(1995) 01 BOM CK 0048

Bombay High Court

Case No: Writ Petition No''s. 3561 of 1991, 432, 938 and 952 of 1992

Chandrakumar Madhukar Deshmukh and etc.		APPELLANT
	Vs	
The Board of Trustees of Port of Bombay and Others		RESPONDENT

Date of Decision: Jan. 27, 1995

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (1997) 1 LLJ 206

Hon'ble Judges: V.H. Bhairavia, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. These four writ petitions are filed by the petitioners respectively under Article 226 of the Constitution of India challenging the order dated June 19, 1989 passed by the respondent - Bombay Port Trust terminating the services of the petitioners and the order dated January 30, 1990 passed by the respondent-Government rejecting the appeals preferred by the petitioners and the order dated April 16, 1991 passed by the reviewing authority in the revision applications dismissing the said applications.

2. It is submitted that all the petitioners were the employees of the respondent-Bombay Port Trust attached to the Bombay Port Trust Container Yard, Chembur, Bombay, working in different capacities such as security officer, shed superintendent, watchmen, gatemen, drivers, etc. It is submitted that in all twenty employees were charge-sheeted for the commission of misconduct and were issued show-cause notices dated December 16, 1987 and were suspended by the order dated March 5, 1988 from their respective duties. It is submitted that all the charge-sheeted employees in their written statements in pursuance of the show-cause notice categorically denied the allegations levelled against them in the

said show-cause notices. It is submitted that subsequently the suspension orders were revoked by respondent No. 2 and a 3 departmental enquiry was ordered. One Shri D. N. Daithankar, Advocate, was appointed as the enquiry officer for conducting the enquiry into the alleged charges. It is submitted that after recording the evidences, the enquiry officer submitted his report to respondent No.2 on June 14, 1988 (Exhibit ''F''). It is submitted that in his enquiry report against all the charge-sheeted employees, except charge-sheeted employee No. 20. The charge was held to be proved by the enquiry officer. It is submitted that pending the enquiry, one charge-sheeted employee died. Thus, 18 charge-sheeted employees have been subjected to disciplinary action in pursuance of the enquiry report under the Bombay Port Trust Rules and Regulations and the services of the petitioners - delinquents came to be terminated for the alleged misconduct by order dated June 19, 1989 (Exhibit ''L''). The petitioners-delinquents'' appeals against the said order before Government of India also came to he dismissed by order dated January 30, 1990 (Exhibit ''N''). It also reveals that the revision applications against the said order also came to be rejected by order dated April 16, 1991 (Exhibit ''P''). Being aggrieved by the disciplinary proceedings and punishment ranging from dismissal to compulsory retirement, the petitioners-delinquent have challenged the legality and prosperity of the impugned orders in these petitions under Article 226 of the Constitution of India.

3. The facts leading to the impugned domestic enquiry are peculiar and interesting which are reproduced below :-

Some cartons of polyester filament yarn which have been smuggled and which have been seized, had been stored by the D.R.I. and kept in the container yard by regularly drawing panchanamas on July 22, 1986 and July 27, 1986 under proper lock and seal. Police Inspector Shri Gurunath Ram Gaonkar attached to D.C.B., I.D., Bombay, was the investigating officer in this case. He had received reliable information that some persons were found disposing of clandestinely some smuggled articles and were making bargains for selling the same. Then, Police Inspector Shri Gaonkar acted promptly and he rounded up one Mohd. Saddique at C.S.I. Road, Kurla, and after interrogating him he found that he was involved in the case of theft of polyester filament yarn from the B.P.T. Container Yard, Chembur, Deonar. P. I. Gaonkar further pursued the matter when Mobd. Saddique led him to Char Null, Dongri, and pointed out one Majid Salim Sheikh alias Chanda as the person who had pre-planned for committing the theft. P.I. Shri Gaonkar further interrogated Majid Salim Shaikh alias Chanda when he volunteered to point out the person through whom he has despatched the stolen property and then took him to Dharavi, Zopadpatti and pointed out one Rahimtullah Imam Sheikh, when on further inquiry and interrogation, it was disclosed that some cartons of polyester have been stored in the Brown Box building at Kurla-Andheri Road. He then led the panchas and the witness Shri Gaonkar to the Brown Box Building. When the building was searched, the cartons were found stored on the terrace and some in the passage of

