(2011) 06 GAU CK 0067

In the Gauhati High Court

Case No : Writ Petition (C) No. 6420 of 2007

Amalendu Dev Assistant Manager E/M Drilling Division NEEPCO Ltd. — APPELLANT

Vs

NEEPCO Ltd. — RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:
Constitution of India, 1950 — Article 226
North Eastern Electric Power Corporation Limited Conduct, Discipline and Appeal Rules — Rule 27, 28, 37, 4, 5(5)

Citation : (2011) 4 GLT 564

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : J. Deka, for the Appellant; K.P. Sharma and H. Das, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The Petitioner who has been imposed with major penalty of reduction to a lower post pursuant to a departmental proceeding, has filed this writ petition challenging the enquiry proceeding including the order of penalty and the order by which his appeal was rejected.

2. The Petitioner while was serving as Deputy Manager (E/M) under the Respondents was served with charge sheet No. NEEPCO/PRES/10937 dated 25.07.2003 for alleged failure to maintain absolute integrity and devotion to duty and in acting in a manger prejudicial to the interest of NEEPCO Ltd. in the matter of awarding a contract for repairing work of 40 MT Coles crane (registration No. ASN 8376) and thereby contravening provisions of Rule 4 and 5(5) of NEEPCO Conduct, Discipline and Appeal Rules.

3. As many as 9 (nine) Articles of Charges were framed against the Petitioner which are reduced below:

(i) He initiated the note UO/WS/95-96 AN 3/21 dated 12.06.95 highlighting discussion held with the Chief Engineer alongwith the SE (E) HGC and EE/CWD and himself on 07.06.95 regarding the problem of the steering column assembly and the PTO for the Hydroalic system of the jack without any formal report from the crane operator or any one else.

(ii) The material requisition note WSD/94-95/W 12/192 dated 22.06.1995 was signed by him and Shri Mukul Buragohain JE, listing out the details of the spares required for the repair without conducting any inspection.

(iii) He falsely certified all the bills of the firm submitted by Shri Monoj Kumar Durgar Without ensuring the submission of the genuine repair certificate of the PTO from in UK and the invoice as documentary proof of source of procurement of the spares instead he processed the bills submitted by Monoj kumar Dugaor on the basis of a certified photo copy of fake cash memos. The certification of the cash memos are also appended by Monoj Kumar Dugar himself who was an interested person.

(iv) He falsely citified the supply of spares shown forwarded vide challan dated 15.09.95, 13.09.95 and 26.09.95 of the contractor when the same were actually not supplied.

(v) In utter disregard to the letter sent by Shri Hanuman Mall Ghiya the real prop. Of M/s. Oswal garage intimating not to issue any work order to the firm vide regd. A/D letter No. 1690 & 1691 a copy of which was endorsed to the SDO. Shri Amalendu Deb did not take any action but the work was awarded to M/s. Oswal garage falsely represented by Monoj Kumar Durgar, who was not competent to repair the crane.

(vi) He also processed and passed for payment an unsigned bill No. OG/1540/95-96 dated 16.09.95 submitted by Monoj Kumar Dugar.

(vii) He dealt and processed the bill No. OG/1543/95 dated 28.09.95 for Rs. 224156.70 without any enclosures, i.e. documentary proof of source of procurement of spares.

(viii) At Clause 4 of the work order dated 14.09.95 a copy of which was endorsed to him and in his possession as well as at Clause (i) of the minutes of meeting dated 04.09.95 the contractor was required to submit a repair certificate of the PTO assembly. But when a warranty card of M/s. Dydrolic renovation centre, USA, was forwarded by the Executive Engineer CWD alongwith the bill dated 13.10.95 for verification vide letter no CWD0A-4/95-96/3405 dated 17.10.95 he did not raise any objection the warranty card is of USA origin not UK but falsely passed the bill for payment.

(ix) In spite of giving comments to the effect as per ANNEXURE-I the firm has carried out only opening of the prime over chamber and replacing the gasket and mobil and refitting the same vide his letter No. WSD/95-95/A-18/614 dated 04.01.96 but the unattended work not got done form the contactor but he falsely certified on the bill No. OG/1838/96 dated 12.12.95 that the work has been carried out as per specification/order. Thereby the bill of contract was processed and passed and illegal payment was made.

(x) He entered a false date of commencement and date of completion of the repair as in the MB No. 777 pg 184 to favour Shri Monoj Kumar Dugar.

4. In response to the charge sheet, the Petitioner by his reply dated 19.08.2003 denied the charges. Since the enquiry officer held that only the charge Nos. 3, 6, 8 and 10(partially) to have been proved, the defence of the Petitioner in his reply to his charge sheet in respect of those charges are quoted below:

3) That, with regards to articles of charges at Annexure-A paragraph (iii), I beg to state that no false certificate has been initiated, the contractor has sent the PTO Assembly through M/s. Locus India Limited to M/s. Hydraulic Renovation Centre, Lausiana. On receive back the said assembly it was detected and the repair was done at USA, not in UK. The matter was however, discussed with the competent authority and as agreed for fitment based on time constrained and guarantee obtained. Regarding genuinely of the certificate it is to state that the said farm has already executed works at our project site against this order of the project head, which was duly approved and recommended by the head of the Department. If at all, the firm has manipulated the certificate it is not within my knowledge.

