

(2018) 07 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition(C) 8208 Of 2002 & Cm Appl. 13910 Of 2002

K.Krishna Kurup

APPELLANT

Vs

M/S M.M.T.C. Ltd

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Indian Penal Code 1860 — Section 21
Constitution Of India, 1950 — Article 226

Citation : (2018) 07 DEL CK 0034

Hon'ble Judges : C. HARI SHANKAR, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C. HARI SHANKAR, J.Â Â

1. On 14th December, 1998, an agreement was entered into, between M/s Sterlite Industries India Ltd (hereinafter referred to as "Sterlite")

and the Mineral and Metals Trading Corporation of India Ltd (hereinafter referred to as "MMTC"), the respondent herein.Â Under the said

agreement, MMTC was to undertake storage, handling and marketing of continuous cast copper rods (hereinafter referred to as "CC rods")

manufactured by Sterlite, in various states.Â Sale, of the rods, was to be undertaken, by MMTC, on consignment basis, at various places in India.Â

Though the Agreement provided that MMTC would sell only against 100% advance, or against financial arrangements made by the customer, it had

been earlier decided, in a meeting held on 20th January, 1994, between Sterlite and MMTC, that MMTC could extend credit to the customers of the

rods, but on its own terms and at its own risk.Â In case such credit was extended by MMTC to the customers of the rods, it was decided that

payment, to Sterlite, would, nevertheless, be made, by MMTC, on delivery of the rods being effected to the customers.Â Acting on the basis of this

understanding, MMTC sold CC rods to M/s Hindustan Transmission Products Ltd (HTPL), from time to time, under Letters of Credit (hereinafter

referred to as â??L/Csâ??), opened by HTPL with the Punjab National Bank (hereinafter referred to as â??the Bankâ??), during 1995.

2. The petitioner K Krishna Kurup, who was working, theretofore, at the Cochin Sub-Regional Office (SRO) of the MMTC, was transferred, in

January, 1995, to the Indore SRO of MMTC, as Manager (Finance and Accounts) [hereinafter referred to as â??Manager (F & A)â?].Â The

respondent contends that, during the period January 1995 to January 1996, the petitioner was responsible for financial matters at the Indore SRO,

which included implementation of systems and procedures relating to finance, and supervision and monitoring thereof.Â Included in the scope of these

duties, it is contended by the respondent, was the necessity to ensure prompt realisation of payments, in respect of CC rods manufactured by Sterlite

and lifted by the customers, so that prompt remittances, to Sterlite, could be made.

3. Alleging that the petitioner was remiss in ensuring that 13 LCs, relating to CC rods, manufactured by Sterlite and supplied, by MMTC to HTPL,

were submitted, in time, to the Bank, so that payments would be made by the Bank thereagainst, as also in ensuring that the said L/Cs, when

submitted, were in order and accompanied by all requisite documents, the petitioner was visited with a charge-sheet dated 12th May, 1997, proposing

to hold an inquiry, against him, under Rule 25 of the MMTC Employees Conduct, Discipline and Appeal Rules, 1975 (hereinafter referred to as

â??the rulesâ?), and inviting his response thereto.Â The charge-sheet contained two Articles of Charge.Â Inasmuch as the Second Article of

Charge was dropped, the necessity of making any reference, thereto, stands obviated. Article 1, of the Articles of Charge against the petitioner, as

contained in the said Memorandum was, however, exhaustive and detailed, and, instead of attempting to paraphrase the same, reproduction of the

Statement of Imputation of misconduct, in respect of the said Article of Charge, would be more appropriate:

â??1. Shri K K Kurup, Manager (F&A), was transferred to Indore SRO from Cochin SRO, and he reported for duty in Jan 1995. During the

period Jan 1995 to Jan 1996, Shri Kurup was responsible for the Finance Function at Indore SRO which included implementation of systems and procedures relating to Finance function and for supervision and monitoring of the same.

2. In respect of sale of CC copper rods of Sterlite-make from Indore SRO to various customers, Shri Kurup was responsible for prompt realisation of payments due in respect of the material lifted by the customers and remittances to Messrs Sterlite Industries Ltd. Mumbai. However, Shri Kurup was grossly negligent in the discharge of his duties and responsibilities which resulted in MMTC not being able to realise from Messrs Hindustan Transmission Products Ltd. (HTPL) a sum of approx. 15.92 crores in respect of 896.801 MT of CCC copper rods of Sterlite-make sold to them from MMTC's Indore office against 13 inland LCs (details given in the statement enclosed to the charge-sheet).

3. Gross negligence on the part of Shri Kurup resulted in delayed submission of documents to Punjab National Bank (PNB) and/or in submission of documents to the bank with serious discrepancies contrary to the terms and conditions laid down in the LCs opened by Messrs HTPL. The serious discrepancies noted by Punjab National Bank, inter-alia, are as under:

- a. bills of exchange/hundies were not accepted by the drawee, as per the terms of the LC
- b. documents were submitted for negotiation beyond the stipulated period of 15/21/30 days from the date of transport documents (in some cases, documents were submitted even after 4 ½ months)
- c. documents were submitted much later than the expiry of LC.
- d. description of goods in the invoices/other documents was not as per the LCs.
- e. receipt of goods on the delivery challans was not properly made
- f. address of the drawee not given in the hundi.

4. The Internal Audit had reported that a review of the credit sales against LCs of non-ferrous metals at Indore SRO for the period of 9 months, i.e., April to 21st Dec 1995, showed that,

- a. sales realisation from PNB against sales made to HTPL were not forthcoming for months together without any stir in the SRO
- b. for three transactions for Rs. 1.27 crores made in April 1995 against LC Nos.

39/95 and 52/95 for which the documents should have been submitted to the bank in April/May 1995 (exact dates could not be ascertained as no copies of LCs were available in the office) and the sales

realization should have come in Oct, 1995, even the documents had not been submitted to the bank by 21st Dec 1995

C. in respect of 40 sales transactions totaling to Rs. 15.39 crores, the documents had not been submitted to the bank even after the stipulated date

(details enclosed to the Internal Audit report of 26th Dec 1995)

5. In spite of his attention being drawn to the fact that the documents were not being submitted to the bank as per the terms and conditions mentioned

in the LCs and that this was likely to result in serious problems for the Company, Shri Kurup failed to take immediate action to submit the documents

to the bank in time. Shri S S. Modh, Dy Manager, vide his note of 18.7.1995, clearly brought out that several LCs were expiring and documents had

not been submitted in time to the bank.