the third floor where the Brown Box Building is situated. He then discovered the imported polyester filament yarn worth Rs. 22 lakhs. P.I. Shri Gaonkar further learnt that the theft of these polyester filament yarn from the two big containers from the B.P.T. Yard at Chembur, Bombay, and so he contacted the concerned authorities of B.P.T. and then he took the panchanama of the containers of the polyester filament yarn from which the polyester filament yarn had been stolen. As many as 367 cartons of polyester filament yarn had been stolen and the seals on the recovered cartons and on the cartons in the containers exactly tallied and were identical and it was established beyond doubt that the theft of the cartons of polyester filament yarn had been committed from the containers at B.P.T. Container Yard at Chembur. It was then that the authorities of B.P.T. started making inquiries in the matter. There is a Chembur Container Yard in which articles worth lakhs of rupees have been stored and for which arrangements have been made for the safety and security of them. The whole yard has a compound wall of 6/7 feet height upon which there is a barbed wire fencing and nobody can enter the premises of this yard except through the gate. Sufficient staff of watchmen, head watchman, assistant shed superintendent, shed superintendent, gate keeper, watchman at the gate and above all an Assistant Security Officer, are posted. A detailed procedure for bringing in the consignment and taking out the consignment is laid down. In spite of the safety and security and security arrangements, theft of a gigantic scale worth about Rs. 22 lakhs being theft of sizeable cartons of 367 in number and which cannot be handled very easily, had taken place under the very nose of the security and dock staff posted as aforesaid in the yard on the night of February 13/14, 1987 and, therefore, the present departmental enquiry had been commenced.

4. On the basis of the aforesaid information, one Shri Dharmendra Ramlochan Singh, Police Inspector, D.C., C.I.D. Unit IV, Bombay, lodged an F.I.R. on February 17, 1987 at 5.30 p.m. (Exhibit J). It is necessary to reproduce the said F.I.R.

(See F.I.R. at the end of the case)

It is pertinent to note here that none of the charge-sheeted employees is named as accused in the said F.I.R. It is submitted that thereafter one Shri Deshpande, Vigilance Officer, carried out the investigation of the alleged offence of theft in the B.P.T. Container Yard. He recorded the statements of one Narendra Kuvarji Shah (P.W.1), the owner of the two trucks Mohd. Munir Aklumiya Ansari and Istadevsingh Avdheshsingh, the two truck drivers; Shri Gaonkar, Police Inspector, Crime Branch, Bombay; Shri H. D. Kulkarni, Deputy Docks Manager; and others. It is submitted that the Vigilance Officer took the two drivers to the scene of offence and it is alleged that the two drivers demonstrated before Shri Deshmukh how the 367 cartons were loaded into the trucks. From the statements of the two drivers, it was disclosed that the alleged commission of theft took place in the night of February 13/14, 1987 between 00.00 hours and 2.30 hours and 30 to 40 labourers were engaged in loading the said cartons into the trucks. It is Pertinent to note that the statements of

these two drivers came to be recorded by the Vigilance Officer Shri Y. D. Deshpande in the month of August 1987, whereas the alleged offence was committed in the night of February 13/14, 1987. It is also submitted that the statements of the two workmen of Lift & Shift Company (D-6 and D-7) were recorded by the Vigilance Officer Shri Deshpande in the presence of Shri H. D. Kulkarni, Deputy Docks Manager. It is submitted that these two workmen have categorically stated before the Vigilance Officer that no such incident of theft occurred on the night of February 13/14, 1987 between 2.00 hours and 3.30 hours. The copies of the statements were supplied to the petitioners-delinquents. It is also pertinent to note here that these four viz., the two truck drivers Mohd. Munir Aklumiya Ansari and Istadevsingh Avdheshsingh and the two workmen of Lift & Shift Co., have not been examined by the enquiry officer. It is submitted that on the report of the Investigating Officer V. D. Deshpande, enquiries were made regarding the staff on duty on the relevant date and time. Admittedly, the petitioners were on their respective duties on the date and time in question. On the basis of the report submitted by the Vigilance Officer Deshpande, show-cause notices were issued and thereafter domestic enquiry proceedings were commenced. The show-cause notices along with the articles of charges were served upon the petitioners-delinquents on December 16, 1987.

