



2026:CGHC:32852



CGHC010199962022



2026:CGHC:32852

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 4531 of 2022**

Dwarika Prasad Suryawanshi S/o Late Praja Ram Suryawanshi, Aged About 54 Years Junior Assistant (Removed) At- District Office, C.G. State Civil Supplies Corporation, Janjgir, District - Janjgir Champa (C.G.) R/o Jarhabhatha, Mandir Chowk, Bilaspur, District : Bilaspur, Chhattisgarh

... Petitioner**versus**

1 - C.G. State Civil Supplies Corporation Limited, Raipur Through - The Chairman/appellate Authority, H.Q. - Block No. 7, Second Floor, Sector-24, Office Complex, Atal Nagar,, District : Raipur, Chhattisgarh

2 - The Managing Director C.G. State Civil Supplies Corporation Limited, Raipur, H.Q. - Block No. 7, Second Floor, Sector-24, Office Complex, Atal Nagar,, District : Raipur, Chhattisgarh

... Respondent(s)

For Petitioner	:	Mr. Rajesh Kesharwani, Advocate
For Respondent(s)	:	Mr. Animesh Tiwari, Advocate along with Mr. Yogendra Pandey, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey**Order on Board****30/07/2026**

1. The petitioner has filed this petition seeking the following relief(s):-

"10.1 The Hon'ble Court may kindly be pleased to pass an appropriate and suitable direction(s) to the respondents for quashing the impugned punishment order, dt. 26/05/2009 [Annexure- P/1] and impugned appellate order, dt. 13/04/2022 [Annexure – P/20].



10.2 The Hon'ble Court may kindly be pleased to reinstate the petitioner in service with all consequential benefits of services etc. and any other relief.

10.3 The Hon'ble Court may kindly be pleased to allow any other relief as deem fit and proper with cost of petition."

2. The facts of the present case, in brief, are as under:-

- A. The petitioner was initially appointed to the post of Vehicle Driver in the year 1990 and subsequently his designation was changed as Junior Assistant vide order dated 11.03.2005 and he was posted at the District Office, Jashpurnagar on 07.04.2005.
- B. The petitioner was placed under suspension vide order dated 26.09.2005 on account of certain allegations, and his headquarter was changed to District Office, Kanker.
- C. An article of charge was served upon the petitioner wherein the following allegations were made:-

"आपको अप्रैल 2005 से प्रदाय केन्द्र कुनकुरी में प्रभारी के हैसियत से जिला कार्यालय, जशपुर द्वारा पदस्थ किया गया था। आपके द्वारा प्रदाय केन्द्र कुनकुरी का स्टॉक पंजी पूर्ण एवं अद्यतन नहीं रखा गया, जिसके कारण स्टॉक के हेराफेरी एवं अनियमितता की जानकारी तत्काल ज्ञात नहीं हो सका एवं एस.डब्ल्यू.सी द्वारा लम्बी अवधि से अनियमितता एवं हेराफेरी किया जाना पाया गया जिसके लिए आप भी जिम्मेदार हैं।

आरोप क्रमांक (1)- सी.एम.आर एवं एल.आर.टी. के अंतर्गत चावल जमा के ट्रक चालानों, एवं तौल पत्रक में आपके द्वारा भी हस्ताक्षर किया जाकर जमा बताया गया है, लेकिन उक्त मात्रा का एस.डब्ल्यू.सी से जमा रसीद प्राप्त नहीं किया गया और न ही पंजी संधारित किया गया। इस तरह उक्त कृत्य में आप भी सहयोगी रहे।

आपका उक्त कृत्य म.प्र./छ.ग. सिविल सेवा आचरण नियम 3 का उल्लंघन है एवं म.प्र./छ.ग. सिविल सेवा (वर्गीकरण नियंत्रण एवं अपील) नियम 1966 के नियम 10 एवं 14 अंतर्गत दंडनीय है।

आरोप क्रमांक (2)-

माह अप्रैल 05 से प्रदाय केन्द्र कुनकुरी के गोदाम में स्कंध जमा एवं इश्यु की सप्ताहिक/मासिक जानकारी जिला कार्यालय, जशपुर को आपके द्वारा दी गयी है, जित्तके अनुसार शेष स्कंध की मात्रा गोदाम क्षमता से अधिक गया गया। इस संबंध में जिला कार्यालय जशपुर एवं मुख्यालय को आपके द्वारा स्थिति से अवगत नहीं कराकर अनियमितता एवं हेराफेरी में