- some LCs had not been sent to bank for negotiation on time
- some LCs had been preferred to the bank for negotiation but entries in the LC register were missing
- some LCs had not been preferred to the bank for negotiation but it was not known whether the payments had been received or not
- copies of the LC documents were not available in the file which were preferred to the bank
- in some cases, LC documents were available in the file but entries in the LC register were missing
- in some cases, LC documents of a party were being found in another party's file
- in some cases, duplicate entries of LCs had been made in the LC register
- date of writing the LC details were missing
- sight LC documents had not been presented to the bank immediately after delivery

It was also suggested by Shri Modh that the following action be taken immediately:

a. each party's file should be maintained in such a manner that all LC documents must be present in the respective party's file

b. proper data must be entered in the LC register giving LC details, LC amendments, date of entry in the register, date of presentation for negotiation, amount realized, etc

c. a proper system to be made so that documents are sent for negotiation within due date

d. in case where documents clearly specify that payments were to be made at sight, proper care should be taken so that there is no interest loss to

MMTC

e. LC documents to be presented to the bank immediately after delivery

f. one officer to be posted to check status of LC etc.

6. Shri R P Saini, DGM incharge at Indore SRO, had recorded his observations on the said note of Shri Modh, as under:

“I hope necessary steps have been taken by Manager (F) since above points were brought to his notice by the concerned Dy Manager. It is also

brought to my knowledge that in spite of timely advice by the concerned parties directly to Manager (F), LCs are not negotiated in time. Such cases of

LC expiring have to be checked immediately. Please let me know how many such cases are there, so that a comprehensive report could be sent to

CO.”

This note was duly acknowledged by Shri Kurup on 8th August, 1995. Still no action was taken.”

Again on 12th Aug, 1995, Shri Modh put up a note giving a list of 4 pages showing the latest position of LCs to see whether the documents in respect

of these LCs had been submitted to the bank. This note was also marked to Shri Kurup by Shri Saini with his endorsement, “please look into it and

let me know final position immediately”.

7. In spite of the above, no remedial action was taken up by Shri Kurup and documents were not submitted to the bank in time. Shri Kurup was

grossly negligent in the discharge of his duties and failed to take the most urgent steps for ensuring presentation of documents as per conditions laid

down in LCs opened by Messrs HTPL. Shri Kurup wrote a letter on 30th Oct 1995 to the Chief Manager, Punjab National Bank, requesting that

based on letter of HTPL requesting LC opening bank to accept documents even if they had discrepancies, to release payments against LCs Nos.

65/95, 90/95, 58/95, 68/95, 70/95 and 61/95. It is apparent from this letter that Shri Kurup acted very negligently in relying on the letter of Messrs

HTPL that documents could be submitted against LCs even with discrepancies and that they would still be honoured and payments released against

such documents. However, as it ultimately transpired, HTPL themselves refuted this viewpoint vide letter of 6th Feb 1996. Punjab National Bank also

refuted this contention and did not honour the documents.Â

8. On a number of occasions, Shri Kurup himself corresponded with Punjab NationalÂ Bank, Indore, enclosing documents in respect of LCs opened

by HTPL for negotiating the same and realising payments for MMTC, including the 13 LCs in respect of which the payments have not been received,

referred to in para 3 above. In spite of failure in realising payments, Shri Kurup continued to send documents to the bank with discrepancies and/or

after the due date for submitting documents as per the LC terms and conditions. He also failed to keep his superiors at Indore SRO or at CO informed

of the refusal by the bank to release payment.â??

4. In his response to the aforementioned charge-sheet, the petitioner did not seriously question the fact that payments, against the 13 L/Cs in question,

could not be realised.Â He, instead, assailed the charge, against him, on three grounds, i.e. (i) that matters relating to finance/accounts, in the context

of sale of the CC rods, was being looked after, by the Deputy Manager (F & A), and not by the petitioner, who was posted in the Agro Division, (ii)

some of the L/Cs had already expired, or were likely to have expired, and (iii) discounting, by the Bank, had, in the past, been done even in the case of

lapsed L/Cs.Â I may note, here, that, as the petitioner has not chosen to place, on record, his response to the aforementioned charge-sheet dated 12th

May, 1997, I have culled out these defences, as put forth by the petitioner, from the Inquiry Report which subsequently came to be issued by the

Inquiry Officer appointed in the case.

5. Mr. A.K. Garde, retired Secretary of the Central Vigilance Commission (CVC) was appointed as the Inquiry Officer (hereinafter referred to as

â??I/Oâ??), to enquire into the charges against the petitioner.

6. Dealing with the above defences, advanced by the petitioner, to the charge against him, the I/O, in his Inquiry Report dated 9th November, 1998,

observed/held as under:

(i) He had, at the outset, advised the Presenting Officer (hereinafter referred to as 'PO'), as well as the petitioner, to prepare a joint tabulated

statement with reference to the 13 L/Cs, showing the due date for presentation of documents to the bank, the date of expiry of the LCs, the dates on

which the documents were prepared by the Account Section, and the dates when they were sent to the bank, among other details. A statement,

containing the said information, as signed by the Presenting Officer, was received, though it did not bear the signature either of the petitioner or his

Defence Assistant. This statement contained the picture in respect of each of the L/Cs. The L/Cs themselves, along with the connected documents,

had also been exhibited as Ex. P-4 and Ex. P-5.

(ii) The petitioner had not disputed the factual position reflected in the aforementioned statement submitted by the Presenting Officer. Neither did he

dispute the fact that payment of ₹ 15.93 crores was outstanding. He, instead, sought to contend that he was not responsible for the said payment

remaining outstanding.

