

(2005) 12 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35230 of 1995

Bhupendra Kumar Misra

APPELLANT

Vs

Managing Director, U.P. Financial Corporation and Assistant
General Manager/Inquiry Officer U.P. Financial Corporation

RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 11

Uttar Pradesh Financial Corporation (Staff) Regulations, 1961 — Regulation 26

Citation : (2006) 5 AWC 4328

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : A.B.L. Gour, Arun Kumar, M.B. Singh and R.P. Singh, for the
Appellant; H.R. Mishra, Pradeep Kumar and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—Feeling aggrieved against the order dated 1.9.95 whereby the petitioner has been dismissed from service he has filed the above noted writ petition, with the allegation that he was a permanent Class IV employee in the establishment of the respondent No. 1 and 2 i.e. U.P. Financial Corporation, Kanpur. Since very inception of his services the petitioner was looking after the works of Electronics in the office and also connected with the telephones and Fax services and while working as such the petitioner was asked to do the work of Class III employee i.e. accounts work in the office of Corporation. It is alleged that an order was given by U.P. Financial Corporation to M/s Sheopati Electricals and Electronics Corporation, Kanpur for supply of certain Articles to U.P. Financial Corporation and in pursuance thereof they have supplied the said Articles. Thereafter M/s Sheopati Electricals and Electronics Corporation, Kanpur have submitted their Bill to the U.P. Financial Corporation for payment. In pursuance thereof office made a proposal to the General Manager for payment of bill which was approved by General Manager. On 17.11.93 General Manager Sri P.K.

Mohanty passed an order to pay the amount claimed in the said bill but it was increased from Rs. 5055/- to Rs. 15055/- The copy of the order passed by General Manager is on record as Annexure 4 of the writ petition. It is alleged that writing in the order for payment is in the hand writing of the petitioner but some one manipulated the amount and added one (1) before figure 5055/- Rs. and made it 15055/- by making over writing in place of rupees five thousand fifty five as fifteen thousand fifty five. Aforesaid manipulation was done in different ink and different hand writing. Thereafter in pursuance of the said order dated 17.11.1993 a cheque of aforesaid amount of Rs. 15055/- was issued on 25.11.1993 in favour of M/s Sheopati Electricals and Electronics Corporation, Kanpur. It appears that M/s Sheopati Electricals and Electronics Corporation, Kanpur encashed the aforesaid cheque then they came to know about the said mistake and issued a cheque of Rs. 10,000/- on 27.11.1993 for refunding excess payment made to them. A true copy of the letter refunding Rs. 10,000/- to the Manager of U.P. Financial Corporation and date of refund of cheque including endorsement of Manager U.P. Financial Corporation on the said letter is on record as Annexure 5 of the writ petition.

2. It is in connection of the aforesaid incident the petitioner was placed under suspension on 21.12.1993 and a charge-sheet was also issued on 27.12.1993 and served upon him. The petitioner has replied the said charge-sheet and lastly replied on 18.4.1994 and denied the charges levelled against him. On 27.12.1993 an Inquiry Officer was appointed to hold disciplinary inquiry against the petitioner who held the disciplinary inquiry and has submitted the inquiry report to Disciplinary Authority on 25.4.1995 holding the petitioner guilty of charge levelled against him. Thereupon a show cause notice was issued to the petitioner dated 22nd June, 1995 asking his reply thereon, indicating therein that the petitioner is responsible for issue of cheque of excess amount of Rs. 10,000/- and he has made some manipulation in the record of the office. A true copy of show cause notice issued to the petitioner on 22nd June, 1995 is on record as Annexure 6 of the writ petition. The petitioner replied the aforesaid show cause notice, a true copy of which is on record as Annexure 7 of the writ petition. Thereupon the disciplinary authority without going through the reply submitted by the petitioner against the finding of Inquiry Officer in correct perspective has dismissed the petitioner from service vide impugned order dated 1.9.95 wherein one line order has been passed to the effect that the petitioner has been found guilty of committing act of financial embezzlement and criminal breach of trust in violation of Regulation 26 of U.P. Financial Corporation Staff Regulations. Hence this petition.

