

(2011) 11 BOM CK 0113
In the Bombay High Court
Case No : Writ Petition No. 980 of 2010

Abha Chawla Mohanty

APPELLANT

Vs

The Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 18, 18(1),
18(2), 25, 25(6)
Right to Information Act, 2005 — Section 8, 9

Citation : (2012) 1 ALLMR 757

Hon'ble Judges : Mridula Bhatkar, J; A.M. Khanwilkar, J

Bench : Division Bench

Advocate : A.G. Kothari, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.

1. This Writ Petition under Article 226 of the Constitution of India takes exception to the Charge-sheet dated 8th March, 2004 and Addendum to Charge-sheet dated 8th November, 2004, as well as the Order of Penalty dated 18th May, 2006 passed by the Competent Authority and the Order dated 28th June, 2007 passed by the Appellate Authority. In substance, the challenge is to the action taken against the petitioner on the basis of the opinion recorded in the departmental proceedings initiated against the petitioner, which culminated in her removal from service. As a consequential relief, the petitioner prays for issuance of writ against the respondents, directing them to reinstate her with full back-wages and continuity of service with all incidental benefits with effect from 18th May, 2006. In addition, the petitioner is praying for damages and compensation for personal loss caused to her due to unlawful dispossession of the petitioner and her family members from the official service quarters.

2. Briefly stated, the petitioner was appointed in the Divisional Office No. 4 of

Oriental Insurance Co. Ltd. (hereinafter referred to as "the Company") in the month of October, 1985, upon being selected in the All India Examination for the Post of Assistant Administrative Officer. The petitioner was assigned to the Technical Department. When the departmental action against the petitioner was initiated pursuant to Articles of Charge framed against her dated 8th March, 2004, she was working as Assistant Manager and was posted at M.C.D.O. VI. The Articles of Charge dated 8th March, 2004 read thus:

ARTICLES OF CHARGES FRAMED AGAINST

MRS. ABHA C. MOHANTY, ASST. MANAGER, MCDO 6

Mrs. Abha C. Mohanty, Asst. Manager while posted at M.C.D.O. 6, has committed the following acts of misconduct during the years 2002, 2003 and 2004.

Mrs. Abha C. Mohanty is highly irregular in her attendance, remaining absent for several days although no admissible leave was due to her, during the years 2002 to 2004 and she has not submitted leave applications for the same in spite of several letters issued to her. She had also not submitted Medical Certificate for her Maternity Leave. On many days, she used to attend office only for a few hours / minutes and also to come to office late and leave office early at any time of her choice without taking permission.

In the past also, a Disciplinary Action was initiated against her for not submitting leave applications and not refunding excess Travelling Advance drawn by her vide Chargesheet dated 05.07.2000. But Competent Authority had taken a lenient view of the matter.

Mrs. Abha C. Mohanty, thus committed the misconduct of wilful unauthorised absence for a very long period during the year 2002, 2003 and 2004, disobeyed the lawful and reasonable order of her superiors, has not maintained devotion to duty, exhibited conduct which is unbecoming of public servant, indulged in wilful insubordination and disobedience, remained absent without leave and without submitting leave applications and Medical Certificates for Maternity Leave, without sufficient grounds and satisfactory explanation committed an act which is subversive of discipline or of good behaviour, all in contravention of Rules 3 (ii) (iii) (iv), 4(7), (8) (17) and (20) read with Rule 18 of the General Insurance Conduct Discipline and Appeal Rules, 1975.

PLACE: MUBAI

DATE: 08.03.2004

Sd/ (B.C. SHAH) ASST. GENERAL MANAGER & DISCIPLINARY AUTHORITY

3. The said Articles of Charge were accompanied by Statement of Imputation of Misconduct / Misbehaviour in support thereof. The same reads thus:

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGE AGAINST MRS. ABHA C. MOHANTY, ASSISTANT MANAGER, MCDO 6

Mrs. Abha C. Mohanty, Asst. Manager while posted at M.C.D.O. 6, has committed the following acts of misconduct during the years 2002, 2003 and 2004.

During the years 2002 to 2004 she has remained absent for several days although no admissible leave was due to her and she has not submitted leave applications for the same inspite of several letters issued to her. On many days, she used to attend office only for a few hours / minutes and also to come to office late and leave office early at any time of her choice without taking permission.

From January 2003 to March, 2003 she has remained unauthorisedly absent from office. From 2nd March, 2003, she applied for Maternity Leave and remained absent till 15th October, 2003 without submitting any Medical Certificate. She again remained absent from 17.10.2003 till date without any sanction and / or intimation. Inspite of several letters addressed to her she has neither improved her attendance nor submitted leave applications.

In the past also, a Disciplinary Action was initiated against her for not submitting leave applications and not refunding excess Travelling Advance drawn by her vide Chargesheet dated 05.07.2000. But Competent Authority had taken a lenient view of the matter and she was cautioned to be careful in future in adhering to the rules and regulations of the Company vide Order dated 17.01.2001.

In this connection, reference is made to the following Rules of the General Insurance (CDA) Rules 1975.

Rule 3: General

(1) Every employee shall at all times:

(ii) maintain devotion to duty and;

(iii) do nothing which is unbecoming of a public servant;

(iv) conform to and abide by these Rules and shall observe, comply with and obey all orders and directions which may, from time to time, be given to him, in the course of his official duties by any persons under whose jurisdiction, superintendence or control he may, for the time being, be placed.

Rule 4: Misconduct

Without prejudice to the term "Misconduct" the following acts of omission and or commission shall be treated as misconduct:

(7) Absence without leave or overstaying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation.

(8) Habitual late or irregular attendance.

(17) Absence from the employee's appointed place of work without permission or sufficient cause.

(20) Commission of any act subversive of discipline or of good behaviour.

Rule 18: Employee not to be absent from duty without permission or be late in attendance.

(1) An employee shall not absent himself from his duties without having obtained the permission of the Competent Authority nor shall he absent himself in case of sickness or accident without submitting a medical certificate satisfactory to the Competent Authority. Provided that in case of an emergency an employee may be allowed to avail one day's casual leave without prior sanction subject to the condition that the Competent Authority is promptly advised of the circumstances in which prior sanction could not be obtained.

(2) An employee who absents himself from duty without leave or overstays his leave shall not be entitled to draw any pay or allowances during such absence or overstayal and shall be further liable to such disciplinary measures as the Competent Authority may deem necessary. Provided however, that the Competent Authority may treat such period of absence or overstayal if not followed by termination of service, as period spent on Casual Leave, Earned Leave, Sick Leave or Leave on Loss of Pay, but the employee shall not be entitled as of right to such treatment. Provided further that the Competent Authority may treat such absence or overstayal as period spent on leave on loss of pay, irrespective of whether the employee has any other leave to his credit or not.

Mrs. A.C. Mohanty, thus committed the misconduct of wilful unauthorised absence for a very long period during the years 2002, 2003 and 2004, disobeyed the lawful and reasonable order of her superiors, has not maintained devotion to duty, exhibited conduct which is unbecoming of a public servant, indulged in wilful insubordination and disobedience, remained absent without leave and without submitting leave applications and Medical Certificate for Maternity Leave, without sufficient grounds and satisfactory explanation, committed an act which is subversive of discipline or of good behaviour, as per / in contravention of Rule 3 (ii)(iii)(iv), 4(7) (8) (17) (20) read with Rule 18 of the General Insurance

PLACE: MUBAI

DATE: 08.03.2004

Sd/ (B.C. SHAH) ASST. GENERAL MANAGER & DISCIPLINARY AUTHORITY

ANNEXURE III

MRS.ABHA C. MOHANTY, ASST. MANAGER, MCDO 6

LIST OF DOCUMENTS

1. Attendance Register
2. File containing various letters written to her.

ANNEXURE-IV

LIST OF WITNESSES:

1. Ms. P. Narayanan, Asst. Admn. Officer, MCDO 6

2. Ms. D. Sandhya, Asst. Admn. Officer, MCDO 6

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4. Later on, the petitioner was served with a letter purportedly to be Addendum to charge-sheet dated 8th March, 2004. The same reads thus:

EXHIBIT "M"

THE ORIENTAL COMPANY LIMITED

(Subsidiary of General Insurance Corporation of India)

Mumbai Regional Office No.2, Oriental House, 7th Floor, 7, Jamshedji Tata Road,
Mumbai 00 020,

Tel.No.2852660/2661/2663/2664 Gram : OFGINSWEST Fax: 2852595, 2840001

Date : 8th November, 2004.

PERSONNEL DEPT

Regd.A.D.

By U.C.P.

Courier Service

Mrs.A.C.Mohanty

304, Adarsh Apartment

B.D.Ambedkar Marg,

Near Bombay Dying -Spring

Mill Compound, Naigaon,

Dadar (E), Mumbai 400 014.

Madam,

RE :Addendum to Charge-Sheet dated 8th March, 2004 issued by Disciplinary Authority, A.G.M. MRO II under rule 25 of General Insurance CDA Rules.

