

(2005) 04 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 227 of 1999

Mihir Dutta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 27, 27(2), 29, 6(5)
Constitution of India, 1950 — Article 1, 226, 311(2)
Evidence Act, 1872 — Section 149
Tripura Civil Services (Conduct) Rules, 1988 — Rule 3

Citation : (2005) GLT 440 Supp

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : A.K. Bhowmik, S. Ghosh, S.R. Dey and A. Deb, for the Appellant;
U.B. Saha and T.D. Majumder, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J

1. In this writ petition The Petitioner has challenged the order dated 22.8.1998 of the Administrative Reforms Department, State of Tripura (Annexure-X) and the order dated 5th July, 1999 passed by the Government of Tripura rejecting the appeal dated 25-9-1998 of the Petitioner.

2. The brief facts necessary for adjudicating of the writ petition are that after graduation the Petitioner joined the department of PWD, Tripura on 19-8-1968 as Overseer and was promoted as Assistant Engineer on 5-9-1972 and later on, as Executive Engineer w.e.f. 6.9.1980. A disciplinary proceeding was drawn against the Petitioner on 23rd July, '92 (at Annexure-A to the writ petition) under Rule 14 of CCS (CCA) Rules, 1965 in short called "Rules, 1965" on a charge that he committed irregularities in awarding contract as Executive Engineer during the period from 19th July, '89 to 12th April, '90.

3. The Article 1 of the Charge alleged against the Petitioner reads as follows:

The said Shri Mihir Dutta while functioning as Executive Engineer, Agartala Division No. II, Agartala during the period from 19-7-1989 to 12-4-1990 awarded 362 Nos. of works involving an amount of about Rs. 80.00 lakhs on the basis of spot quotations. The spot quotations were collected through the S.D.O. (PWD) Sub-Division No. 1 Agartala, SDO (PWD) Mohanpur Sub-Division and SDO (PWD), Khayerpur Sub Division. The quotations along with the comparative statements were sent to the Executive Engineer by the Asstt. Engineers of above Sub Divisions. Shri Mihir Dutta then accepted the lowest quotations and entered into agreements mostly in form 7 with the stipulation to deduct 10% towards E/M and S/D from the bills. The value of each work concerned was within Rs. 30,000/- i.e. within the financial power of the Executive Engineer towards in negotiation. It is observed that though the amount of the estimate was within Rs. 1.50 lac i.e. within the financial power of technical sanction of the estimate by the Executive Engineer, the estimate was splitted up into small groups in most of the cases and the works were awarded on the basis of spot quotations keeping the amount of each work within 30,000/- i.e. within the financial power of the Executive Engineer to award on negotiation without calling regular tenders for the whole work. Further, Shri Dutta awarded more than one work to each contractor. Action of Shri Dutta in awarding a large number of works on spot quotations after splitting up those into small groups of less than Rs. 30,000/- without inviting regular tenders and also awarding of more than one work to each contractor were against rules and highly irregular.

4. The enquiry officer who was appointed has served the charges-sheet to the Petitioner. The Petitioner denied the charges through his written statement. The enquiry officer after taking into consideration the materials on record and evidences arrived at a finding on 28.12.1996 that the Petitioner was guilty of charges alleged against him. The finding of the enquiry officer was served to the Petitioner vide departmental memo dated 27.3.1997 whereupon the Petitioner submitted a representation by his letter dated 28.4.1997 and in reference thereto opinion of the Tripura Public Service Commission was also obtained. Thereafter the order dated 22.8.1998 was passed by the Administrative Reforms Department of the Government of Tripura. The relevant parts reads as follows:

Now therefore, after considering all the material evidence on records, the disciplinary authority has come to the conclusion that the Co while functioning as Executive Engineer, Agartala Divn. No. II during the period from 19-7-1989 to 12-4-1990 did award 562 number of works involving an amount of Rs. 80.00 lakh as on the basis of spot quotation and without calling of tender illegally and without any justification and that the Co split up the value of each work within Rs. 30,000/- to bring it within his financial power and that the Co. also awarded more than one work to each contractor and thus violated Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.

AND THEREFORE the disciplinary authority hereby orders that the imposition of

penalty of reduction of pay by five stages in the existing time scale for a period three years which will have the effect of postponing his future increment to pay be imposed upon the said Co, Shri MihirDatta.