5. The following is the Articles of charges :-

(i) You have thus committed the misconduct of abetting, conniving at or attempting or committing the said theft and shown dishonesty connection with Port Trust work or property in terms of Rule 2(2)(b) of the B.P.T. Rules and Regulations for Non-Scheduled Staff; and

(ii) You have committed the misconduct of neglecting the assigned work in terms of Rule 22(2)(i) of the B.P.T. Rules and Regulations for Non-Scheduled Staff., and also

(iii) You have violated Regulation 3(1) of the B.P.T. Employees (Conduct) Regulations, 1976, and thereby rendered yourself liable to be proceeded against departmentally for a major penalty under Regulation 8 read with Regulations No. 12 and 13 of the B.P.T. Employees (Classification, Control & Appeal) Regulations, 1976.

6. The petitioners were supplied with the copies of documents including the list of witnesses.

The following were the witnesses :-

1. Shri K. T. Khandekar, Assistant Security Officer.

2. Shri Madhusudan Ramchandra Chiniwar, Shed Supdt., Chembur Yard

3. Shri Mohd. Amin Haji Juma Sheikh, Shed Supdt., Chembur Yard.

4. Shri Balkrishna Janu Thukrul, Assistant Manager, Chembur Yard.

5. Shri Gaonkar, Police Inspector, Crime Branch, Bombay.

6. Shri Dharmendra s/o Ramlochan Singh, E.O., D.R.I., Bombay.

7. Shri Mohd. Munir Aklumiya Ansari, r/o Govandi, Bombay

8. Shri Istadevsingh Avdheshsingh r/o Govandi, Bombay

9. Shri Rajkumar Ramdhani Maura, r/o Sewree, Bombay

10. Shri Ramsingh Kharbharam Maurya, r/o Sewree, Bombay

11. Shri Narendra Kunverji Shah r/o Sewree, Bombay

12. Shri H. D. Kulkarni, Dy. Docks Manager, I.D.

13. Shri K. D. Sathya, Audit Inspector, Accounts Branch.

14. Shri Y. D. Deshpande, Vigilance Officer (Investigation).

It is submitted that out of 14 cited witnesses, four material witnesses were not examined for the reasons best known to them viz., Shri Mobd. Munir Aklumiya Ansari, Shri Istadevsingh Avdheshsingh, the two truck drivers; and Shri Rajkumar Ramdhani Maura and Shri Ramsingh Kharbharam Maurya, the two workmen of Lift & Shift Co. After recording the evidence of the witness, the enquiry officer framed the following four points for his consideration along with his findings :

Point 1. Whether it is proved that any charge-sheeted employee has done gross negligence and woeful dereliction of duties by not noticing the unauthorised removal of 367 cartons of polyester filament yarn valued at Rs. 22 lakhs which took place from the Chembur Yard. (Article I) ?

Finding 1. Yes, against all charge-sheeted employees except C.S.E. No. 20, Shri Bhosale.

Point 2. Whether it is proved that any of that charge-sheeted employees had failed in doing their duties with integrity and devotion to duty ?

Finding 2. Against all the charge-sheeted employees except C.S.E. No. 20, Shri Bhosale.

Point 3. Whether it is proved that any of the charge-sheeted employees had abetted in committing the commission of theft of the 367 cartons of polyester filament yarn from two containers ?

Finding 3. Yes, Against all the charge-sheeted employees except C.S.E No. 20, Shri Bhosale.

Point 4. Whether the circumstances of the case indicate that a conspiracy must have been hatched by any of the charge sheet ed employees and in furtherance of the object of that conspiracy they had abetted the commission of the theft of 367

cartons of polyster filament yarn worth of Rs. 22 lakhs ?

Finding 4. Yes against all the charge-sheeted 2 employees except C.S.E. No. 20, Shri Bhosale.

7. It is submitted that all the points were held proved against the charge-sheeted employees and accordingly the enquiry officer held the alleged misconduct proved and on the basis of his findings, the enquiry officer has submitted his report on May 23, 1988 to respondent No.1 which has resulted into the termination of the services of the petitioners delinquents, by order dated June 19, 1989. It is submitted that the petitioner-delinquents have preferred appeals against the impugned order of dismissal before the Government of India. The Government of India allowed four appeals of the charge-sheeted employees and the punishment of dismissal of the four charge-sheeted employees was set aside and their punishment was reduced and were ordered to be reinstated in their respective services. But the appeals of the present petitioners delinquents came to be dismissed by the order of the Joint Secretary, Government of India, dated February 2, 1990 (Exhibit ''O''). The review petitions filed by the petitioners-delinquents to the Secretary, Government of India, Ministry of Surface Transport, New Delhi, also came to be rejected by order dated April 16, 1991 (Exhibit ''P'')