We refer to the Charge Sheet dated 8th March, 2004 issued to you by Disciplinary Authority of MRO II for initiating Departmental Enquiry against you under rule 25 of General Insurance CDA Rules, 1975.

We have received your Interim Reply dated 29th March, 2004 to the above referred Charge Sheet. Your Final Reply is still awaited. In case you want to send your Final Reply, if any, the same should be sent to us immediately.

Please refer to Annexure III of the above referred Charge Sheet enclosing therewith a file containing various letters addressed to you. In some of the letters addressed to you, specific time span against some dates has been mentioned during which time you were present in the Office. This means that for rest of the time on that particular date, you were absent from the Office. For all such dates against which specific time span has been mentioned in various letters. You were absent for the full day, and accordingly, you are supposed to submit Leave Application for the full day, which please note.

Further, you have not attended Office continuously since April, 2004, nor have intimated to the Office the reasons for your absence. Please note absence from Office without prior permission is treated as "Un-authorized absence" under CDA rules.

We enclose herewith copy of letter dated 1st September, 2004 addressed to you by your MCDO 6 Mumbai.

As a matter of natural justice, we again give you an opportunity to submit your Final Reply within 15 days from the date of receipt of this letter, before further action is initiated in this matter.

Thanking you,

Yours faithfully, ASST.GENERAL MANAGER AND DISCIPLINARYAUTHORITY

5. The petitioner filed her reply and contested the charges framed against her. According to the petitioner, the charges were trumped up at the behest of her superiors, who were not on good terms with her. The petitioner denied the charges, and claimed that the same were founded on tampered registers / official documents. The petitioner asserted that the Articles of Charge were vague. The petitioner demanded certain documents, which, according to her, were relevant documents, and only upon receipt thereof, she would be in a position to file a meaningful reply to counter the charges framed against her. Besides filing written reply, the petitioner initially participated in the enquiry proceedings conducted by the Enquiry Officer appointed for that purpose. The petitioner made application before the Enquiry Officer to allow her to be represented by N.R Mohanty (her husband) as her defence assistant. However, that request was not acceded to and she was left with no other choice but to defend the departmental proceedings on her own. She participated in the enquiry proceedings until 20th September, 2005, but walked out of those proceedings on the ground that the enquiry was not being conducted in a fair manner. The Enquiry Officer, however, proceeded with the enquiry ex parte against the petitioner. The Management produced documentary as well as oral evidence in support of the charges framed against the petitioner.

6. The Enquiry Officer, on analysing the said evidence produced by the Management, found that the charges as framed against the petitioner are established. The Enquiry Officer, in his report dated 20th January, 2006, in the first place, adverted to the Management's case and the charges framed against the petitioner. He then referred to the documentary evidence produced by the Management, which were in the form of letters issued to the petitioner and the surprise inspection reports given by a team of senior officials of M.R.O. -I and II. The Enquiry Officer also noted that the Management examined witness Ms. P. Narayan, Assistant Administrator, MCDO-IV to substantiate the charges framed against the petitioner. The Enquiry Officer noted that the charge framed against the petitioner was in respect of violation of Rules 3, 4 and 18 of the General Insurance CDA Rules, 1975.

7. The Enquiry Officer then referred to the defence case as noted in the interim and final replies filed by the petitioner and various written communications, wherein the petitioner denied all the charges levelled against her. The Enquiry Officer then referred to the request of the petitioner to provide her defence assistance, N.R Mohanty (husband of the petitioner). He observed that, at the relevant time, the said N.R Mohanty had become ex-employee and was not in service of respondent No. 1-Company. For that reason, as per the rules, he was ineligible to espouse the cause of the petitioner. For, the rules provide that only an employee who is working in the Company within the region can act as the defence assistant. The Enquiry Officer then referred to the request of the petitioner to furnish Internal Audit Reports and Vigilance Check Reports for MCDO-VI for years 2000 to 2004, leave positions as per Self Appraisal Report, part of Confidential Report for years 1999/2000 to 2003/2004, leave record in the prescribed format for years 1999 to 2004, Attendance Registers for the period from 2000 to 8th March, 2004 and copies / clarification of A.A. Hallary. The Enquiry Officer has also noted that the petitioner has tried to defend herself mainly on the ground that the proposed departmental enquiry was initiated against her at the behest of R.C. Shah, who was Manager and superior of the petitioner at the relevant time, as the petitioner had repudiated the docket of his sister, Lata Shah. The Enquiry Officer has noted that the petitioner was provided with the leave records for years 2002 to 2005 and photo-copy of the relevant extract of Daily Attendance Registers for years 2002 to 2004 as maintained in the D.O. The petitioner was also provided a set of 39 letters, which formed part of Annexure 3 of the charge-sheet. He noted that the said communications, in particular, letter dated 22nd August, 2005, confirmed the stand of the Department that the petitioner had received the communications. The Enquiry Officer noted that other documents demanded by the petitioner were irrelevant and unwarranted qua the charges framed against the petitioner.

8. After having analysed the material on record, the Inquiry Officer proceeded to record his findings and conclusion. For considering the grounds of challenge raised in this petition, we deem it appropriate to reproduce the same hereunder :

Findings: Whenever the CSO absented from the office, she has not supported or given any proof that she informed the office either orally/writing and availed of the leave, i.e. She was absent without any authorization. This continued over a period of 3 years. There were 3 different DO I/Cs and all of them were biased against her is unbelievable. More so, the daily attendance which was not a secret one and all the staff and officers have access to the same. There is no record of any representation/protest from CSO on wrong making of absent/late in the register. The case is supported by the fact that the prosecution witness and as per the practice prevailing in the DO if any one is marked late/absent or any innocent mistake in the leave record, is pointed out/represented is incorrect the same is immediately examined and if found correct is rectified. There is not even a single written representation/protest to that effect by the CSO. Thus, this proves that Incharges were not biased against CSO. It can be safely concluded that charge of unauthorized absence from the office is established i.e. CSO never obtained prior approval for her absence from the office. This is further supported by the facts that there are three surprise inspector reports of independent team consisting officials of both RO's dated 25.11.2002, 27.11.2001 and 10.12.2002.

There is enough correspondence on record which proves that she was communicated her absence and was asked to submit the leave applications which she has failed to do that proves that the CSO disobeyed the written orders/instructions of the office. In light of the above, the charge that CSO has committed the act of misconduct - absented from the office, habitual later coming/irregular in attendance, absence from the employee appointed place of work without permission. Thus she has willfully unauthorizedly absented herself for a very long period during the period of 3 years i.e. 2002, 2003 & 2004. and has exhibited the conduct of disobedience and remained absent without submitting leave applications and has not even given any satisfactory explanation for such acts of commission by the CSO.

Conclusion: -Thus in light of the foregoing, the undersigned concludes that charges leveled against the CSO are proved.

9. On the basis of the findings recorded by the Enquiry Officer, the matter was examined by the General Manager and Competent Authority. The Competent Authority agreed with the opinion recorded by the Enquiry Officer. The Competent Authority noted that the charges proved against the petitioner were grave in nature. Accordingly, the Competent Authority, vide order dated May 18, 2006, not only upheld the opinion of the Enquiry Officer but proceeded to impose penalty on the petitioner of removal from the services of the Company, which shall not be disqualification for future employment. We deem it appropriate to reproduce the order of the Competent Authority dated May 18, 2006. The same reads thus:

Deptt.: Personnel

Ref.No.: HO/Pers/CDA/932

ORDER

May 18, 2006

WHEREAS Major Penalty Proceedings in terms of Rule 25 of GI [CDA] Rules, 1975 were initiated against Ms Abha C Mohanty, Dy. Manger, vide Charge Sheet dated 08.03.2004 for, while posted at MDO 6, having committed the following acts of misconduct during the years 2002, 2003 & 2004:

Ms Mohanty is highly irregular in her attendance, remaining absent for several days although no admissible leave was due to her, during the years 2002 to 2004 and she has not submitted leave applications for the same in spite of several letters issued to her. She had also not submitted Medical Certificate for her Maternity Leave. On many days, she used to attend office only for a few hours / minutes and also to come to office late and leave office early at any time of her choice without taking permission.

In the past also, a disciplinary action was initiated against her for not submitting leave applications and not refunding excess Travelling Advance drawn by her vide Chargesheet dated 05.07.2000. But Competent Authority had taken a lenient view of the matter.

AND WHEREAS Departmental Enquiry was held, Ms. Mohanty left the Enquiry Proceedings on 20.09.2005 and did not participate in the proceedings. Shri N K Saluja, Enquiry Officer has given his findings vide Enquiry Report dated 20.01.2006 that the charges against Ms. Mohanty stands proved. As per procedure a copy of Enquiry Report was sent to Ms. Mohanty on 25.01.2006 for her representation, if any, against the findings of the Enquiry Officer.

AND WHEREAS in her reply dated 20.02.2006 Ms. Mohanty has pleaded that the Enquiry Report was corrected by Ms Kala [a prosecution witness], the office has not provided her Internal Audit report, Vigilance Check report of DO 6 for the last five years, leave position appearing in Self Appraisal Form of CR for the last five years and leave record for the past five years, the Charge Sheet was served on her without Annexure III, as per marking in Attendance Register she has been asked to submit leave applications for holidays also, the attendance were manipulated under tenure of Shri Bharat Shah, Shri Naresh Kumar & Shri Halari and the Enquiry Officer has rejected her request to act Shri N R Moyanty [her husband] as her defence Assistant.