The appeal petition submitted by the Petitioner on 25.9.1998 before His Excellency the Governor of Tripura against the aforesaid punishment was also considered. Since no appeal lie against such punishment, the Petitioner was informed by letter dated 1.6.1999 that the aforesaid appeal shall be treated as a revision petition as per provision of Rule 29 of CCS (CC and A) Rules if there is no objection on his behalf. It appears that instead of giving reply to the aforesaid letter, the Petitioner preferred Writ Petition (Civil) No. 227 of 1999. The High Court directed to finalize the appeal before 5th July, 1999. After due examination and careful consideration the appeal petition dated 25.9.1998 addressed to His Excellency the Governor of Tripura was rejected and an order accordingly was passed on 5th July, 1999 (Annexure-BB to the writ petition).

5. Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988 reads as below:

3 General:

(1) Every Government Employee shall at all times:

(i) Maintain absolute integrity:

(ii) Maintain devotion to duty; and

(iii) Do nothing which is unbecoming of a Government employee

(2)(i) Every Government employee holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government employees for the time being under his control and authority;

(ii) No Government employee shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior;

(iii) The direction of the official superior shall ordinarily be in writing. Oral direction to subordinate shall be avoided. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter;

(iv) A Government employee who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing and in absence thereof, confirmation shall be presumed.

It has been argued on behalf of the Petitioner as below:

In the charge and imputations of misconduct, it is alleged that 362 numbers of works valued at Rs. 80 lacs were awarded on the basis of spot quotations but in the statement of imputations only 8 works valued at Rs. 6,16,090/- were

mentioned rendering the charge inconsistent with imputations.

6. In the charge and the imputations it is said that splitting of work upto an estimated value of 1.5 lacks and awarding contract of splitted work upto 30,000/- were within the powers of the Executive Engineer and, therefore, even according to the charge and imputations the Petitioner acted within his powers and, therefore, charge does not constitute any misconduct on the part of the Petitioner.

7. According to the Petitioner the charges are vague, where the imputations had been alleged that the Petitioner committed irregularities in splitting works and awarding contract on spot quotations without calling regular tenders, all within his powers but at the same time the Petitioner has been charged for committing financial irregularities without mentioning as to how he committed irregularity and as to what rule/rules were violated.

8(A). The Divisional Accountant Sri Bishnupada Mukheijee being the authorized officer primarily responsible for maintaining regularly all financial matters including matter relating to tenders and awards of contracts was not even examined. Therefore, reasonable opportunity was denied to the Petitioner.

(B) The copies of admitted additional documents were not supplied. The Petitioner requested the inquiring authority on the date of hearing on 1.2.1995 to supply him photocopies of all the additional documents at the cost of the Petitioner but by the order dated 1.2.1995 the Respondent No. 4 (Inquiring Authority) refused to supply the copies of the documents causing serious prejudice to the Petitioner.

(C) The Petitioner's request for changing of the Inquiring Authority was rejected by a non-speaking order as the Inquiring Officer being the next-door neighbour of the Petitioner was biased against the Petitioner as such the Petitioner was denied fair and reasonable opportunity of defence.

(D) The penalty imposed in reference to the enquiry report is based on no evidence as none of the witnesses in their depositions had made any statement in support of the case of the prosecution or the State Government and the findings of the inquiry officer are perverse and based on surmise and conjecture.

9. The disciplinary authority passed non-speaking order of penalty relying only on enquiry report mechanically without application of mind.

10. In the facts and circumstances, the penalty awarded is discriminatory and disproportionate to the alleged offence as another Executive Engineer Sri N. Bhattachajee for the similar offence was simply warned whereas the Petitioner's permanent increment was a major penalty.

11. In support of his contentions, Mr. A.K. Bhowmik, the learned senior counsel for the Petitioner has placed reliance on Union of India (UOI) and Others Vs. J. Ahmed, In paras 11 and 12 of the said judgment it has been observed;

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pearce v. Foster*) (1886) 17 QBD 536 (at p. 542). A disregard of an essential condition of the contract of service may constitute misconduct (see *Laws v. London Chronicle, (Indicator Newspapers)* (1959) 1 WLR 698). This view was adopted in *Sharda Prasad Tiwari and Others Vs. Divisional Superintendent, Central Railway, Nagpur Division, and Satubha K. Vaghela Vs. Moosa Raza, The District Development Officer, The High Court* has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

12. The High Court was of the opinion that misconduct in the context of disciplinary proceedings means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

12. In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, it has been observed by the Hon'ble Supreme Court as follows:

Let us make it abundantly clear that we are not sitting up appeal over the findings of the Inquiry Officer. In a petition under Article 226, the High Court does not function as a Court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse, the Court can always interfere with the same. We may refer in this connection to *Union of India (UOI) Vs. H.C. Goel*,

13. In *R.P. Bhatt Vs. Union of India and Ors (UOI)* ., the Supreme Court observed in para 4 of the judgment as under:

The word "consider" in Rule 27(2) implies "due application of mind". It is clear upon the term of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such-non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in Clause (a), (b) and (c) thereof.