6) That, with regards to articles of charges at Annexure-A Paragraph (vi), I beg to state that regarding the Unsigned Bill No. OG/1540/95-96 dated 16.09.95 processed by the all connected official and finally payment also made by the finance wing KHEP. The Unsigned Bill however evaded the watchful eyes rights from Superintendent of Taxes to finance wing of KHEP. Moreover, the corporation was not forced to loose in spite of the payment of the Bill, which was within the ordered value. Therefore, the mater is extremely regretted.

8) That, with regard to articles of charges at Annexure-A paragraph (viii), I beg to state that the warranty card as forwarded by the Division Officer was taken as repair certificate since the contractor got the work done through M/s. Hydraulic Renovation Centre, regarding the repair in USA, the matter was discussed with the competent authority and as agreed the assembly was allowed to install keeping in view the guarantees obtained from the contractor, to avoid delay in re-commissiong the crane as per schedule. As such passing of false bill for payment does not arise.

10) That, with regards to articles of chares at Annexure-A Paragraph (x), I beg to stated that the date of commencement was recorded to be 15.09.1995 is in order, which completion date should have been 08.11.1995 instead of 08.10.95 which is regretted final filed testing was conducted in presence of all connected officials and the crane operator did not complaint/ reported. On being pressed to the Department Service the crane was functioning in order. During the course of repairing bout SE, HGC/CE, KHEP visited the site, frequently besides E.E./CWD to

pursue the works. Therefore, to my best knowledge, I had not committed any mistake during the course of the works.

5. On conclusion of the enquiry, the enquiry officer submitted his report dated 31.08.2005 holding the charge Nos. 3, 6, 8 and 10(partially) to have been proved. When the Petitioner was furnished with the copy of the enquiry report, he made a representation dated 30.06.2006 against the said report. In the representation, the Petitioner pointed out the purported infirmities in the findings of the enquiry officer relating to the charges held to have been established. Accordingly he prayed for his complete exoneration from the charges.

6. The disciplinary authority by its order dated 01.02.07 imposed on the Petitioner the major penalty of reduction to a lower post. By virtue of such penalty the Petitioner stood reverted from the post of Deputy Manager (E/M) to that of Assistant Manager (E/M) in E-3 Grade. For a ready reference the order penalty is reproduced below:

Whereas, Shri Amalendu Deb, Deputy Manger (E/M), Drilling Division, NEEPCO Ltd. Lanka (earlier posted at DHEP, NEEPCO Ltd.) was charge sheeted vide No. NEEPCO/PERS/10937, dated 25.07.2003 and whereas, Shri Amalendu Deb, Deputy Manager (E/M), Drilling Division, NEEPCO Ltd. Lanka, had submitted a written reply to the charge-sheet vide his letter dated 19.08.2003, denying all the chares, the undersigned being the Competent Disciplinary Authority, did not agree with his explanation and decided to order for inquiry. Accordingly, Shri I.P. Barooah, the then GM (P & A), NEEPCO/PERS/21/32/28166-74 dated 24.12.2003. And whereas the Inquiry Officer had submitted the Inquiry Report dated 31.08.2005, containing 21 (twenty one) pages, I had examined the report and accepted the same.

As such, Shri Amlendu Deb, Deputy Manager (E/M), Drilling Division, NEEPCO Ltd. Lanka was served a show cause notice vide memo No. PERS/21/7361-67 dated 14.06.2006 directing him to explain in writing within 15 (fifteen) days from the date of receipt of the show cause notice as to why penalty proposed in the show cause should not be imposed on him.

Shri Amalendu Deb, Deputy Manager (E/M), Drilling Division, NEEPCO Ltd. Lanka, vide his letter dated 30.06.2006 had submitted his written explanation. I have gone through his written explanation which was not found to be satisfactory.

Accordingly, I, the undersigned, as Disciplinary Authority, under powers vested in NEEPCO Conduct Discipline and Appeal Rules do hereby orders the imposition of major penalty of "reduction to a lower post", i.e. reduction to the post of Asstt. Manager (E/M) in E-3 grade with immediate effect upon Shri Amalendu Deb, Deputy Manager (E/M), Drilling Division, NEEPCO Ltd., Lanka under Rule 27(e) of the NEEPCO Conduct Discipline & Appeal Rules.

7. Being aggrieved by the said order of penalty imposed on him, the Petitioner preferred a departmental appeal dated 09.02.2007 to the appellate authority. In

the appeal, he urged various grounds and also referred to the evidence on record so as to contend that it was wrong on the part of the enquiry officer to hold the charges against the Petitioner to have been established and also that the order of the disciplinary authority imposing the major penalty was uncalled for. In respect of the said appeal, the Petitioner was communicated with the decision of the appellate order by letter dated 14.09.07. The letter reads as follows:

To,

Shri Amalendu Deb, Asstt. Manager (E/M) Drilling Division, NEEPCO Ltd. Lanka

Sub: Appeal under Rule 37 of NEEPCO''s Conduct, Discipline and Appeal Rules.

Ref: Your letter dated 09.02.2007.

Sir,

With reference to your letter on the subject cited above, I am directed to inform you that the Appellate Authority had examined your appeal considering the gravity of the misconduct and application of mind did not agree to your request to set aside the office order No. 2865 dated 01.02.2007.