AND WHEREAS the undersigned being the General Manager and Competent Authority after having gone through the Charge Sheet and other connected records / documents of the case observes that Enquiry Report was not corrected by Ms Kala [prosecution witness] but she has corrected the typing errors in the Minutes of the enquiry proceedings which was duly signed by Enquiry Officer & Presenting Officer. Internal Audit report and Vigilance Check Report has no relevance with her charges, therefore, it was not provided to her. Self Appraisal Form are part and parcel of Confidence Report, which is a privileged document of

the company. She was given leave record and attendance sheets for the period covered under the Charge Sheet. Ms Mohanty was made available the documents forming part of Annexure III of the Charge Sheet, when she denied the receipt of the same. She remained on leave /unauthorized absence on preceding and succeeding days to holidays, therefore, as per Rules she has been asked to submit leave applications for such holidays also. It is incorrect to state that attendance were manipulated under the tenure of Shri Bharat Shah, Shri Naresh Kumar and Shri Halari. All Officers have access to the daily attendance sheet, it is not a secret document and she has never pointed out or raised objection that her attendance were marked wrongly. The Enquiry Officer has rightly decided that as per company rules an employee who is working within the region can act as Defence Assistant and disallowed Shri N R Mohanty, Ex-employee to act as her Defence Assistant. Ms Abha Mohanty during the year 2002, 2003 & 2004 (31.03.2004) remained on LOP / unauthorized absence for 4951/2 days which constitutes serious misconduct on her part. The undersigned observes that she was given ample opportunity during course of enquiry to defend her case but she has left the proceedings and did not participate. The undersigned further observes that the charges proved against her are grave in nature and as such the conduct of Ms A C Mohanty is blameworthy.

AND THEREFORE, the following penalty is hereby imposed on Ms. Abha Mohanty
Removal from the services of the company which shall not be disqualification for future employment.

Shri (sic) Abha Mohanty be informed accordingly.

Sd/ [DILIP DHAR] GENERAL MANAGER AND COMPETENT AUTHORITY

10. Against the said decision of the Competent Authority, the petitioner preferred appeal, which was disposed of by respondent No. 3 vide order dated 28th June, 2007. The Appellate Authority concurred with the findings of the Enquiry Officer, as also those of the Competent Authority. The Appellate Authority, accordingly, confirmed the penalty imposed by the Competent Authority without any modification thereof. The said order reads thus:

Deptt.: Personnel

Ref.No.: HO/Pers/CDA/932 A

ORDER

June 18, 2007

WHEREAS Major Penalty Proceedings in terms of Rule 25 of GI [CDA] Rules, 1975 were initiated against Ms Abha C Mohanty, Dy. Manager, vide Charge Sheet dated 08.03.2004 for, while posted at MDO 6, having committed the following acts of misconduct during the years 2002, 2003 & 2004:

Ms Mohanty is highly irregular in her attendance, remaining absent for several

days although no admissible leave was due to her, during the years 2002 to 2004 and she has not submitted leave applications for the same in spite of several letters issued to her. She had also not submitted Medical Certificate for her Maternity Leave. On many days, she used to attend office only for a few hours / minutes and also to come to office late and leave office early at any time of her choice without taking permission.

In the past also, a disciplinary action was initiated against her for not submitting leave applications and not refunding excess Travelling Advance drawn by her vide Chargesheet dated 05.07.2000. But Competent Authority had taken a lenient view of the matter.

AND WHEREAS Departmental Enquiry was held, Ms. Mohanty left the Enquiry Proceedings on 20.09.2005 and did not participate in the proceedings. Shri N K Saluja, Enquiry Officer has given his findings vide Enquiry Report dated 20.01.2006 that the charges against Ms. Mohanty stands proved. Accordingly the General Manager being the Disciplinary Authority imposed the following penalty vide order dated 18.05.2006 as:

Removal from the services of the company which shall not be disqualification for future employment.

AND WHEREAS Ms. Mohanty has filed an appeal against the order of the Disciplinary Authority. She pleads that she was never provided the tabulation of absence of 472 days from 2004-04 nor the Enquiry Officer put the said dates of absence to scrutiny during the proceedings, that if the charges of absence are as grave why Enquiry Officer did not provide the Audit Report and Vigilance Check Report, that annual leave record from the year 1999 till date has not been provided to her, that order of "termination" was communicated to her without asking for as Show Cause, that the company had been remitting salary and paid Wages Arrears for the said period.

AND WHEREAS the undersigned being the Chairman-cum-Managing Director and Appellate Authority in the matter after having gone through the Charge Sheet, Enquiry Report, penalty order and appeal of Ms Mohanty observes that she was given ample opportunity during the course of enquiry to defend her case which she failed to do by not participating and leaving the proceedings. Providing her the reports of Vigilance and Internal Audit has no relevance to the charges. She was given Leave Record and photocopies of Attendance Register for the period covered under the Charge Sheet. As regards remittance of salary, till the charge is proved, the Charged Employee continues to be treated as an "Employee" of the company. Points raised in her Appeal Representation have been considered by the Disciplinary Authority and are repetitive in nature. Even after the issuance of Charge Sheet she has not mend (sic) herself and remained on unauthorized absence for 2501/2 days. The undersigned observes that the charges proved against her are grave in nature.

AND THEREFORE the undersigned does not find any reason to interfere with the

decision taken by the Disciplinary Authority and the same is upheld without any modification.

Ms Abha C Mohanty be informed accordingly.

Sd/ [M RAMADOSS] CHARMAN CUM MANAGING DIRECTOR AND APPELLATE AUTHORITY

11. In view of the order of removal from services, the Estate Officer proceeded with the action of taking back possession of the service quarters occupied by the petitioner. According to the petitioner, that action was also replete with high-handedness so as to victimise the petitioner, and the petitioner and her family members were thrown out on streets at odd hours.

12. As aforesaid, the petitioner has not only challenged the charges framed against her, but also the findings and conclusion reached by the Enquiry Officer, as also the decision of the Competent Authority which is founded on the opinion of the Enquiry Officer. The petitioner has also challenged the order of the Appellate Authority by way of present petition.

13. In the petition as filed, it is stated by the petitioner that, in or about June, 1989, she was promoted to the Administrative Officer Cadre, and was assigned to the Miscellaneous (Technical) Department in the Regional Office. Her husband was General Secretary of Officers' Association. In that capacity, he was spearheading officers' grievances and espousing their causes. On one occasion, R.K. Jain, in-charge, was forced to roll back certain in-principle decisions taken by him. The petitioner was directly working under the said R.K. Jain. Because of the forced roll back decisions required to be taken by him, he took it as affront, and started victimising the petitioner so as to get to Mr. Mohanty. It is stated that, after string of harassments suffered by the petitioner at the hands of said Mr. Jain, the petitioner and her husband, Mr. Mohanty, were denied promotions in years 1996 and 1997. On the other hand, the entire batch of 1985, to which the petitioner belongs, was promoted. The petitioner, therefore, registered protest with the Chairman and Managing Director, and, after his intervention, she was promoted as Assistant Manager in year 1998. The petitioner and her husband Mr. Mohanty were, however, shunted out from Indore to Mumbai, as the Management did not want Mr. Mohanty in Indore. It is the petitioner's case that, when she was transferred to Mumbai in year 1998, she did not have any problems until one R.C. Suri from Indore Office joined the Regional Office in Mumbai. By that time, however, the petitioner's husband, Mohanty, was elected as the General Secretary of All India Officers' Association of the Company. According to the petitioner, Bharat C. Shah was the Regional Manager of the Regional Office No.2. He ensured that the petitioner was transferred to the Miscellaneous Department, which was directly under R.C. Suri. According to the petitioner, the said R.C. Suri and Bharat Shah got together and began a string of harassments and victimisation of the petitioner and her husband, using their superior positions. They issued oral orders to the staff subordinate to the

petitioner for disallowing interaction with her or promoting insubordination or non-cooperation.

14. It is the case of the petitioner that the petitioner had repudiated the fraudulent Medclaim of Ms. Lata Shah, sister of R.C. Shah, Manager (Marketing), who was close to Bharat C. Shah (Regional In-charge). Thus, out of spite, the said Bharat Shah and R.C. Suri started victimising the petitioner. The petitioner, with a view to avoid continuous harassment at the hands of the said officers, requested for transfer. However, that request was rejected.

15. The petitioner further states that she was denied opportunity to take training unlike the other similarly placed officers. Similarly, her option to leave for G.I.C., in year 2001, was not forwarded. Her deductions from salary towards repayment of loan taken from the Credit Society were not made and withheld, causing accumulation of interest and penalty on the loan taken. She was disallowed from signing the register for attendance, while other officers continued to sign the same. She was assured that her attendance would be marked. The Attendance Register and records were not shown to the petitioner, in spite of repeated demands. When this grievance was brought to the notice of In-charge, Bharat C. Shah, she was assured that needful will be done.