14. In *Kashinath Dikshita Vs. Union of India (UOI) and Others*, the Supreme Court has observed as under:

Where the Govt. refused to its employee who was dismissed, the copies of the

statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Govt, failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Article 311(2) inasmuch as the employee has been denied reasonable opportunity of defending himself. Decision of Allahabad High Court, Reversed.

15. In 1997 (2) SLR 836 (Shiraguppi L.B. v. Deputy Superintendent of Police Mercara and Ors.) it has been held by the Karnataka High Court in paras 29 and 30 as follows:

29. As already stated above, no presenting officer was appointed by the enquiry officer as required under Rule 6(5) of the Disciplinary Proceeding Rules of 1965. By implication this rule prohibits the inquiry officer to cross-examine the witnesses since that power is given to the presenting officer. In the instant case the Inquiring officer throughout cross-examined the departmental witnesses and defence witnesses himself. The astounding aspect of the case is that he has suggested to the defence witnesses that they have given falsehood. Thus the Inquiring officer has acted in a onesided manner and has prejudged the defence evidence even before he wrote the minutes of the disciplinary enquiry. The omissions and commissions pointed out by the learned Advocate for the Petitioners clearly establish bias on the part of the enquiry officer in the departmental enquiry against the Petitioners. From what has been stated above, any reasonable man would think it probable or likely that the inquiring officer was prejudiced against the Petitioners and that is sufficient to quash his decision.

30. There is another circumstance which requires to be dealt with. As already stated the approach of the enquiry officer was one sided. He has discarded the evidence of the tractor driver who removed 33 bags of rice from the place of seizure to the police station, on the sole ground that he is interested in the Petitioners. His evidence was the best evidence, but the same was rejected by the enquiring officer on unreasonable grounds. The enquiring officer's report suffers for want of critical examination of the evidence in both appreciation and assessment of the evidence on record. No doubt the enquiring officer has prepared a laborious report of number of typed pages. But he has wholly missed to find out the truth of the charges framed against the Petitioners. The case against the Petitioners is that they distributed among themselves eight bags of rice seized from the smugglers. There is absolutely no evidence to show that the 1st Petitioner had taken any share of the rice. In these circumstances, I am constrained to say that the department has made a mountain of a mole hill. It is improbable to conceive that the 1st Petitioner who had completed his

probationary period as Sub Inspector and posted to an independent charge of a police station would stoop to commit acts alleged against him having a bright future in the police department. Possibility of some interested police officers entangling him in an inquiry of this kind cannot be ruled out. The evidence on record discloses that the statements of the Petitioners were recorded by P.W. 13 at the stage of preliminary enquiry under threat and duress as contended by the learned Advocate for the Petitioners.

16. According to the learned Counsel for the Respondents tender means to make a formal offer of; to offer or prefer, to offer in accordance with the terms of the law and of the obligation; An offer made in writing by one party to another to execute certain work or supply certain commodities at a given cost. Meaning of quotation means the started current price of a commodity or stock. As per Black's Law Dictionary meaning of quotation is a statement of the market price of one or more securities or commodities and meaning of tender is an offer of money. Spot quotation means current rate/price of commodity at the spot.

17.(i) The regular tender is the process of obtaining rates in prescribed Form of PWD following the procedures as out-lined in Sections 17, 18, 19 and 20 of the CPWD Manual. The Executive Engineer was vested with financial power for award of work by way of tender in specified Form to lowest tenderer for an amount of Rs. 1.50 lacs for each work order. In such system, the rates are considered to be competitive.

(ii) The quotation is the process of obtaining rates in plain paper and can not be considered as competitive and the work awarded on the basis should be construed to have been awarded without call of tender. The Executive Engineer was vested with financial power for award of work without call of tender for an amount of Rs. 30,000/- for each individual work order.