Thanking you,

Yours faithfully, Sd/- Dy. General Manager (P and A) IR

8. Being aggrieved by the enquiry report which was followed by the order of penalty and rejection of appeal, the Petitioner has filed the instant writ petition. According to the Petitioner, the findings recorded in the enquiry officer is totally perverse being not based on evidence. Another ground urged is that the particular decision through discussion of the matter at different levels being a collective one with the approval of the higher authorities, the Petitioner alone could not have been picked up for imposing the major penalty. In this connection, the petition has brought on record the charges against the other officers who were also involved in the transaction to show that most of them have either have exonerated of the charges or have been imposed with minor penalty of censure and stoppage of one increment.

9. In the above context, the Petitioner has made the following statement in paragraph 17 of the writ petition.

17. 10 employees were charge-sheeted in this matter for signing the bills along with the Petitioner and paying the bills. Two employees were let off by shopping only one increment, another two employees were censured and 5 were exonerated. The Petitioner was singled out for the major penalty of demotion without any justified ground. The order suffers from rank discrimination and arbitrariness.

10. In the counter affidavits filed by the Respondents, the contentions raised in the writ petition as well as in the rejoinder affidavit have been denied. According to the Respondents, the enquiry was conducted in a fair and transparent manner

in which the Petitioner was found guilty of the charges aforementioned out of 10 charges and considering the gravity of the misconduct, he had been imposed with the penalty of reduction to a lower post.

11. I have heard Mr. J. Deka, learned Counsel for the Petitioner as well as Mr. K.P. Sharma, learned Sr. counsel assisted by Mr. H. Das, learned Counsel appearing for the Respondents. I have also considered the entire materials on record including the departmental enquiry file.

12. Mr. Deka, learned Counsel for the Petitioner in his elaborate argument has referred to the evidence on record so as to contend that the said evidence would go to suggest that the Petitioner is not guilty of the charges. Referring to the findings recorded by the enquiry officer he also suggested that the said findings being not based on evidence are perverse and consequently not sustainable in law. He also submitted that it being a case of victimization of the Petitioner making him scapegoat leaving aside the superior officers who were also involved in the collective decision, the order of penalty is liable to be interfered with. Another submission made by Mr. Deka is that both the impugned orders, i.e. the orders of penalty and rejection of appeal, being non-speaking, they are liable to be set aside. Further submission made by Mr. Deka is that as per Rule 28 of the Conduct, Discipline and Appeal Rules applicable to the employees of the Respondents, a major penalty can be imposed only by the appointing authority, but in the instant case the said penalty having been imposed on the Petitioner by the disciplinary authority, same is liable to be interfered with.

13. During the course of hearing, Mr. Deka, learned Counsel for the Petitioner, to buttress his argument, placed reliance on the following decisions:

1) Union of India (UOI) Vs. H.C. Goel,

2) Kuldeep Singh Vs. The Commissioner of Police and Others,

3) Roop Singh Negi Vs. Punjab National Bank and Others,

4) Bhagwati Prasad Dubey Vs. Food Corporation of India and Another,

5) Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others,

6) Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others,

7) Dimbeswar Saikia Vs. Union of India (UOI) and Others,

8) Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra Sarmah,

9) Girish Ch. Sarmah Vs. Bongaigaon Refinery and Petrochemicals Ltd. and Others,

14. The aforesaid decisions have been referred to by the learned Counsel for the Petitioner so as to emphasize on the points of his argument that the High Court exercising its power of judicial review under Article 226 of the Constitution of

India can enquire as to whether the order passed in departmental proceeding is based on any evidence; the departmental enquiry being a quashi-judicial proceeding, the enquiry officer must discuss the evidence on record; the requisite evidence must link the charged officer with the alleged misconduct, otherwise it would be a case of no evidence in law; in case of collective decision only one man cannot be picked up for differential treatment; duty to give reasons by the authority involved in disciplinary proceeding etc.

15. Countering the above argument, Mr. K. P. Sharma, learned Counsel for the Respondents in his argument submitted that the arguments advanced by the learned Counsel for the Petitioner being not founded on the averments made in the writ petition, same is liable to be ignored. He submitted that the enquiry proceeding having revealed that there is at least some evidence to establish the charges against the Petitioner, same is sufficient to hold the charges to have been established. According to him irrespective of any collective decision by the officers involved and the penalty imposed on other officers, the Petitioner cannot absolve himself of the misconduct based on the charges established against him. In support of his argument he has also placed reliance on the following decisions:

1) Bank of India and Another Vs. Degala Suryanarayana,

2) (1999) 2 SCC 394 Commissioner & Secty. to the Govt. and Ors. v. C. Shanmugam

3) High Court of Judicature at Bombay through ite Registrar Vs. Udaysingh Nimbalkar and Others,

4) Balbir Chand Vs. Food Corporation of India Ltd. and others,

5) Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari,

6) State of Bihar and Others Vs. Kripalu Shankar and Others,

16. The aforesaid decisions have been pressed into service so as to contend that the writ court exercising its power of judicial review under Article 226 of the Constitution of India cannot reappreicate the evidence like an appellate authority and that if there is some evidence to sustain the charges, same will be sufficient to hold the charged officer to be guilty of the charges.

