
(2019) 07 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 139 Of 2016

Karuna Bhatta

APPELLANT

Vs

Cement Corporation Of India & 3 Ors.

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 136, 226

Citation : (2019) 07 GAU CK 0018

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : U.K. Nair, M.M. Kataki, M.Z. Ahmed, A.M. Dutta, A.C. Kalita

Final Decision : Dismissed

Judgement

1) Heard Mr. U.K. Nair, the learned senior advocate assisted by Mr. M.M. Kataki, the learned advocate for the petitioner. Also heard Mr. M.Z. Ahmed, learned senior advocate assisted by Mr. A.M. Dutta, learned advocate for the respondents No. 1 to 3. None appears on call for the Union of India although the name of the conducting CGC is reflected in the cause list.

2) It has been submitted that the petitioner had superannuated during the pendency of disciplinary proceeding and, as such, the matter be heard out of turn. Hence, at the instance of the learned senior counsel appearing for both sides, the matter was heard at the admission stage by issuing rule returnable forthwith.

3) This writ petition has been filed under Article 226 of the Constitution of India. The case projected by the petitioner is that at the relevant time, he was serving at Bokajan Cement Factory of Cement Corporation of India (respondent No.1) as its General Manager (Co-ordination & Business Department) and Addl. General Manager (Marketing). He was served with a show cause notice dated 19.09.2011 in connection with Proceeding No. 156, alleging that while working as General Manager at Bokajan Cement Factory, he had issued invoices to the transporters

for the cement carried by them for carriage to Imphal. The petitioner was charged that although the cement was sold to the transporters at market rate, but no penalty was imposed under Clauses 5.3 and 5.4 of the Special Terms and Conditions of the tender. It was projected that transporters were engaged for transporting 1309.10 MT, 626.00 MT and 3255.40 MT quantity cement to a dump site at Imphal. But due to severe insurgency problem in the State of Manipur, the transporters got stuck on the road and could not proceed to unload the cement at the dump site. Moreover, it is projected that the In-Charge of the Imphal dump site had abandoned his post. It is also projected that during that time there was excessive rainfall in the area. Accordingly, as the trucks were stranded in the highway to Imphal, those transporters had informed the Bokajan Cement Factory that there was every possibility of deterioration of quality of cement. The said transporters had also offered to purchase the cement at the prevailing market rate at Imphal. It is projected that the two options available were either the cement be recalled at the risk of deterioration of cement or that the offer of the transporters to purchase the cement is accepted. Accordingly, a decision was taken to accept the offer made by the transporters to purchase cement under transportation at its market price at Imphal. It is projected that as the condition of cement had not deteriorated or damaged, there was no possibility to invoke Clause 5.3 of the Terms & Conditions of Transportation. Moreover, as there was no mala fide intention of the transporters, Clause 5.4 of the said Terms & Conditions could also not be invoked.

4) However, the management found fault with the decision of the petitioner and the matter was enquired into. The Chairman- cum- Managing Director of the respondent no.1 (CMD) ordered an enquiry by order dated 01.11.2010. In the Enquiry Report dated 18.01.2011, it was accepted that the law and order situation at Imphal was not critical and benefit of doubt was in favour of the petitioner. As per the said report dated 18.01.2011, it was opined that there was no financial loss to the CCI and that no financial gain appeared to have been caused to the transporters, as such, it was not a case for imposition of penalty prescribed under Clause 5.3 and 5.4 of the Terms and Conditions of Contract for Transportation for non delivery of cement.