8. Heard the learned Counsel for the parties.

9. It has been submitted by Mr. Ramaswamy, learned Counsel for the respondents, that this Court has no jurisdiction under Article 226 of the Constitution of India to interfere with the concurrent findings in respect of the domestic enquiry. He relied on the observations of the Supreme Court in Nand Kishore Prasad v. The State of Bihar 1978 (XI) LLJ 84, wherein it has been observed as under : (Para 19)

"If the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant disciplinary rules and the Constitutional provisions, the order passed by such authority cannot be interfered with in proceedings under Article 226 of the Constitution, merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge of a criminal trial".

It has been further submitted by the learned Counsel that in domestic enquiry, law of evidence is not to be applied strictly and guilt or misconduct is not to be proved beyond reasonable doubt. If the material relied upon is capable of having any probative value, the weight to be attached to it is a matter for the enquiry officer or disciplinary authority entrusted with the responsibility of deciding the issue. This statement of law finds echo in State of Haryana and Another Vs. Rattan Singh, wherein it has been observed as under :

"In a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent

mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."

Further, it has been observed thus :-

"..... departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act."

Further it has been observed thus :

"The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice .....

The simple point is : was there some evidence or was there no evidence ? not in the sense of the technical rules governing regular Court proceedings but in a fair common sense way as a man of understanding and worldly wisdom will accept.

10. Keeping in view the above observations of the Apex Court, this Court is required to decide as to whether this is a fit case for interfering with the domestic enquiry report under Article 226 of the Constitution of India ?

11. Mr. Deshmukh, learned Counsel for the petitioners-delinquents, submitted that the basic errors committed in this case are the erroneous presumptions that Inspector Goankar has arrested persons who are the real thieves and that the thieves have told the police the truth as to how and when they committed the theft and that statements of the culprits become evidence before the enquiry officer even though the statements came before the enquiry officer purely as hearsay. He further vehemently submitted that -

"unbelievable has become believable for the enquiry officer"

because the enquiry officer has erroneously and without application of mind and use of reason and logic accepted as true the hearsay story told by a police, officer who had abdicated his functioning as an alert investigating officer on the basis of a story heard by him as told by some hardened criminals who have their own reasons not to tell the truth. Shri Deshmukh has submitted that even the enquiry officer has observed in his report that -

"This will show that nobody could easily or even with great exertion could climb over the barbed wire of the wall and get inside the premises of the yard except with the permission of the gate-keeper through the gate".

The enquiry officer has further observed thus :-

"It is improbable, nay impossible, that the removal of the cartons, as many as 367, would have gone unnoticed when the charge-sheeted employees had been specifically assigned the duties of maintaining security of the yard".

The learned Counsel has further submitted that no Court or even a man with ordinary common sense will believe that on the night of February 13/14, 1987, among the entire Port Trust staff composed of 20 employees belonging to two departments i.e. Dock Department and Security Organisation, and having different designations and functions and most of whom have clean service records, there was not even one person who was capable of performing his duties honestly and loyally; that the Bombay Port Trust management and its work and security systems are so rotten that among 20 Port Trust employees there was not even one employee who could perform his duty honestly and loyally. The learned Counsel has further submitted that when these observations are taken into account along with the fact that no hardened criminal would commit theft in circumstances when there are more than 30 eye-witnesses to the theft, it is clear that there was no theft in that night or at any rate the theft could never have taken place in the manner and at the time as told by the criminals. It is further submitted that the findings of the enquiry officer are not just, unjustified and perverse. The learned Counsel has further submitted that the report is the result of use of double standards by the enquiry officer who accepts hearsay evidence in support of the charges but rejects the same when it is in favour of the delinquents-employees. The findings are based on pure conjectures and surmises. The baseless speculative aspect of the report is clearly evidenced from the fact that the enquiry officer has had to use the Phrase "must have been" not less than 12 times in his report. It is submitted that it is a well settled law that no action can be taken on the basis of conjecture, suspicion and mere belief.