17. The decision in Udai Sing (supra) has been pressed into service to remind the Court about the standard of proof required in a departmental enquiry unlike in a criminal trial. Similarly the decision in Dwarka Prasad Tiwari (supra) has been relied upon to emphasize the scope of the Court in interfering with the penalty imposed on the ground of being disproportionate. The decision in Kripalu Shankar (supra) has been referred to, to argue that although the Petitioner has obtained the documents relating to a departmental enquiry initiated against other officers towards raising the plea of discrimination, the said documents being official documents, the Petitioner could not have placed reliance on the same. Basically this decision has been relied upon so as to contend that the

notings made by the Govt. officers in files cannot be relied upon, being privileged documents.

18. Finally the decision in Balbir Chand (supra) has been referred to, to counter the argument that in a collective decision the Petitioner could not have been made scapegoat. In the said decision, the Apex Court dealing with the question of parity in awarding penalty held that if a lesser penalty is imposed wrongly to one officer, same by itself will not entitle another officer guilty of proved misconduct to claim lesser punishment instead of a major one. However, it was observed that the matter can be examined by the higher departmental authority.

19. I have considered the rival submissions made by the learned Counsel for the parties and have given my anxious consideration to the same. I have also gone through the entire evidence on record based on which my findings and conclusions are as follows:

20. To appreciate the arguments advanced that it is a case of no evidence and/or incorrect/ inappropriate appreciation of evidence, same will have to be appreciated in reference to the findings recorded by the enquiry officer vis a vis the evidence on record. The stand of the Petitioner in his reply to the charge sheet has been noted above. The enquiry officer in his findings recorded that only the charge Nos. 3, 6, 8 and 10 (partially) stood proved against the Petitioner. While arriving at the said findings, the enquiry officer in his report under the head Analysis of Witnesses discussed the same charge wise. As out of 10 charges, only the aforesaid 4 (four) charges have been held to be established, the findings recorded in respect of the said charges are only taken note of and the same are reproduced below:

15.7 As regards article of charge (iii) is concerned that he falsely certified all the bills of the firm submitted by Shri Manoj Kumar Dugar without ensuring the submission of the genuine repair certificate of the PTO from a firm in U.K. and the invoice as documentary proof of source of procurement of the spares. Instead he processed the bills submitted by Shri Manoj Kumar Dugar on the basis of a certified photocopy of fake Cash memos. The certification on the Cash memos were also appended by Shri Manoj Kumar Dugar himself who was an interested person. The Prosecution states that article of charge (iii) framed against Shri Deb is sustainable as per PW-3.21 and PEX-56, PEX-136 to 139. The defence states that on getting back the PTO assembly duly repaired by the contractor from M/S Hydraulic Renovation Centre, the matter was reported and discussed with CE(E) KHEP alongwith EE, CWD informing that the contractor has repaired the assembly at USA instead of UK as per the original certificate submitted by the contractor. The CE(E) while agreeing allowed verbally to fit the assembly for obtaining substantial guarantee and would also delay the repairing work of the crane leading to failure to achieve the target to execute the P.H. erection works, thereby loosing substantial revenue. As may be seen from the statement of PW-3 that it required documentary are not provided finance take up the matter with the technical wings for submitting the required documents, prior to release payment. As per record no such media found to have refund by clearing separate bills nor such similar was procured at this end, against certified photocopies as stated more certification of cash memos were appeared by the contractor at the time of submitting the bills for payment.

Under the above circumstances, the charges brought under article of charges III are not tenable.

From analysis of above documents it appears that as per MOM dated 04.09.95 between NEEPCO and M/S Oswal Garage represented by one Shir M.K. Dugar vide Clause (i) that repair work shall be carried out through reputed firm in UK since the repair facilities are not available in the country. However, Shri M.K. Dugar submitted a Warranty card purportedly issued by M/S Hydraulic Renovation, USA which was also found to be faked and ungenuine subsequently by CBI. As such the charge of certifying all bills without ensuring the submission of genuine repair certificate of PTO assembly from a firm in U.K. stands proved against Shri Deb.

15.10 The article of charge (vi) of processing and passing for payment an unsigned bill No. OG/1540/95-96 dated 16.09.95 submitted by Shri M.K. Dugar is concerned, the prosecution states that article of charge (vi) framed against Shri A. Deb is sustainable as stated by PW-21 and PEX-39. The defence states that while processing the bill, the tax payable found to have been certified by tax authority without the claimant signature. The said bill was also corrected EE, CWD who also overlooked the case which was a human error by all concern which was not intentionally.

From analysis of above it has been proved that the charged officer processed an unsigned bill No. oG/1540/95-96 dated 16.09.95.

15.12 As regards article of charge (viii) is concerned and at Clause (iv) of the Work order dated 14.09.95a copy of which was endorsed to him and in his possession as well as at Clause 1 of the Minutes of meeting dated 04.09.95 the Contractor was required to submit a repair certificate of the PTO assembly. But when a Warranty Card of M/S Hydraulic Renovation Centre, USA was forwarded by the Executive Engineer, CWD alongwith the bill dated 13.10.95 for verification vide letter No. CWD/A-4/95-96/3405 dated 17.10.95, he did not raise any objection that the Warranty Card is of USA origin not UK, but falsely passed the bill for payment. The prosecution states that the article of charge (viii) framed against Shri Deb is difficult to sustain as per the statement obtained from PW-3, 21 and PEX-25 to 27, 28 to 33 and 136 to 139. The defence states that the matter of accepting had the verbal consent of CE(E) KHEP.

