(2006) 05 OHC CK 0052

In the Orissa High Court

Case No : O.J.C. No. 5338 of 2001

Brajendra Kumar Mishra APPELLANT

Vs

Bengal Chemicals and Pharmaceuticals Limited and Others RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 102 CLT 557 : (2006) 1 OLR 860 Supp

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Advocate : Ashok Mohanty, T. Rath, J. Sahu, H.K. Tripathy, J.P. Patnaik and M.K. Rout, for the Appellant; J.P. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

A.K. Samantaray, J.—The petitioner in this writ petition under Articles 226 and 227 of the Constitution of India has come with a prayer for quashment of Annexure-11, the order of Disciplinary Authority dated 14.9.2001 inflicting punishment of removal from service and the order of the Appellate Authority under Annexure-14 confirming the said order and has prayed for a direction to the opposite parties for his reinstatement in service with full pecuniary benefits.

2. The factual foundation on which the petitioner has structured the writ petition runs as under:

The petitioner was appointed as Area Sales Manager under Bengal Chemicals & Pharmaceuticals Ltd. (O.P. No. 1) (hereinafter referred to as "the Company") being duly selected and joined as such, on 15.10.1988 at Gauhati. In the month of June 1996 he was transferred from Gauhati to Patna and continued as such. On 5.5.1998, he was transferred from Patna Depot to Cuttack Depot under the transfer order Annexure-2. Although his transfer order was received on 5.5.1998 the petitioner was not relieved from Patna Depot to join at Cuttack till 30.5.1998. On 30.5.1998, the petitioner receiving telephonic communication from his home that his mother had expired, he after intimating the General Manager (Marketing) of the Company (O.P. No. 4) on the very same day proceeded to Gunupur, his native place and sent a telegram from Gunupur to O.P. No. 4 praying for grant of leave from 1.6.1998 to 10.6.98 under Annexure-3. On 11.6.1998, the petitioner intimated O.P. No. 4 that he was proceeding to Patna on 12.6.1998 from Cuttack and intended to handover the charge of Patna Depot to Sri S.K. Dey, who was transferred against his post at Patna on 15.6.1998 (Annexure-4). On his arrival at Patna, he found that though he did not make over charge to Sri S.K. Dey, Sri Dey had assumed charge from 1.6.1998. The petitioner thereafter, contacted Sri S.K. Dey for handing over charge but Sri Dey refused to take charge from him on the ground that he had no instruction from O.P. No. 4. In such a situation, the petitioner was not in a position to handover charge including physical verification of the stock and this fact was communicated to O.P. No. 4 on 16.6.1998 (Annexure-5). But in spite of the intimation through the letter, O.P. No. 4 did not issue any instruction either to the petition or to Sri Dey for handing over and taking over of the charge and feeling helpless the petitioner returned back to his place of posting at Cuttack Depot on 17.6.1998 and continued to work as Area Sales Manager. During 3rd week of August, 1998 the petitioner was intimated by O.P. No. 4 at Cuttack over phone to meet him at Patna on 26.8.1998 and accordingly, petitioner went to Patna and stayed there for two days but there was no handing over and taking over of charge during the said two days and the petitioner returned back to Cuttack on 27.8.1998 with O.P. No. 4. He intimated again and again that making over and taking over of charge is necessary and actually verification of stock was essential but no importance was attached to his request by O.P. No. 4. Thereafter, the petitioner was intimated by O.P. No. 4 over phone to come over to Patna and meet the Vigilance Team on 16.12.1998 and on 16.12.1998, after he reached Patna, statement of the petitioner was recorded by the Vigilance Officer and the petitioner returned back to Cuttack on 17.12.1998. On 2.1.1999, the petitioner was called to the Head Office and was handed over the memorandum of charges as per Annexure-6. On receipt of the charges, the petitioner sought for certain documents and thereafter, submitted his written statement of defence denying all the charges on 15.1.1999 (Annexure-7). On receipt of the written statement of defence, one Mr. S.D. Mukherji, Asst. General Manager, Hindustan Copper Limited was appointed as Enquiry Officer by the Management and the enquiry proceeded. On behalf of the Management only one witness, namely, Sri S.K. Dey was examined and cross-examined. The petitioner was also examined by the Enquiry Officer on 11.8.1999. After conclusion of the enquiry, the Enquiry Officer submitted his report on 27.6.2000 (Annexure-9) and the copy of the same was forwarded to the petitioner on which the petitioner submitted his representation/ show cause on 4.8.2000 (Annexure-10). The Disciplinary Authority imposed penalty of removal from service on 14.9.2000 (Annexue-11). After receiving the order of removal, the petitioner preferred appeal challenging the order of removal and the findings of the Enquiry Officer under Appeal Memo (Annexure-12) and the Appellate Authority confirmed the order of the