(iii) The spot quotation does not fall within the purview of tender and is treated as "Without Call or Tender" u/s 16-3 of CPWD Manual.

(iv) The estimate technically sanctioned on each individual work on detailed working estimate while the financial power is the delegation of power for acceptance of tender/quotation as the case maybe.

(v) PWD Form-7 is relating to percentage rate Tender. PWD Form-8 is relating to item rate tender which will be evident from Section 15.2.2. respectively.

18. Mr. U.B. Saha, the learned senior Government Advocate has argued that in view of Rule 3 of "Rules, 1988" the conduct of the Petitioner was characterized as misconduct and the enquiry officer has submitted report after taking into consideration the entire documentary evidences and after considering the prevalent Rules applicable in the case of the Petitioner and after appreciating and evaluating the evidences has passed an order in consonance with the principles of natural justice and after showing documents including additional documents necessary for finalization of the enquiry report to the Petitioner, after proper

analysis of the allegations against the Petitioner and in consideration of his oral and documentary response. After careful consideration the inquiry report was accepted by the disciplinary authority. Accordingly the Administrative Reforms Department of the Government of Tripura by its order dated 22.8.1998 affirmed the punishment after consultation with the Tripura Public Service Commission and the appeal was rejected on 5.7.1999. According to the learned Counsel for the Respondents Shri Bishnupada Mukhejee intended to depose as a defence witness but despite information he did not appear before the enquiry officer because of his ailments nor indicated for further accommodation however, in those circumstances the enquiry officer did not find necessary to wait for his participation. According to the learned Counsel for the Respondents, the enquiry officer repeatedly directed the Presenting Officer to supply additional documents desired by the Petitioner and the same were allowed to be seen and extracted by the Petitioner from the records as such he should not have any grudge. Residing by the enquiry officer in the neighbourhood of the Petitioner cannot be a conclusive ground of unfairness of the inquiry report. The enquiry report shall not be vitiated as the comments of Divisional Accountant being matter of records has been looked into and has been taken into consideration by the inquiry report and as such by non examination of Divisional Accountant, the Petitioner cannot derive any advantage.

19. In AIR 2004 SCW 6725 (Ganesh Santa Ram Sirur v. State Bank of India and Anr.) similar view was taken. The Supreme Court has observed as follows:

Mr. Salve submitted that the Appellant, the Branch Manager of a Bank is required to exercise higher standards of honesty and integrity when he deals with the money of the depositors and the customers and, therefore, he is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of the Bank Officer. According to Mr. Salve, good conduct and discipline are inseparable for the functioning of every officer, Manager or employee of the Bank, who deals with public money and there is no defence available to say that there was no loss or profit resulted in the case, when the Manager acted without authority and contrary to the rules and the scheme which is formulated to help the Educated Unemployed Youth. Mr. Salve's above submission, is well merited acceptance and we see much force in the said submission.

20. In AIR 2005 SCW 95 Damoh Panna Sagar Rural Regional Bank and Anr. v. Munna Lai Jain the Supreme Court has observed that acting beyond one's authority is by itself a breach of discipline and is a misconduct.

21. According to the learned Counsel for the Respondents in reference to para 17 of Munna Lai Jain, (supra) good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank and no defence available to say employee to that there was no loss or profit resulted in case, when the officer/employee acted without authority. The relevant paragraph is quoted below:

17. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik*, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