एस.डब्ल्यू.सी प्रभारी को सहयोग दिया गया तथा वास्तविक स्थितियों से निगम के जिला कार्यालय को अंधकार में रखा गया।
।

आपका उक्त कृत्य म.प्र./छ.ग. सिविल सेवा आचरण नियम 3' का उल्लंघन है एवं म.प्र./छ.ग. सिविल सेवा (वर्गीकरण नियंत्रण एवं अपील) नियम 1966 के नियम 10 एवं 14 अंतर्गत दंडनीय है।

आरोप क्रमांक (3)

आपके समक्ष प्रतिदिन गोदाम खुलता एवं बंद होता था लेकिन शेष स्टॉक का मिलान नहीं किया गया और न ही भौतिक सत्यापन किया गया जिससे हेराफेरी की मात्रा दिनोदिन बढ़ती गयी।

आपका उक्त कृत्य म.प्र./छ.ग. सिविल सेवा आचरण नियम 3 का उल्लंघन -है एवं म.प्र./छ.ग. सिविल सेवा (वर्गीकरण नियंत्रण एवं अपील) नियम 1966 के नियम 10 एवं 14 अंतर्गत दंडनीय है।"

- D. The petitioner filed reply to the article of charge on 08.12.2005 and denied the allegations.
- E. Respondent No. 2 appointed an Enquiry Officer & a presenting officer and directed the petitioner to appear before them on 07.04.2006.
- F. The Enquiry Officer recorded the statements of prosecution witnesses, namely Shri S.L. Adil and Shri D. K. Chandrwanshi, on three occasions, i.e., 25.11.2006, 30.12.2006 and lastly on 17.01.2008.
- G. After conclusion of the inquiry, the Enquiry Officer submitted his report on 20.09.2005.
- H. Earlier, an application was moved by the petitioner for change of the Enquiry Officer on 07.02.2008, but no order was passed thereon. Consequently, he preferred WPS/6474/2008, which was decided on 18.03.2009. In the said petition, directions were issued to the respondent authorities to conclude the inquiry within a period of two months.



- I. A second show-cause notice was issued to the petitioner on 20.04.2009, which was duly replied to by him; thereafter, the disciplinary authority inflicted the penalty of recovery of Rs. 86,38,100.00, the amount towards the loss of 7690.89 quintals rice caused to the department. The said order was challenged by the petitioner by filing WPS No. 2953 of 2009, but same was dismissed. However, liberty was granted to the petitioner to take recourse to law.
- J. The petitioner thereafter preferred a departmental appeal before the competent authority on 26.02.2010, which was rejected vide order dated 29.10.2011, against said order Writ Petition (S) No. 659 of 2011 was preferred and same was allowed vide order dated 28.06.2011 and order dated 29.10.2011 was set-aside and the matter was remanded back to the appellate authority for fresh consideration.
- K. The appellate authority decided the appeal vide order dated 10.10.2011 and dismissed it.
- L. The petitioner challenged the order dated 10.10.2011 by filling WPS No.6244 of 2011, and vide order dated 08.09.2021, order passed by the appellate authority was set-aside, and matter was remitted back to decide it afresh. Against order dated 08.09.2021, Writ Appeal No. 314/2021 was preferred by the petitioner, which was disposed of 07.03.2022 and the appellate authority was directed to dispose of the appeal within a period of 30 days.
- M. Pursuant to judgment dated 07.03.2022, the petitioner preferred appeal before the appellate authority and again appeal was dismissed vide order dated 13.04.2022. Hence, the petitioner has challenged the orders dated 26.05.2009



(Annexure P/1) and 13.04.2022 (Annexure P/20) in the present petition.

