

(2016) 03 GAU CK 0004

In the Gauhati High Court

Case No : W.A. No. 254 of 2012 and 93 of 2014.

Indian Oil Corporation Ltd. and another.

APPELLANT

Vs

Paban Chandra Das and another.

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Citation : (2016) 3 GauLJ 210 : (2016) 3 GauLR 485 : (2016) 2 GauLT 437 : (2016) 3 NEJ 229

Hon'ble Judges : Hrishikesh Roy;Manojit Bhuyan, JJ.

Bench : Division Bench

Advocate : D. Borgohain and P. Gohain, Advocates, for the Appellant; S.N. Sarma, Sr. Advocate, A. Sarma and A. Zahid, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J. (CAV) - Heard Mr. S.N. Sarma, the learned Senior Counsel appearing for the appellant in the WA No. 254/2012. Also heard Ms. D. Buragohain, the learned Counsel appearing for the appellant [petitioner in the WP(C) No. 6442/2006] in the WA No. 93/2014.

2. These two Appeals are filed against the same judgment dated 15.6.2012 in the WP(C) No. 6442/2006. The writ petitioner at the relevant time was serving as the Deputy Manager (Operation) (hereinafter referred to as "the delinquent") at the Dharmanagar Depot of the Indian Oil Corporation (IOC) Ltd. from 1.9.2000 to 31.5.2005. He was transferred to Guwahati on 8.5.2005 and was directed to handover charge to the new incumbent on 21.5.2005. During the process of charge handover, huge shortage of stocks/products at the Dharmanagar Depot was noticed and accordingly the transferred officer was directed to remain in station until further order. Thereafter a preliminary enquiry was conducted and during the joint physical stock verification that was carried out on 21.5.2005, abnormal shortfall of petrol, diesel and kerosene were detected at the IOCL Depot and accordingly the delinquent was suspended on 1.6.2005.

3. Then the Disciplinary Authority issued the Charge Sheet dated 3.6.2005 with multiple allegations but for the purpose of the present proceeding, it would be sufficient to take note of the following three allegations (which were held to be proved) from the first Charge Sheet dated 3.6.2005 :-

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1. Abnormal shortages of MS, HSD and SKO as detailed below were detected at Dharmanagar depot during a joint physical stock check that was carried out at Dharmanagar in presence of Shri A. Audt, SM(Ops.), Guwahati as a part of charge handing over/taking over of Dharmanagar depot consequent to your transfer to Guwahati vide office order No. PERS:1/5-872 dated 08.04.05 and posting of Shri S. Ray at Dharmanagar vide office order No. PERS:1/5-073 dated 08.04.05.

Product Book Stock as on 21.05.05 (Opening) in KL Physical Stock as on 21.05.05 (Opening) in KL Discrepancy in KL

MS 358.778 311.138 (-) 47.640

SKO 1373.106 1333.010 (-) 40.096

HSD 1928.643 1825.525 (-) 103.118

Such high stock losses cannot result in the course of normal depot operations nor happen over a short time period, but can be attributed to deliberate and systematic product diversion and disposal by you over a period of time through fraudulent ways and means. After receipt of your transfer order towards end April"05, you deliberately resorted to book stock manipulation prior to handing over charge of Dharmanagar Depot with the mala fide intention to cover-up the high stock losses which resulted from your fraudulent acts of product diversion. Amongst others, the following irregularities committed by you between 30th April"05 to 22nd May"05 have come to light.

1.1 Prior to the joint stock inspection on 21.05.05 which commenced at around 0800 hrs, you made an abortive attempt in the early morning hours on 21/05/05 to unload HSD tank wagon from the railway siding to the depot tank with the mala fide intention to partially make up HSD stock shortage of 103 KL (of which you were fully aware of) and show the tank wagon as short received.