3. Heard Sri R.P. Singh holding brief of Sri Arun Kumar learned counsel for the petitioner. No one appeared on behalf of the respondents despite the case has been taken in revised list. Since writ petition is pending for last ten years and on behalf of the respondents a caveat had already been lodged but no counter affidavit was filed in the writ petition, therefore, court left with no option except to proceed exparte against respondent, on the basis of undisputed available

materials on record.

4. The learned counsel for the petitioner has submitted that whole disciplinary inquiry held against the petitioner was farce exercise, as neither any witness in support of the charges levelled against him were examined before Inquiry Officer in presence of the petitioner, nor their statements were supplied to the petitioner asking him to cross examine nor he was asked to adduce his defence evidence nor any representative of M/s Sheopati Electrical and Electronic Corporation, Kanpur was examined in the disciplinary inquiry thus whole disciplinary proceeding was conducted in most arbitrary manner in utter violation and disregard of provisions of regulation and principles of natural justice and fair play. The learned counsel for the petitioner has further submitted that the Inquiry Officer has completely ignored the basic question that whether the manipulation by adding "1" before "5" and making it 15 has been done in the hand writing of the petitioner or not? The Inquiry Officer has further ignored the fact that cheque was issued to M/s Sheopati Electricals and Electronics Corporation. Kanpur on 25.11.93 and the excess amount paid to them has been refunded on 27.11.93 within a short span of 2 days after being satisfied that Rs. 10,000/- has been paid to them in excess. Till that time nobody in U.P.Financial Corporation knew that excess amount has been paid to M/s Sheopati Electricals and Electronics Corporation, Kanpur. In case there would have been any motive to deceive the Corporation what was occasion to refund excess payment made to M/s Sheopati Electrical and Electronic Corporation, Kanpur before the same was detected by the Respondent corporation. The Inquiry Officer has also not considered the fact that when it was within the knowledge of the Accounts Department which has issued the cheque that there is some manipulation or overwriting in the order of General Manager in respect of the amount to be paid through cheque then why they paid the said amount without any proper inquiry.

5. Besides this other persons who were actually responsible in preparation of cheque have not been subjected to any disciplinary action in the matter and the petitioner has been made scape-goat to save the skin of actual culprit, if any. Learned counsel for the petitioner has further submitted that although from the perusal of the inquiry report it appears that the Inquiry Officer has recorded the finding that he has examined all those witnesses and the charges were found proved against the petitioner but the Inquiry Officer did not point out as to how and on which evidence adduced before him the petitioner could be linked with the alleged charge. Virtually there is no material on record on the basis of which the petitioner could be linked with the charges of misconduct levelled against him. In the given facts and circumstances of the case the findings recorded by the Inquiry Officer is without evidence and perverse as no reasonable man could have come to the such conclusion. In support of his submission the learned counsel for the petitioner has placed reliance upon two decision of Hon'ble Apex Court rendered in the case of Sher Bahadur Vs. Union of India (UOI) and Others, and in the case of Syed Rahimuddin Vs. Director General, C.S.I.R. and Others, . The submissions of the learned counsel for the petitioner appears to have some

substance.

6. On the basis of the submission of learned counsel for the petitioner and from perusal of records, the question arises for consideration is that what is content and scope of judicial review in the matters pertaining to the disciplinary inquiry? In this connection it is necessary to point out that the question in issue is not res-integra, rather it has received consideration of Hon''ble Apex Court on numerous occasion. It would be useful to refer some decisions of Hon''ble Apex Court herein after.

7 In State of Andhra Pradesh Vs. Sree Rama Rao, the Hon''ble Apex Court has observed as under:

The High Court is not constituted in a proceeding under Article 226 of the Constitution as a Court of appeal over the decision of the authorities holding departmental enquiry against a public servant: It is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent employee is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

8. In Union of India (UOI) Vs. Sardar Bahadur, the Hon''ble Apex Court held :

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials.