From the analysis of above evidences it appears that charge (viii) has also similarity with the charge (iii) which has been proved that as per Clause (iv) of work order dated 14.09.95 where there was a condition that repair work shall be carried out through reputed firm in UK and also agreed that copy of invoice against purchase of spares of PTO shall be submitted to NEEPCO, but on contrary to this, the contractor submitted a warranty card of M/S. Hydraulic Renovation Centre, USA. As such the charge of not raising any objection that the warranty card was of USA origin and not UK stands proved.

15.14 In respect of article of charge (x) that he entered a false date of commencement and date of completion of the repair as in MB No. 777 page 184 to favour Shri M.K. Dugar is concerned, the prosecution states that the particle of charge (x) framed against Shri Deb is sustainable as per the statement given by PW-4, 21 and PEX-44, 67 to 71. The defence states that the PTO assembly was dismantled by workshop on 14.09.95 in present of DW and both the challans (i.e. challan & materials gate pass) were prepared on 14.09.95. But was allowed to take out only after routing the gate pass thorugh Manager Security KHEP on 15.09.95 and from 15.09.05 the contractor started the mobilization of his resources.

The date of completion should have been 08.11.95 instead of 08.10.95 as recorded due to oversight and pressure of works, which was already being regretted in my reply dated 19.08.03 as such may please be treated as human error.

The PO has mentioned in conclusion that article No. VIII of the article of charges is mentionable but the P.O. has specifically mentioned in his report charge VIII it is difficult to sustainable.

This is an error apparent the phase of the record.

The conclusion in respect of charges III, VI & X are not based on abident of record.

From analysis of above it reveals that a discussion was held between the representatives of NEEPCO and M/S Oswal Garage on 04.09.95 and work order was issued on 14.09.95. As per MB No. 777 date of commencement has been shown as 15.09.95 and date of completion has been shown as 08.10.95. In between the dates, there is a entry as "Date of final testing- 11.12.95". It appears that final testing has been done more than two months of date of completion. As per normal rules, the date of completion should be after the date of final testing as such there appears to be some anomalous situation as far as recording of various dates on the MB by technical engineers, so much so that as per agreement dated 27.09.95 between NEEPCO and the Contractor, vide Clause (f), time of completion was 30 days from the date of receipt of the work order. the work order dated 14.09.95 was received by the contractor presumably on the same date i.e. on 14.09.95 and work should have been completed by 14.10.95. Though in MB, it was recorded to have completed on 08.10.95, for all technical purposes, the work have had deemed to have completed after final testing i.e. on 11.12.95 and there is no record of grating of extension of time by the Competent authority. The article of charge x in respect of Shri Deb is partly proved.

21. Before dealing with the aforesaid findings recorded by the enquiry officer it

will be pertinent to mention here that under para 15.12 referred to above, the disciplinary authority itself submitted before the enquiry officer that the article of charge No. (viii) framed against the Petitioner was difficult to be sustained as per the evidence adduced by the PW 3 and PW 21 and the Exbt. PEX 25 to 27; 33 to 136 and to139. In spite of such stand on behalf of the disciplinary authority the enquiry officer in his report held the charge to have been established.

22. If the aforesaid findings recorded by the enquiry officer is scrutinized, what is found is that the enquiry officer after briefly recording each one of the charges and the plea of the prosecution and defence, simply recorded the findings that the same has been established. In the process no analysis has been made in respect of the evidence.

23. So far as the Article of Charge No. 3 is concerned, PW 3 Shri P.K. Agarwala, AAO, NEEPCO Ltd. categorically stated that the documents submitted in the form of cash memo are acceptable. He further stated that there was discussion with the Finance Department to release the payment to the party based on cash memo submitted. He also stated that he had seen cash memo in original. Unfortunately, the enquiry officer in his report has not referred to this witness adduced by none other than the witnesses examined by the disciplinary authority.

24. Similarly as regards the Article of Charge No. (vi), it is in the evidence that the particular bill dated 16.09.95 which was unsigned was processed by series of authorities beginning from Superintendent of Taxes to the Finance wing of the Respondent Corporation and final payment was also made by the Finance wing. The absence of the signature of the contractor on the bill escaped notice of all the authorities including the Finance wing of the Corporation which had made the payment. It was a human error, but the enquiry officer picked up the Petitioner alone to hold that he was guilty of the said charge.

25. As regards to Article of Charge No. (viii), the enquiry officer irrespective of the aforesaid stand of the disciplinary authority that on the basis of the evidence on record, same was not established, abruptly came to the conclusion that same stood established against the Petitioner.

26. Going to the Charge No. (x), the enquiry officer completely ignored to notice the defence statement of the Petitioner to the effect that the PTO Assembly was dismantled on 14.09.95 in the presence of DW and the challans, namely the challan and material gate pass, were prepared on 14.09.95. The challan and material gate pass were allowed to be taken out after routine check up by the Manager, security on 15.09.95 and from 15.09.95 the contractor started mobilization of his resources. Thus, from the evidence on record it is established that the said charge was not proved against the Petitioner, yet the enquiry officer held the same to have been established partially. However, while doing so it was not indicated as to which element of the charge was established leaving aside the other elements.