Disciplinary Authority (Annexure-14).

3. The petitioner has challenged and averred that the memorandum of charges under Annexure-6 would go to show there are only three charges on the basis of some allegations against the petitioners (sic.) and the allegations are that the petitioner while posted at Patna during the period from 3.5.1996 to 30.5.1998 on several occasions raised, in connivance with Sri Sudhir Kumar Manna, Packer, Patna Depot, false sales invoices and challan without receiving any order from any customer and accordingly made entries in issue column in the Bin-cards and taken away goods worth Rs. 2.41 lakhs outside the Depot, but the goods had not actually been delivered to the parties. The other allegation is that the petitioner deposited a sum of Rs. 55,745.45 with the Sales Tax Authority against the false invoices. The 3rd allegation is that during stock verification by the Deputy Manager on 14.11.1998 it was detected that there was shortage of materials valued at Rs. 8.04 lakhs for which no invoices or challan could be traced.

4. It is the assertion of the petitioner that only against order placed goods were despatched and full payment for the materials were made by the intending companies and the said amount has been fully accounted for the this fact he had brought out during the enquiry proceeding. He has in the writ petition forcefully asserted that the allegation regarding non-placement of order and consequential supply thereto is not only false, fabricated and there is absolutely no material on record to support such allegation. He has also asserted that the Management''s allegation regarding deposit of an amount of Rs. 55,745.45 towards Sales Tax has not at all been proved and on the other hand the petitioner had proved that only Rs. 24,851.69 was deposited with the Sales Tax Authorities. He has further asserted that if at all any excess payment was made the succeeding officer could raise a claim for refund after the goods already sold were returned back. As regards the shortage of goods at Rs. 8.04 lakhs as per stock verification on 14.9.1998 it is averred that the said detection is without any basis and is general in nature and the same being done on 14.11.1998 the same might have occurred after 30.5.1998 on which date he left Patna Depot. In this connection, he has further asserted that physical verification of the stock during his incumbency was done on 31.3.1998 and there was absolutely no shortage in the stock. It is finally asserted that the order of the Managing Director for removal from service and the order of the Appellate Authority confirming the same are liable to the quashed on the face of the fact that the area Sales Manager is not physically in charge of store and stock at any point to time and the charge of the stock and store and responsibility of maintenance of the same is of the Senior Stores Account Assistant and the petitioner was never handed over the key of the store so as to fix up responsibility regarding any shortage.

5. A counter has been filed on behalf of the opposite parties admitting the fact that on account of the demise of the petitioner''s mother, the petitioner proceeded to his native place on 30.5.1998 informing O.P. No. 4 by a telegram for leave till 10.6.1998 and as the tenure of the petitioner at Patna Depot expired

