

(1998) 09 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 1493 of 1990

Rabindra Nath Thakur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-09-1998

Acts Referred:

Constitution of India, 1950 — Article 117, 12, 226
Industrial Disputes Act, 1947 — Section 11, 33

Citation : (1999) 1 BLJR 197 : (1998) 3 PLJR 495

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Judgement

A.K. Ganguly, J.—This writ petition has been filed for quashing the order dated 17.1.1989 passed by the Deputy General Manager, Canara Bank, Circle Office, Calcutta (respondent No. 3) imposing upon the petitioner the punishment of reduction to a lower scale in time scale by three stages. Against the said order the petitioner filed an appeal and the said appeal was also dismissed by the appellate authority. Both the original and the appellate orders have been challenged by the petitioner in this writ petition.

2. The enquiry against the petitioner was held in respect of the following charges:

You are working as Manager, Scale I at our Bagoura Branch since 3.10.1986.

You were previously working at our Divisional Office, Patna as an Accountant.

While so working at Divisional Office, Patna you were deputed to our Manganpur Branch to officiate as Manager during the period commencing from 16.2.1985 to 10.12.1985. During the period of deputation, you were permitted to stay at and operated from Hajipur to Manganpur.

You have submitted a T.A. Bill dated 2.5.1986 to the Bills Section Personnel Wing, Head Office, Bangalore, claiming a total sum of Rs. 39,498.10 (Rupees thirty nine thousand, four hundred ninety eight and paise ten only) towards fare,

boarding and lodging expenses and halting allowance. Out of the above amount, you have claimed a sum of Rs. 29,766.70 towards boarding and lodging expenses supported by hotel bills. The details of hotel bills submitted by you are more fully described in the statement of imputations to this articles of charge.

The investigations conducted to verify the genuineness of the hotel bills have revealed that you did not stay in the hotel at Hajipur, but stayed at and operated from Patna. The hotel bills submitted by you are false, fabricated and obtained through unfair means in active connivance of the hotel authorities. You have by producing the aforesaid hotel bills, made/attempted to make a false claim against the Bank with an ulterior motive of deriving pecuniary benefits for yourself and to cause wrongful loss to the Bank.

By your above action in preferring a false claim, you have failed to perform your duties with honesty and integrity, devotion and diligence and have acted in a manner which is most unbecoming of an Officer of the Bank. You have, thus contravened Regulation 3(1) read with Regulation 24 of the Canara Bank Officer Employees" (Conduct) Regulations, 1976 and thereby committed misconduct punishable under the provisions of Canara Bank Officer Employees" (Discipline & Appeal) Regulations, 1976.

3. Against such charges the petitioner filed his written statement denying the charges. Thereafter an enquiry was held and the Enquiry Officer in his report held the petitioner guilty of the charges and thereupon the aforesaid penalty was imposed.

4. Assailing the said enquiry, learned Counsel for the petitioner, mainly attacked the manner in which the enquiry was held. As such submission has been made that the charge was based on the basis of investigation report made by Sri G.H. Rai, Manager Bill Section, Bangalore on the basis of the occupancy register of Hotel Vaishali where the petitioner is said to have stayed during the relevant period. The petitioner has further stated that the entire evidence of the department is based on one witness, namely, the said Sri Rai and in his evidence he has said that he went to the hotel in question, talked with one gentleman. The said gentleman referred to by the management witness as an old man" told the said management witness that he is the proprietor of the hotel and he produced the hotel register and it is on the basis of the conversation the management witness had with the said old man, the investigation report was submitted.

5. It is on the basis of the said investigation report, it was asserted by the management, that the petitioner did not stay at the hotel during the period in question. On the other hand it is alleged that the petitioner during the period in question operated from Patna only and" was not staying at the hotel. It was also stated that it is highly improbable for a person to take two breakfasts and two meals in a day in the way claimed by the petitioner. Apart from that it has also been stated that the petitioner has charged Rs. 50/- as the hotel tariff whereas at the relevant time the hotel charge was less than that.

6. It is obviously true that no body from the Hotel was produced in the said enquiry nor was the old man produced before the enquiry authority to depose before the Enquiry Officer. On the other hand the management said that the hotel authority refused to give anything in writing to the management witness or to any person who went and visited the hotel on behalf of the management for the purpose of obtaining copies of the hotel register. The said management witness stated in his evidence that he had copied out the names from the hotel register of the relevant time and that document which purports to be an extract of the hotel register was made an exhibit in the said enquiry.

7. In the enquiry the management witness was made available for cross-examination and he was thoroughly cross-examined by the defence assistant of the petitioner and upon said cross-examination and examination of the production of relevant materials, as noted above, the findings were arrived at by the Enquiry Officer. This being broadly the facts of this case, the question which falls for consideration before this Court is whether the enquiry has been held in a proper manner on a fair basis.