If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

9 In B.C. Chaturvedi Vs. Union of India and others, , the Hon''ble Apex Court opined (at P.4379 of AIR SCW)"

The disciplinary authority is the sole Judge of facts, Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

Further it was held AIR SCW 4380

A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline.

They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

10. Again in *Government of Tamil Nadu and another Vs. A. Rajapandian*, the Hon'ble Apex Court opined (at P. 4834 of AIR):

It has been authoritatively settled by string of authorities of this court that the Administrative Tribunal cannot sit as a Court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority.

11. In *Apparel Export Promotion Council Vs. A.K. Chopra*, while taking note of earlier decisions the Hon'ble Apex Court in para 17 and 18 of the decision held as under :-

17, The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole Judge of facts and in case an appeal is presented to the appellate authority, the Appellate Authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings -were wholly perverse and or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court, Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during power of judicial review, the High Court cannot normally speaking substitute its own conclusion with regard to the guilt of the delinquent, for that imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears ignored the well-settled principle that even

though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at by Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Halton in *Chief Constable of the North Wales Police v. Evans* (1982) 3 All ER 141, observed:

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the Court.

18. Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of judicial review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute, its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

12. In *The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another*, . In para 16 of the decision Hon''ble Apex Court held :-

16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole-judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

13. Thus from a close analysis of law enunciated by the Hon''ble Apex Court

referred herein before it is clear that, in departmental proceedings, the Disciplinary Authority is sole Judge of facts and in case an appeal is presented to the Appellate Authority the Appellate Authority has also the power and jurisdiction to reappreciate the evidence and come to its own conclusion on facts being the sole fact finding authority. Once the finding of facts based on appreciation of evidence recorded, court in writ jurisdiction may not normally interfere with those factual finding unless it finds that findings were based either on no evidence or were wholly perverse and or legally untenable. The adequacy or inadequacy of evidence or reliability of evidence is not permitted to be canvassed before the High Court, provided the inquiry was held in accordance with the rules of disciplinary inquiry in as much as in conformity of principle of natural justice and fair play. Since the High Court does not sit as Appellate Authority over the factual findings recorded during departmental proceeding while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion with regard to the guilt of delinquent in place of departmental authorities where there are some relevant materials which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on such materials. Even so far as imposition of penalty or punishment is concerned unless the punishment or penalty imposed by the Disciplinary or the departmental Appellate Authority is either impermissible or it shocks the conscience of the High Court it should not normally substitute its own opinion and impose some other punishment or penalty.

14. Before I conclude the issue I would like to refer some more decisions of Hon"ble Apex Court dealing with the procedure to be followed, nature of evidence to be accepted and minimum standard of proof required in such disciplinary inquiry.

In State of Mysore Vs. S.S. Makapur, . While dealing with scope of procedure to be followed in domestic inquiry, in para 6 of the decision the Hon"ble Apex Court has held as under :-

What was actually under consideration was the procedure to be followed by quasi-judicial bodies in holding enquiries and the decision was that they were not bound to adopt the procedure followed in Courts, and that it was only necessary that rules of natural justice should be observed. Discussing next what those rules required, it was observed that the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the

contents of the previous statement should be repeated by the witness word by word and sentence by sentence is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross examine them.

15. In *Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others*, , while dealing with the nature of evidence and scope of standard of proof in disciplinary inquiry in para 14 of the decision the Hon"ble Apex Court has held that the application of principles of natural Justice in inquiry does not imply that what is not evidence can be acted upon. The relevant portion of para 14 of the judgment is reproduced as under:

But the application of principles of natural justice does not imply that what is not evidenced can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact, which are not spoken to by persons who are competent to speak about them and are subjected to cross examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellate produced the balance sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX, CPC and the Evidence Act both for which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly acceptable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the tribunal to give inspection in so far as that is relevant to the enquiry . The applicability of these principles are well recognised and admit of no doubt.