(iii) Ex. P-4 and Ex. P-5 indicated that on the very day, when the documents were received from the Trade Section, they were further prepared by

Account Section. Forwarding letters to the bank, were also prepared soon after. However, the documents were received by the bank belatedly, in

some cases, as many as two to eight months after the dates on which the letters, for sending the documents to the Bank, were prepared. Owing to the

delay, the L/Cs were not honoured by the Bank.

(iv) There was a specific clause, in the individual L/Cs, requiring the documents to be presented within 15/21/30 days of the dates of the transport

documents, but within the validity of the L/Cs. It had been revealed, in the inquiry proceedings, however, that the documents were not received by

the Bank, within the said period.

(v) A joint visit had been conducted, in December, 1995, by the Chief General Manager (CGM) and the General Manager (Finance) [hereinafter

referred to as 'GM(F)], particularly in connection with the non-realisation of payment, from HTPL, against Sterlite rods sold to them by the

Indore SRO of MMTC.

The joint report prepared, consequent thereto, stated that (a) the Deputy Manager (M) and the Deputy Manager (F) had handed over the L/Cs and

documents to the petitioner, who failed to submit them, in time, to the Bank, as stipulated in the L/Cs and (b) the petitioner told the said visiting team

that he had been unable to submit the L/Cs and documents in time, to the Bank, owing to excessive workload, though no such grievance had ever been

raised by him before the competent authorities, including the DGM.Â

(vi) PW-1 Mr. D. S. Goswami, the Manager (Finance), referring to this report, pointed out that the irregularities highlighted by the Bank, qua the L/Cs,

were, in nearly all cases, either regarding the delay in their submission, or that they were not accompanied by the requisite documents. No question, on

these aspects, was put by the petitioner, to PW-1, during cross examination. As such, the deposition of PW-1, to that effect, had to be treated as

correct.Â

(vii) In June, 1996, another team, of two General Managers, D.S. Gulati and R. Hari, visited the Indore SRO, for investigating the case of non-

realisation of payment against lapsed L/Cs of HTPL. The findings of this team, as reflected by them, in Ex.D-4, were that in a number of instances,

the documents were submitted, by the Bank, after the expiry of the deadline mentioned in the L/Cs and, in some cases, even after the validity period

of the L/Cs themselves, till which period alone credit was allowed, and that there was no prior procedure followed for realising payment against

material supplied. Though PW-1 D.S. Goswami was also a member of this team, neither the petitioner, nor his DA, during cross-examination,

questioned Mr. Goswami regarding the report of this team either. As such, the observations contained in the said report had to be treated as valid and

binding.Â

(viii) PW-2 S. S. Modh had also submitted the notes, dated 18th July, 1995 and 12th August, 1995, exhibited as Ex. D-1, in which he had pointed out

the discrepancies in documents and also given, in the notes, a list of the expired L/Cs. He further deposed that he had intimated these discrepancies to

the petitioner, through the Regional Head R.P. Saini. In his notes dated 18th July, 1995 and 12th August, 1995, PW-2 S. S. Modh, broadly stated as

under:

(a) On enquiry, it was discovered that some of the lapsed L/Cs had not been sent to the Bank for negotiation in time, whereas, in the case of certain

other L/Cs, they were presented to the Bank for negotiation, but entries in the L/

Cs register were missing. In the case of some L/Cs, it was not known whether payment had been received, from the Bank, thereagainst or not. In the note of S.S. Modh, the DGM had entered an observation, expressing the hope that the petitioner would have taken necessary steps, as the points mentioned by Mr. S. S. Modh, in his notes, had been brought to the notice of the petitioner by him. Even so, on 1st August, 1995, the DGM had noted that, in spite of timely advice, by the concerned parties, directly to the petitioner, L/Cs were not negotiated in time. This note, of the DGM, was marked to the petitioner, who merely affixed his signature, thereon, on 8th August, 1995. No corrective action was, however, been taken by the petitioner in this regard.Â

(b) In his further note dated 12th August, 1995, PW-2 Mr. S. S. Modh attached a list, showing the latest position regarding the L/Cs. This note was marked, by the DGM, R.P. Saini, to the petitioner, on 12th August, 1995 itself, advising him to look into it and communicate the requisite information immediately. The petitioner, however, again merely signed the note. The position regarding unsatisfactory situation, about the L/Cs, was not put, to PW-2, during cross-examination, at all. A reading of the note of PW-2, S. S. Modh, (Ex.D-1), read with his deposition, reveals that the situation regarding the L/Cs was unsatisfactory, that serious attempts had not been made to present the documents in time to the Bank, so that payment could be recovered, and that, even when the DGM asked the petitioner to look into the matter, and let him know the financial position, there was no evidence to indicate that the petitioner took any corrective action to put up the position to the DGM in writing. He merely signed the note and left it at that.Â

(ix) Apart from the above two reports, each by a two-member Committee, as well as the note of PW-2 Mr. S. S. Modh, the following discrepancies were also highlighted, by the Bank, in its letter dated 27th January, 1996, addressed to the MMTC: (a) The Bills of Exchange/hundi were not accepted by the drawee as required by the L/Cs.Â Â

(b) The documents were submitted for negotiation beyond the stipulated period of 15/21/30 days from the date of transport documents; in certain cases, after four and half months.Â

(c) Documents were submitted much after the expiry of L/Cs.Â

(d) The description of goods, in the invoices/ other documents, did not correspond with the description in the L/Cs.Â

(e) Receipt of goods, on the delivery challans, was not properly made.

(f) The address of the drawee was not given in the hundi.

(x) This indicated that, apart from delay in their submission to the Bank, the documents accompanying the L/Cs also contained a number of

discrepancies, thereby indicating that the papers were never verified before submitting them to the bank. This reflected, adversely, on the F & A

branch, of which the petitioner was the Manager (in-charge).