12. Lastly, the learned Counsel has submitted that there is a discriminatory treatment given by the authorities to the petitioners-delinquents, in that all the charge-sheeted employees were charge-sheeted for the same misconduct and the articles of imputation of the charges were the same and evidence is the same against all the charge-sheeted employees. However, the appellate authority, respondent No.3, has partly allowed the appeals of some of the charge-sheeted employees and they were ordered to be reinstated by reducing the punishment of dismissal to stoppage of increment, whereas the appellate authority has dismissed the appeals of the petitioners-delinquents. It is in violation of Article 14 of the Constitution of India.

13. In support of his aforesaid submissions, the learned Counsel has relied on the following,, authorities :-

1. AIR 1978 SC 196

2. Khardah Co. Ltd. Vs. Their Workmen,

3. State of Haryana and Another Vs. Rattan Singh,

4. 1978 XI LLJ 84

5 . 1969 XI LLJ 377

14. I find much force and substance in the argument of Mr. Deshmukh, learned Counsel for the petitioner-delinquent. Before I deal with the arguments advanced by the learned Counsel Mr. Deshmukh for the petitioners, I shall make it very clear that it is well settled law that normally courts should not interfere with the findings of enquiry officer and the decision taken by the disciplinary authority based on the enquiry report unless the principle of natural justice is violated or the findings are perverse or biased.

15. In the case of Central Bank of India v. Prakash Chand Jain 1969 XI LLJ 377, it has been observed thus at pages 380-381 :

"In this connection, reference was also made to some cases where the Court has held that a finding by a domestic tribunal like an Enquiry Officer can be held to be perverse in those cases also where the finding arrived at by the domestic tribunal is one at which no reasonable person could have arrived on the material before the tribunal. Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. In each of these cases, the findings are treated as perverse. It is in the light of these principles that we have to see whether the Industrial Tribunal, Delhi, in the present case, was justified in refusing to accord approval to the order of dismissal which was passed on the basis of the evidence recorded by the Enquiry Officer, Mr. Tipnis."

16. The substantive rules which form part of principle of natural justice, cannot be ignored by the domestic tribunals. The principle that the facts sought to be proved must be supported by the statements made in the presence of the person against whom the enquiry is held and that statements behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot he ignored on the ground that domestic tribunals are not bound by the technical rules or procedures contained in the Evidence Act. Therefore, mere admission in evidence of a prior statement without putting the same to the witness was not in consonance with the principle of natural justice (1960) S C R 327 . In the case of Union of India (UOI) Vs. Sardar Bahadur, it has been observed by the Supreme Court thus :

"Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct

thereafter of the witness or some other persons in whose presence these statements are made."

17. In departmental proceedings guilt need not be established beyond reasonable doubt; proof of misconduct may be sufficient. The standard of proof required is that of preponderance of probability. In the instant case, the propriety of the hearsay evidence recorded by the enquiry officer is questioned by the petitioners delinquents. It is an admitted fact that there is no direct or substantive evidence as regards the date and time of commission of the alleged theft which allegedly took place on the night of February 13/14, 1987 between 00.00 to 2.30 hours. The finding of the enquiry officer on this crucial point is based on the evidence of P.l. Goankar 24 (P.W.4), Narendra Kuvarji Shah (P.W.1), Shri Deshpande and Shri Kulkarni. These witnesses have no personal knowledge regarding the commission of theft on a particular date. The source of their information is the statements of the two 3, drivers Mohd. Munir Aklumiya Ansari and Istadevsingh Avdheshsingh who have admittedly participated in the commission of theft. These two drivers though cited as witnesses were not available for cross-examination by, the petitioners delinquents. Therefore, the enquiry officer has rightly held that there is no direct nor circumstantial evidence on the crucial points as regards the date and time of the commission of the alleged theft. The truthfulness of the contents of the alleged statements of the two drivers before the four witnesses can be questioned if it is found that the story told by the authors of the statements is improbable and impossible, that the removal of cartons, as many as 367 in number, and loading the same into the trucks with the help of about 30 to 40 labourers would have gone unnoticed by the residents of the surrounding locality.
Therefore, in my view, in the absence of any other substantive evidence, hearsay or indirect evidence cannot take the place of conclusive evidence. In regard to the charge against the delinquents, the proof of truthfulness of the hearsay evidence cannot be dispensed with in a domestic enquiry.