5) It is projected that for the first time on 14.11.2011, the petitioner was informed that 4 numbers of vigilance investigations/ proceedings were instituted against him, viz., (i) CCI/VIG/BKO/8/154/5101; (ii) CCI/VIG/BKO/9/ 155/5100; (iii) CCI/VIG/BKO/8/156/5106; and (iv) CCI/VIG/BKO/9/157/5102. Thereafter, three departmental proceedings, bearing No. CCI/VIG/BKO/8/ 154/5101, CCI/VIG/BKO/0/155/5100 and CCI/VIG/BKO/8/156/5106 were instituted against the petitioner. In connection with the said proceedings, by the following communications, Article of Charges were framed against the petitioner, viz., CCI/VIG/BKO/154/08/5735 dated 11.09.2013, containing 7 Articles of Charges; CCI/VIG/BKO/155/ 08/5744 dated 03.10.2013 containing 6 Articles of Charges; and CCI/VIG/BKO/156/08/5106 dated 19.09.2011 containing 3 Articles of Charges. However, the vigilance case No. CCI/VIG/ BKO/9/157/5102 was closed by the

Management. After enquiry, the proceedings bearing No. CCI/VIG/BKO/154/08/5735 was dropped. However, although the proceedings No. CCI/VIG/BKO/155/08/5744 was also dropped, but the penalty of "censure" was imposed on the petitioner.

6) As against the Articles of Charges framed vide Memorandum No. CCI/VIG/BKO/156/08/5106 dated 19.09.2011, the petitioner had submitted his written statement of defence. In course of inquiry, the Management had examined one witness, namely, Sri Ramendra Singh, ex- Deputy General Manager (Pers.) as Management Witness and relied upon 22 documents. The petitioner had examined 2 persons as defence witnesses, namely, Sri Suresh Purohit, Ex-Additional General Manager (Fin.) and Sri V.K. Pandey, Additional General Manager (Prodn.) and relied upon 11 documents. During the pendency of the said departmental inquiry, the petitioner had superannuated on 29.02.2012. After the superannuation of the petitioner, the Inquiry Officer had submitted his report dated 13.09.2013, holding therein that the Articles of Charges No. I, II and III were all partly proved. Thereafter, the second show cause notice dated 19.09.2013 was issued to the petitioner along with copy of the Inquiry Report submitted by the Inquiry Officer to submit his representation against the same. Accordingly, the petitioner had submitted his representation on 25.09.2013, denying the correctness of the Inquiry Report. The CMD of the respondent No.1, who was the disciplinary authority, by his order No. CCI/VIG/BKO/156/8/5745 dated 03.10.2013, after considering the reply/ representation submitted by the petitioner, was satisfied that there existed good and sufficient reason for imposing a token cut penalty of Rs.50,000/- (Rupees Fifty thousand only) on the petitioner.

7) Against the order dated 03.10.2013, passed by the Disciplinary Authority, vide letter dated 24.12.2013, the petitioner had preferred an appeal before the Board of Directors of the respondent No.1. The said appeal was placed before the Board of Directors and thereupon, the said appellate authority in its 319th Meeting held on 03.07.2014, adopted a resolution expressing its satisfaction over the order passed by the Disciplinary Authority by holding that there was no grounds/ scope to review the Appeal by the Board. Accordingly, the appeal of the petitioner was rejected.

8) The learned senior advocate for the petitioner has submitted that there was no finding by the Disciplinary Authority as to how Clause 5.3 and 5.4 of the Terms and Conditions of Contract for Transportation got attracted, yet the disciplinary authority by the impugned order No. CCI/VIG/BKO/156/ 5745 dated 03.10.2013, had imposed a penalty of Rs.50,000/- on the petitioner. It is submitted that the penalty was imposed only to prevent the petitioner from being considered for promotion, which was otherwise due to the petitioner, as such, it is submitted that the punishment of penalty of Rs.50,000/- was imposed in a mala fide manner and for extraneous consideration.