(xi) This further indicated that the entire issue, relating to forwarding of documents, to the Bank in time, so that payments could be received against

the L/Cs, had been handled, by the petitioner, in an unsatisfactory, cavalier and irresponsible manner, resulting in failure to realize payment of ₹ 15.93

crores and corresponding failure to remit payment to Sterlite.Â

(xii) The first defence, of the petitioner, to the charge against him, was that financial/accounts matters, relating to sale of CC rods, were being looked

after by Mr. M. D. Beg, Deputy Manager (F & A), and that he was not involved, in any manner, therewith. While it was true that the management

had not cited any documents delineating, exactly, the duties which the petitioner was expected to handle at the Indore SRO, the fact of the matter was

that the Indore SRO was upgraded, as a fullfledged SRO, in November, 1994 and that, on 4th January, 1995, the petitioner joined SRO Indore as

Manager (F&A). (xiii) This contention was additionally not acceptable, for the following reasons:Â

(a) PW-3 Mr. Mathpal had deposed that he used to send the documents, such as delivery challans and copies of delivery orders either to Mr. Beg or

to the petitioner. This would not have been possible, had the petitioner not been associated with sale of copper rods.Â

(b) In his cross-examination, PW-2 S. S. Modh had stated that the NFM Division at Indore was headed by the DGM R. P. Saini, who was assisted by

Mr. Mathpal, Deputy Manager (NFM), the petitioner, Mr. Beg, and himself.

(c) PW-2 S. S. Modh, too, deposed that the documents, including L/Cs, were submitted, at times to Mr. Beg and at times to the petitioner.

(d) The L/C documents at Ex. P-4 indicated that the petitioner had signed a number of forwarding letters to PNB, including usance drafts, invoices,

debit notes and godown delivery challans.Â

(e) Ex. P-5 further indicated that the petitioner had signed the Bank's acknowledgment for having received the bills, as also pay-in-slips relating to the bills.

(f) The Joint Report Ex.P-31 also proved that L/Cs were being sent and routed through petitioner as it stated that the petitioner was required to submit the L/Cs, along with documents, within time, to the banks for negotiation, which the petitioner failed to do.

(g) Had the petitioner not had anything to do with sale of copper rods and realisation of payments thereagainst, there was no reason for Mr. Saini to have marked his notes, dated 1st August, 1995 and 12th August, 1995, to the petitioner, as well as Ex. D-1, in which he referred to the unsatisfactory position of L/Cs. The petitioner had never sought to contend, in response thereto, that he was not concerned with examination of files relating to sale of copper rods.

(h) The Manager (F) was, for all practical purposes, the Finance Officer (In-charge) of financial operations at Indore.

(i) Ex. D-2, which was a letter dated 22nd May, 1995, from the DGM R. P. Saini to R. Hari, (GM) clearly stated that, as per the allocation of work amongst the officers, the petitioner was entrusted with 'looking after all financial operations'.

As such, it could not be accepted that the petitioner had nothing to do with the financial aspect of sale of copper rods to HTPC, or realisation of payments thereagainst, against the L/Cs furnished by HTPL.

(xiv) The second point of defence, urged by the petitioner, was that some of the L/Cs had already expired or were likely to have expired. In this context, it was clear from the reports at Ex. P-4 and P-5, that documents were prepared by the Accounts Section from early May, 1995, and letters proposing to send the documents to the Bank were also prepared soon after, but there was considerable delay in actual receipt of documents by the Bank, which had caused the problem.

(xv) Inasmuch as the third ground urged by the petitioner, i.e. that the Bank had also made payments, in certain cases, against lapsed L/Cs, was concerned, this, if anything was a matter of good fortune for the MMTC, and could not be cited as a justification for the delay, on the part of the

petitioner, in submitting the documents to the Bank, or in submitting the L/Cs without their being accompanied by the documents in satisfactory

condition, especially in view of the specific stipulation, in the L/Cs, to the effect that they were required to be submitted 15/21/30 days within

presentation of the transport documents.Â

7. Having thus analysed the evidence before him, the I/O concluded, in para 23 of his Inquiry Report thus:

â??Apart from the position discussed above, on the basis of totality of the evidence on the record of this case particularly in the face of letter of Sh

R.P. Saini to Sh R Hari at Exb. D-2 in which it is stated inter-alia that the work allocation amongst Sh K.K. Kurup and Sh M.D.Beg is to look after of

financial operations, it would be incorrect for Sh Kurup to try to stick to his stand that he was not associated with the financial operations of CC

copper rods.Â The above work distribution does not show that he was not to handle CC copper Rods. Secondly since Sh Kurup was posted there as

a Manager(F) in Januaryâ??95 for all practical purposes he was posted there to be incharge of the Finance division, in his capacity as Manager(F &

A) because there is no other finance officer who was posted there who was senior to him or there was no other Mgr(F & A) who was parallel to his

own post. In such circumstances as Mgr(F), it was the responsibility of Sh Kurup to assume command and control over all financial transactions

including the LCs. Even when notes dated 1-8-95 and 12-8-95 by Sh Saini on the report submitted by Sh S.S. Modh at Exb. D-1 were marked to Sh

Kurup he has simply signed those notes without taking any action.Â Another unsatisfactory situation is that though the letters to the banks and

invoices signed by Sh Kurup were prepared on receipt of challans from Commodity Division, but due to negligence in not arranging to submit the

documents to the negotiating bank within due dates resulted in non-realisation of Rs.15.93 crores from M/s HTPL.â??

(Emphasis supplied)

8. A copy of the aforementioned Inquiry Report, dated 9th November, 1998, was forwarded to the petitioner, who submitted his response, thereto, on

1st March, 1999. Unfortunately, no copy of the said representation has been brought on record by the petitioner in these proceedings.Â

9. Vide order dated 9th July, 1999, the General Manager, in his capacity as

disciplinary authority, concurred entirely with the findings of the I/O and, opining that, as lapses on the part of the petitioner warranted his dismissal from service, considering the fact that he had rendered 31 years of service in the company, the interest of justice would be met by imposing, on him, the penalty of reduction to the lower post of Deputy Manager with corresponding reduction of pay scale in terms of Rule 23 of the Rules.Â

10. The findings of the DA merit reproduction as under: â??I have examined in detail the findings of the Enquiry Officer, submissions made, by the Charge Officer and documentary evidences taken on record.Â I agree with the findings of the Enquiry Officer that while article No.1 of the chargesheet is established, article No.2 could not be established. The article No.1 chargesheet which has been established at the enquiry is serious.