3. Learned counsel appearing for the petitioner would submit that the Enquiry Officer examined Witness Nos. 1/Shri S. L. Adil and 2/Shri D.K. Chandrawanshi on three occasions on 25.11.2006, 30.12.2006 & 17.01.2008 without any rhyme or reason. He would contend that those witnesses categorically stated that Shri Sunil Kumar Nigam, Branch Manager of the State Warehousing Corporation, was responsible for the loss caused to the department. He would also contend that the Enquiry Officer exercised the powers of a prosecutor, which was arbitrary and illegal. He would argue that the statement of one Shri J.P. Pandey was recorded, though his name was not disclosed in the list of witnesses. Similarly, the statement of Shri Vijay Sharma was also recorded. He would argue that the petitioner was not afforded sufficient time to cross-examine prosecution witnesses. Further, his application seeking change of the Enquiry Officer was not considered. He would further argue that there are material contradictions & omissions in the statements of the prosecution witnesses. He has placed reliance on judgments of the Hon'ble Supreme Court in the matter of ***Rajendra Yadav v. State of Madhya Pradesh***, reported in ***(2013) 3 SCC 73*** ; ***Union of India & Others v. Ram Laxhan Sharma***, reported in ***(2018) LawSuit(SC)567***; ***Roop Singh Negi v. Punjab National Bank***, reported in ***(2009) 2 SCC 570***, ***Union of India v. P. Balasubrahmanayam*** ***(2021 LawSuit(SC)148*** and ***State of Uttaranchal & ors. v. Kharak Singh***, reported in ***(2008) 8 SCC 236***, as well as the judgment passed by the Coordinate Bench in the matter of ***Saugat Banarjee v. Vivekanand Vidyapeeth and ors.***, reported in ***2007 LawSuit(Chh)143***.
4. On the other hand, learned counsel appearing for the respondents would oppose the submission made by counsel for the petitioner and



submit that the petitioner, who was posted as Junior Assistant at Kunkuri, District Jashpur, was found guilty of serious misconduct and irregularities relating to maintaining stock of food grains. He would also submit that a full-fledged departmental inquiry was conducted and an order of recovery of Rs. 86,38,100/- was passed by the disciplinary authority on 26.05.2009. He would contend that during the departmental inquiry, the petitioner was afforded sufficient opportunity of hearing. He was served with the show-cause notice & inquiry report and was permitted to cross-examine the witnesses. A second show-cause notice was also issued, and thereafter the disciplinary authority imposed the penalty. He would further contend that the appellate authority considered all grounds raised by the petitioner and passed a well reasoned order.

He would also contend that re-appreciation of evidence in departmental proceedings is not permissible and this Court, while exercising jurisdiction under Article 226 of the Constitution of India, cannot sit as an appellate authority over findings recorded in departmental proceedings. He would argue that on 07.04.2006 the petitioner appeared before the Enquiry Officer and denied the charges. On 29.04.2006, the Presenting Officer and the petitioner were present and all relevant documents were made available to him. On the request of the petitioner, Shri S.L. Tiwari was permitted to act as defence Assistant on 19.05.2006. He would further submit that the statements of Shri S.L. Adil and Shri D.K. Chandravanshi were recorded on 25.11.2006 and copies thereof, along with relevant documents, were supplied to the petitioner. The petitioner was permitted to cross-examine those witnesses on multiple dates. He would also submit that sufficient opportunity was afforded to the petitioner throughout the proceedings. After preparation of the enquiry report, a show-cause



notice dated 20.04.2009 was issued along with a copy of the inquiry report. The petitioner submitted his reply thereto.

5. Learned counsel for the respondent would submit that on physical verification of stock and records, shortage was found and the petitioner was never exonerated either in preliminary enquiry or departmental enquiry. Merely because allegations were also levelled against Branch Manager Shri Sunil Kumar Nigam some would not absolve the petitioner from his own acts. He would further submit that the petitioner was posted at Procurement Centre, Kunkuri, from 21.02.2005 and his signatures are available on the relevant documents, therefore, he cannot escape from the liability. He would contend that Shri S.L. Adil and Shri D.K. Chandravanshi were examined thrice to exhibit voluminous records after facilitating cross-examination. The allegation that the Enquiry Officer acted as a prosecutor is wholly baseless; thus, he would pray that the petition deserves to be dismissed.
6. I have heard learned counsel for the parties and perused the documents placed on file.
7. Now dealing with the judgments cited by the counsel for the petitioner one by one.
8. In the matter of ***Rajendra Yadav (supra)***, the Hon'ble Supreme Court in para-9 held as under:-
 - "9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences."