16. It is also the case of the petitioner that she was P.F optee from the inception, and had not changed her option. However, behind her back, her option was shown as Pension Optee. As a result, for one full year, her P.F. contribution was not sent to her P.F. Account. Only after the petitioner complained about this to the Personnel Department, remedial steps were taken to restore the correct contribution.

17. According to the petitioner, the harassment continued even in April, 2000 when show-cause notice was issued. Besides giving reply to the said show-cause notice, she requested to transfer her out of Mumbai. Instead, the petitioner received charge-sheet alleging that she remained unauthorisedly absent on various dates from 25th May, 1998 to 31st December, 1999. The said charge sheet is in respect of misconduct during earlier period between May, 1998 to December, 1999. The charges therein read thus :

Mrs. A.C. Mohanty while posted at MROII as Asstt. Manager has committed the following misconduct during the year 1998-99:

1) Mrs. A.C. Mohanty on her transfer (on promotion) from Indore RO to MRO II took a travelling advance of Rs. 30,000/-. However, Mrs. A.C. Mohanty did not submit the

T.E. Bill and did not get the amount adjusted for almost a period of 16 months from the date of her joining duties at MRO II (i.e. on 25.5.98) in spite of various reminders to do so. As per Rules in vogue as regards Advances, an employee has to submit the T.E. Bill within 7 days from the date of resuming of duties. However, Mrs. A.C. Mohanty submitted the bill only on 30.6.99. After scrutiny,

the same was finally settled for Rs.19,062/-and the balance of Rs.10,938/-was ultimately deposited by her on 01.10.99. Thus Mrs. A.C. Mohanty is deemed to have misappropriated the Company's funds to the extent of Rs.10,938/- for a period of 16 months.

2) Further, Mrs. A.C. Mohanty has remained unauthorisedly absent on various dates from 25.5.98 to 31.12.99 whilst posted at MRO II. She has also not submitted leave applications for the various dates of her absence in spite of various reminders given to her by the Controlling Office.

Mrs. A.C. Mohanty has thereby, committed the Misconduct of Misappropriation of Company's funds, remaining willfully on unauthorized absence, disobeying the lawful and reasonable orders of her superiors, exhibited conduct unbecoming of a public servant, acted in a manner prejudicial to the interest of the Company thereby contravening Rule 3 (1) (iii), (iv) and Rule 4 (5) (7) (8) (17) and 18 (1) (2) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (Amended).

Head Office

New Delhi

Sd/ (S.K. CHANANA) ASST. GENERAL MANAGER & DISCIPLINARY AUTHORITY

18. The petitioner contested the proceedings, pointing out that the charges framed against her were trumped up and concocted one. The enquiry, however, was later on dropped. The Disciplinary Authority in its order noted that it was taking a lenient view, and the petitioner was merely cautioned to be careful in future. According to the petitioner, this was notwithstanding the clear circumstances prevailing that no case could be made out against the petitioner. The decision of the Disciplinary Authority was communicated to the petitioner vide letter dated January 17, 2001. The same reads thus :

The Oriental Insurance Company Limited,

Oriental House P.B. No. 7037

A-25/27, Asat Ali Road, New Delhi

Deptt. Personnel

Ref. HO/Pers/CDA/555.

17th January, 2001.

Ms. A.C. Mohanty,

Assistant Manager,

MCDO-16

Madam,

This has reference to the Charge-sheet dated 6.7.200 and your reply dated 6.10.2000 together with enclosures. I have gone through the same and observe that you have admitted not being diligent in submission of bills in time and also the leave applications for your absence. However, in view of the circumstances explained in your letter, the undersigned is inclined to take the lenient view of the matter and you are hereby cautioned to be careful in future in adhering to the Rules and Regulations of the Company.

Yours faithfully, Sd/ (B.K. Sarkar) Asst. Genl. Manager

19. According to the petitioner, the harassment was then continued by non-release of her salary cheque for the month of July, 2000. That salary cheque was released only in January, 2001. It is the case of the petitioner that her salary was arbitrarily deducted. The same was not streamlined despite reminders. As a result, the petitioner made representation to Bharat Shah.

20. The petitioner has then adverted to the incident of non mentioning of details against the name of the petitioner regarding her earned leave balance, which Notification was circulated by the Personnel Department dated 11th May, 2001. It is the case of the petitioner that, on or about 15th September, 2001, the petitioner, in discharge of her official duty, repudiated the claim under Mediclaim put up before her of Lata Shah, sister of R.C. Shah, Manager (Marketing) at the Regional Office and henchman of Bharat Shah. That was done in her capacity as Assistant Manager. On the instructions of Bharat Shah, the In-charge of the office, by an office order, stripped all work of the petitioner by memo dated 24th September, 2001. Even the petitioner's husband was subjected to harassment and victimisation. He was forced to resign from service of the respondent-Company in January, 2002.

21. According to the petitioner, her victimisation and harassment continued further. On or about 19th June, 2002, when the petitioner reported for work, she found that her cabin was locked - ostensibly on instructions of her superiors. It is only after her insistence, the cabin was opened. That fact was placed on record by the petitioner in her letter of the same date. Since the petitioner was apprehending departmental action, by her letter dated 23rd August, 2002, she sought confirmation from A.A. Hallary.

22. The petitioner has asserted that the Estate Officer at the behest of her superiors initiated eviction proceedings against the husband of the petitioner. This was done, even though no decision was taken on the resignation papers submitted by the petitioner's husband, till then. The Estate Officer wanted the petitioner and her family members to be evicted from the premises and also recover compensation from them for unauthorised use and possession of the premises. The said proceedings were resisted by the petitioner's husband. The eviction proceedings were eventually dropped only after the retirement of Bharat Shah and R.C. Suri in the month of March, 2004 and consequent to decision of M.K. Chintan allegedly regularising the flat in the name of the petitioner. This is

one more circumstance, which the petitioner submits, is indicative of bias of superior officers against the petitioner and her husband, under whom, they were working. The petitioner states that, although the official residence was regularised in the name of the petitioner and also indicating that the eviction case was being withdrawn, the communication was addressed to the petitioner's husband and not to the petitioner. This argument has been advanced by the petitioner to demonstrate that the departmental action against the petitioner, which is subject-matter of this petition, is continuation of the said harassment and victimisation of the petitioner and her husband.

23. As is noticed from the Articles of Charge dated 8th March, 2004 and Addendum to the Charges dated 8th November, 2004, it is evident that the same pertain to period commencing from 1st January, 2003 and onwards till the issuance of the Articles of Charge.

24. With reference to the said charges, according to the petitioner, she proceeded on Maternity Leave in and around March, 2003. On 18th March, 2004, the petitioner wrote directly to Bharat Shah to stop harassment and restore her position as Assistant Manager. The said Bharat Shah, prior to his retirement, however, by letter dated 8th March, 2004, initiated proceedings against the petitioner. According to the petitioner, no preliminary enquiry was conducted. No show-cause notice was issued. No details were collected by said Bharat Shah, and yet, vague charge-sheet was sent to the petitioner. According to the petitioner, she, in fact, gave birth to a baby on 18th April, 2003. She submitted hospital bills with surgeon's certificate on 30th December, 2003. The Personnel Department had asked her to submit Discharge Card of the concerned hospital and treating doctor's certificate within a period of three days. Even that compliance was made by the petitioner. According to the petitioner, if these documents were perused, the question of proceeding against her for unauthorised absence for the relevant period after March, 2003 would not arise. The petitioner, therefore, filed her interim reply to Charge-sheet, dated 29th March, 2004. The petitioner was served with Addendum to Charge-sheet, dated 8th April, 2004.

25. The petitioner then asserts that the Divisional Manager informed the petitioner that attempt could be made to resolve the issues across the table. The petitioner, by her letter dated 18th November, 2004, thanked the Divisional Manager for the said communication, as also for the clearance of her maternity bill of Rs. 50,000/-. She maintained that she was forced out and isolated from the office by actions of the previous Divisional Manager, who, in active connivance with Bharat Shah, the then Regional Manager, resorted to innumerable instances of harassment to her. By her letter dated 18th November, 2004, she requested to streamline the attendance / leave records, as the same were used as an instrument by her superior and Bharat Shah to run her down. She asserted that the records have been tampered and falsified for that purpose.