18. In the instant case, there is no substantive evidence which corroborates the alleged statements of the two drivers. On the contrary, the F.I.R. (Exh. J) lodged by Shri Dharmendra Ramlochan Singh on February 17, 1987 does not mention any specific date of commission of the alleged theft from the Yard. No doubt, F.I.R. is not a substantive evidence but it is first in time lodged by the competent authority disclosing the commission of theft. The period of commission of the alleged theft is shown as between June 27, 1986 and February 15, 1987. It establishes that the respondents had no personal knowledge regarding the commission of theft in the Yard. They came to know only from the police department which had reported to B.P.T. about the seizure of some smuggled goods. However, the disciplinary authority can obtain information in any way it thinks best, always giving a fair opportunity to the person dealt with for correcting or contradicting any relevant statement. It can receive relevant evidence or information from any source

whatsoever but subject to the whole some rules of natural justice. The basic rule governing domestic enquiries requires that no order entailing penal consequences can be made on the basis of ex parte statements of witnesses or hearsay evidence. This necessarily carries with it the right to show that the evidence against him is not worthy of credence or consideration and that he can only do it if he is given a chance to cross-examine the witness called against him. The importance of cross-examination, as a minimum content of the basic rule of fair play and Wholesome rule of natural justice, is underlined in several judgments. It must be adhered to particularly when facts are disputed and credibility of a person who has given testimony or some information, is in doubt or is challenged. By the same token of the basic rule, if any document is relied on, the author of it should be examined so that he can be cross-examined to discover the truth of what is stated in the document (in the present case statement). Relied on Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, and Dadarao Shegoji Tidke Vs. State of Madhya Pradesh and Another, . The order of-dismissal is mainly base a on the letter written by the only eye-witness to the incident without examining the writer or conclusions drawn solely on an ex parte report of negligence; the enquiry violates the principle of natural justice.

19. There are previous statements of the witnesses recorded by the Vigilance Officer Shri Deshpande. The material and relevant evidence, on the crucial point on the charge, is based on the statements of two drivers but they were not examined under the pretext that they were not available and, therefore, the charge-sheeted employees had no chance to cross-examine them and to bring the truth on record. Likewise, the statements of two workmen (D-6 and D-7) of Lift & Shift Co., were recorded by the same Vigilance Officer Shri Deshpande and the charge-sheeted employees wanted to examine them as their defence witnesses, but they were not called for examination by the enquiry officer.

20. One more very important fact requires to be considered at this stage is that though the statements of two independent workmen (D-6 and D-7), working in Lift & Shift Co., were admittedly recorded by the Vigilance Officer Shri Deshpande, they were not called for examination and the enquiry officer has not given any reason for not believing their statements. These workmen have categorically stated before the Vigilance Officer that no such incident of theft had occurred on the night of February 13/14, 1987. If the statements of these two workers were read with the evidence of the charge-sheeted employees who have been subjected to cross-examination by the respondents, the alleged statements of the two drivers would have no place in the evidence. The statements of these two workmen were treated to be hearsay evidence. The statements of these two workers recorded by the Vigilance Officer Shri Deshpande who has also recorded the statements of the two drivers, treated as hearsay evidence, carry the same weight and perhaps more weight than the statements of the drivers who were admittedly parties to the commission of the theft. If there are two statements before the enquiry officer on the crucial point, one

in favour of the prosecution and the other in favour of the delinquents, in my view, the enquiry officer is not free to accept one favourable to the prosecution and reject the other in favour of the delinquents without giving any reason. The enquiry officer is also required to give reasons for accepting one statement and rejecting the other. In the instant case, the enquiry officer has failed to do so. Therefore, in my view, it is a perverse finding and is in violation of the principle of natural justice. So far as the discriminatory treatment given to the petitioner-delinquents by the appellate authority, respondent no.3, is concerned, the same is also not legal and a healthy approach of the said respondent. The same deserves to be quashed and set aside. Both the orders passed in the appeal and in the revision application also deserve to be quashed and set aside.

21. In the result, the order of discharge dated June 19, 1989 (Exhibit L) passed by respondent No.2 and the order dated January 30, 1990 (Exhibit N) passed by the Government rejecting the appeals preferred by the petitioners as also the order dated April 16, 1991 (Exhibit P) passed by the reviewing authority, are all quashed and set aside. The respondents are directed to reinstate all the petitioners with full back wages. It is directed that the petitioners shall be reinstated within four weeks and shall be paid their back wages within eight weeks of the receipt of the writ hereof.

Certified copy expedited.