9) The learned senior advocate for the petitioner had meticulously taken the

Court through the relevant materials on record. By referring to the provisions of Clause 5.3 and 5.4 of the Terms & Conditions of Contract of transportation, it is submitted that the Management had admitted that there was bad law and order situation in the State of Manipur. It is submitted that due to various strike calls, bandh, night curfew, etc., trucks were stranded in the highway towards Imphal. Therefore, due to rainy season and uncertainty of local situation, the transported cement could not be delivered at dump-site. Moreover, due to heavy rains, there was likelihood that the quality of cement would have deteriorated. Hence, the transporters had offered to purchase the cement at market price prevailing at Imphal. Hence, it is submitted that the management had not suffered any financial loss due to the decision taken by the petitioner. It is submitted that in the Inquiry Report dated 13.09.2013, one of the finding was to the effect that the petitioner must have persuaded the transporters to purchase cement, and in this regard, it is submitted that the said finding is on the basis of surmises and conjectures alone.

10) It is submitted that the CMD had ordered an enquiry by order dated 01.11.2010. By heavily relying on the said Enquiry Report dated 18.01.2011, it is submitted that despite payment made to CCI, there was no complaint of non-delivery of cement to M/s. IFCD, a Govt. of Manipur enterprise. It is also submitted that moreover, the respondent No.1 had paid the transporters' bills. Hence, it is reiterated that as full market value of cement, as prevailing at Imphal, was realized by the respondent No.1, it had not suffered any financial loss. It is submitted that the said Enquiry Report dated 18.01.2011 had dealt with the then prevailing law and order situation at Imphal, where instances of miscreants taking delivery of cement at gun-point, kidnapping of employees of respondent No.1 and evacuation of employees of respondent No.1 under police protection from Imphal were highlighted. It is further submitted that in the said Enquiry Report dated 18.01.2011, it was mentioned that because of situation at Imphal, the respondent No.1 was not making deliveries on FOR basis. It is submitted that in the said Enquiry Report dated 18.01.2011, it was specifically highlighted that Clause 5.3 and 5.4 were not imposed in the State of Manipur due to prevailing situation known to all. The learned senior advocate has referred to the finding recorded in the Enquiry Report dated 18.01.2011 to the effect that the decision has been collectively taken by (i) all the officials of Bokajan Unit, (ii) Zonal Marketing Officers including (a) SO, Imphal, (b) Sales Head, Bokajan, (iii) Regional Manager, Guwahati, (iv) HOD (Finance, Guwahati, (v) HOD (Finance), Bokajan, (vi) GM, Bokajan, as such, the integrity of the officials cannot be doubted. It is submitted that in the said report, all the officials were exonerated on the ground that the respondent No.1 had not suffered any financial loss and there was no undue financial gain to the transporters.

11) Referring to the deposition and cross examination of the management witness No.1 (MW-1), it is submitted that the said witness had admitted in his cross examination that did not know anything and, as such, no material fact was proved. It is submitted that the Inquiry Report, exonerating the petitioner was

proved by the petitioner by examining the author of the said report. Thus, evidence was led by the petitioner which exonerated him. Accordingly, it is submitted that from the overall evidence of the witnesses, it was not clear that which of the charges were proved against the petitioner. In the said context, it is submitted that the Disciplinary Proceeding was conducted in a premeditated manner to punish the petitioner with an oblique motive to deprive the petitioner by somehow making an adverse entry in his otherwise excellent and unblemished service record at the fag end of his service career.

12) In support of his submissions, the learned senior advocate for the petitioner has relied on the following case citations, viz., (i) Maharashtra State Board of Secondary and Higher Education Vs. K.S. Gandhi, (1991) 2 SCC 716, (ii) M.V. Bijlani Vs. Union of India & Ors., (2006) 5 SCC 88.

13) The learned senior advocate for the respondents has submitted that on separate allegations four enquiry proceedings were drawn up against the petitioner, out of which three departmental proceedings were drawn up as contended by the learned senior advocate petitioner. In his short submissions, the learned senior advocate for the respondents has submitted that there was no evidence to show that the Enquiry Report dated 18.01.2011 had been accepted by the Management. It is further submitted that the petitioner ought to have invoked Clause 5.6 of Part-III of the Special Terms & Conditions of the Tender, and if the delay could not be satisfactorily explained, the petitioner ought to have invoked Clause 5.4 of Part-III of the Special Terms & Conditions of the Tender and non adherence thereto had caused financial loss to the respondents. It is further submitted that payment for cement sent for transportation at the market rate prevailing at Imphal did not render the Clauses 5.4 and 5.6 to be redundant.