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2.2 The dip book record of MS tank no 10 which showed closing dip of 289.5 cm, (equivalent to about 108 KL of MS) on 16.02.05 showed opening dip of 276.8 cm on 17.02.05 (equivalent to about 95.5 KL of MS). As this dip difference of 12.7 cm showed a product shortfall of approx. 12 KL, the matter was brought to your notice at around 0900 hrs on 17.02.05 by Shri KA Laskar, Depot Supervisor and other concerned staff. However, you did not investigate the matter nor reported

the same to higher authority, knowing fully well that such high stock variation cannot happen overnight.

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4.1 Along with the Charge Sheet, the list of document's and witnesses were also provided to the delinquent.

4.2 In his reply of 14.7.2014, the delinquent in respect of Charge No.1 contended that operation of the Dharmanagar Depot is a collective responsibility of senior and subordinate employees with adequate checks and balance to prevent pilferage of products from depot and accordingly fuel loss attributed to the depot in-charge was denied against the first charge of stock shortage.

4.3 On the Charge No. 1.1 about the abortive attempt to partially make up the HSD stock shortage by the delinquent, the explanation was that he made the early morning attempt for unloading of the diesel tankers in order to avoid payment of demurrage charge to the Railways authorities, who were pressuring the Depot Manager for unloading the transported diesel.

4.4 On the Charge No.2.2 about anomalies in the dip book record of the MS Tank No.10 and the product shortfall, the delinquent stated that he was never told about the dip difference by any of the subordinate staff and therefore he had no reason to either report the matter or to investigate the product shortfall himself, as the depot in-charge.

5. Continuing with the earlier charges, the additional charge memo dated 26.7.2005 was served by the Disciplinary Authority and in this case we are concerned only with the following allegation (which was held to be established) in the departmental enquiry :-

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...

Moreover in spite of adequate impress fund regularly provided by Digboi Finance, contractors bills, telephone and electricity bills were not paid on time and were kept pending at the depot.

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.."

6. After receipt of the second charge memo dated 26.7.2005, the delinquent through his letter dated 2.8.2005 requested for inspection of documents and in response thereto, the Disciplinary Authority informed through the letter dated 10.8.2005 that the required documents can be inspected at the Guwahati office of the OIL.

7. The two written response of the depot in-charge where the charges were categorically denied, were found to be unsatisfactory and accordingly an inquiry

officer was appointed to enquire into the charges. The enquiry was started on 27.9.2005 and was concluded by 15.12.2005 through multiple sittings. The delinquent participated in the enquiry and took the assistance of the co-employee K.K. Bhattacharjee. The presenting officer produced 9 witnesses to prove the charges and 30 exhibits were produced through the management witnesses. However the delinquent examined himself to defend the charge and produced only one defence exhibit.

8.1 After due assessment of the evidence, the enquiry officer in his report held that since the delinquent was the overall in-charge of the Dharmanagar depot during the period in question, he is directly accountable for the abnormally large missing stock of the oil depot and accordingly it was held that the stock loss was through fraudulent diversion and disposal. The attempt of the depot in-charge to unload the HSD tank Wagon on the early morning of 21.5.05 was found to be an attempt to partially cover up the missing stocks and the explanation of attempt to avoid demurrage charge by the railways was disbelieved by the enquiry officer. The failure of the depot in-charge to report the stock loss to the higher authority was found to be proved and it was held that the delinquent suppressed the information on missing loss in the IOCL Depot.

8.2 The only allegation from the supplementary charge sheet that was found to be partially proved was the charge, relating to non-payment of electricity bills on due time. But all the other charges were found to be not established by the Inquiry Officer in his Report dated 9.12.2005. Therefore here we are concerned with only the 4 charges found to be established, in the departmental enquiry.

9. After the inquiry report was placed before the Disciplinary Authority, the supplementary enquiry was ordered in respect of the confessional statement dated 28.5.2005 (M-31) of the charged officer but the inquiry officer held that the said exhibit M-31 should not be construed as the voluntary confessional statement. Thus a supplementary inquiry report was in the negative for the confessional statement of the depot in-charge was given.