i. Shri Kurup has, however, contended in his representation that it was not his responsibility to deal with HTPL transactions as indicated in the chargesheet.Â He, as a responsible Officer of the Company, only forwarded the documents to the Bank, though this job was assigned to some other Officer. The Enquiry Officer has held that there is enough evidence on record that Shri Kurup was responsible for submissions of documents to the Bank.Â These documents have been signed by Shri Kurup. If he was not dealing with the matter, there was no reason for him to affix signatures on letters, etc. In course of enquiry, the witnesses also corroborated the facts that documents like delivery challan/delivery orders, etc. were handed over to Shri Kurup for taking necessary action for negotiation of L/C. He failed to cross-examine the witnesses on this point and also could not submit any documentary evidence in support of his contention. Hence, it cannot be denied that responsibility for realization of payment against 13 L/Cs in question rested with him.

ii. The contention of Shri Kurup that the practice followed by him of sending the documents to Bank beyond the due date or expiry of L/C was extension of old practice followed by Indore Office has no substance. It is a fact that instances are available of negotiation of L/C after its expiry during 1994-95, but negotiation of L/Cs after expiry were honoured and no default in payment was reported, whereas in the present case because of inordinate delay in negotiating the documents, payment of Rs.15.93 crores could not be realized. It is, therefore, felt that Shri Kurup cannot take the

refuge on the contention that similar irregularities were committed in the past; while not condoning the irregularities committed in the past, the moot

point is that payments were realised, whereas in his case no payments were realised.Â

iii. He has also contended that he was not aware of the alternative arrangement for realizing payments which existed during 1994-95. According to

him on request of HTPL and with the sanction of Corporate Office as also with the consent of M/s. Sterlite Industries, documents were discounted by

the other than L/C opening Banks nominated by HTPL and in some cases discounting was done after due date and in some cases even after expiry of

L/C. This contention of Shri Kurup lacks merit since if at all such arrangement existed, as a responsible officer, he was required to acquaint himself of

such practice. Moreover, when L/Cs opened by Punjab National bank were available, there is no reason why Shri Kurup should allow the L/Cs to

expire and look for an alternative arrangement for realisation of payment. The default in payment occurred mainly on account of late/delayed

presentation of documents.

iv. As for his contention that the two notes dated 18th July??95 and 12th August??95 relied upon by the Enquiry Officer were raised by Shri S.S.

Modh, Deputy Manager pointing to L/Cs expiry submitted to Shri R.P. Saini, the then DGM were of no consequences since by that time 12 out of 15

L/Cs had already expired, and therefore, no purpose could have been served by bringing this to his notice, it is felt that these notings were in the form

of reminders that major lapses were occurring by delaying realization of payment. In spite of alarming notes, it is observed that the last document was

submitted to the Bank for negotiation in January??96 which is a pointer to his slow response and tardy manner in dealing issues of such important

nature.

v. Lastly, he has contended that the default in negotiating 13 L/Cs amounting to Rs. 15.93 crores occurred mainly on account of late submission of

documents by the NFM Section at Indore and that he has been held accountable for nonnegotiation of 13 L/Cs; whereas 3 out of 13 L/Cs were

submitted to the Bank by Shri M.C. Beg, Deputy Manager(F & A). The documents at Exb. P4 and P5 clearly shows that invoices, drafts and

covering letters of Bank in respect of bills submitted to PNB against 13 L/Cs bear

signature/handwriting of Shri Kurup. Significantly, the dates of covering letters to PNB for negotiation of L/Cs are the same as the date of delivery challans, whereas the documents were physically received by the Bank on dates between 19th September 1995 to 11th January 1996. In course of cross examination, the witnesses have stated that delivery challans were handed over to Finance Section immediately after receipt of challans from the godowns. There is also evidence on record vide Exb. P4 and P7 that Shri Kurup had approached PNB, HTPL and M/s. Sterilite Industries for release of payment against material lifted by HTPL condoning the delay on the ground that HTPL had accepted documents though presented after expiry of the negotiation date and in some cases even after expiry of the L/C. At no stage he kept DGM in-charge at Indore of NFM Section at CO informed of such correspondence with the Bank. Significantly, 10 out of 13 L/Cs had expired before reaching the Bank and 3 L/C were submitted to the Bank after expiry of due date of negotiation, but within the validity of the L/C.Â Â Â Â

The acts of omission and commission on the part of Shri Kurup in delayed submission of documents to the Bank for negotiation of L/Cs has resulted into non-realisation of Rs.15.93 crores which amounts to gross misconduct and constitutes acts of subversive of discipline, financial norms and prudence.â??

(Emphasis supplied)Â

11. The petitioner appealed, against the aforementioned punishment order, to the Director (P), who was the appellate authority in the MMTC. The appeal of the petitioner was dismissed, by the appellate authority, by order dated 11th November, 1999, opining that the petitioner had not brought out any new evidence in his defence and had merely sought to shift the blame on other officers.Â

12. The petitioner thereafter, filed a review petition, against the above orders of the disciplinary authority and appellate authority, before the Chairman and Managing Director (CMD) of the MMTC. In this review petition, the petitioner raised, for the first time, a contention that Mr. Garde, who had acted as I/O, was not eligible, in fact, to be appointed in the said capacity, in view of Rule 25(2) of the Rules which permitted the DA to appoint â??any public servantâ??.

â??Public servantâ? it was contended, was defined, in the Rules, as meaning and including a person mentioned in Section 21 of the Indian Penal Code

(IPC). This required the DA to be a person who was in service, as a retired person could not be regarded as a â??public servantâ? within the

meaning of the IPC. As such, it was contended that the appointment of I/O was ab initio void.Â

13. This contention was vociferously urged before me by Mr. Ashok Kumar Panigrahi, learned counsel for the petitioner. On my pointing out to him

that this contention, even if accepted, would require me, at the very least, to remit the matter to the respondent, that the inquiry would have to start

afresh with the appointment of a competent I/O, the response of learned counsel was that, at this distance of time, allowing the inquiry against the

petitioner to commence afresh would be a travesty of justice.Â It can hardly lie in the mouth of the petitioner to contend thus, given the fact that the

petitioner, too, acquiesced to the inquiry proceedings without demur, and never chose to raise the issue of validity of appointment of the I/O till the

stage of review proceedings.Â Analogizing the review power of the CMD to review jurisdiction as contemplated by the Code of Civil Procedure,

1908, it was, actually, not even open to the petitioner to raise this contention at the stage of review, as the fact that the I/O was the retired CVC was

known to the petitioner all through, and he had never chosen to object to his appointment as I/O.Â In any case, having kept silent on the issue till the

stage of review, such a contention, if accepted by this Court at this stage, could not justify setting aside of the disciplinary proceedings, against the

petition, in toto, but could, at the very best, warrant remand of the proceedings to the MMTC to appoint a competent I/O and re-conduct the inquiry

proceedings.Â Mr. Sanjay Kumar Sharma, appearing for the respondent, too, so contends, and, in my opinion, rightly.