26. The petitioner asserts that, on the basis of the impugned charge-sheet, when

the enquiry commenced, she requested the Enquiry Officer to allow her husband, N.R. Mohanty, to be her defence assistant, and also requested for furnishing specified documents. The petitioner also expressed apprehension that Mrs. P. Hariharan, a proposed prosecution witness, was likely to proceed on maternity leave and consequential delay of the enquiry. She, therefore, requested for examination and cross-examination of the said witness in the same week. However, no reply whatsoever was received by the petitioner. Instead, the petitioner, almost after gap of five months, received letter dated 22nd June, 2005. The petitioner was informed that one Mr. Saluja was appointed as the Enquiry Officer and the enquiry would proceed on day-to-day basis from 28th June, 2005. The petitioner, by her letter dated 28th June, 2005, expressed her anxiety about the manner in which the proceedings were being delayed and also asked the Enquiry Officer to reconsider her request to provide her defence assistant. Once again, during the enquiry proceedings on 29th June, 2005, request was made by the petitioner for supplying relevant documents for her defence and to permit her defence assistance of N.R. Mohanty, who was yet to be relieved by the Company. The petitioner, by letter dated 29th June, 2005, had informed the Assistant General Manager and the Disciplinary Authority of the irregularities in the enquiry pending against her. According to the petitioner, by letter dated 30th June, 2005, the Enquiry Officer informed the petitioner that her request to appoint Mohanty as defence assistant was not accepted by the Competent Authority; and, therefore, she should produce some other defence assistant. This, according to the petitioner, was indicative of the Enquiry Officer acting under dictation of the Competent Authority. The petitioner, therefore, once again, by letter dated 5th July, 2005, requested the Enquiry Officer to consider her request for defence assistant, as also to furnish the specified documents. The petitioner sent another letter dated 22nd August, 2005, listing out the desired documents, which were denied to her, as not relevant in the proceedings.

27. According to the petitioner, the resignation papers submitted by her husband in year 2002 were surreptitiously and in haste accepted by the Appropriate Authority on 23rd August, 2005. Thus, according to the petitioner, she has been denied the benefit of taking her husband as defence assistant. The petitioner, however, was informed by the Enquiry Officer, by letter dated 29th August, 2005, that she was free to take N.R. Mohanty as her defence assistant, subject, however, to bringing No Objection Certificate from the in-charge of the office, in which Mohanty was working, with a clear noting that, as and when he would be required to attend the enquiry, he would be relieved for the same, and the in-charge of that office would have no objection in that behalf. According to the petitioner, such condition could not have been imposed as per the C.D.A. Rules. On the one hand, the Enquiry Officer gave impression of allowing the petitioner to take assistance of N.R. Mohanty, her husband, subject to certain conditions, but, at the same time, that opportunity was negated by accepting the resignation papers of N.R. Mohanty on 23rd August, 2005. Thus, the petitioner was denied assistance of N.R. Mohanty on the specious ground that, on acceptance of his

resignation, he became ex-employee of the Company.

28. The petitioner has then adverted to the letter dated 16th September, 2005, placing on record objection regarding recording of improper proceedings by the Enquiry Officer. It is her case that, on 20th September, 2005, the Enquiry Officer refused to record the objections of the petitioner. Therefore, she was constrained to inform the Enquiry Officer that, until the proceedings were correctly recorded verbatim, no fruitful purpose would be served by continuing with the farce of an enquiry. She wanted the Enquiry Officer to conduct the enquiry in a fair, impartial and just manner. She was then compelled to request the Disciplinary Authority to take corrective action by next date.

29. According to the petitioner, in her absence, minutes of the meetings of proceedings held on 20th September, 2005 were recorded by the Enquiry Officer to indicate that the petitioner walked out of the proceedings without taking permission of the Enquiry Officer, and that, all throughout, she was making irrelevant submissions. After these minutes were received by the petitioner, she wrote to the Disciplinary Authority for intervention and correction of the record. She also requested that she should not be discriminated, because she is a woman officer. She should not be harassed and put to ridicule.

30. The petitioner then wrote to the Enquiry Officer vide letter dated 25th September, 2005 to supply the specified documents. The Enquiry Officer, instead, proceeded ex parte against the petitioner, as was evident from the communication dated 3rd January, 2006 received from the Enquiry Officer. The petitioner immediately wrote to the Enquiry Officer by letter dated 6th January, 2006 that she should be furnished with the said documents forthwith and also to intimate the next date of enquiry, after arranging for the relevant documents. However, the Enquiry Officer proceeded ex parte against the petitioner, disregarding the request of the petitioner.

31. Thus, according to the petitioner, the enquiry has been conducted in an unfair and biased manner. According to the petitioner, the ex parte enquiry culminated in an ex facie perverse report of the Enquiry Officer.

32. The petitioner eventually made application under the Right to Information Act, 2005, calling upon the Appropriate Authority to furnish the documents, of which access was not provided to the petitioner, in spite of requests made by the petitioner to the Enquiry Officer in that behalf. The petitioner was, however, informed by the State Public Information Officer that the documents specified by the petitioner could not be divulged to her under Sections 8 and 9 of the Right to Information Act. The grievance of the petitioner is that the enquiry did not proceed in fair and unbiased manner and, in any case, the same was vitiated on account of non-furnishing of the relevant documents to the petitioner. According to the petitioner, the Enquiry Officer jumped to the conclusion that the charges have been proved against the petitioner.

33. The petitioner was then called upon to offer her comments in relation to the

report of the Enquiry Officer. Even at that stage, no documents were annexed to the said report. Once again, the cardinal principle of fair play was not observed. The petitioner has also placed on record that the order passed by the Competent Authority of removing the petitioner from service was communicated to the petitioner by her subordinate at her residence, despite being present in office at the relevant time, vide letter dated 24th May, 2006.

34. The petitioner has then referred to the fact that she was not given personal hearing on the specious reasoning that there is no provision for giving personal hearing under the Rules. The petitioner further asserts that, even at the appellate stage, she fervently requested to furnish the specified documents. However, even the Appellate Authority discarded that request of the petitioner, and did not furnish the relevant documents, but proceeded to dispose of the appeal without appreciating the entire evidence and the order of the Enquiry Officer. The Appellate Authority also did not offer personal hearing to the petitioner.

35. According to the petitioner, after the disposal of the appeal, the documents, which have now been furnished to the petitioner, would reveal that the charge, as framed against the petitioner, ought to fail. In that, sufficient leave was available to the credit of the petitioner. Thus, the charge that no admissible leave was due to the petitioner was untenable. Further, from the Salary Certificate for the relevant period, the charge framed against the petitioner that she unauthorisedly remained absent from office from January, 2003 till 8th April, 2004 was belied. For, that reason is not mentioned in the Salary Certificate. Even the personal record does not mention that the petitioner had taken leave for more than six weeks.

36. The petitioner has also adverted to the manner in which the petitioner came to be evicted from the official residence. Even that circumstance is indicative of biased action at the behest of her superiors. In this backdrop, the petitioner has not only challenged the charge-sheet and the orders passed by the Competent Authority and the Appellate Authority, but also the action of the Estate Officer in ousting the petitioner from the official residence in a high-handed manner.

37. The respondents have filed reply-affidavit sworn by Vivek Shukla, Manager of the respondent-Company, and have countered all the material allegations. At the outset, the respondents have asserted that the petition should be dismissed on the ground of laches, as it has been filed in April, 2010 to question the orders passed against the petitioner by the Competent Authority on 18th May, 2006 and by the Appellate Authority on 28th June, 2007. On merits, according to the respondents, the disciplinary action was instituted because of the acts of commission and omission of the petitioner constituting misconduct of a serious nature. The disciplinary proceedings were conducted in accordance with the norms specified in the extant Regulations. The petitioner was given full opportunity, but the petitioner walked out of the proceedings, for reasons best known to her. As a result, the proceedings were continued ex parte against the

petitioner culminating in the finding of guilt by the Estate Officer, which finding and conclusion is accepted and concurred by the Competent Authority. Even the Appellate Authority concurred with the said conclusion.

38. The respondents further contend that the genesis of this petition is that the departmental proceedings initiated against the petitioner were the outcome of bias against the petitioner. That basis is completely ill-advised. In that, the petitioner, during the relevant period of three years, reported to three different superior officers. It is not the case of the petitioner that all the three officers were biased against her. Further, the fact that the petitioner was absent from office unauthorisedly during the relevant period, and did not bother to submit applications for leave, in spite of being called upon to do so in itself is a serious misconduct, warranting disciplinary action and imposition of penalty of removal from service. In fact, the order passed by the Competent Authority is one of removal of the petitioner from services of the respondent-Company, without disqualification for future employment. This penalty is imposed on the finding of fact arrived at by the Authorities that the charge, as framed against her, has been proved. The petitioner did not produce any evidence to rebut the charge that she had proceeded on leave after taking necessary permission / sanction. According to the respondents, therefore, no interference, in exercise of Writ Jurisdiction, is warranted in the fact situation of the present case, especially when there is no merit in the contention that the charges, as framed, were vague, coupled with the fact that the Management produced documentary as well as oral evidence to substantiate the charge; and the petitioner failed to rebut the onus placed on her that she had proceeded on leave after taking permission / sanction in that behalf.

39. As regards the grievance of the petitioner of non-supply of documents, resulting in unfair enquiry against the petitioner, it is contended that all the relevant documents in the context of the charge framed against the petitioner were already furnished to her. The documents which were not supplied to the petitioner had no bearing on the said charge.

40. With regard to the grievance of the petitioner that she has been denied opportunity of taking defence assistance, it is contended by the respondents that her request to allow her to appoint N.R. Mohanty (her husband) as defence assistant was not permissible. In that, as per Rule 25(6) of the G.I.C. D.A. Rules, 1975, the charged officer can nominate only an employee of the Company to be his Defence Assistant. Her husband, after acceptance of his resignation, became ex-employee of the Company, and, therefore, could not have been appointed as Defence Assistant of the petitioner.