10. After considering the enquiry findings, the Disciplinary Authority ordered for dismissal of the depot in-charge on 28.6.2006 and this was challenged through the WP(C) 6442/2006 by the delinquent.

11. The learned Single Judge observed that no distinct and definite articles of charges were framed in the disciplinary proceeding and this caused prejudice to the delinquent. In the findings given in the enquiry report, certain contradictions were noticed and accordingly it was held that the conclusions were drawn on the basis of inferences on account of the purported failure of the depot in-charge to establish his innocence. While noting the abnormal shortage of petrol, diesel and SK oil in the IOCL Depot, the Court held that there is no evidence to show that the depot in-charge was individually responsible for disposal of the missing products, by fraudulent means. Moreover the shortage was attributed to operational and evaporation causes coupled with the collective responsibility of

the depot in-charge and the staff who were responsible for operation of the IOCL Depot. On the basis of such conclusion, the Disciplinary Proceeding is held to be vitiated and reinstatement of the delinquent was ordered by the learned Single Judge.

12. Since back wages were not ordered by the learned Single Judge upon reinstatement, the delinquent subsequently filed the Writ Appeal No.93/2014 to claim the back wages. On the other hand, the Management earlier filed the Writ Appeal No.254/2012 to challenge the interference with the disciplinary proceeding and the order of reinstatement of the depot in-charge.

13.1 Mr. S.N. Sarma, the learned Senior Counsel submits that the scope for interference by the Writ Court in disciplinary matter is limited and interference with the disciplinary action can be justified only when findings recorded are perverse and/or based on no evidence. He contends that non observance of the principles of Natural Justice in the enquiry was not the case here and re-appreciation of evidence by the Writ Court is not warranted. In the absence of such legal infirmity, the conclusions about vagueness of charge by the learned Judge is contested by Mr. S.N. Sarma by referring to the replies of the delinquent to project that, he clearly understood the allegations levelled against him and therefore the delinquent did not suffer any prejudice on account of non-formulation of the statement of allegation, which in any case is not the requirement of the Service Rules.

13.2 The Senior Counsel refers to the IOCL's Conduct Discipline and Appeal (CDA) Rules, 1980 (hereinafter referred to as "the CDA Rules") to project that specific charges are required to be framed under Rule 31(3) and this was done with full particulars as per the requirement and there is no further need to formulate the statement of allegations.

13.3 Moreover the delinquent was provided inspection of documents when asked for and he participated in the inquiry proceeding by taking assistance of a colleague. Therefore it is argued that disciplinary proceeding was conducted in accordance with the CDA Rules and the depot in-charge was afforded a fair opportunity consistent with the principles of natural justice and there is no cause for intervention by the Writ Court.

13.4 The learned Senior Counsel submits that this was a case of abnormally large missing stock loss to the tune of 1,90,754 Ltrs. of petrol, diesel and kerosene from the Dharmangar Depot of the Oil Company and since the delinquent was in overall in-charge of the Depot during 1.8.2000 - 20.5.2005, the conclusion drawn against the depot in-charge is a natural conclusion. He further submits that other staff in the depot also faced disciplinary proceedings and were punished.

13.5 Referring to the high stock loss which can't be explained away by normal evaporation/transportation causes and which can occur only through a systematic process of diversion and disposal, the Counsel argues that the In-

charge of the Depot can't escape from his responsibility since the charge relates to missing stock.

13.6 The guilty mind of the depot in-charge according to the IOCL's lawyer is clearly discernible from the unusual attempt by the delinquent on the morning of the notified joint stock verification exercise on 21.05.2005, to partially make good the HSD stock shortage through unloading of diesel wagons from the Railway siding. Mr. Sarma argues that the delinquent was conscious and aware of the discrepancy in the physical stock and the stock register and that is why, he made a desperate attempt to unload the diesel wagons from the Railway Siding early on the morning of 21.5.2005.

14.1 On the other hand, Ms. D. Borgohain, the learned Counsel submits that there is no direct evidence to show that the delinquent was involved in systematic product diversion or disposal and therefore she argues that the Writ Court was justified in concluding that the charged officer can't be wholly responsible in the collective responsibility discharged by different officials and staff for the Management of the Dharmanagar Depot of the Oil Company.