14. The aforementioned review petition, preferred by the petitioner, was dismissed by the reviewing authority, vide order dated 29th July, 2002.

15. Consequent on the above orders, the petitionerâ??s pay, was fixed, vide order dated 17th November, 2000, as per the stipulations contained in the

punishment order dated 9th July, 1999 (supra).

16. It is in these circumstances, that the petitioner had moved this court by means of the present writ petition, praying for quashing of the Inquiry

Report, dated 9th January, 1998, the punishment order dated 9th July, 1999, penalising the petitioner, the appellate order dated 11th November, 1999,

the consequent order dated 17th November, 2000, fixing the petitioner's pay in accordance with the punishment order dated 9th July, 1999 (supra)

and the order dated 29th July, 2002, passed by the reviewing authority.

17. I have heard Mr. Ashok Kumar Panigrahi, learned counsel for the petitioner, and Mr. Sanjay Kumar Sharma, learned counsel for the respondent

at length and perused the record.

18. Mr. Panigrahi, arguing for the petitioner, advances the following contentions:

(i) Managing the sales and finances relating to supply of CC rods manufactured by Sterlite, to HTPL and remittance of payments thereagainst, was

not part of the petitioner's duty, in his capacity as Manager (Finance) in the Indore SRO, as he was allocated the Soya and Agro Division.

(ii) The petitioner was never provided the details of the 13 L/Cs; as such, the opportunity of providing his defence, the charge against him, stood

compromised.

(iii) All the L/Cs had expired prior to his joining the said Division. My attention has been invited, in this regard, to a fax communication, dated 7th

November, 1994, Mr. Beg, Deputy Manager (F & A) to Sterlite as well as a letter, dated 7th November, 1994, from HTPL to the DM (F & A) at the

Indore SRO of MMTC, Mr. Beg, referring to 6 L/Cs, with the comment that the said L/Cs were "expiring today".

(iv) The appointment of the I/O was contrary to Rule 25(2) read with Clause (o) of Rule 2 of the Rules, as retired Government Officers could not be

appointed as I/O under the said provisions.

(v) Though, this point had been urged by the petitioner, before the reviewing authority, the said authority did not return any finding thereon. Though

reliance was placed, by the respondent, in this regard, on Office Order No. MMTC/15/8/CO/99 dated 16th March, 1999, which conveyed the

approval, by the Board of Directors of the MMTC, in its 281st meeting held on 27th January, 1999, to the amendment to Rule 25.2 of the Rules by

providing for appointment of retired public sector officers/retired Judges as I/Os in departmental/ disciplinary proceedings, the said order was

expressly made effective only from 27th January, 1999, as was pointed out by the petitioner in his rejoinder.

(vi) My attention has also been invited to a number of documents, filed by the petitioner, before this court, under a separate index, which, according to

learned counsel for the petitioner, related to non-receipt of payments, from the Bank, against the L/Cs opened by HTPL.Â Mr.Â Panigrahi has

sought to emphasise the fact that the name of his client did not figure in the said documents, thereby indicating that his client was not responsible for

the said non-remittance of payment, by the Bank.

(vii) Rule 4.3 of the Rules required directions, from official superiors, ordinarily to be in writing and, even where oral directions were found to be

required, for such directions to be reduced to writing immediately thereafter.Â The Rule further required that an employee, who received oral

directions from his superior, would seek confirmation thereof, in writing, as early as possible.

In these circumstances, Mr. Panigrahi would contend, the charge against his client was unsubstantiated, and that his client was, in fact, being targeted

for lapses committed by other officers.

19. Adopting the reasoning of the I/O, Mr. Sharma, learned counsel for the respondent, seeks to meet the objection, of Mr. Panigrahi, regarding the

legality of the appointment of Mr. Garde as I/O, on the basis of Office Memorandum dated 27th December, 1995, issued by the MMTC, which, on the

basis of clarifications issued by the Government of India, stated that retired Government officials/judges/public sector officers of proven integrity were

eligible to be appointed as I/Os in individual cases, under the Rules.Â Without prejudice thereto, he would seek to submit that, as the issue regarding

competence of the I/O was raised, for the first time, by the petitioner, in review proceedings, if this Court were persuaded to accept the said

submission of Mr. Panigrahi, the MMTC deserved to be accorded an opportunity to hold the inquiry proceedings de novo, by appointing an appropriate

I/O.Â Â

20. Regarding the contention, of Mr. Panigrahi, that the L/Cs in question had expired, Mr. Sharma would reply that the expired L/Cs were

subsequently revalidated.Â He has handed over, in this regard, a chart, purporting to be the chart which was submitted, by the PO, to the I/O,

depicting the position of each of the 13 L/Cs, which indicates that all the L/Cs expired during the tenure of the petitioner as Manager (Finance) at the

Indore SRO of MMTC.Â Insofar as the degree of involvement and, consequently, culpability, of the petitioner, in the matter of failure to obtain remittances, from the Bank, Mr. Sharma has relied on the findings of the I/O.