14) In order to explain the allegations against the petitioner, the learned senior advocate for the petitioner has referred to the Articles of Charges framed against the petitioner, which are as under:-

a. It is submitted that as per Article of Charges No. I, the work order issued to the transporter, namely, M/s. Tecons was dated 19.12.2006 for 1309.10 MT CCI cement. The goods should have been delivered in 2-3 days at best. However, the petitioner had approved the proposal dated 14.07.2007 to raise invoice on the said transporter. This had caused undue financial gain to the said transporter to the extent of Rs.70,65,819/- by invoking Clause 5.4 and Rs.12,26,978/- by invoking Clause 5.3 of Part-III of the Special Terms & Conditions of the Tender.

b. Similarly, as per Article of Charges No.II, the work order issued to the transporter, namely, M/s. NIU Trader was dated 10.06.2006 for 626 MT CCI cement. The goods should have been delivered in 2-3 days at best. However, the petitioner had approved the proposal dated 14.07.2007 to raise invoice on the said transporter. This had caused undue financial gain to the said transporter to the extent of Rs.36,92,838/- by invoking Clause 5.4 and Rs.6,84,282/- by invoking Clause 5.3 of Part-III of the Special Terms & Conditions of the Tender.

c. Similarly, as per Article of Charges No.III, the work order issued to the transporter, namely, M/s. Nagaland Hardware Store was dated 06. 10.2006 and 19.03.2007 for 3255.40 MT CCI cement. The goods should have been delivered in 2-3 days at best. However, the petitioner had approved the proposal dated 11.06.2007 to raise invoice on the said transporter. This had caused undue financial gain to the said transporter to the extent of Rs.1,83,15,582/- by invoking Clause 5.4 and Rs.28,89,830/- by invoking Clause 5.3 of Part-III of the Special Terms & Conditions of the Tender.

15) It is submitted that within the reasonable time of issuing work orders, the cement was not delivered at Imphal dump site. Moreover, it is submitted that the petitioner had not lead any evidence to show any admissible data showing disruption of road traffic due to strike calls, bandhs, etc., or that the quality of cement was on verge of deterioration or damage due to rain. It is further submitted that the petitioner did not have power or authority to sell cement by raising invoices on the transporter. It is submitted that once the petitioner became aware that cement was not delivered at destination, the petitioner was duty bound to adhere to the tender conditions and invoke Clause 5.6 and consequently, penal provisions contained under Clauses 5.3 and 5.4 should have been invoked. It is submitted that if the petitioner had applying the formula provided therein, the respondent No.1 could have realized a huge penalty. Hence, it is submitted that the evidence led by the petitioner was merely an attempt to divert the attention to the views and opinion of others, which did not absolve the petitioner of the misconduct as elaborated in the Statement of Imputations of misconduct, appended to the Article of Charges. It is also submitted that by order No. CCI/VIG/BKO/155/ 08/5744 dated 03.10.2013, the penalty of "censure" was imposed on the petitioner, which was not under challenge.

16) In support of his submissions, the learned senior advocate for the petitioner has referred to the following cases, viz., (i) K.L. Shinde Vs. State of Mysore, (1976) 3 SCC 76;

(ii) Uttar Pradesh State Transport Corporation Vs. Har Narain Singh, (1998) 9 SCC 220; (iii) Lucknow Kshetriya Gramin Bank (now Allahabad, U.P. Gramin Bank) & Anr. Vs. Rajendra Singh, (2013) 12 SCC 372; (iv) Life Insurance Corporation of India Vs. S. Vasanthi, (2014) 9 SCC 315.