16. In *State of Haryana and Another Vs. Rattan Singh*, , the Hon"ble Apex Court has held that it is well settled that in a domestic enquiry the strict and sophisticated rule of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There

is no allergy to hearsay evidence provided it has reasonable nexus and credibility. For ready reference relevant portion of para 4 of the decision is quoted below :

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility,. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by Counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal cannot be held good.

17. Now coming to the cases relied by learned counsel for the petitioner in support of his contention it is to be pointed out that in Syed Rahimuddin Vs. Director General, C.S.I.R. and Others, while dealing with the scope of judicial review in context of conclusion or finding of fact arrived at in a departmental inquiry by the Inquiry Officer and Disciplinary Authority in para 5 of the decision Hon"ble Apex Court held as under: -

It is well settled that a conclusion or a finding of fact arrived at in a disciplinary inquiry can be interfered with by the court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable man. Having examined the report of the Inquiry Officer, we are unable to accept the contention of the learned counsel for the appellant that the findings of the Inquiry Officer cannot be held to be findings based on no evidence.

18. In Sher Bahadur Vs. Union of India (UOI) and Others, , while explaining the meaning of expression "sufficiency of evidence" Hon"ble Apex Court in para 7 of the decision held that sufficiency of evidence postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the Inquiry Officer has noted in his report "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence." Para 7 is quoted as under :-

7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither

relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the Inquiry Officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry ", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex.CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-I, referred to in the enquiry report and adverted to by the High court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.

19. Thus in view of the law laid down by Hon"ble Apex Court it is clear that the allegations of misconduct must be established in the disciplinary" inquiry by adducing evidence to connect the delinquent employee with the charges of misconduct and where misconduct alleged have no nexus with the charged officer in that situation it cannot be said that there is any evidence in support of the delinquency/misconduct of the employee. The Hon"ble Apex Court has drawn distinction between the sufficiency or adequacy of evidence and case of no evidence and held that where the delinquent employee cannot be linked with misconduct by any evidence adduced against him in disciplinary inquiry it would be a case of no evidence rather inadequate or insufficient evidence. In such situation writ court can interfere under Article 226 of the Constitution of India in findings of disciplinary authority in such disciplinary inquiry.

20. Now coming to the facts of the case again it is necessary to point out that from a bare perusal of findings of Inquiry Officer, recorded in the inquiry report, there is no indication at all as to whether he has conducted any inquiry in which witnesses were examined in support of the charges in presence of the petitioner in as much as asking him to cross examine any witness by supplying the copy of statements of witnesses and adduce his own defence evidence. In such a situation it cannot be said that the petitioner was afforded fair opportunity of hearing to defend his case in consonance of the principles of natural justice and fair play.

21. Besides this it is also nowhere stated in the inquiry report that said alteration in the order of payment made to M/s Sheopati Electrical and Electronic Corporation, Kanpur was made in the same hand writing of petitioner and no justification was given as to why the cheque was prepared without proper verification and inquiry, particularly when it was found that some manipulation and over writing has been done in the actual order for payment as it could not be conceivable that cheque was prepared for payment without perusing the actual order for payment which might have brought along with bill and vouchers. It is also nowhere mentioned in the inquiry report that who had prepared the aforesaid cheque and as to whether he/she was subjected to any disciplinary action and what responsibility was fixed upon him or her. No finding of any kind was recorded in this regard on the basis of any evidence to the effect that aforesaid manipulation and over writing was made in the hand writing of the petitioner, and if it was done with the help of the petitioner why the excess money paid was refunded by M/s Sheopati Electrical and Electronic Corporation, within two days from the date of receipt of payment on 27.11.1993, much earlier to the suspension of petitioner and initiation of any disciplinary inquiry against him. It is also neither alleged nor proved that cheque was prepared by the petitioner. Such relevant questions having material bearing with the issue left unanswered by Inquiry Officer. The mere fact that Inquiry Officer has noted statements of some witnesses and recorded his conclusion and finding that on the basis of those statements the charge of securing fraudulent excess payment has been found proved against the petitioner without connecting him with statement of any witness and other materials on record in my opinion in principle could not satisfy the rule of sufficiency of evidence as held by Hon'ble Apex Court in *Sher Bahadur's* case (supra). Contrary to it, it is clearly a case of finding the petitioner guilty of the charge without having any evidence to link the petitioner with the alleged misconduct as such the findings of inquiry officer accepted by the Disciplinary Authority can not be said to be based on any legal evidence and accordingly not sustainable in the eyes of law.