14.2 The learned Counsel submits that serious prejudice was caused to the delinquent as statement of allegations were not formulated and she contends that in the absence of specific allegation, the depot in-charge could not have effectively defended the serious charges levelled by the management. In support of her contention, Ms. Borgohain relies on *Surath Chandra Chakrabarty v. State of West Bengal* reported in 1970(3) SCC 548.

14.3 Since a criminal case was also registered on the missing stock in the Dharmanagar Depot and the depot in-charge was exonerated in the criminal case on account of the final report filed by the CBI, Ms. Borgohain submits that disciplinary proceeding should take into account the clean chit in the criminal case to exonerate the delinquent in the disciplinary proceeding.

15. The lawyer for the delinquent contends that since the charges were not proved to the hilt, the learned Single Judge rightly quashed the disciplinary action on the ground of perversity.

16. The procedure for imposing major penalties are prescribed under Rule 31 of the CDA Rules and whenever a disciplinary proceeding is proposed, the authority should frame definite charges on the basis of the allegations against the employee, as provided under Sub-Rule (3) of Rule 31. When we examine the two charge memos dated 3.6.2005 and 26.7.2005, we find that specific charges in seriatum were framed and more importantly from the replies given by the delinquent, it is clear that he was well aware of the charges he was facing. Therefore we feel that charge as they were framed with full details satisfied the requirement of the CDA Rules and in the absence of any prejudice caused to the delinquent, the disciplinary proceeding would not justify any interference on this count.

17. The standard of proof in criminal case is of higher order as compared to a disciplinary proceeding where findings can be given on the basis of preponderance of probabilities and relevant evidence to justify the conclusion reached by inquiry officer. The Writ Court does not exercise the power of an Appellate Authority to judge the merit of the conclusion reached by the inquiry officer. Only in those cases when there is a procedural error leading to manifest injustice or fair opportunity was denied to the delinquent to defend the charges and the conclusion reached are perverse without reference to evidence, the intervention of a Court in exercise of Writ power can perhaps be justified.

18. Proceeding on the above basis, let us now examine whether the intervention made by the learned Single Judge was justified in the impugned disciplinary proceeding. When we read the judgment under challenge, it is apparent that the same is based on re-appreciation of the evidence in the disciplinary enquiry but even in this exercise, the evidence are referred to selectively. Therefore in order to prevent miscarriage of justice, we are called upon now to verify whether the findings are based on evidence or are the inferences of the inquiry officer.

19. The inquiry officer noted the Joint Stock Check Report (Exbt.M-1) signed by the delinquent himself together with M.W.-1 and M.W.-7 on 21.5.2005 to give finding on the missing fuel in the IOCL depot. The witnesses of the management, who were subjected to cross-examination clarified that measurements were taken in the storage tank by M.W.-6 and jointly re-checked by the delinquent and M.W.1, in presence of M.W.-5. The possible variation due to change in temperature was also taken into account. On the basis of consideration of all these relevant evidences, the inquiry officer found that the Charge No.1 relating to missing oil stock was proved.

20. But surprisingly the learned Single Judge misread the charge as one pertaining to deliberate and systematic product diversion and disposal over a period of time through fraudulent ways and means and on that basis referred to the possibility of stock variation due to temperature change, evaporation and operational loss etc. and on that basis opined that the charge pertaining to high stock loss while the delinquent was the depot in-charge, is not established.