27. It is in the aforesaid context of analysis of the evidence, the learned Counsel

for the Petitioner placed reliance on the decisions referred to above so as to contend that the evidence on record did not establish the charges against the Petitioner and that it is a case of no evidence at all. It was also contended that the enquiry officer after referring to the respective pleas of the disciplinary authority and the defence could not have arrived at an abrupt conclusion so as to hold the Petitioner guilty of the charges without discussing the evidence on record. In the enquiry report itself the enquiry officer has referred to witnesses examined numbering 21 and documents examined numbering 107. He also noticed the additional witnesses and the documents, but most of the same having not been discussed in the enquiry report, it is not discernible as to on what basis the aforesaid charges had been held to have been established against the Petitioner.

28. On a bare perusal of the findings recorded by the enquiry officer in respect of the charges which have been held to be established against the Petitioner, it will be seen that the findings of the enquiry officer are perverse and not based on evidence on record. The enquiry officer did not consider and/or discussed the defence evidence (DW 1).

29. He also did not appreciate the other evidence including the evidence of PW 3. It is for this reason the Petitioner has pleaded that had the enquiry officer taken note of the said evidence, the charges against the Petitioner could not have been held to be established.

30. As regards the Charge No. (iii), the Petitioner at the relevant point of time was posted at Sub-Divisional Office, E/M Workshop Sub-Division. In that capacity he was not responsible for inspection and verification of spares supplied by the contractor. As per the clause-4 of the work order dated 14.09.1995, spares were to be used after inspection and approval by the Executive Engineer or the Superintending Engineer. In this connection, clause-4 of the work order is quoted below:

4. Inspection of spares: All the spears to be supplied for repair of crane shall be of the genuine quality and reputed make. The spare shall be used after inspection and approval of the E.E., CWD or by the undersigned....

31. It will be pertinent to mention here that the work order was issued by the Superintending Engineer and the contract agreement dated 27.09.95 (PEX-34) was also signed by him. PW 21, i.e. the Inspector of CBI, in his evidence deposed that the spares those were to be supplied were required to be inspected and approved by the Executive Engineer or by the Superintending Engineer.

32. As noted above, the enquiry officer in his report totally ignored the evidence adduced by the DW 1 who in his deposition stated that the EE and JE had verified the materials in presence of SDO and JE and Foreman (Mech.). The said witness also stated that the PTO assembly was fitted into Crane after repair outside and was functioning properly. He had also deposed that the Chief Engineer, Superintending Engineer and the Executive Engineer used to visit the site often

during repairing and they were satisfied with the repairing job and at no point of time any complaint was made. It will be pertinent to mention here that there was no cross examination of the DW 1 in respect of the said assertion made in his deposition.

33. As per Clause 13 of the work order dated 14.09.95, supervision of the said work was entrusted to E.E. For a ready reference, Clause 13 is reproduced below:

13. Supervision of work: All the spars shall be delivered to the E.E., CWD or any of his authorized representative. The repair work shall be executed under the supervision of the E.E., CWD or his authorized representative.

34. PW 3 in his cross examination admitted that during the relevant period when the bill of the contractor was passed there was no specific practice/convention or any specific circular from the authority relating to the process to be initiated towards passing the same. This witness had also stated that there was no reason to believe that documents submitted by the contractor were not as per the requirement of the work order.

35. Clause 14 of the work order spoke of paying authority. The paying authority was the Section Accounts Officer. There is absolutely no evidence on record, oral or documentary, to show that the Petitioner was responsible in processing the bill in question.

36. Coupled with the above, when the matter is considered in the perspective of a team work with involvement of many higher authorities, it is seen that none of the said authorities including the other authority who were also taken up for departmental proceeding relating to the same incident, has been imposed with any major penalty. In this connection, the Petitioner has made the following statement in paragraph 17 of the writ petition followed by the statement made in paragraph 32 of the rejoinder affidavit which are reproduced below:

17. 10 employees were charge-sheeted in this matter for signing the bills along with the Petitioner and paying the bills. Two employees were let off by shopping only one increment, another two employees were censured and 5 were exonerated. The Petitioner was singled out for the major penalty of demotion without any justified ground. The order suffers from rank discrimination and arbitrariness.

32. That, the Inquiry Reports of following employees were furnished to the Petitioner under the Right to Information Act, 2005, which are as under:

(i) Shri Parag Chandra Bhattacharjee, who was posted and functioning as Superintendent Engineer (E), HGC, KHEP, the Article of charges including statement of imputation against him was stand not proved and he was exonerated.

(ii) Shri Nehar Kanti Baruah, who was posted and functioning as Executive Engineer (E/M), Central Workshop Division, KHEP, the Article of Charges (iii), (viii), (ix) and (xi) were stand proved and imposed minor penalty of withholding one increment of pay.

(iii) Shri Mukut Buragohain, who was posted and functioning as Junior Engineer (E/M), Central Workshop Division, KHEP, the Article of Charge (iv) stands proved and imposed minor penalty of censure.

(iv) Shri Prabal Kumar Mukhopadhyay, who was posted and functioning as Accounts Officer, F & A Wing, KHEP, the Article of charges including statement of imputation against him was stand not proved and he was exonerated.