Analysis

21. Adverting, first, to the submission, of Mr. Panigrahi, that the appointment of Mr. Garde as I/O was violative of the Rules, specifically of clause (o)

of Rule 2, I am of the view that it is not open, to the petitioner, to advance such a submission at this stage.Â It is a trite position, in law, that objections

to the jurisdiction of judicial, or quasi-judicial authorities, are required to be taken at the earliest available opportunity, and not after several stages of

the proceedings have been traversed.Â The petitioner acquiesced to the jurisdiction of the I/O, never having objected, thereto, during the inquiry

proceedings.Â There is nothing to indicate that, till the stage of the review application, submitted by the petitioner to the CMD of MMTC, this

objection was ever taken.Â Mr. Panigrahi is, to that extent, forthright in admitting that his client did, in fact, take the said objection, for the first time,

before the reviewing authority.Â Even so, he would submit, the objection having been taken, the reviewing authority was bound to consider the

same.Â Empirically expressed, this contention may appear attractive; however, the fact of the matter is that the reviewing authority did not return any

finding thereon and, this writ petition having remained pending for over a decade and a half thereafter, I am not prepared to countenance the

submission, on merits, today.Â For one, as already observed by me hereinabove, even if I were to agree with the petitioner, the petitioner himself

having raised the issue belatedly at the stage of review, there is substance, in the submission of Mr. Sharma that, at the very worst, his client deserves

to be given an opportunity to re-conduct the inquiry proceedings with a competent I/O â?" assuming, that is, that this court finds substance in the

submission of Mr. Panigrahi regarding incompetence of Mr. Garde to have functioned as I/O.Â Secondly,Â Mr.

Sharma has drawn the attention, of this Court, to an Office Memorandum, dated 27th December, 1995, issued by the MMTC, which, on the basis of

clarifications issued by the Government of India, stated that retired Government officials/judges/public sector officers of proven integrity were eligible

to be appointed as I/Os in individual cases, under the Rules.Â This Office

Memorandum was, indisputably, extant, on the date when Mr. Garde was appointed as I/O. The legality of this Office Memorandum is not under challenge. It is clear, therefore, that, in appointing Mr. Garde as I/O, the MMTC acted on the basis of applicable executive instructions, which held the field. For this reason, too, I am unable to agree with the contention, of Mr. Panigrahi, that these proceedings stand vitiated, ab initio, solely because Mr. Garde, in his perception, was incompetently appointed as I/O.

22. I proceed, next, to dispose of the submissions, of Mr. Panigrahi, that his client had not been supplied details of the 13 L/Cs, and that the L/Cs had, in fact, expired even before his client joined as Manager (Finance) at the Indore SRO of MMTC. I had, during hearing, pointed out, to Mr.

Panigrahi, that the grievance, voiced by him, regarding non-supply, to his client, of the details of the 13 L/Cs forming subject matter of the charge, did not appear to be justified, in view of the specific observation, figuring in para 7 of the Inquiry Report, to the effect that a statement, containing all

information relating to the 13 L/Cs, signed by the PO, stood exhibited in the proceedings. The same paragraph goes on to record that the various

L/Cs themselves, and connected documents, were also exhibited as Ex P-4 and P-5. To this, Mr. Panigrahi did not have any satisfactory response,

apart from saying that these documents did not form subject matter of the present writ proceedings. For that, however, Mr. Panigrahi's client

has only himself to blame. It is expected, of every litigant, that he approaches the court with clean hands, and does not suppress vital information, or

relevant documents. Mr. Sharma, learned counsel for the respondent has, as already noted herein above, handed over, in court, a copy of a chart,

signed by the PO, stated, by him, to be the chart referred to in para 7 of the Inquiry Report. Prima facie, it appears to be

so. Mr. Panigrahi, needless to say, submits that he is not in a position to make any comments on

the said chart; at the same time, he is not in a position dispute the facts reflected therein. A perusal of the chart reveals that, in fact, each of the 13

L/Cs expired during the tenure of the petitioner as Manager (Finance) at the Indore SRO of MMTC. It is also seen that, in the case of each of the

L/Cs, though documents had been prepared well before the due date for presentation, thereof, to the Bank, and letters, whereunder the documents

were to be sent to the Bank, were also ready on the very same day, they were presented to the Bank, in the case of each L/C, after the due date for presentation; in certain cases, more than 4 months after the said date.Â There is no denial of the fact that, during these dates, and during this entire period, the petitioner held charge of the post of Manager (Finance) at the Indore SRO.Â The contentions, of Mr. Panigrahi, to the effect that the petitioner had not been provided details of the 13 L/Cs, and that the L/Cs had expired before the petitioner took charge as Manager (Finance) at the Indore SRO, stand effectively belied, by the said chart and the details contained therein.Â I may reiterate that it is unfortunate that the petitioner has concealed the aforementioned chart, from this court on in the present proceedings, and advanced arguments contrary thereto.

23. Insofar as the submission, of Mr. Panigrahi, that his client was not in charge of, or dealing with, sales of CC rods, manufactured by Sterlite, to HTPL, or the remittances to be received from HTPL, by way of liquidation of the L/Cs furnished by to the Bank, is concerned, the I/O has dealt, in detail, with the said submission, and opined that, in view of the various documents, oral depositions of witnesses, and accompanying details, the responsibility, of the petitioner, in the matter of ensuring receipt of payment, by HTPL, against these 13 L/Cs, stood established, and that the petitioner could not seek to walk away from his liability in this regard.Â This is a pure finding of fact, supported by evidence, oral as well as documentary, and, in the opinion of this court, cannot be said to be tainted by perversity, or manifest irrationality, as would justify interference, by it, in exercise of its writ jurisdiction.Â Â

24. In cases such as this, it may be noted, the jurisdiction exercised by this court is in the nature of certiorari, and is governed by the following classic enunciation of the law, contained in Syed Yakub v. K. S. Radhakrishnan, AIR 1964 SC 477:

â??7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of

it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal

acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where

the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a

writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means

that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ

proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may

appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the

Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced

the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a

writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot

be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient

or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the

said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that

the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8.Â It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected

by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is

manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis- interpretation of the relevant

statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the

said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.â??