41. With regard to the petitioner's plea that the relevant registers have been tampered, it is contended by the respondents that the same is devoid of merits. In that, the respondents have proved the relevant documents during the enquiry. Besides, the respondents examined witness, whose version has gone unchallenged. The said witness was not cross-examined by the petitioner. The

petitioner, on her own, has not produced any evidence in support of her plea that she, in fact, attended office during the relevant period, or that she remained absent during the said period, for which, she had obtained prior permission or, for that matter, ex-post facto sanction. None of the documents now pressed into service by the petitioner have been proved by her in evidence. As a result, the same cannot be taken into account. The respondents also contend that non-mention of any remark in the salary slip or leave record will not militate against the respondents. Those documents, however, will be of no avail to the petitioner to contend that she "authorisedly" remained absent from the office during the relevant period.

42. Even the grievance of the petitioner that no personal hearing was given to her by the Competent Authority or the Appellate Authority has been refuted by the respondents. According to the respondents, there is no provision in the Rules to provide personal hearing to the delinquent officer before the Competent Authority or the Appellate Authority. Thus, there is no infraction of any procedure prescribed by the Rules.

43. Having considered the material on record and the rival submissions, we shall first proceed to answer the preliminary objection raised by the respondents about the maintainability of this petition. Indeed, the petitioner has challenged the charge-sheet dated 8th March, 2004 and the Addendum to Charge-sheet, dated 8th April, 2004 as well as the orders passed by the Competent Authority on 18th May, 2006 and by the Appellate Authority on 28th June, 2007 by way of this petition, which is filed in April, 2010. However, it is noticed that the petitioner had filed writ petition for the same relief on 9th June, 2008 through advocate. That petition was eventually withdrawn with liberty, by her advocate, on 13th April, 2009. According to the petitioner, who is now appearing in person in the present petition, she was ill-advised to withdraw the said writ petition. In fact, the petitioner was hopeful that the advocate would take further steps after the withdrawal of the earlier writ petition; but, for reasons best known to him, the petitioner had to fend for herself. Eventually, the petitioner, having realised that the matter was not being properly pursued by her advocate, filed the present writ petition in person. In the rejoinder-affidavit, the petitioner has made allegations against her former advocate. It is not necessary for us to examine those allegations. Suffice it to observe that the petitioner did challenge the self-same charge-sheet and orders by way of writ petition, which was withdrawn with liberty to file the present petition. The present petition has been filed pursuant to the said liberty. It is true that the petitioner took almost one year for filing the present writ petition. Nevertheless, in view of the explanation offered in the rejoinder-affidavit, in our view, it will not be proper to non-suit the petitioner on this technical ground, who has approached this Court for enforcement of her fundamental rights. In the circumstances, we are inclined to reject the preliminary objection about the maintainability of writ petition on the ground of laches. Instead, we would prefer to examine the matter on merits.

44. The primary grievance of the petitioner is that the disciplinary proceedings initiated against her were the outcome of bias of her superiors, R.C. Shah and Bharat Shah in particular. That was on account of repudiation of Mediclaim of sister of R.C. Shah, Manager (Marketing). The said R.C. Shah was henchman of Bharat C. Shah (Regional In-charge). At his behest, said Bharat Shah, the immediate superior of the petitioner at Mumbai after the petitioner was transferred to Miscellaneous Department, started victimising and harassing the petitioner. The petitioner was directly under R.C. Suri. The said R.C. Suri and Bharat Shah got together and began string of harassments and victimisation, using their superior positions. They not only harassed and victimised the petitioner, but also her husband.

45. The petitioner has pressed into service several circumstances, which have unfolded from 1998, and more particularly, after year 2000, to contend that it was a clear case of victimisation of the petitioner. Further, the petitioner was proceeded for similar charge on the earlier occasion, which charge, however, was dropped, as it was noticed that the same could not be proved against the petitioner. In the first place, all the circumstances preceding the issuance of show-cause notice to the petitioner and initiation of departmental proceedings on the earlier occasion are in respect of acts of commission and omission of the then superior officers of the petitioner. Further, they have not been named as party-respondents in the present petition. Even for that reason, the allegations made against them cannot be taken forward. As aforesaid, the said circumstances are in respect of period relevant for the earlier disciplinary action initiated against the petitioner, which, however, was eventually dropped in January, 2001 with giving caution to the petitioner, as she had admitted that she was not diligent in submission of bills in time and also leave applications for her absence. That cannot be the basis to answer the points in issue in the present petition. Inasmuch as, the present petition emanates from the Articles of Charge framed against the petitioner for having remained unauthorisedly absent for several days during years 2002 to 2004. A bare perusal of the Articles of Charges, the case made out against the petitioner was that she was highly irregular in her attendance during the stated period. She remained absent for several days, though no admissible leave was due to her during the relevant period between 2002 and 2004. She did not submit leave applications for the leave period, that, too, in spite of several letters issued to her to do so. She did not submit Medical Certificate for her Maternity Leave within the prescribed time. On many occasions, she used to attend office only for a few hours / minutes and also used to come to office late and leave office early at any time she liked, without taking permission of her superiors.

46. Understood thus, the circumstances which preceded issuance of the show-cause notice on the earlier occasion or initiation of previous disciplinary proceedings cannot be the basis to hold that the charges framed in the subject Departmental proceedings against the petitioner are trumped up charges. To refute the said charges, the petitioner was expected to prove that she was, in

fact, regularly attending office during the said period or that she was on leave with prior permission / sanction of the Competent Authority or, at least, ex-post facto permission for the relevant period. Unauthorised absence by itself is normally a serious misconduct. If the proved unauthorised absence is persistent and for a long period - as in the present case - it will be inexcusable. The Apex Court in the case of Delhi Transport Corporation Vs. Sardar Singh, opined that when the employee concerned proceeds on leave without permission, it inevitably affects the work of the employer. In such cases, the employee concerned is required at least to bring some material on record to show as to how his absence was on the basis of the sanctioned leave and as to how there was no negligence. That burden is cast on the employee, who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials in support thereof. In the case of Mithilesh Singh Vs. Union of India (UOI) and Others, the employee was charged for having left duties without permission. In defence, the employee had contended that he had made application for grant of leave. The Court opined that mere application for grant of leave cannot be considered to be proper intimation for absence. On that finding, the Court proceeded to hold that absence from duty without proper intimation is a grave offence warranting removal from service. [Also see Regional Manager, The Regional Manager, Central Bank of India Vs. Vijay Krishna Neema and Others, Thus, we have to examine whether the petitioner has successfully rebutted the charges framed against her in the present proceedings and substantiated her defence by producing any evidence and contemporaneous record in that behalf.

47. Furthermore, we find force in the opinion recorded by the Authorities below that it is too much to complain that all the three officers, under whom, the petitioner had to work during the relevant period of three years between 2002 to 2004, were biased against her. It is not the case of the petitioner that other superior officers, under whom, the petitioner had to work during the relevant period, had any bias against her. Accordingly, we have no hesitation to reject the argument of the petitioner that the charges framed against her, which are subject-matter of challenge in this petition, were either trumped up or the same are vitiated, being mala fide and colourable exercise of power by the Authority concerned.

48. The next question is: Whether the impugned charges as framed can be said to be vague, thereby misleading the petitioner to effectively defend herself? On conjoint reading of Articles of Charges and the Statement of Imputation of Misconduct in support of the Articles of Charges framed against the petitioner, it is amply clear that the same mention about the unauthorised absence of the petitioner between

(i) January, 2003 to March, 2003, (ii) 2nd March, 2003 to 15th October, 2003 and (iii) 17th October, 2003 till 8th November, 2004. It is not as if no period of absence has been spelt out in the charges and the Statement of Imputation.

Thus, the petitioner could have filed reply to deny the said allegation and also assert that she was, in fact, present and worked during the said period, or that she remained absent after taking permission / sanction of the Appropriate Authority either for the entire period or part thereof, as the case may be.