17) Having heard the learned senior advocates for both sides, perused the materials on record.

18) At the outset, the Clauses 5.3, 5.4 and 5.6 of Part-III of the Special Terms & Conditions of Tender is extracted below:-

5.3 The recovery for any damage, deterioration or shortage shall be made at the prevailing market rate or invoice value which is higher including taxes, duty and transportation charges + 10% extra towards incidental charges.

5.4 In case of shortage in delivery or non delivery of the material handed over for transportation found to be due to any malafide intention on the part of the contractor or his representatives, the recovery shall be at double the rate indicated in sub-para 5.3. This recovery shall be without prejudice to any other remedies available to the Corporation under the law.

5.6 The contract shall ensure that material is delivered within a maximum period of 3 (Three) days from the date of loading/taking delivery. In case of any delay, penalty at the rate of 500/- (rupees five hundred only) per day per truck not to be taken into account for calculating delay. In case of bandh, supporting documents are to be furnished by the contractor. In the event of delay for more than 7 days it will be treated as the case of non delivery and penalty will be imposed as per para 5.4 above.

19) The learned Senior advocate for the petitioner had laid stress on the fact that by an order dated 01.11.2010, the CMD of the respondent No.1 had ordered an enquiry to be conducted into the allegations against the petitioner and accordingly, the Enquiry Report dated 18.01.2011 was submitted, thereby exonerating the petitioner. It was also submitted that the petitioner had led evidence to prove the contents of the said Enquiry Report dated 18.01.2011. It is submitted that the said evidence was material and germane to the issue of misconduct and as the said evidence could not be demolished, the imposition of penalty on the petitioner was not sustainable. The relevant paragraph 18 and 37 of the case of Maharashtra State Board of Secondary and Higher Education (para-21, 22, 37) is extracted below.

18. Thus it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/ decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High court under Article 226 or the appellate jurisdiction of this court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.

37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference

from the evidence and circumstances must be carefully distinguished from conjectures or speculation. the mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. the standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.

20) In the case of M.V. Bijlani (supra), cited by the learned senior advocate for the petitioner, the Supreme Court of India had held in paragraph 25 thereof as under:-

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

21) On facts, it is seen that although the petitioner has proved the Enquiry Report dated 18.01.2011, but no evidence was led to show that the Management of the respondents had accepted the said Enquiry Report dated 18.01.2011. Thus, if the Disciplinary Authority had not taken cognizance of the said report, the Court cannot find fault in the impugned Inquiry Report dated 13.09.2013 or with the resultant order dated 03.10.2013, passed by the Disciplinary Authority. The petitioner had made an attempt to project that Clause 5.3 and 5.4 had never

been invoked previously. It is also seen that even in the Enquiry Report dated 18.01.2011, the focus of the Enquiry was to give instances of insurgency and the then prevailing bad law and order situation and moreover, the previous non-invoking of Clause 5.3 and 5.4 by the respondent No.1 and also by the petitioner was justified. In the opinion of this Court, the past practice that was being followed was not the "terms and conditions" of the tender. Therefore, as the Special Terms & Conditions of Tender provided for certain consequences to follow if cement was not delivered within 7 days, then the drawing up of the departmental proceedings against the petitioner cannot be said to be questionable and render the resultant enquiry report dated 13.09.2013 to be unsustainable.

