relied upon by Shri Udayan Tiwari has to be scrutinized in the facts and circumstances of the case and the principle laid down by the Supreme Court in the various cases referred to hereinabove, and if the same is done it cannot be said that the material available is not enough to hold the charges, particularly Charge No.4 as proved. Accordingly, I am not inclined to accept the contention of Shri Udayan Tiwari to the effect that the finding of the inquiry officer is perverse and, therefore, is to be out rightly rejected. On the contrary, the evidence of the inquiry officer are based on some evidence which is available on record and the sufficiency of the evidence cannot be a ground for interfering into the matter, because the inquiry officer does give cogent reasons for dis-believing the statement of the defence witnesses, particularly Hari Singh, and also for the act of the petitioner in showing inflated weighments to defraud the Corporation. Under such circumstances, it is a case where the findings are to be held to be reasonable and proper and no interference on that count is called for.

23. Finally, the question of quantum of punishment has to be taken note of. As already indicated hereinabove, if the order of punishment is taken note of, it would be seen that the order of punishment is imposed holding that the petitioner is guilty of the charges levelled against him and, therefore, he should be immediately removed from service. However, while doing so, the impugned order of punishment dated 19.4.1989 - Annexure P/6 indicates that the disciplinary authority has held that the petitioner is found guilty of failure to maintain absolute integrity and the offence involves moral turpitude and has defrauded the Corporation. As already indicated hereinabove, out of the four charges with regard to Charge Nos. 1 and 2, the allegations of failure to maintain absolute integrity or the intent of the petitioner to defraud the Corporation or the allegations of moral turpitude are not established. What is established against the petitioner with regard to Charge Nos. 1 and 2 is that he is grossly negligent in the discharge of his duty. Charge No.3 is held to be ''not

proved'' and with regard to Charge No.4, even though he is found guilty of having shown inflated weighments, but the allegation of defrauding the Corporation or integrity are not found to be proved and the inquiry officer in paragraph 43, with regard to this Charge i.e... Charge No.4 in his report dated 13.12.1988, goes to say that the petitioner increased the weighment by 5.95 Quintals in order to make his overall result appear normal. If the petitioner''s intention was to show his result as normal, it is not known as to how he can be held responsible for defrauding the Corporation and to what extent loss was caused to the Corporation and whether any actual loss has been caused. It is therefore, the question as to whether for these acts of gross negligence in the discharge of his duty, the extreme punishment of removal from service, which requires reconsideration.

24. Neither the Disciplinary Authority or the Appellate Authority have adverted to consider this question in the right perspective, but holding the petitioner to be guilty of the charge of not maintaining absolute integrity, causing wrongful gain to himself and loss to the Corporation and for defrauding the impugned action is taken. Whereas on a close scrutiny of the inquiry report, it transpires that in sum and substance the inquiry officer has only found the petitioner guilty of ''gross negligence'' with regard to Charge Nos. 1 and 2; Charge No.3 is ''not proved''; and, an effort to show inflated weighments to protect himself and show that he has given normal results without there being any evidence of loss of integrity or mensrea with regard to Charge No.4. Accordingly, it is a fit case where to the extent of reconsidering the question of punishment the matter should be remanded back to the competent authority.

25. Accordingly, this petition is allowed in part. Even though the procedure followed in the inquiry and the findings of the inquiry officer are upheld, the matter is remanded back to the disciplinary authority to reconsider the question of imposition of a suitable penalty on the petitioner keeping in view the allegations which are found to be established in the departmental inquiry. Accordingly, the disciplinary authority is directed to pass appropriate orders with regard to punishment to be imposed upon the petitioner after taking note of the totality of the circumstances and the observations as are made hereinabove in this order.

26. Granting relief to the petitioner to that extent, the petition stands disposed of.