9. In the matter of ***Rajendra Yadav*** (*supra*), the Hon'ble Supreme Court dealt with the question of parity in punishment among co-delinquents who were found guilty in respect of the same incident. The principle laid down therein relates to discrimination in the matter of imposition of punishment upon similarly situated delinquents but in the present case, the petitioner has not demonstrated that he has been subjected to any discriminatory or unequal treatment vis-à-vis any co-delinquent involved in same case. The said judgment, therefore, has no application to the facts of the present case.
10. In the matter of ***Ram Lakhan Sharma*** (*supra*), the Hon'ble Supreme Court in para-paragraphs 25, 26, 30 & 32 are held as under:-
- “25. A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in A.K. Kraipak and others vs. Union of India and others, AIR 1970 SC 150. This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles that is no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In paragraph 20 following has been held:
- “20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-



judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably....”

26. In *State of Uttar Pradesh and others vs. Saroj Kumar Sinha*, 2010 (2) SCC 772, the Hon’ble Supreme Court held that inquiry officer is a quasi-judicial authority, he has to act as independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paragraphs 28 and 30. The Hon’ble Supreme Court held as under:-

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”



30. A Division Bench of the Madhya Pradesh High Court had occasion to consider the question of vitiation of the inquiry when the Inquiry Officer starts himself acting as prosecutor in Union of India and ors. vs. Mohd. Naseem Siddiqui, ILR (2004) MP 821. In the above case the Court considered Rule 9(9) (c) of the Railway Servants (Discipline & Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well recognised facets in paragraph 7 of the judgment, which are as under:-

“7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets:

- (i) The adjudicator shall be impartial and free from bias,
- (ii) The adjudicator shall not be the prosecutor,
- (iii) The complainant shall not be an adjudicator,
- (iv) A witness cannot be the Adjudicator,
- (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,
- (vi) The Adjudicator shall not decide on the dictates of his Superiors or others,
- (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.”

32. The Division Bench after elaborately considering the issue summarised the principles in paragraph 16 which as under:

“16. We may summarise the principles thus:



(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may."

35. Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be



decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High court giving rise to Civil Appeal No.2608 of 2012."

11. In the matter of ***Ram Lakhan Sharma (supra)***, the issue of principles of natural justice and, in particular, the circumstances in which an Inquiry Officer may be said to have acted as a prosecutor, thereby vitiating the departmental inquiry, was discussed. The Hon'ble Supreme Court has held that whether an Inquiry Officer has acted as a prosecutor is essentially a question of fact, to be determined having regard to the manner in which the evidence was recorded and the proceedings were conducted.
12. In the present case, there is no material to establish that the Inquiry Officer conducted the examination-in-chief of the prosecution witnesses, put leading or suggestive questions with a view to establishing the departmental case, or otherwise acted in the capacity of a Presenting Officer. The mere fact that the prosecution witnesses were examined on more than one occasion, particularly for exhibiting voluminous records and facilitating cross-examination, cannot by itself establish that the Inquiry Officer acted as a prosecutor.
13. In the matter of ***Roop Singh Negi (supra)***, the Hon'ble Supreme Court in para 6,7 & 10 held as under:-
 - "6. Appellant made a representation against the said order before the appellate authority. The appellate authority noticing his contentions in details. Inter alia, on the premise that appellant had been given an



opportunity of personal hearing, the appeal was dismissed, opining:

"In view of the above, the submissions made by the appellant in his appeal dated 23.02.2001 and his verbal submissions made during personal hearing are devoid of merits. As such I find no reasons to interfere or alter the order of Disciplinary Authority.

Thus keeping in view the nature and gravity of the proven charges, punishment of "Dismissal from Bank Service", imposed upon Shri Negi by Disciplinary Authority vide its order dated 24.01.2001 is hereby confirmed and appeal of Shri Negi is rejected."

7. The appellate authority also did not apply his mind to the contentions raised by the appellant; no reason was assigned in support of his conclusion.

10. 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. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no



direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

14.In the above quoted judgment, the Hon'ble Supreme Court found serious infirmities in the departmental proceedings, including reliance upon material which had not duly been proved in the inquiry and the absence of substantive evidence to establish the charges.

15.In the present case, however, the petitioner was subjected to a full-fledged departmental inquiry, the prosecution witnesses were examined, relevant documents were made available, and the petitioner was afforded opportunity to cross-examine the witnesses. The petitioner has, therefore, failed to establish any comparable infirmity in the evidentiary process.

16. In the matter of *P. Balasubrahmanayam* (supra), the Hon'ble Supreme Court in paragraphs No.19 & 20 are held as under:-

“**19.** It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration inter alia of this Court, *S.R. Tewari v. Union of India* and Anr, 2013 6 SCC 602. This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement disproportionate and harsh, keeping in mind the finding arrived at by the ent was completely disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the concerned authority to impose punishment; losing site of the fact that the allegations qua bribery had not been found against the respondent.

20. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to



the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained.”

17. In the matter of ***P. Balasubrahmanayam (supra)***, the Hon’ble Supreme Court dealt with proportionality of punishment, particularly where the gravity of the charge alleged was not established and the punishment imposed was found to be unduly harsh.
18. In the present case, the penalty imposed upon the petitioner is founded upon the findings recorded in the departmental inquiry concerning the misconduct and loss caused to the department. No case of punishment being wholly disproportionate to the misconduct proved against the petitioner has been made out. Consequently, the said judgment is also distinguishable on facts and does not assist the petitioner.
19. In the matter of ***Kharak Singh (supra)***, the Hon’ble Supreme Court in para-paragraph No.20 held as under:-

“20. A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The Department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply- affidavit filed by the Department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all



these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e. Forest Conservator), he rejected the same but has not pointed out the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent.”

20. In the matter of ***Kharak Singh*** (supra), the Hon'ble Supreme Court found specific procedural infirmities, including non-supply of documents, non-examination of departmental witnesses in the presence of the delinquent employee and failure of the appellate authority to deal with the specific objections raised by the employee. No such comparable infirmity has been established in the present case but in the present case, the petitioner was supplied the inquiry report, was issued a second show-cause notice, was afforded opportunity to submit his response and was also permitted to cross-examine the departmental witnesses.

21. The Coordinate Bench in the matter of ***Saugat Banarjee*** (supra), in paragraph No. 10 to 13 held as under:-

“10. On perusal of the impugned notices dated 25-11-2003 and 30-12-2005, it appears that the authorities have framed the charges, details have been submitted and the petitioner is given full opportunity to file his response on the said charges. The petitioner ought to have explained before the authorities that no other person, except the Divisional Superintendent of Education can be appointed under the provisions of law. It appears that the petitioner instead of filing a response to the respondent No. 1 Institute for change of an Enquiry Officer and the appointment of the Divisional Superintendent of Education as Enquiry Officer straight-away rushed to this Court seeking relief in the nature of quashing the impugned orders.



12. The Supreme Court in the case of State of Punjab v. V.K. Khanna and Ors. and other connected matter (2001) 2 SCC 330, observed as under:

33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any Court pending enquiry but it is equally well settled that in the event there is an element of malice or malafide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that even Law Courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official....

13. Applying the well settled principle of law to the facts situation of the present case, I am of the considered opinion that the purported departmental enquiry against the petitioner was not initiated in accordance with the provisions of law as stated hereinabove. Thus, the respondent Nos. 1 and 2 are directed to initiate the departmental proceedings from the stage of submission of written explanation in accordance with law.

22. In the matter of *Saugat Banarjee* (supra), the Coordinate Bench has dealt with the legality of initiation and conduct of the departmental proceeding in the particular factual circumstances obtaining therein. The Coordinate Bench found the departmental inquiry to have been initiated contrary to the applicable legal provisions. In the present case, no such



foundational illegality in the initiation or conduct of the departmental inquiry has been demonstrated by the petitioner.

- 23.** In the present case, the appellate authority, in its order dated 13.04.2022, recorded findings that petitioner failed to obtain and maintain deposit receipts/WHRs and proper stock records for rice deposited in the warehouse; furnished stock reports showing balances exceeding warehouse capacity but failed to report the discrepancy to higher authorities; facilitated irregularities and misappropriation by keeping the District Office unaware of the actual stock position; failed to match book balance with physical stock and did not conduct proper physical verification of stocks; negligence and lack of supervision resulted in continued shortages and embezzlement of rice stocks; thus, he was held responsible for the loss of 7,690.89 quintals of rice valued at ₹86,38,100/- and consequently removed from service with recovery ordered against him.
- 24.** The petitioner has annexed written submissions filed in support of the departmental appeal; however, the memorandum of appeal has not been placed on record, therefore, it cannot be presumed that the grounds raised in the appeal were not considered by the appellate authority.
- 25.** The petitioner has also relied upon a preliminary report dated 20.09.2005 report to contend that he was initially exonerated and Mr. Sunil Kumar Nigam, was held responsible for loss caused to the department. However, the findings in the said report reveal that the petitioner was found guilty and a recommendation was made for issuance of a show-cause notice, therefore, the contention of the petitioner is misconceived.
- 26.** The statements of Witness Nos. 1 and 2, namely Shri S.L. Adil and Shri D.K. Chandravanshi, show that they were examined on 30.12.2006 and



the petitioner was granted an opportunity to cross-examine them. The statement of the petitioner was also recorded.