22. The Supreme Court has considered its earlier decisions and other important decisions e.g. (i) *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, (ii) *Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai)*, *Allahabad Bank and Others*, (iii) *Om Kumar v. Union of India* AIR 2000 SCW 4361 : AIR 2000 SC 3689, (iv) *R. v. Lord Saville Ex. P.* (1999) 4 All ER 860, (v) *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, (vi) *Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik*, (vii) *R. v. Ministry of Defence Ex. P. Smith* (1996) 1 All ER 257, (viii) *B.C. Chaturvedi Vs. Union of India and others*, ; *Tata Cellular Vs. Union of India*, (x) *U.P Financial Corpn. v. Gem Cap India) Pvt. Ltd.* AIR 1993 SCW 1189 : AIR 1993 SC 1435; (xi) *Derbyshire County Council v. Times Newspaper Ltd.* (1993) AC 534 ; (xii) *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, (xiii) *R. v. Secy of State for the Home Deptt. Ex. P. Brind* (1991) 1 AC 696 ; (xiv) *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, (xv) *Spycatcher Case Attorney General v. Guardian Newspapers Ltd.* (No. 2) (1990) 1 AC 109 ; (xvi) *Ranjit Thakur Vs. Union of India (UOI) and Others*, (xvii) *R. V. Secretary of State Ex. P. Bugdaycay* 1987 1 AC 514 : (1987) 2 WLR 606 (xviii) *Sudhir and Another Vs. State of Madhya Pradesh*, (xix) *CCSU v. Minister for Civil Services* (1985) 1 AC 374 : (1984) 3 WLR 1174; (xx) *Council for Civil Services Union v. Minister of Civil Service* (1983) 1 AC 768 ; (xxi) *E.P. Royappa Vs. State of Tamil Nadu and Another*, (xxii) *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974) ITR 182; (xxiii) *Breen v. Amalgamated Engineering Union* (1971) 1 All ER 1148; (xxiv) *Associated Provincial Picture Houses Ltd. Wednesbury Corpn.* (1948) 1 KB 223 : (1947) 2 All ER 680 and has arrived at a conclusion that in disciplinary proceeding and in respect of punishment awarded to an employee in reference to exercise of judicial review in the administrative decision, no interference should be made that punishment awarded was shockingly disproportionate unless termination of services of bank employee for reasons to be recorded was found by the High Court as shockingly

disproportionate.

23. In *State of Punjab and Others Vs. Ram Singh Ex. Constable*, it was held that even a single act of misconduct, if found to be gravest nature having regard to its quality, insidious effect and gravity of situation in the attending circumstances, may justify dismissal impinging upon pensionary rights after putting long length of service. According to the learned Counsel for the Respondents allegations made in Article 1 are so serious and are sufficient for constituting the offence of misconduct whereupon the Petitioner has rightly been terminated.

24. In 1997 (2) SLR 378 *Tara Chand Vyas v. Chairman and Disciplinary Authority and Ors.*, the Supreme Court has observed that the thrust of the imputation of charges was that the writ Petitioner had not discharged his duty as a responsible officer to safeguard the interest of the Bank by securing adequate security before the grant of the loans to the dealers, and had not ensured supply of goods to the loanees. The charges were based upon the documentary evidence which were considered by the enquiry officer elaborately and after discussing each charge by giving reasons enquiry report was presented which was considered by the Disciplinary Authority that charges were proved and so held by the appellate authority. The Supreme Court observed that the appellate Court is not like Civil Court, so no interference in the disciplinary proceeding was called for. It has further been observed by the Supreme Court in *Tara Chand Vyas*, (supra) that corruption has taken deep roots among the sections of the society and the employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The relevant portion of the paragraph reads as follows:

...The banking business and services are also vitally affected by catastrophic corruption. The disciplinary measure should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary actions to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public interest. Every employee/officer in the banking should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules last rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society.

25. In 1997 (2) SLR 433 *Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh and Ors.*, the Supreme Court has observed that after following rules when disciplinary rules when the dismissal order has become final, the High Court was not entitled in writ jurisdiction to reappreciate evidence and reverse finding and is not supposed to act as appellate authority under Article 226 of the Constitution as the power under Article 226 could be invoked within the limit of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. With these observations the order of the High Court quashing the punishment of dismissal from service was set aside by the Supreme Court.

26. In *B.C. Chaturvedi Vs. Union of India and others*, the Supreme Court has observed that in departmental enquiry Court/Tribunal cannot interfere with findings of fact based on evidence and substitute its own independent findings. The Supreme Court in *Tara Chand Vyas*, (supra) has laid down the scope of judicial review in the disciplinary proceeding and in the decision making process and after considering the following decisions (i) *Union of India (UOI) Vs. H.C. Goel*, (ii) *Union of India and Others Vs. S.L. Abbas*, (iii) *The Administrator of Dadra and Nagar Haveli, Silvassa Vs. H.P. Vora*, (iv) *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, has observed as below:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion of finding reached by the disciplinary authority (sic) made to evidence. If the conclusion or finding be such as to reasonable person would have ever reached the Court/

Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to be facts of that case.