22. That apart from the perusal of para 4 and 5 of the inquiry report it appears that once the inquiry officer has accepted that on the basis of statement of Smt. Renu Bhatnagar, the petitioner was directed by her to do the aforesaid work on the direction of General Manager and he was also aware of the aforesaid incident, in that situation no reasonable man can draw such a conclusion as drawn by Inquiry Officer therefore such finding is also perverse. Contrary to it submissions of learned counsel for the petitioner that the petitioner has been made scape goat to save the skin of actual culprits in the matter appears to be correct. Thus the order of the disciplinary authority under challenge based on aforesaid findings of the Inquiry Officer cannot sustain. Not only this but at one place while stating the nature of charge against the petitioner, inquiry officer has stated that the petitioner has colluded with M/s. M/s Sheopati Electricals and Electronics Corporation in excess payment made to them but while concluding his finding on the said charge though without any link evidence he has held that

petitioner has facilitated the aforesaid excess payment goes to show that while recording the said finding the inquiry officer did not apply his mind upon facts and circumstances of the case in correct perspective. Thus the finding of Disciplinary Authority based on aforesaid finding on this count also is not sustainable and liable to be quashed by this Court, accordingly the impugned order dated 1.9.95 is hereby quashed.

23. Now further question arises for consideration that what relief may be granted to the petitioner in given facts and circumstances of the case? In this connection it is necessary to point out that it is well settled legal position that where the removal or dismissal from service is quashed by the court on account of faulty procedure adopted in disciplinary inquiry which vitiates the inquiry on technical ground or on the ground of violation of any procedural rules of disciplinary inquiry or violation of any facets of principles of natural justice, the proper course is to quash the disciplinary proceeding from the stage it was found faulty leaving it open to the competent authority to hold it afresh from that stage. And some time in rarest case to shorten the litigation court can mould the relief without leaving it to the competent authority to hold fresh inquiry. But in the situation different as aforesaid, as in present case, where in the disciplinary inquiry the charges of misconduct has not been established besides other illegalities committed in holding the disciplinary inquiry, it would not be proper to leave it open to the disciplinary authority to hold fresh inquiry to meet the lacunae of case on merits. Thus in such a situation I am of the considered opinion that the petitioner should be reinstated with continuity of service along with other consequential benefits including seniority and arrears of salary revised from time to time along with regular increments admissible thereon but not with full back wage as arrears of salary from the date of his dismissal till reinstatement.

24. However, so far as back wages is concerned, it is necessary to point out that from the date of dismissal of petitioner till the date a period of about ten years have passed. Although there is no material on record that the petitioner was in gainful employment of some where else but at the same time it was highly probable that in said period of interregnum he might have earned his livelihood, even on casual basis for sustaining himself having regard to his status in service. Thus it would be appropriate to meet the end of justice to direct the respondents to make payment of only 50 percent of salary along with increments admissible to him by treating him in continuous service as arrears of salary or back wages for the period under which he was out of employment on account of impugned order till the date. Thereafter he shall be paid full salary till the date of his actual reinstatement in service. The aforesaid 50 percent of arrears of salary shall be paid to the petitioner within a period of 3 months from the date of production of a certified copy of the order passed by this Court.

25. In view of the aforesaid discussion and observations, the writ petition succeeds and is allowed. There shall be no order as to costs.