49. Indeed, the petitioner has asserted that the registers were tampered. However, the two Authorities below have recorded finding of fact that it is incorrect to state that attendance sheets were manipulated. No legal evidence has been brought to our notice to hold that the said finding of fact is perverse, manifestly wrong or error apparent on the face of record. Notably, the petitioner has not substantiated that defence in the disciplinary enquiry. The petitioner, in fact, walked out of the disciplinary enquiry, albeit under protest. We are in agreement with the argument of the respondents that, if the delinquent officer walks out of the enquiry proceedings without a just cause, it is not open to him to complain about the reasonable opportunity not afforded to him in the said enquiry. This position is well-established [See *Bank of India Vs. Apurba Kumar Saha*, (1997) 10 SCC 386 *Ranjan Kumar M ITR a v. Andrew Yule and Co. and Ors. and Chairman, Ganga Yamuna Gramin Bank and Others Vs. Devi Sahai*,

50. As aforesaid, the petitioner has not only failed to produce any material to substantiate her defence that she, in fact, attended the office during the relevant period or that she had taken prior permission / sanction or ex-post facto sanction of the Competent Authority for the relevant period. Moreover, the petitioner, having failed to even cross-examine the prosecution witnesses or challenge the documentary evidence proved by the Management during the enquiry, we fail to understand as to how the petitioner can succeed in the argument that the official records of the respondent-Company were tampered with. More so, to persuade us that those documents could not be used against the petitioner in the subject departmental proceedings. The respondents have rightly relied on the decision of the Apex Court in the case of *Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another*, to contend that in the present case, the petitioner having boycotted the enquiry and the charge framed against her of admitted absence, having been duly proved from the Attendance Muster itself, there was no plausible defence available to the petitioner. It is well established position that in a domestic inquiry, once a conclusion is deduced from the evidence, it is not possible to assail that conclusion even though it is possible for the Court to arrive at a different conclusion on the same evidence. (See the *Banaras Electric Light and Power Co. Ltd. Vs. The Labour Court II, Lucknow and Others*, The Apex Court in the case of *B.C. Chaturvedi Vs. Union of India and others*, has held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Once it is found that the inquiry in relation to charges of misconduct is held in conformity with the Rules and in particular, Rules of natural justice, coupled with the fact that the finding reached by the concerned Authority is based on some evidence, the Court must be loath in interfering with the said findings. Further, the technical rules of Evidence Act nor of proof of fact or

evidence as defined therein, apply to the disciplinary proceedings. It will be useful to refer to the decision of the Apex Court in the case of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, wherein the Court expounded that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunal and courts to substitute their subjective opinion in place of the one arrived at by the domestic tribunal (Also see State of Rajasthan and Another Vs. Mohammed Ayub Naz, and Noharlal Verma v. District Co-op. Central Bank Ltd. - (2008) 14 SCC 445.

51. The next grievance of the petitioner is that the petitioner has been denied facility of Defence Assistant, even though the prosecution appointed Enquiry Officer having background of legal knowledge. It is true that, initially, the Enquiry Officer declined the request of the petitioner to allow her to appoint N.R. Mohanty (her husband) as Defence Assistant. The petitioner is also right in pointing out that the letter sent by the Enquiry Officer does indicate that the Competent Authority had not approved of the said request. Relying on this observation, it was argued by the petitioner that the Enquiry Officer was acting under dictation of the Competent Authority. It is not possible to comprehend this proposition canvassed by the petitioner. For, the communication sent by the Enquiry Officer will have to be read in its entirety and in proper perspective. If so read, all that it conveys, is that, N.R. Mohanty was not eligible for being appointed as Defence Assistant. The Enquiry Officer, at the same time, gave option to the petitioner to nominate some other eligible person of her choice as Defence Assistant. It is also noticed that, subsequently, the Enquiry Officer changed his decision, and allowed the request of the petitioner to permit her to avail assistance of N.R. Mohanty (her husband) as Defence Assistant; but that was subject to obtaining permission of the department in which N.R. Mohanty was working that, whenever he would be required for enquiry, he should be relieved by that department, and the in-charge of that department will have no objection in relieving him for the purpose of enquiry against the petitioner. That decision was communicated to the petitioner by the Enquiry Officer vide letter dated 29th August, 2005. In connection with this letter, two-fold grievance has been made by the petitioner. The first is that no such pre-condition could be attached to the permission. There is no provision in the CDA Rules to impose such condition. In other words, the condition for granting permission was obviously pre-determined to deny opportunity of defence to the petitioner. We are not impressed by this submission. Merely because such condition has been mentioned in the communication sent by the Enquiry Officer that, by itself, does not mean that the Enquiry Officer intended to deny benefit of defence assistance to the petitioner. All that the Enquiry Officer conveyed was that the in-charge officer of the department, in which N.R. Mohanty was working, should consent to relieve him, whenever required for the purpose of enquiry. That would have ensured uninterrupted progress of the enquiry and avoidable adjournment on the ground of non-availability of the Defence Assistant. To get over this, it was argued that, to ensure that the petitioner does not get defence assistance of N.R. Mohanty

(her husband), the resignation papers submitted by him as back as in year 2002 were hurriedly accepted on 23rd August, 2005. Because, on acceptance of his resignation papers, he would cease to be the employee of the respondent-Company. In that case, he would be ineligible to represent the case of the petitioner, by virtue of Rule 25 of the Rules. In the first place, there can be no doubt that, as per Rule 25 of the Rules, only employees of the respondent-Company in the region can represent the delinquent officer as Defence Assistant. With acceptance of resignation papers of the petitioner's husband on 23rd August, 2005, in fact and in law, he would cease to be employee of the respondent-Company. Thus, as per Rule 25, N.R Mohanty was ineligible to represent the petitioner as Defence Assistant. The fact that acceptance of resignation of N.R Mohanty coincided in August, 2005, cannot be the basis to assume that the same was hastily accepted to deny defence assistance to the petitioner. Besides, the Enquiry Officer had made it clear that the petitioner was free to nominate any other eligible person of her choice as Defence Assistant. That opportunity was not availed by the petitioner, for reasons best known to her. In our opinion, therefore, the argument of the petitioner that the enquiry proceedings are vitiated on the ground that the petitioner has been denied defence assistance cannot be countenanced.

52. That takes us to the other ground vehemently urged on behalf of the petitioner, which, according to the petitioner, will have the inevitable effect of vitiating the enquiry proceedings. According to the petitioner, the relevant documents demanded by her were not supplied to her until the conclusion of the enquiry. That has deprived the petitioner of the opportunity to effectively defend herself in the proceedings. In the context of this submission, we may have to bear in mind as to whether the documents, which have not been supplied to the petitioner, were indispensable for answering the charges framed against her and must have caused serious prejudice to her in defending the action. The record indicates that the petitioner was supplied with the compilation of documents, which consisted of 39 letters addressed to her in the past regarding her unauthorised absence. In the said communications, it has been noted that the photo-copies of Attendance Registers for years 2002, 2003 and 2004 have been already furnished to her. It is seen that the petitioner received letter dated 13th July, 2005 on 15th July, 2005, as is apparent from her signature bearing on the copy of letter dated 13th July, 2005. The attendance sheets were proved through the Management witness. It has also been found, as of fact, by the two Authorities below, that the petitioner was furnished with the documents forming part of Annexure III of the charge-sheet. It has also been found that internal audit report and vigilance check report, which were insisted by the petitioner, have had no relevance with her charges. For that reason, the same were not provided to her.

53. We are unable to comprehend as to how the internal audit report and vigilance check report could have rebutted the charges framed against her or, for that matter, substantiated her defence. It has also been found by the two

Authorities below that self-appraisal forms are part and parcel of confidential report and were privileged documents of the Company. Be that as it may, we are in agreement with the respondents that even the self-appraisal forms, which were part and parcel of confidential report, would have no bearing on the charges framed against the petitioner that she was highly irregular in her attendance, remaining absent for several days, though no admissible leave was due to her during the relevant period and she had not submitted leave applications for the said period, that, too, in spite of several letters issued to her, calling upon her to do so. In other words, the documents insisted by the petitioner could not have rebutted the charges framed against the petitioner that she used to attend office only for a few hours / minutes and also come to office late and leave office early at any time she liked, without taking permission. Admittedly, the petitioner was given leave record and attendance sheets for the period covered under the charge-sheet, as has been found by the Authorities below. Those were the relevant documents either to rebut the charges framed against the petitioner or to substantiate her defence that she was, in fact, attending office regularly and punctually, and that, whenever she was on leave, her leave was duly sanctioned / approved.

54. The Authorities below have found, as of fact, that the petitioner, during the years 2002 to 31st March, 2004, remained on L.O.P. / unauthorised absence for 4951/2 days. The Appellate Authority has noted that even after issuance of charge-sheet, the petitioner did not mend her ways and remained "absent unauthorisedly for 2501/2 days, which constituted serious misconduct on her part. Further, the petitioner had never made representation/protest regarding the correctness of the entries in the attendance register. Moreover, although the petitioner was given opportunity to defend her case, she abruptly abandoned the enquiry proceedings on a specious and unsubstantiated plea that the enquiry was not being conducted fairly, leaving no option to the Enquiry Officer but to proceed ex parte against her.

55. According to the petitioner, after the enquiry proceedings were concluded, as also the appeal was disposed of, she was furnished documents under the Right to Information Act. It was submitted that the said documents would belie the charges framed against her. Emphasis was placed on the salary slips and leave record. It was contended that the petitioner was paid salary, as was evident from the salary slips for the relevant period. The fact that the petitioner received salary for the relevant period, by itself, does not militate against the charges as framed against her and more so belie the documentary and oral evidence produced by the Management, which evidence has gone unchallenged. Even the leave record, assuming that it indicates that leave was available to the credit of the petitioner, will be of no avail to her, as that does not substantiate the defence of the petitioner that she was not unauthorisedly absent during any of the stated 4951/2 days between 2002 to 31st March, 2004. We fail to understand as to how the documents now furnished to the petitioner under the Right to Information Act can undo the overwhelming unchallenged evidence produced by the Management

during the enquiry, establishing the charges against her of having proceeded on unauthorised leave for 4951/2 days during the relevant period. That, by itself, is a serious misconduct.