on 30.5.1998 the transferee incumbent Sri S.K. Dey joined there on 1.6.1998 and took over charge of the Depot in absence of the petitioner. It is stated that as Sri Dey took over charge and started managing the affairs of the Patna Depot, there was no necessity on the part of the petitioner to request for handing over charge to Sri Dey after lapse of 10 to 12 days. It is stated that after the O.Ps. received information regarding irregularities in management of the affairs of the Patna Depot, during the incumbency of the petitioner, they directed their Vigilance Cell to investigate into the matter and submit a report. The Vigilance Cell, during the course of investigation, recorded statement of the petitioner and other officers at Patna Depot. On the basis of the vigilance investigation it was revealed that the petitioner, in connivance with another employee, namely, Sudhir Kumar Manna caused financial loss to the Company, misappropriated Company fund and violated the Company Procedure in management of the Patna Depot. As the act of the petitioner as well as the other employee amounted to misconduct under the rules of the Company, charges were framed under Annexure-6 and written statement of defence was sought for. The petitioner submitted his written statement of defence and as the authority was not satisfied with he same, a domestic enquiry was directed appointing an Enquiry Officer. It is stated that the Enquiry Officer proceeded with the enquiry and during the enquiry opportunity was afforded to the petitioner to cross-examine the witnesses and after the Enquiry Officer completed the enquiry submitted his report (Annexure-9), It is further stated that the Enquiry Officer specifically held the petitioner liable for not acting as a responsible public servant while discharging his duties, for which the Company had to suffer financial loss on account of payment of excess tax for non supplied materials, for non maintenance of record properly for supply of materials on verbal order to the parties and for allowing the parties to use Depot Store for keeping their goods.

6. It is stated that after receipt of the enquiry report, the Disciplinary Authority forwarded the copy of the enquiry report to he petitioner for filing his representation, if any, and the petitioner filed his representation. The Disciplinary Authority, after perusal of the same, passed the impugned order of removal from service (Annexure-11). Thereafter, the petitioner preferred appeal and the Appellate Authority i.e., Board of Directors, confirmed the order of removal. In the concluding paragraphs of the counter affidavit, the allegations against the petitioner as per the charge memo have been described and it has been stated that since a domestic enquiry has been conducted affording all opportunity to the petitioner and following the principle of natural justice and the Disciplinary Authority having concurred with the findings of the Enquiry Officer and the Appellate Authority confirming the same, there is no reason for the petitioner to challenge the same in this writ petition.

7. As we have pointed out at the very outset that it is the contention of the Learned Counsel for the petitioner that the petitioner has been intentionally and purposefully entangled in the charges followed by domestic enquiry on totally false and frivolous grounds. During the conduct of the enquiry, none of the

charges has been substantiated against him. This, he asserted, can be proved on the basis of the documents available on record.

8. Before we delve into the details of the charges framed against the petitioner and the details of the evidence collected during the domestic enquiry to substantiate the charges which ultimately resulted in removal from service we would like to quote the articles of imputations raised against the petitioner which are as follows:

When Mr. S.K. Dey present SPO of Patna Depot contacted M/s. Unipharma, Patna, M/s. Endoos Enterprises, Dhanbad, National Drug Agency, Patna for recovery of debtors against the invoices No. 86/2/0280, dt. 24.3.98, 86/3/0373, dt. 24.3.98 raised against for Unipharma and 86/2/0222, dt. 31.12.97, 86/2/0175, dt. 18.10.97, 86/3/0289, dt. 31.12.97, raised against Endoos Enterprises, Dhanbad and 86/3/158, dt. 29.8.97, 86/3/324, dt. 31.1.98 raised against National Drug Agency. The informed us that they have not ordered for such materials any time and have not received such materials from Patna Depot.

The total value on the above said invoices amounts to Rs. 2.41 lacs.

On investigation, it was been found that Sri Brajendra Kumar Mishra raised two invoices on stockist M/s. Unipharma Patna on various dates between 4.9.97 to 31.3.98 and adjusted the stock in the Bincards and taken out the said goods out of Patna Depot but did not actually deliver the material to the party. Again during the period 18.10.97 to 31.12.97 Sri Brajendra Kumar Mishra raised three Nos. of invoices on M/s. Endoos Enterprise, Dhanbad and adjusted the stock in the Bincards and taken out the said goods out of Patna Depot but did not supply the materials to the party. Further on 28.9.97 and 31.1.98 Mr. Mishra raised two Nos. of invoices on M/s. National Drugs Agency, Patna and adjusted the stock in the Bincards and taken out the said goods out of Patna Depot but did not supply the materials to the party.