27. In *The Regional Manager and Another Vs. Pawan Kumar Dubey*, while dealing the ratio decidendi the Supreme Court has observed in para 7 as below:

We think that the principles involved in applying Article 311(2) having been sufficiently explained in *Samsher Singh Vs. State of Punjab and Another*, it should no longer be possible to urge that *Sughar Singh's* case 1974 SC 423 (supra), could give rise to some misapprehension of the law. Indeed, we do not think that the principles of law declared and applied so often have really changed. But the application of the same law to the different circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

28. The same view has been followed in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, . In the said case the Supreme Court in para 8 A has observed as under:

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words of a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, and said Lord Mums in *Herrington v. British Railways Board* 1972 (2) WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In *Gangadhar Behera and Others Vs. State of Orissa*, the Supreme Court held as under:

Above being the position, we find no substance in the plea that evidence of eye-witnesses is not sufficient to fasten guilt by application of Section 149. So far as the observations made in *Kamaksha Rai's* case (supra), it is to be noted that the decision in the said case was rendered in a different factual scenario altogether. There is always peril in treating the words of a judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases (See *Padmasundara Rao (dead) v. State of Tamil Nadu* 2002 (3) JT (SC) 1. It is more so in a case where conclusions

relate to appreciation of evidence in a criminal trial, as was observed in Krishna Mochi's case.

29. According to the Respondents in view of *R.S. Saini Vs. State of Punjab and Others*, the claim of the writ Petitioner assailing his removal on the ground of perversity of the inquiry based on no evidence, non-application of mind and mala fide, the Supreme Court did not find any scope of judicial review in the finding of the disciplinary inquiry as the same did not suffer from infirmities. The Supreme Court further observed that the inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate its findings and adequacy or reliability, which cannot be permitted to be canvassed in the writ proceedings. If the conclusions have been drawn in a reasonable manner and objectively, such conclusions cannot be termed as perverse or not based on any material. The Supreme Court has also held that the High Court as well as the Supreme Court within limited scope of their jurisdiction could hold that the disciplinary inquiry against the delinquent did not suffer from infirmities.

30. According to the Respondents in (2001) 1 SCC 416 *High Court of Judicature at Bombay v. Shashi Kand S. Patil and Anr.*, the Supreme Court has observed that the findings of the Inquiry Officer are not binding on the disciplinary authority and final decision rests with the disciplinary authority, which can come to its own conclusions, bearing in mind the views expressed by the Inquiry Officer, and judicial interference is permissible if there is violation of the natural justice and statutory regulations and the decision of the disciplinary authority is also vitiated by considerations extraneous to the evidences and merits of the case or if the conclusion made by the authority on the very face of it is wholly arbitrary or capricious and no reasonable person could have arrived at such a conclusion on similar grounds.

31. The Supreme Court has observed that Court is not to sit over the finding of disciplinary authority in reference to the verdict of in *Union of India and another Vs. G. Ganayutham (Dead) by LRs., State of Punjab and others Vs. Bakhshish Singh, State of Punjab v. Bakshish Singh*, as well as in view of the observations made in 1988 (9) SCC 220, *U.P.S.R.T.C. v. Hari Narain Singh*, by specific denial of not furnishing the relied documents and material in the charge-sheet shall not vitiate the inquiry report, *moreso*, when the record/documents were open for inspection therefore the Petitioner could not be said to have been deprived of opportunity of hearing.

32. I have heard the learned Counsel for the parties and has perused the records. A single charge was so grievous that it was sufficient to constitute misconduct in reference to Rule 3 of "Rules 1998". The enquiry officer after serving the charge-sheet and after carefully considering of the written statement and the materials on records and the evidences after following proper procedure and by allowing the Petitioner to see the additional documents required, has arrived at a finding holding the Petitioner guilty of charges. The report of the enquiry officer was approved by the Disciplinary Authority and after consultation

with the Tripura Public Service Commission, Administrative Reforms Department has passed a reasoned order and the appeal too was dismissed by the State Government. Minor procedural infirmities shall not vitiate the finding of the enquiry officer when the enquiry report has been passed after following the procedure prescribed for. Acting beyond one's authority is breach of discipline and shall tantamount "misconduct". No defence shall be available to the Petitioner by saying that by his conduct or action in question no loss has resulted to the State. this Court while adjudicating the matter in its writ jurisdiction under Article 226 of the Constitution is not supposed to sit over the finding of the Disciplinary Authority or Appellate Authority and in the facts and circumstances this Court cannot record any reason that the punishment is disproportionate to the charge against the Petitioner.

33. In these circumstances, I find no merit in the writ petition and accordingly the same is dismissed. No costs.