(v) Shri Pradip Bhattacharyya, who was posted and functioning as Sr. Accountant, F & A Wing, KHEP, the Article of Charges including statement of imputation against him was stand not proved and he was exonerated.

(vi) Shri Harapati Das, who was posted and functioning as Asstt. Accounts Officer, F & A Wing, KHEP, the Article of Charge (ii) was stand proved and Charge (vi) was stand partly proved and imposed minor penalty of withholding one increments of pay.

(vii) Shri Bidhan Chandra Dey, who was posted and functioning as Jr. Accountant, F & A Wing, KHEP, the Article of Charge (i) was stand proved and Charges (ii), (vi) and (vii) were stand partly proved and imposed minor penalty of censure.

Further, Shri Pitambar Das, the Chief Engineer, KHEP was also charge sheeted, but he was exonerated.

In view of the above, the major penalty imposed on the Petitioner is unreasonable, disproportionate and discriminatory and not sustainable in law.

37. The Petitioner has derived the aforesaid information through RTI Act, 2005. In response to the said categorical statement made by the Petitioner, the Respondents in their affidavit in opposition and additional affidavit dealing with the said statements have stated thus:

17. That the contention of the Petitioner in para 22 are not correct. The Charge No. (X) was partly proved although it was admitted that it was an unintentional mistake done due to oversight and pressure of works, hence the Charge No. (X) was not wrongly decided against the Petitioner.

26. That with reference to the statement made in paragaraph-32 of the affidavit in reply, it is categorically denied that the major penalty imposed on the Petitioner is unreasonable, disproportionate and discriminative and not sustainable in law as submitted.

38. The Petitioner has annexed the relevant documents pertaining to the proceedings initiated against each one of the officers named in the above quoted paragraph-32 of the rejoinder affidavit. The charges leveled against the said officers were relating to the same incident and their involvement in the transaction was more or less same like that of the Petitioner. In this connection,

the charges leveled against Shri Nehar Kanti Baruah, Executive Engineer (E/M) may be referred to:

i) Shri Nehar Kanti Baruah, EE, CWD without obtaining /receiving any formal report of the damage to the Crane from Operator of the Workshop shall decide with the other Officers of the Project to repair the Crane without any formal report and inspection.

ii) He along with Shri Mukut Buragohain, JE, WSD had vide Challan No. 3172 dated 14.09.95 jointly issued the PTO assembly of the Crane for repair. But the same was again fitted without any proper repair.

iii) He also intentionally did not insist on submission of genuine repair certificate of the PTO assembly. But accepted the photo copy of a fake and forged Warranty Card purportedly issued by M/S Hydraulic Renovation Centre, 3710, Diane Centre, Metaire, Lousiana, USA instead of a repair certificate from a firm in U.K. as stipulated and agreed in the MOM dated 04.09.95 and the Work order, in respect of repair of the PTO Assembly. He also did not verify/get verified the forwarding Challan of M/S Lucas Indian Services. H.O. Chennai (Madras) submitted along with the Bill dated 13.10.95 of M/S Oswal Garage which was fake and forged.

iv) He had falsely shown inoperation of all the spares purportedly supplied by Shri Manoj Kumar Dugar, which he did so by his note and signature in the respective challans of M/S Oswal Garage i.e. 15.09.95, 13.10.95 & 26.09.95. The spare parts were not actually supplied and not the product of Coles and not as per specification of the spares given in the Work Order.

v) He also failed to ensure submission of a genuine documentary proof of source of procurement of spares by the contractor but accepted fake and fabricated Cash Memo of M/S KIAT Marketing Ltd. submitted to him. On the basis of photo copies of the fake and fabricated Cash Memos submitted by Shri Manoj Kumar Dugar, he passed the bills of Shri Manoj Kumar Dugar of M/S Oswal Garage without any objection and without getting the same verified.

vi) He certified and passed the bill No. 04/1543/95 dated 28.09.95 for Rs. 2,24,156.70 of the Contractor which was not supported by any documentary proof of source of procurement.

vii) In utter disregard to the letter sent by Shri Hanuman Mal Ghiya, Prop. Of M/S Oswal Garage "not to issue any Work order to the firm" vide Regd. A/D letter No. 1690. Shri Baruah did not take any action but the work was awarded to Shri Manoj Kumar Dugar as Prop. Of Oswal Garage.

viii) He in order to favour the Contractor also certified and passed the unsigned bill submitted by Shri Manoj Kumar Dugar i.e. Bill No. OG/1540/95-96 dated 16.09.95 for which NEEPCO Ltd., suffered pecuniary loss.

ix) He authenticated/countersigned the false entries made in the Measurement book entered by his subordinate staff without verifying the date of commencement of the repair of the Crane which was shown as 15.09.95 and date of completion of the repair was also shown as 08.10.95.

x) Shri Amalendu Deb, SDO, WSD while submitting his verification report vide No. WSD/95-96/A-18/614 dated 04.01.96 on the labour bill No. OG/1838/96 dated 12.12.95 intimated that "the work has not been carried out as per specification in Annexure-I", yet Shri Nehar Kanti Baruah passed the bill for payment without getting the work done.

xi) He negligently authenticated the date of commencement of work and completion of the work in the MB bearing No. 777 which are false.