During investigation it has further been revealed that to cover up above malafide activities, Sri Mishra also deposited Sales Tax amount of Rs. 55,747.45 to Sales Tax Authority against the above said invoices, causing further damage to the Company.

During stock verification on 14.11.98 by Dy. Manager (Accounts) it had been found that there is a shortage of materials of Value, of Rs. 8.04 lacs for which no invoices or challan could be traced.

9. Learned Counsel for the petitioner before addressing his submission cited a decision in the case of B.C. Chaturvedi Vs. Union of India and others, wherein in paragraph 13 it has been held that:

Disciplinary Authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has co-extensive power to reappreciate 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. In Union of India (UOI) Vs. H.C. Goel, , this Court held at page 369 that if the conclusion, upon consideration of the evidence, reached by the Disciplinary Authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

10. Learned Counsel also cited a decision of the Apex Court in the case of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, . In the cited case the Apex Court have held as under:

Interference with the decision of the 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.

11. Addressing his arguments Learned Counsel for the petitioner submitted that the case at hand is a glaring example as to how mala fide and arbitrariness has played its role and without any evidence the petitioner has been visited with the punishment of removal from service. Taking us to the article of charge No. 1 he submitted that the allegation against the petitioner in the article of charge aforementioned is that when the Area Sales Manager asked for recovery of outstanding amounts from the Firms, namely, M/s. Unipharma, Patna, M/s. Endoos Enterprises, Dhanbad and M/s. National Drug Agency, Patna, it was said by them that they had not ordered for any material at any point of time and that they had not received any material from Patna Depot of Bengal Chemicals and Pharmaceuticals Limited. On the basis of such reply from the aforementioned three firms the charge of misconduct has been alleged against the petitioner delinquent and it has been specifically stated in the charge that invoice Nos. 86/2/0280, dt. 24.3.98, 86/3/0373, dt. 24.3.98 are said to have been raised against M/s. Unipharma by the petitioner. Invoice Nos. 86/2/0175, dt. 18.10.97, 86/2/0222, dt. 31.12.97 and 86/3/0289, dt. 31.12.97 were raised against M/s. Endoos Enterprises, Dhanbad. Invoice Nos. 86/3/0158, dt. 29.8.97 and 86/3/324, dt. 31.1.98 were raised against M/s. National Drugs Agency by the petitioner without any order from the aforementioned firms for supply of any goods and they had also not received any such materials from the Patna Depot.

12. In this contention, the Learned Counsel for the petitioner took us to the documents relied on by the petitioner during the domestic enquiry and as we find M/s. Unipharma had placed orders on 24.3.98 for supply of goods and this fact was also brought to the notice of the Enquiry Officer through the Xerox copy of the letter Annexure-10 which was filed by the petitioner along with his written statement of defence and we also notice the letter of M/s. Unipharma dated 27.8.99 where there is reference to the letter dated 13.11.98 which reads as

under:

As you have admitted through your above referred letter that you have received the total materials against invoice Nos. 86/3/0373 and 86/2/0280, dt. 24.3.98. You are requested to pay Rs. 67,329.00 and Rs. 17,02.00 (sic.) against our credit note Nos. 86/0173 and 86/0176, dt. 27.8.98 immediately.