- 27.** Though it is alleged that statements of Shri J.P. Pandey and Shri Vijay Sharma were recorded, but no material has been placed on record to establish how such statements caused prejudice to the petitioner.
- 28.** The petitioner has failed to establish any mala fide intention or bias on the part of the Enquiry Officer. Merely because an application seeking change of the Enquiry Officer was moved would not lead to the conclusion that the Enquiry Officer acted with bias.
- 29.** In the present case, the Enquiry Officer and Presenting Officer were duly appointed by the disciplinary authority. The Enquiry Officer examined the witnesses, afforded sufficient opportunity to the petitioner to cross-examine them, and thereafter submitted his report on the basis of the evidence available on record.
- 30.** The petitioner has not challenged the competence of the Enquiry Officer. It is also a well-settled principle of law that re-appreciation of evidence is not permissible in exercise of writ jurisdiction.
- 31.** The Hon'ble Supreme Court in the matter of ***Union of India and Others Versus P. Gunasekaran***¹ while dealing with the scope of interference in service matters held as under :-

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

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure

¹. (2015) 2 SCC 610



prescribed in that behalf;

- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

14.In one of the earliest decisions in *State of A.P. v. S. Sree Rama Rao*, many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)

"7.... The High Court is not constituted in a proceeding under Article 226 of the Constitution as 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. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and



the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

Likewise, Hon'ble Supreme Court in the matter of ***Union of India and Others Versus Datta Linga Toshawad***² held that penalty inflicted in a departmental inquiry can be interfered by the High Court while exercising power under Article 226 of Constitution of India if the order has been passed by an incompetent authority or if procedure to inflict the penalty has not been followed or if the penalty is disproportionate looking to the misconduct.

32. The scope and power of judicial review of the Courts while dealing with the validity of the quantum of punishment imposed by the disciplinary authority was the subject matter of discussion before the Hon'ble Supreme Court in ***Life Insurance Corporation of India and others vs. S.Vasanthi [(2014) 9 SCC 315]***, wherein it was reiterated that the High Court in the exercise of its powers of judicial review cannot assume the role of sitting as a departmental appellate authority as the same is not permissible under law. It shall be apt to reproduce paras 10 and 11 of the judgment which read thus:-

*"10. The scope and power of judicial review of the courts while dealing with the validity of quantum of punishment imposed by the disciplinary authority is now well settled. In **Kendriya Vidyalaya Sangathan v. J. Hussain (2013) 10 SCC 106**, the law on this subject, is recapitulated in the following manner: (SCC pp.110-12, paras 7-10) "7. When the charge is proved, as happened in the*

²(2005) 13 SCC 709



instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist....

*11. We are of the opinion that the High Court transgressed its limits of judicial review by itself assuming the role of sitting as departmental appellate authority, which is not permissible in law. The principles discussed above have been summed up and summarized as follows in the case of **Lucknow Kshetriya Gramin Bank . v. Rajendra Singh, (2013) 12 SCC 372 (SCC p.382, , para 19):-***

"19.1. When charge(s) of misconduct is proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent rt authority.

19.3 Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.



19.4 Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co- delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co- delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

- 33.** From the above proposition of law, it is well settled that the High Court in exercise of its powers of judicial review cannot assume the role of a departmental appellate authority. The limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.
- 34.** In the present case, the petitioner was afforded sufficient opportunity of hearing. The disciplinary authority, on the basis of the legally admissible evidence and taking into consideration the evidence available on record, inflicted the penalty. Further, the findings recorded by the disciplinary authority have been affirmed by the appellate authority; thus,



2026:CGHC:32852

there are concurrent finding of fact, which cannot be disturbed while exercising powers under Articles 226 of the Constitution of India.

- 35.** Taking into consideration the above-discussed facts and the law laid down by the Hon'ble Supreme Court, no good ground is made out to interfere with the impugned order(s), accordingly, the petition is hereby **dismissed**.

Sd/-

Rakesh Mohan Pandey

JUDGE

Nadim