39. The enquiry officer in his report held Shri Nehar Kanti Baruah guilty of Charge Nos. (iii), (viii), (ix) and (xi). On a total reading of the Charges against Shri Baruah, it is absolutely clear that the charges leveled against him and the Petitioner were more or less same. It will also have to be borne in mind that Shri Baruah was a superior authority over the Petitioner. However, in his case the punishment imposed is minor penalty of withholding of one increment. Other officers named in paragraph -32 of the rejoinder affidavit either have been exonerated or have been imposed with minor penalty of censure or withholding of one increment only. Only exception is the Petitioner in whose case the disciplinary authority had chosen to impose major penalty of reduction to a lower post.

40. It is in the aforesaid context the learned Counsel for the Petitioner has placed reliance on the decision of the Division Bench of this Court in Girish Chandra Sarma (supra) affirmed by the Apex Court in BRPL (supra). As in the instant case, in the said case also the Petitioner was imposed with major penalty of reduction in rank in respect of the proceeding initiated against him involving collective decision. In the said case the plea taken was that the proceeding initiated against the Petitioner was based on surmises and presumption bereft of ground reality. Noticing the fact that the particular decision was a collective one and the Petitioner alone was picked up for each and every action leaving aside his colleagues and other superior authority, it was held that the charges framed against the Petitioner were misdirected inasmuch as the Appellant alone was not entrusted with the job.

41. The aforesaid decision of the Division Bench of this Court was carried on appeal before the Apex Court and the Apex Court dismissing the appeal and upholding the judgment of the Division Bench held that appreciation of the evidences by the Court was in order and the Petitioner was rightly held not guilty. The plea of perverse findings was accepted towards upholding the judgment of the Division Bench.

42. The aforesaid proposition of law laid down by the Division Bench of this Court affirmed by the Apex Court is squarely applicable to the facts and circumstances involved in this case. The disciplinary authority could not have held the Petitioner

alone guilty of the Charges to the extent of warranting imposition of major penalty by way of reverting him to a lower post.

43. The decision in Balbir Chand (supra) is not applicable to the fact situation involved in the instant case. In the said case dealing with the plea that some of the delinquents were let off with minor penalty when the Petitioner was imposed with a major penalty by removing from service, the Apex Court held that it was a mistake on the part of the disciplinary authority not to impose major penalty on the other officers. That was a case of a notorious contractor known to have committed on earlier occasions misappropriation in relation to Corporation property. The charges against the Petitioner were of very serious nature.

44. In the instant case, it was the collective decision. None of the charges is directly attributable to the Petitioner. Whatever the Petitioner had done was not on his independent decision and the matter was processed through the superior authorities including the Finance Wing of the Respondent Corporation. While other officers including the superior officers have been allowed to go scot-free although their involvement was much more compared to the position of the Petitioner, the disciplinary authority could not have imposed major penalty on the Petitioner, more particularly when it is a case of no evidence and perverse findings recorded by the enquiry officer.

45. Another aspect of the matter is that the Petitioner was appointed into the Corporation''s service by the authority higher than the disciplinary authority which has imposed the impugned order of penalty dated 01.02.2007. In this connection, the Petitioner has stated in paragraph-5 of the rejoinder affidavit that the Director (Tech), i.e. the Disciplinary authority, being not the appointing authority of the Petitioner, he was not competent to initiate disciplinary proceeding and pass the order imposing major penalty. In reply to the said statement, the Respondent Corporation in its additional affidavit has stated that although the Petitioner''s appointing authority was the Chairman and Managing Director, but the disciplinary authority of the Petitioner at the time of imposition of the penalty was the Director (Tech) and as such he was competent to issue the order of penalty.

46. One of the major penalty prescribed in the rules is the reduction to lower grade or post or to lower stage in a time scale. Rule 28 of the Conduct, Discipline and Appeal Rules applicable to the employees of the Corporation categorically states that no major penalty shall be imposed by the authority lower than the actual appointing authority. In the instant case the Petitioner was appointed by the Chairman and Managing Director of the Respondent Corporation and admittedly the disciplinary authority is under him. However, the said authority not only issued the charge sheet against the Petitioner, but also imposed the impugned order of penalty. The same being in conflict with the aforesaid Rules, is not sustainable in law.

47. The impugned orders passed by the disciplinary authority and the appellate

authority have been noted above. Both the orders on the fact of it, are non speaking. This is precisely the reason as to why the learned Counsel for the Respondent Corporation during the course of hearing fairly admitted that the appellate order is a non speaking one.

48. For all the aforesaid reasons, I find sufficient force in the submissions of the learned Counsel for the Petitioner and I am of the considered opinion that that the writ petition deserves to be allowed. Consequently, the impugned orders dated 01.02.2007 (Annexure-5) and 14.09.2007 (Annexure-7) are set aside and quashed. Consequently, the Petitioner shall be restored back to his former post he was holding before passing of the impugned order of reduction to lower post. However, considering the facts and circumstances, it is made clear that the Petitioner upon his restoration to his former post with all consequential benefits including the notional fixation of pay, will not be entitled to arrear salary as he was not holding the promotional post in the interregnum, but was holding the post to which he was reduced.

49. The writ petition is allowed to the extent indicated above leaving the parties to bear their own costs.