This is a letter which was addressed to M/s. Unipharma, Krishna Kutir, Biharisao Lane, Patna by the successor of the petitioner on whose allegation that there was no order from the firms and goods were taken away in the name of the firms and were not actually supplied to them and were sold outside by the petitioner in connivance with another which is falsified from the above noted letter where M/s. Unipharama has admitted to have received goods supplied under the invoices in question. It is submitted by he Learned Counsel that M/s. Unipharma had made full payment on 12.5.98 and 21.5.98 and it confirmed the payment and receipt of the goods. He took us to the copies of the invoices and the copy of the accounts statement showing payment, which was produced during the domestic enquiry and was marked as Annexure-17 in the said enquiry where we find there is detailed mention of the invoice Nos. with date and the date of payment made. Learned Counsel further submitted with reference to the accounts statement that on 24.3.98 a sum of Rs. 1,95,481.70 and a sum Rs. 34,788.70 was debited to the accounts of M/s. Unipharma under the aforesaid invoices and the said amount has been credited to the accounts of M/s. Unipharma on 12.5.98 and 21.5.98. From the aforementioned documents, we have absolutely no doubt that against genuine orders on behalf of M/s. Uniphrama, the petitioner had supplied materials which were duly received by the said firm confirming the same and had made payment which has been duly accounted for.

13. What we notice is that on the face of such grave allegation of siphoning huge quantity of materials from the Depot of the Company without order from the firm and not supplying goods or materials, no witness from the side of M/s, Unipharma has been produced during the enquiry to at least corroborate the assertion and the allegation which was raised by none other than said Sri S.K. Dey who took over the management of the entire Patna Depot of the Company without taking charge from the petitioner when the petitioner was away from Patna at his native place in connection with the obsequies of his mother. It was submitted by Learned Counsel for the petitioner and we find substantial force in it to believe that by a calculated and premeditated plot hatched against the petitioner, the successor of the petitioner took over the management of the depot and there was actually no handing over and taking over of charge on the face of the request of the petitioner to the higher authorities for the same. We have found in the preceding paragraphs as to how false and frivolous the charge regarding non-supply of materials and non-receipt of indent from M/s. Unipharma is and how the documents on record themselves speak about the falsity of the charge, on that score.

14. Learned Counsel for the petitioner switching over to the charge pertaining to

M/s. Endoos Enterprises, Dhanbad submitted that the statement of allegation relates to three invoices, i.e., invoice Nos. 86/2/0222, dt. 31.12.97, 86/2/0175, dt. 18.10.97 and 86/3/0289, dt. 31.12.97. During argument he took us to Annexure-18 and pointed out that under invoice No. 86/2/0175 goods were sent by transport and so far as invoice No. 86/2/0222 dated 31.12.97 is concerned, he referred to Annexure-19, i.e., the monthly statement of stock and sales as on 31.10.1998 which goes to show that all the goods have been returned and entered into the stock statement. He brought to our notice the credit note No. 188 which proves his contentions in toto. So far as invoice No. 86/3/0289, dated 31.12.97 is concerned, it was submitted by him that claim of M/s. Endoos Enterprises was received on 26.11.98, where it has been stated that goods had not been released from the transport. In this connection, he further submitted that the Company even before receipt of the claim allowed credit of the amount in respect of the invoices which goes to show that by the date of issuance of the credit note, i.e., on 31.10.98, the goods had already been returned by the transporter and the amount had been credited to the account of M/s. Endoos Enterprises from the debit by way of credit note No. 189. He also filed a xerox copy of the said credit note for our perusal which was supplied to the petitioner during the conduct of the enquiry and the same is kept on record. In this connection, it is also surprising to note that the management has not examined anybody from the aforementioned firm M/s. Endoos Enterprises during the conduct of the domestic enquiry to substantiate the charge.