21. Similarly against the Charge No. 1.1 which relates to the attempt by the delinquent to partially cover up the HSD stock shortage on the early morning hours of 21.5.2005 (when the joint stock inspection was already scheduled) was held to be established on the basis of inference as the inquiry officer disbelieved the explanation of the delinquent that he attempted to prevent demurrage being charged by the Railway Authorities. On this charge, the findings were recorded by the inquiry officer from paragraphs 11.2.1 to 11.2.4. The abortive attempt of the delinquent to unload the diesel tank wagon was proved through M.W.-8, who testified that he was picked up by the delinquent in his car in the very early morning hours of 21.5.2005 from his residence. This unsuccessful attempt was noticed in the context of the clear instruction of the authorities (M.W-5) that the depot should not be operated after closing of 20.5.2005 till the Joint Checking on

21.5.2005. It was also on evidence that the diesel tankers were placed at the siding only at about 5 P.M. on 20.5.2005. But despite the restriction placed on unloading of wagon after closing of stock on 20.5.2005 for the Joint Verification scheduled the next day, the delinquent made an abortive attempt at unusual hour to unload the diesel tanker in the storage tank and he explained his abnormal conduct to prevent charging of demurrage by Railways. But no evidence was led by the delinquent to indicate that any such demurrage claim was a distinct possibility to justify the abnormal early morning personal attempt and that too, when depot operation was prohibited for that day, for the stock verification exercise. That is why the inquiry officer inferred that the delinquent attempted the unusual exercise on the morning of 21.5.2005 with mala fide intention to makeup the diesel shortage. Thus conclusion was drawn by the inquiry officer on the basis of relevant evidence and it is not a case of drawing inference without any basis, as has been concluded by the learned Single Judge.

22. The Charge No.2.2 relates to inaction of the delinquent to report on the product shortfall or to investigate in the matter by himself for the M.S. Tank No.10, on the basis of DIP measurement. Finding on suppression of information on high stock loss by the delinquent was given by the inquiry officer, on the basis of the Tank Gauge Book (Exbt. M-5) when this exhibit was found endorsed by the concerned witnesses. Moreover the contents of the Tank Gauge Book was not challenged by the delinquent during his cross-examination of the M.W.-2, who proved the Tank Gauge Book. The possible variation in the measurement in the storage tank between Closing DIP and the Opening DIP was also taken into account by the Inquiry Officer. But surprisingly the suppression on information on stock loss was found to be not a charge levelled against the delinquent by the learned Single Judge. But if we carefully examine the Charge No.2.2, it is clear that one of the components of that charge is not reporting the product shortfall in the M.S. Tank No. 10 to the higher authority knowing fully well that such high stock loss can't happen overnight. If this was the charge the contrary finding on this issue in the impugned judgment to the effect that suppression of information was not a charge levelled against the delinquent, is found to be misreading of the Charge No.2.2.

23. The only charge found to be proved from the 2nd charge memo dated 26.7.2005 relates to delayed payment of telephone/electricity bills, contractors bills in due time and keeping them pending despite funds being provided under these Heads. This charge was considered by the inquiry officer by examining the payment vouchers with enclosures and the evidence disclosed that duplicate electricity bills pertaining to February 2003 to September 2003 (Exbt. M-29) were forwarded to the delinquent on 24.2.2004 but he released payment only on 30.12.2004 and thus the rebate for timely payment could not be availed by the Corporation. The explanation of the delinquent that adequate fund was not available was not accepted by the inquiry officer as he found that while steps were taken to secure funds from the Guwahati office for 2 electricity bills, the other bills were not forwarded to the Guwahati office for clearing the payment in

time. On this basis, negligence in performance of duty by the delinquent was found by the inquiry officer. It may be noted here that the Management introduced no evidence on the charge relating to non-payment of contractors' bills. Thus the Charge No.2.2 was found to be partially proved in the departmental domestic inquiry, after due consideration of the evidence. But despite the finding based on relevant materials, it was concluded erroneously, we believe, that this charge of delayed payment of electricity bills was not proved upon adequate evidence.

24. The pivotal responsibility of the delinquent as the depot in-charge was not recognised appropriately in the impugned judgment as the shortfall of physical stock as found on 21.5.2005 was attributed to collective responsibility and also evaporation/operational loss. According to the learned Single Judge, the depot in-charge alone may not be responsible for the losses noticed in the oil depot. But the Writ Court lost sight of the fact that depot supervisor K.A. Laskar was also proceeded departmentally in the matter and eventually he too was dismissed from service.