56. As aforesaid, the evidence on record establishes that the petitioner did not submit any representation/protest or for that matter, leave applications for the relevant period, that, too, in spite of repeated letters sent to her to do so. The Competent Authority and the Appellate Authority has upheld the said findings of the Enquiry Officer on the basis of the proved uncontroverted evidence on record. That finding of fact is unassailable. Suffice it to observe that the stated documents not supplied to the petitioner, have been rightly held to be not relevant qua the charges framed against her nor useful to substantiate the defence. The non-furnishing of any document, by itself, is not enough to vitiate the enquiry proceedings. The document should be such that it is indispensable and without which the charge could not have been proved or, for that matter, the defence available to the delinquent officer could be rebutted. Only in that eventually, non-supply of the document may cause serious prejudice or miscarriage of justice. In the present case, for the reasons recorded hitherto, it is not possible to hold that the documents referred to by the petitioner were such that it would have caused any prejudice to the petitioner in pursuing her defence that she, in fact, attended the office during the relevant period regularly and punctually or that she was on leave with permission / sanction of the Appropriate Authority. Accordingly, the argument of the petitioner that the enquiry proceedings are vitiated due to non-supply of certain documents will have to be stated to be rejected.

57. The next grievance of the petitioner is that proper procedure was not followed during the enquiry. This grievance has been duly considered by the Authorities below. It is found, as of fact, that the enquiry report was not corrected by Ms. Kala (prosecution witness), but she carried out correction only in respect of typing errors in the minutes of the enquiry proceedings, which were duly signed by the Enquiry Officer and the Presenting Officer. This is a finding of fact. No legal evidence is brought to our notice to suggest that this finding of fact is perverse or error apparent on the face of the record. Besides, it is noticed that the Enquiry Officer proceeded with the enquiry as per the norms, and more so, after giving due opportunity to the petitioner, who, in fact, squandered that opportunity by abruptly walking out of the enquiry proceedings. Thus understood, the petitioner cannot be heard to complain about the fairness of the enquiry and more so, any irregularity therein, which, however, does not vitiate the entire enquiry.

58. Even the grievance of the petitioner that she did not get fair opportunity at the enquiry and the Enquiry Officer hastily proceeded with the enquiry ex parte against her does not commend to us. The petitioner has referred to several circumstances to persuade us to take the view that the totality thereof would leave no manner of doubt that the entire action against the petitioner was

replete with bias and was colourable exercise of power. As has been noticed earlier, grievance of the petitioner about bias was against specific officers. However, during the relevant period between 2002 and 2004, the petitioner worked under three different set of superior officers, and it is not the case of the petitioner that even those superior officers or any one of them was biased against her. Assuming that the petitioner was entitled to pursue her plea of bias against her superior, the said officer has not been named as a respondent in the present petition.

59. The fact that, soon after the impugned removal order was passed by the Competent Authority against the petitioner, the Estate Officer proceeded in the matter also cannot be the basis to assume that the charge as framed and established against the petitioner is untenable. The opinion of the Enquiry Officer having found favour with the Competent Authority as well as the Appellate Authority, it is not possible to lightly brush aside the said finding on the basis of conjectures and surmises. As has been noted earlier, we are inclined to hold that the Enquiry Officer gave sufficient opportunity to the petitioner to defend herself. It is the petitioner who failed to avail of that opportunity. She did not appoint some other person of her choice as her defence assistant. She did not cross-examine the prosecution witnesses, as also failed to produce her own evidence to substantiate her defence. Instead, she chose to abruptly walk out of the enquiry proceedings. Accordingly, the grievance of the petitioner that there has been unfair enquiry against her or that the enquiry was vitiated because it proceeded ex parte against her is devoid of merits.

60. That takes us to the next argument of the petitioner that the General Manager, who passed the impugned removal order against her, was not competent in that behalf. Further, the appeal preferred by the petitioner was heard by the Chairman, who was also incompetent to hear the same. It is noticed that the petitioner was appointed to the post of Assistant Administrative Officer. When the charges were framed against the petitioner, she was working as Assistant Manager, MCDO-IV, during the relevant period. Considering that fact, we fail to understand as to how the General Manager was not competent to pass the removal order against her. As the impugned removal order has been rightly passed by the General Manager, the Chairman, being the superior authority, would obviously be the Appellate Authority. In our opinion, therefore, there is no substance in the grievance that the impugned removal order has been passed by officer, who was not competent to pass the same, or, for that matter, the Chairman of the Company was not competent to decide the appeal preferred by the petitioner against the decision of the General Manager and Competent Authority.

61. The last submission canvassed at the instance of the petitioner is that the decision of the Appellate Authority, in any case, is vitiated, as the appeal came to be decided against the petitioner without affording opportunity of hearing before the Appellate Authority. As per the extant Regulations, the same do not provide

for oral hearing before the Appellate Authority. The validity of that Rule is not under challenge. Accordingly, the Appellate Authority cannot be faulted for not affording oral hearing to the petitioner before deciding the appeal. Even if we were to accept the argument that oral hearing should have been given to the petitioner by the Appellate Authority, since the petitioner has approached this Court and has urged all questions on merits and invited decision thereon, the said irregularity committed by the Appellate Authority cannot take the matter any further for the petitioner.

62. That takes us to the last aspect, on the quantum of punishment. Once it is held that the charges as framed against the petitioner have been duly established, it would necessarily follow that the petitioner was guilty of a serious misconduct. The penalty for such serious misconduct, as provided in the extant Regulations, is of removal from the services of the respondent Company. The Competent Authority has precisely imposed that penalty against the petitioner, i.e., removal from the services of the Company, which shall not be disqualification for future employment. Considering the seriousness of the charges proved against the petitioner, we do not think that the said punishment is excessive. It is well-established position that the Court cannot sit in appeal over the decision of the Authority competent to impose punishment. The Apex Court in the case of *State of Punjab v. Jit Singh* reported in (2009) 16 SCC 351 has held that in an inquiry with regard to charge of unauthorised absence from duty is established in the departmental proceedings, the punishment to be inflicted lies with the Disciplinary Authority. The Court cannot substitute its own opinion to the punishment so imposed, unless, it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court. (Also see *V. Ramana Vs. A.P.S.R.T.C. and Others*,

63. It was then suggested by the petitioner that, even before the said enquiry proceedings, the petitioner, as in the case of her husband, had shown willingness to resign and leave the Company. That offer was reiterated by the petitioner, provided the impugned order of removal was to be set aside. That arrangement could be worked out only if the respondent-Company was willing to accept the said offer. We had put that suggestion to the counsel for the respondent-Company, who, on instructions, stated that, in the fact situation of the present case, it was not possible to accede to the request of the petitioner, and the respondents would invite decision of the Court on merits. As aforesaid, the penalty imposed, in the fact situation of the present case, cannot be said to be excessive. Accordingly, no interference with the penalty imposed by the Competent Authority, and as confirmed by the Appellate Authority, is warranted.

64. Considering the above, it is unnecessary for us to burden this Judgment with the alternative argument of the respondents that even if the inquiry against the petitioner was defective, the petitioner would not automatically succeed in getting relief of reinstatement. In such a case, the Court, at best, may make an order that the inquiry to proceed from the stage found to be defective. In

support of this submission, the respondents had relied upon the decision of the Apex Court in *State of Punjab and Others Vs. Dr Harbhajan Singh Greasy*, ; *U.P. State Textile Corporation Ltd. Vs. P.C. Chaturvedi and Others*, . For the same reason, it is not necessary to burden this Judgment with the question whether the petitioner has pleaded and proved that she was in fact unemployed during the relevant period for succeeding in the relief of back wages. The respondents rely on decision of the Apex Court in the case of *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, reported in (2005) 2 SCC 363 to buttress this submission. Reliance is also placed on the decision in the case of *Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others*, wherein, it is held that an order of reinstatement is not a must even if termination is held illegal.

65. That takes us to the grievance of the petitioner that she, along with her family members, has been dispossessed from the service quarters in a high-handed manner, for which, she should be compensated by way of damages. Having gone through the pleadings on record, we do not intend to traverse this ground in detail. Considering the fact that the petitioner was evicted from the service quarters only after the Appropriate Authority affirmed the penalty of removal from services after following the necessary procedure, it is not possible to find fault with the action of dispossession. It is noticed, the petitioner resorted to proceedings before the City Civil Court against the action of dispossession. As the dispossession was resorted to by following procedure established by law, the petitioner cannot be heard to complain about prejudice caused to her because of dispossession so as to claim damages and compensation from the Company for such dispossession. Accordingly, even this relief does not commend to us.

66. While parting, we place on record our appreciation for the petitioner - who appeared as party in-person -for having conducted the matter in a dignified manner and more or less adhering to the time schedule indicated by her and concluding her oral arguments within a reasonable time supported by written submissions.

67. Accordingly, this petition fails. The same is dismissed with no order as to costs. Rule is discharged.