15. In relation to invoice Nos. 86/3/158, dt. 29.8.97 and 86/3/324, dt. 31.1.98 it was submitted by Learned Counsel for the petitioner that these two invoices pertain to M/s. National Drugs Agency and taking us to Anenxure-21 he argued that this Annexure-21 shows that on 29.8.97 an amount of Rs. 71,073.70 has been debited on account of M/s. National Drug Agency. He vehemently submitted that at no point of time this National Drug Agency had made any claim against the Company and we have also verified the documents taken into consideration by the Enquiry Officer, but we find no such letter of claim advanced by the said firm. Taking us to Annexue-21, the Learned Counsel pointed out and we have also verified from the said annexure that the entire amount of advance received from M/s. National Drug Agency on 3.9.97, 9.9.97, 11.9.97 and 18.9.97 for which credit had been given for an amount of Rs. 69,027.35 has been received on the account of M/s. National Drug Agency. We have also noticed from said Annexure-21 that the total debit and credit of M/s. National Drug Agency has been squared up on 31.3.98 and this is inclusive of invoice No. 86/3/158. The Learned Counsel submitted that there is no document to show that M/s. National Drug Agency had ever preferred any claim against the Company for non-supply of goods or raising credit note or debit note in respect of invoice Nos. 86/3/324 and 86/3/158. In the enquiry proceeding there is nothing on the record that Annexure-21 was objected to in any manner or disproved by any other document. Besides, no witness from M/s. National Drug Agency was examined to give corroboration to the imputation.

16. The Learned Counsel appearing for the opposite paries neither put forth before us any argument nor could he explain the documents otherwise to contradict the contentions advanced by the Learned Counsel for the petitioner. He, rather, conceded that during the enquiry excepting the successor of the petitioner on whose allegation the petitioner was charge-sheeted and faced the enquiry, no other witness has been examined. He also could not satisfy us as to what prevented the opposite parties to examine any agent of the aforementioned three firms to show that they have never indented for any consignment from the opposite parties-Company and that they had not received any goods against the said indents. We have carefully examined the documents through which Learned Counsel for the petitioner took us and we have also scrutinized the evidence recorded during the enquiry pertaining to the charge about which we have discussed in the preceding paragraphs and we are fully satisfied that there is absolutely no iota of material so as to hold the delinquent/petitioner responsible and in our view the charge is concocted one and based on no evidence.

17. The next charge against the delinquent/petitioner is that to cover up his mala fide activities as per charge No. 1 he deposited the sales tax amounting to Rs. 55,747.45 with the Sales Tax Authorities against the invoices causing further damage to the company. In this connection, Learned Counsel for the petitioner forcefully submitted that the sales tax was deposited during the relevant financial year and in case no sale was effected for which the sales tax was deposited, it was open to the company to seek refund of the said amount. He submitted that it is the admitted position and has been brought out during the domestic enquiry from the sole witness Sri S.K. Dey, the successor of the delinquent/petitioner that neither step was taken for getting refund of the said sales tax amount nor any dispute to the deposit of the said amount was raised before the Sales Tax Authorities. It was submitted and we are of the considered opinion that in view of our elaborate discussion on charge No. 1 and finding that the said charge is nothing but frivolous and utterly malicious and there is absolutely no material to support and sustain such charge and on the face of non-disputing the deposit of sales tax and not taking steps for refund/adjustment of the same by the management/ by the successor of the petitioner, this charge is absolutely of no consequence and the finding in enquiry report that petitioner was responsible for causing loss or damage to the company by depositing the said sales tax amount is based on no evidence. Rather, we find that the tax amount has rightly been deposited against the sales effected. In case there was return of any consignment not being delivered the company could claim refund in respect of that amount from the Sales Tax Authorities, which has not been done.

18. The last imputation under the articles of the charges is that during stock verification on 14.11.98 by the Deputy Manager (Accounts) it had been found that there was a shortage of materials worth of Rs. 8.04 lacs for which no invoice or challan could be traced. In this connection, the Learned Counsel for the petitioner took us to the enquiry report (Annexure-9) wherein at paragraph 7 the Enquiry Officer has categorically found that the allegation of shortage of stock