22) It is seen that the Clause 5.6 of Part-III of the Special Terms & Conditions of Tender as extracted herein before provides for imposing of penalty @ Rs.500/- per day per truck on the contractor for delay beyond 3 (three) days in making delivery. It further provides that declared holidays and bandhs are not to be taken into account for calculating delay, and it is further provided that in case of bandh, supporting documents are to be furnished by the contractor. Moreover, it is provided that in the event of delay of more than 7 days till will be treated as the case of non delivery and penalty will be imposed as per Clause 5.4. The petitioner has not been able to demonstrate that (i) for how many days the trucks were stranded in the highway, (ii) when did the transporters informed about their inability to deliver cement, and (iii) the date when transporters had offered to purchase cement. Moreover, nothing could be shown before this Court that the petitioner could prove that the transport contractors had provided supporting documents for the bandh, necessitating waiver of imposing penalty on such contractors. It is seen that Clause 5.4 Part-III of the Special Terms & Conditions of Tender refers to the incidence of non- delivery of cement. Hence, this Court is unable to find infirmity in the proceeding if the petitioner is charged only for non-compliance of Clause 5.4 and not for Clause 5.6. Accordingly, the punishment of imposing a token penalty of Rs.50,000/- is not found to be disproportionate.

23) Thus, it is seen that the charges of misconduct are proved against the petitioner. Under such circumstances, this Court hardly has any scope to interfere with the punishment, which is the sole prerogative of the disciplinary authority. If one needs an authority on the said principles, the case of Life Corporation of India (supra) may be referred to. Accordingly, although the learned senior advocate for the petitioner has canvassed that by imposing financial penalty, the respondents have closed the doors for the petitioner to be considered for his promotion in the fag end of his career, this Court is of the considered opinion that the spill-out effect of imposing such punishment cannot be gone into unless the punishment is found to be shocking to the conscious this Court. On facts, the punishment is not found to be disproportionate.

24) On scrutiny of the materials on record, it is seen that in his appeal dated

26.12.2013 before the Chairman of Board of Directors of respondent No.1, the petitioner has made a statement therein to the following effect - "... In spite of the above, and in the name of 'Token cut penalty' a huge deduction of Rs.50,000/- (Fifty thousand) was imposed vide order no. CCI/VIG/BKO/156/08/5745 dt 3rd Oct 2013 except the Zonal Manager, entire bunch of executives of Sales, MM & Fin dept of Bokajan including the unit General Manager for committing a bonafide mistakes being carried out routinely since beginning of Marketing Operations at Imphal of non imposition of clause 5.3/5.4 of Tender Documents ..." Thus, it appears from the said statement, that not only the petitioner had admitted his mistake but he also had been informed all the Executives of Sales, MM & Finance of Bokajan Unit including its General Manager were given the same punishment as imposed on the petitioner. Thus, this is not a case where the petitioner was singled out for being awarded discriminatory punishment.

25) In the case of Lucknow Kshetriya Gramin Bank (supra), the Supreme Court of India has held as under:-

"19. The principles discussed above can be summed up and summarized as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

19.2. The Courts cannot assume the function of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court; -

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct

as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable.

20 It is made clear that such a comparison is permissible only when the other employee(s) who is given lighter punishment was co- delinquent. Such a comparison is not permissible by citing the cases of other employees, as precedents, in all together different departmental enquiries."

26) In the case of K.L. Shinde (supra), the Supreme Court of India has observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. In the case of Uttar Pradesh Road Transport Corporation (supra), the Supreme Court of India had held that the High Court was not sitting in appeal over the findings given by the disciplinary authority and, as such, the re-examination of the evidence led in the disciplinary proceedings was not warranted. Similarly, in the case of Life Insurance Corporation of India (supra), the Supreme Court of India had expressed its opinion that the High Court transgressed its limits of judicial review by itself assuming the role of sitting as departmental appellate authority, which is not permissible in law.

27) Therefore, in view of the discussions above, this Court is not inclined to interfere with the (i) Article of Charges framed vide letter No. CCI/VIG/BKO/156/08/5106 dated 19.09.2011, (ii) Enquiry Officer's report dated 13.09.2013; (iii) Disciplinary Authority's order No. CCI/VIG/BKO/156/ 5745 dated 03.10.2013; (iv) Appellate Authority's order dated 21.08.2014, impugned herein.

28) As a result, this writ petition fails and the same is dismissed. The rule stands discharged.

29) No cost.