25. The somewhat elaborate scrutiny of the evidence on the basis of which findings were recorded by the inquiry officer was necessitated here, as we are examining the validity of the judgment given by the learned Single Judge, who declared that the charges were established on the basis of inferences. Certain purported contradictions were found by the learned Single Judge in the analysis of the evidence of the inquiry officer. On the issue of contradiction, it may be apposite now to take note of the contradictions in the judgment under challenge. The confessional statement (Exbt. M-31) of the delinquent was found to be not voluntary by the Inquiry Officer but this was disagreed by the disciplinary authority and it was held in paragraph 42 of the judgment that the authority could not have acted on the basis of his disagreement, without providing an opportunity to the delinquent, on the matter of disagreement. Such required opportunity was found denied in paragraph 42 of the judgment. But earlier in the paragraph 11 and 12 of the same judgment, it was noted that when disagreement was recorded by the disciplinary authority on 15.6.2006, the delinquent was given the opportunity to make additional representation and only thereafter, the further action was taken in the disciplinary matter. Therefore we feel that the Writ Court erred in interfering with the disciplinary proceeding on the basis of the purported contradictions, as we find major contradiction in the observation of the learned Single Judge in the treatment of the confessional statement (Exbt.M-31) by the disciplinary authority.

26. The charges levelled against the delinquent were clearly understood as can be gathered from the replies given by the delinquent. Moreover the charges were definite and contained all material facts and this satisfied the requirement of Rule 31(3) of the CDA Rules on framing of charge for imposing major penalty. Therefore in our opinion the disciplinary proceeding can't be faulted on alleged vagueness of allegation as no prejudice was caused to the delinquent in the

manner, the charges were framed as he could comprehend the charges and was not prejudiced in his defence of the charges in the disciplinary proceeding.

27. It is well settled that judicial review is not an Appeal from a decision but a Review of the manner in which the decision was made. Power of judicial review is meant to ensure that relevant evidence is the basis of the finding and the individual received fair treatment and not to ensure that the conclusion which the authority reaches is correct in the eye of the Court. Moreover the disciplinary authority is the sole judge of facts and adequacy of evidence or reliability thereof can't be canvassed in Court (see *B.C. Chaturvedi v. Union of India* reported in (1995) 6 SCC 749 and also *Moni Shankar v. Union of India* reported in (2008) 3 SCC 484.

28. In the Appeal before us we find that the learned Single Judge embarked upon re-appreciation of evidence as if the Writ Court was sitting in Appeal against the departmental authorities. Therefore having regard to the ratio in *State of Maharashtra v. Madhukar Narayan Mardikar* reported in (1991) 1 SCC 57, we have to declare that the re-appreciation of the evidence made by the learned Single Judge was unwarranted and therefore the impugned verdict rendered on such erroneous approach is legally unsustainable.

29. It is well settled that exercise of jurisdiction under Article 226 of the Constitution to interfere with the decision of the departmental authorities are limited and unless proceedings were held in violation of the principle of natural justice or in violation of the statutory Regulations prescribing the mode of enquiry or if the decision is vitiated on the principle of perversity, interference of the Writ Court would not be justified (see *High Court of Judicature at Bombay v. Shashikant S. Patil* reported in (2000) 1 SCC 416). What we find here is that the delinquent was provided a fair opportunity to inspect the documents when he asked and more importantly, he expressed satisfaction with the opportunity provided to him. He understood the charges and responded accordingly and participated in the enquiry with a co-employee. Therefore we do not see any infirmity in the manner of proceeding with the enquiry which may justify the intervention of the Writ Court. Furthermore, the findings are linked to the legal evidence and it is not a case of finding based upon suspicion as was the situation in *Commissioner of Police v. Jai Bhagwan* reported in (2011) 6 SCC 376 which is cited by the delinquent's advocate. Therefore on all these parameters we find intervention of the Writ Court was not warranted in the present case.