against the petitioner is vague and false. The Enquiry Officer in paragraph 8(c) (iii) has also observed that the only witness examined on behalf of the management, namely, Sri S.K. Dey, who replaced the petitioner as Sales Promotion Officer in Patna Depot when Sri Mishra (petitioner) was transferred to Cuttack Depot there was no formal making over and taking over of charge between the petitioner and Sri Dey. The petitioner was called from Cuttack Depot and a joint statement was prepared of the physical stock of Patna Depot on a later date. The Enquiry Officer has observed that therefore it is very difficult to come to the conclusion that whatever shortage of stock was there in the Patna Depot, had taken place during Sri Mishra''s tenure. He has also observed that there is inherent lacuna in the system as there was no regular stock taking arrangement in Patna Depot and therefore it is very difficult to pinpoint the time when shortage took place, if any. He also observed that unless the system is streamlined there will always be risk to the Company and it will be very difficult to fix responsibility for such shortage. In the said paragraph he also stated that during the period of enquiry lot of documents have been produced by both the parties and it transpired that the suppliers have been influenced to write letters to the Company either claiming non-receipt of the materials and subsequently nullifying their earlier letters which will be evident from M/s. Unipharama''s letter dated 31.8.99 addressed to the management nullifying their earlier letter dated 13.11.98. The Enquiry Officer has also stated that it is difficult for him to verify which of the letters is authentic. In the concluding part of the said paragraph he has stated that the management representative while replying to one of the allegations made by delinquent Sri Mishra that a different stock statement was prepared by Sri Ashish Kr. Mukherjee, Dy. Manager (Accounts), Sri S.K. Dey, SPO and successor of the petitioner and Sri Sadhan Kumar Dey, Assistant Accounts Officer who had mooted a proposal vide note sheet dated 24.11.98 to show the shortage quantity as damage and breakage quantity to avoid payment of sales tax and the higher authorities in the management did not approve the proposal. On the basis of this statement the Enquiry Officer has observed in the concluding part of the said paragraph that such type of proposal only raises doubt about the credibility of the officers concerned although apparently it shows that such proposal was being mooted for the benefit of the Company.

19. The Learned Counsel for the petitioner on of the face of this observation of the Enquiry Officer did not spare any attempt to canvass that the entire series of imputations under the articles of the charges levelled against the petitioner have been disbelieved by the Enquiry Officer and he has entertained serious doubts about the truth of the allegation and has honestly recorded his findings absolving the petitioner. He submitted that the same Enquiry Officer while recording his conclusion of the enquiry though has recorded that after going through all the records pertaining to the enquiry against the petitioner as well as the deliberations made by the parties either orally or in writing during the enquiry proceedings, he was of the opinion that the charges under Rule 5(1), i.e., theft, fraud or dishonesty in connection with the business or property of the Company

or property of another persons within the premises of the Company has not been established beyond doubt as benefit of doubt goes in favour of the delinquent (petitioner). He has recorded that, however, the charges brought out under Rule 5(5), i.e., acting in a manner prejudicial to the interest of the company, he held Sri Mishra responsible for not acting as a responsible public servant while discharging his duties and therefore the charges under this rule has been established against him. The charge brought out against Sri Mishra under Rule 5(10), i.e., damage to the property of the Company has been proved to the extent that the Company had to incur certain financial loss in the form of payment of excess sales tax for non-supplied materials as well as compensating the parties for non-receipt of materials. He has further recorded that although such act on the part of Shri Mishra may be unintentional, but as he was holding the charge of Patna Depot he cannot be devoid of his responsibility for any loss suffered by the Company on account of the reasons as brought out during the enquiry proceedings like not maintaining the records properly as per laid down norms, materials being supplied on verbal orders, allowing the party to use the Company''s store for maintaining the stock etc. In the last paragraph of his findings he has suggested to the disciplinary authority to take necessary steps to plug the loopholes and lacuna existing in the depot at Patna so that this kind of incident does not occur in future and the Company is saved from the avoidable loses and also sincere public servants can discharge their duties without any apprehension of being implicated in any charges due to fault in the system.