(Emphasis supplied)

25. It is not as if findings of fact stand entirely insulated, by their very nature, from exercise of certiorari jurisdiction by courts.Â As in the case of any other finding, findings of fact, too, can be set aside, by issuance of writs of certiorari; provided, however, the finding of fact is (i) returned without admitting admissible and material evidence, or (ii) influenced by inadmissible evidence, or (iii) based on no evidence.Â Findings of fact, Syed Yakoob (supra) categorically holds, are not pervious to interference, in certiorari proceedings, on the ground that the evidence adduced before the lower authority was insufficient, or inadequate to sustain the finding.Â Adequacy or sufficiency of evidence, and the inferences of fact to be drawn therefrom, are the exclusive province of the lower judicial, or quasi-judicial authority, and cannot be examined by a writ Court exercising certiorari jurisdiction.

26. The finding of fact, returned by the IO, and accepted by the DA, in the

present case, to the effect that the petitioner was, in fact, responsible for ensuring remittances, against the L/Cs provided by HTPL, by the Bank, during his tenure, cannot be said to be tainted by any of the disabling features

noticed in Syed Yakoob (supra).Â This Court is, therefore, not in a position to re-examine the evidence, which has appropriately been seen by the

IO.Â The contention, of Mr. Panigrahi, that the petitioner was not responsible for, or dealing with, sales of CC rods, manufactured by Sterlite, to

HTPL, or for ensuring remittances thereagainst, by promptly following up the matter with the Bank is, therefore, rejected.

27. The only other issue that remains to be considered is whether, given this position, the petitioner has rightly been held to have committed

â??misconductâ??, and awarded punishment therefor.

28. It is obvious that the allegation, against the petitioner, is essentially one of â??negligenceâ?.Â No ulterior motives, or intention to favour any

particular party, is imputed to him.Â What is alleged is that he was grossly and, in fact, callously, negligent, in ensuring that the L/Cs were presented,

in time, to the Bank, and that they were accompanied by requisite documents, so that the Bank would honour the same.Â I have already held,

hereinabove, that the petitioner has to be held to have been remiss in this regard, as he was, at the time, Manager (Finance) at the Indore SRO of the

MMTC.Â The various evidences, relied upon by the IO, indicate that, despite the fact that the documents, and L/Cs, were handed over, in time, to the

petitioner, for being presented to the Bank, he effectively slept over the same, resulting in lapsing of the L/Cs and failure to obtain payments, from the

bank, against them.Â The IO has, on an analysis of the evidence before him, arrived at a well-reasoned conclusion that the petitioner was guilty of

negligence in failing to ensure that the L/Cs, accompanied by all relevant documents and details, were presented to the Bank in time, and that the

failure to obtain payments from the Bank, against the L/Cs, was attributable to the said negligence.Â This, again, is a finding of fact which, in the

opinion of this court, does not suffer from perversity or any of the handicaps which, as per Syed Yakoob (supra), would justify interference therewith,

in writ proceedings.

29. Of the various misdemeanours, and shortfalls in performance, which could be characterised as â??misconductâ?, negligence is, jurisprudentially,

the trickiest.Â The law in this regard, as contained in four leading authorities of the Supreme Court, namely U.O.I. vs J. Ahmed, (1979) 2 SCC 286,

State of Punjab v. Ram Singh, (1992) 4 SCC 54, Inspector Prem Chand v. Govt. of NCT of Delhi, (2007) 4 SCC 566 and Ravi Yashwant Bhoir v.

Collector, (2012) 4 SCC 407 is that, while simple negligence in performing one's official duties may not, ipso facto, amount to "misconduct",

as the highest degree of performance is not to be expected of every employee, or workman, extreme cases of negligence, analogous to the entry

sleeping at the post, thereby allowing the enemy to slip through, or a nurse administering an injection, intravenously, which is required to be

administered intramuscularly, resulting in death of the patient, would not only be actionable, but may even invite dismissal from service.Â There is,

however, an intermediate species of cases, which are generally parenthesized as cases of "gross or habitual negligence".Â It is in cases such as

these, that the court has to maintain a fine balance.Â Cases of gross or habitual negligence are, needless to say, actionable by way of disciplinary

proceedings; after all, employees do not have a carte blanche to be negligent, and are not employed in an organisation so that they discharge their

duties negligently.Â Negligence has, therefore, to necessarily invite corrective action.Â Where the negligence is simple, such corrective action may

only be by way of an administrative warning, or an adverse entry in the employee's confidential report, or his being superseded for promotion or

suffering loss of seniority, etc. Where, however, the negligence is found to be gross, or habitual "into which category, in the opinion of this court,

the present case would undoubtedly fall, given the fact that the petitioner defaulted in ensuring timely submission of the L/Cs, in as many as 13 cases,

did not ensure that the L/Cs, when submitted, were accompanied by the requisite documents, and did not even respond, when these facts were

brought to his notice in writing by his superior officers "disciplinary action is undoubtedly warranted.Â In such cases, the exercise of jurisdiction,

by the writ Court, is largely confined to examining whether the punishment awarded, or imposed, on the employee concerned, was, or was not,

proportionate to the misconduct committed by him.

30. It appears, from the findings of the IO, as accepted by the DA and reviewing authority in the present case, that the petitioner was, in fact,

callously negligent of his duties, in ensuring receipt of payments, against the L/Cs provided by HTPL, resulting in colossal financial loss to the MMTC.

As Manager (Finance), he was primarily responsible therefor. Officers in higher echelons of governmental organisations and public sector

undertakings are expected to be conscious of their responsibilities, and alive to the risks involved, were they not to discharge their duties at an optimum

level. Monies due to public sector undertakings are, ultimately, public monies, and losses suffered by public sector undertakings eat, in the ultimate

eventuate, into the pocket of the common citizen. Given the manner in which the petitioner discharged his duties as Manager (Finance), at least in

the matter of forwarding of the L/Cs, with all relevant documents, to the Bank, so as to ensure remittances against the supplies of Sterlite CC rods to

HTPL, this Court is of the view that the punishment, imposed on the petitioner, by the disciplinary authority, and upheld, thereafter, in appeal and

review, cannot be said to be disproportionate to the misconduct committed by the petitioner, or shocking to the judicial conscience, so as to justify

interference by this Court, under Article 226 of the Constitution of India.

31. In the opinion of this Court, therefore, no case, warranting interference, with the decisions impugned in the writ petition, can be said to have been

made out.

The writ petition is, consequently, dismissed, albeit without any order as to costs.