30. In *General Manager (P), Punjab and Sind Bank v. Daya Singh* reported in (2010)11 SCC 233, a perverse finding is defined as one which is based on no evidence or that no reasonable person will arrive at such finding. But in the present case on all the four charges, the findings are recorded on the basis of relevant materials and therefore the conclusion reached by the inquiry officer are not found to be perverse in the present matter.

31. The learned Counsel for the delinquent has cited the case of *Sawai Singh v.*

State of Rajasthan reported in (1986) 3 SCC 454 where the Court found that charges were vague and it was difficult to meet the charges. Therefore although the concerned delinquent had participated in the inquiry, the Court opined that participation by itself does not exonerate the department to bring home the charge. But we find the ratio of Sawai Singh are relevant only in the facts in that case and the said ratio is not attracted to the facts of the present case where the charges were framed in accordance with the CDA Rules and more particularly the delinquent had no difficulty in understanding the charges and conclusions were reached through a fair proceedings with full participation of the delinquent.

32. The Supreme Court in Union of India v. Gyan Chand Chattar reported in (2009) 12 SCC 78 held that serious charges of corruption are required to be proved to the hilt, as it brings civil and criminal consequences upon the concerned employee. In other words, it was held that such serious charges can't be proved on the basis of mere probabilities. In fact the Court held that disciplinary inquiry must strictly adhere to the statutory provisions and the principles of natural justice and inquiry must be conducted fairly and finding should not be perverse or unreasonable and suspicion can't take the place of proof. But as earlier discussed, the findings in each of the charges established in the present case were based on evidence arrived at after due opportunity to the delinquent and in such circumstances, we find that interference with the disciplinary proceeding shouldn't have been made through the impugned judgment.

33. We can't be unmindful that disciplinary proceeding was drawn up in the present matter on account of the abnormally large missing stock of fuel in the oil depot where the delinquent served as the depot in-charge for nearly 5 years from 1.9.2000 - 31.5.2005. The stock loss was established through cogent evidence and the delinquent as the depot in-charge even while claiming collective responsibility, must share the responsibility for the huge stock loss to the tune of 1,90,754 ltrs. of petrol, diesel and kerosene from the Dharmanagar depot of the Oil company. In fact the depot supervisor K.A. Laskar too was proceeded in the matter and eventually his service too was terminated. Therefore exoneration of the delinquent by the Writ Court through application of the scapegoat theory as found in Bongaigaon Refinery and Petrochemicals Ltd. v. Girish Ch. Sarma reported in (2007) 7 SCC 206 was in our assessment an erroneous decision. The delinquent here was the depot in-charge for about 5 years whereas the Dy. G.M of the BRPL in the cited case was charged for wrong evaluation of land price as Member of the Price Negotiation Committee. The subject matter of charge was distinctly different and yet the ratio of Girish Ch. Sarma (supra) was made the basis to give a clean chit to the delinquent by the impugned judgment. Thus we declare that error was committed by wrong application of the scapegoat theory which doesn't get attracted to the long serving depot in-charge in the present case.

34. When findings are recorded in pursuant to a fair proceeding with full

participation of the delinquent and it is seen that legally acceptable evidence support the finding, the intervention of the Writ Court with the disciplinary proceeding is found to be erroneous. As earlier noted, the learned Single Judge travelled beyond what is permitted in disciplinary proceedings and re-appreciated the evidence for himself which in turn necessitated our own verification of the evidence. Upon due application, we find that analysis of the evidence was done selectively and the conclusions reached in the impugned judgment are not warranted by the materials on record.

35. In view of the above reasoning, we find merit in the management's appeal and therefore the WA No. 254/2012 is allowed by quashing the judgment dated 15.6.2012 in the WP(C) No. 6442/2006. Consequently the Writ Appeal No. 93/2014 filed by the delinquent as a Cross-Appeal to claim back wages, is dismissed. Accordingly both the Appeals are disposed of in the manner indicated by leaving the parties to bear their own cost.