20. The Learned Counsel for the petitioner forcefully submitted that regarding allowing the parties to use Company''s premises/ stores at Patna for maintaining their stock, there is absolutely no charge and as such the finding of the Enquiry Officer that the delinquent had allowed the Company store to be used by the parties for maintaining their stock is absolutely of no consequence and there is nothing on record to show that the petitioner had ever allowed any party or firm to store their properties i the Patna Depot of the Company. We have carefully examined the said point raised by Learned Counsel and we find there is no charge to that effect and as such the Enquiry Officer''s finding making responsible the petitioner on that score cannot in any way be used against him. On the other hand, there is absolutely no evidence to that effect in the domestic enquiry conducted. The Learned Counsel further argued that the observation made by the Enquiry Officer at paragraph 8(c)(iii) and the conclusion of the enquiry recorded by him are highly incongruous and the conclusion reached by him is based on no evidence and it suffers from patent error on the face of the record when it has been pointed out elaborately that none of the article of charges has been based on any document or any of it has been proved during conduct of the enquiry.

21. We have, in view of the contention of the Learned Counsel for the petitioner at the very inception that the decision of the authorities is vitiated by considerations extraneous to the evidence and merits of the case and on the very face of it the conclusion appears to be arbitrary and capricious which no

reasonable person could arrive at, examined the material evidence pertaining to the imputations/ charges through which Learned Counsel took us and we have already found while discussing the said evidence that none of the imputations has been substantiated and we have, rather observed that the imputations are imaginary, concocted and fabricated with ulterior motive to put all the blame on the petitioner in which he had no role to play.

22. Learned Counsel for the petitioner further contended that it is apparent on record that in his enquiry successor of the petitioner and some other officers of the management could go in pursuit of their personal interest or with any other ulterior motive and to put the entire blame on the petitioner, who had already left the Depot at Patna and whose request for making over and taking over of charge of the depot after his transfer was not heeded to and his successor took charge of the depot in his absence.

23. The Disciplinary Authority, the Managing Director of the Company, on the basis of such report has found the delinquent guilty of misconduct, in acting in a manner prejudicial to the interest of the Company, damage to any property of the Company Rule 5(5) and 5(10) of the BCPL (CD & A) Rules, 1985, inflicted the punishment of removal from service with immediate effect and directed that during the period of suspension he would not be entitled to any salary except subsistence allowance. Against this order of the Disciplinary Authority the petitioner preferred appeal and the said appeal was placed before the Board of Directors and the same was turned down upholding the decision of the Disciplinary Authority which was communicated to the petitioner vide Annexure-14 dated 15.1.2001.

24. The Learned Counsel for the opposite parties attempted to canvass that interference in the writ jurisdiction as to the adequacy or reliability of the evidence is not permitted and the power of the High Court is very very limited in that field. In this connection, we would like to reiterate that there is no quarrel on this proposition and it is the settled principle of law that if the conclusion on consideration of the evidence reached by the Disciplinary Authority is perverse or suffers from patent error on the face of the record or based on no evidence at all a writ of certiorari can be issued. From our elaborate discussion on the fact of the case, the articles of charges, the evidence recorded, the findings arrived at by the Enquiry Officer, we have absolutely no hesitation to hold with a degree of finality that this is a fit case where interference by this Court in exercise of its writ jurisdiction is warranted to impart justice to a petitioner who has been victimized by way of removal from service. We would also like to record here that the decision of the authorities is totally vitiated by considerations extraneous to the evidence and merit of the case and the conclusion arrived at by the authorities on the very face of it is not only arbitrary but also capricious.

25. In view of our aforementioned categorical finding, we allow the writ petition, quash the order of the Disciplinary Authority (Annexure-11) and the order passed by the Appellate Authority (Annexure-14) and mandate the Opposite

Parties to reinstate the petitioner in service with all consequential service benefits from the date of removal. We direct that this order be enforced within a period of the three months from the date of its communication. The writ be communicated at the cost of the petitioner. However, we pass no order as to cost.

B.P. Das, J.

26. I agree.