8. It is not doubt true that the charges which have been framed against the petitioner contains specific allegation. Therefore, no fault can be found with the charges.

9. In fact, learned Counsel for the petitioner did not try to find any fault in the charges but his submission was that the enquiry is based on the alleged conversation between the management witness and an old man" who runs a grocery shop in the hotel shop and who claims himself to be the proprietor of the said hotel and the name of the said old man has not been disclosed nor was that man produced. This complaint of the petitioner, if judged in the context of the charges framed against him does not assume much significance because one of the charges is that the hotel bills were submitted with the active connivance of the hotel authorities. It has also come in evidence that the hotel authorities refused to give anything in writing to the management witness when he went to visit the said hotel in order to ascertain the petitioner's claim of hotel bills. The stand of the Bank is that in absence of any co-operation from the hotel authorities, it was not possible for the management to produce any one from the hotel itself. Apart from that in a case of domestic enquiry, the enquiry authority has no power to compel the attendance of a witness. There is no such provision under the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as the said Regulation). It may be also noted in this connection that the petitioner did not produce any body from the hotel in his defence as defence witness. In fact, no defence witness was produced.

10. Learned Counsel for the respondent Bank submitted that in such cases, it was impossible for the Bank authorities to produce the witness from the hotel in question as the hotel authority refused to cooperate with the management of the Bank. The Bank authorities tried its best to prove the case on the basis of the materials collected keeping in view the fact that there was total non-cooperation

by the hotel authorities.

11. Learned Counsel for the respondent Bank in support of the fact that the quality of evidence required in a departmental proceeding is not as strict as is required in a criminal trial placed reliance on a judgment in *Maclean v. Workers Union* reported in 1929 All E.R. 468. That was a decision relating to the jurisdiction of the Courts in regard to the domestic tribunals in respect of affairs of certain bodies, namely. Trade Unions, Members Club, Professional bodies etc. In Page 471 of the report the principles for holding such enquiry have been laid down. Those principles are set out below:

There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at if he has had a full opportunity of being heard. With respect of the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particular of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all. We have seen these conditions have been fulfilled by the enquiry and by the tribunal which institutes it. The functions of the Court of law are at an end. It appears to me that we have no power to review the evidence any more than we have a power to say whether the Tribunal came to a right conclusion. If, indeed, it could be shown that nothing was brought before the Tribunal which could raise in the minds of honest persons the inference that infamous conduct had been established, that would go to show that the enquiry had not been a due enquiry; but if there is no blot of that kind upon the proceedings the jurisdiction of the domestic tribunal which has been clothed by the legislature with the duty of discipline in respect of a great profession must be left untouched by Courts of law.

12. There can be no dispute about the propositions which have been extracted above. But this Court must keep in mind that those propositions have been laid down in the context of expulsion of members from a private organisation and the enquiry which contemplated was in the context of an expulsion of a member from the association of a Club.

13. But in the instant case it is something more than mere expulsion which is at stake. It is a question of a person's livelihood and may be his reputation which is at stake. Apart from that it is well settled by the Supreme Court that the petitioner who is an Officer of the Bank is an Officer of the State within the meaning of Article 12 of the Constitution of India and as such he enjoys a statutory status and in such case his enquiry is governed by certain regulations, as has been mentioned in this case. The said regulation is the *Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976*.

14. In the case of *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, it has been held in paragraph 240 of the said judgment at page 186 of

the said report that the employees of a Corporation, which is a statutory authority or instrumentality of the State within the meaning of Article 12 of the Constitution of India, have statutory status as member of its employees. So the law relating to private master and servant un-regulated by the Statute, would not apply to cases of public statutory body. Following the said ratio, this Court finds that the nature of evidence or the principles of enquiry in the case of a purely domestic tribunal established by private contract as is in the case of *Maclean (supra)*, do not strictly apply to the case of an enquiry against an employee of statutory Corporation which is a State within the meaning of Article 12 of the Constitution of India. Nevertheless the difference in the approach and nature of evidence which is required in a departmental enquiry which is different from a purely domestic enquiry in respect of a club and a trade Union is one of degree rather than of kind.

15. In a departmental enquiry also those principles with slight modifications are applicable. Reference in this connection may be made to the three Judge Bench judgment of the Supreme Court in the case of *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, . That was a case of departmental enquiry against a Government servant. In that matter the Supreme Court laid down the areas of interference by the High Court under Article 226 over the decision of the authority made in a departmental enquiry against a public servant. Those observations of Chief Justice A.N. Ray, as His Lordship then was, speaking for the Court in paragraph 21 at page 562 of the report is set out below:

The High Court is not a Court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person would have ever arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

16. On the same vein is the view of the Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, . At page 748 of the said report the Courts have held that it is well settled that strict rule of the Evidence Act and the standard of proof envisaged in a criminal trial would not apply in a departmental proceeding. It has been stated in paragraph 37 at page 748 of the said Judgment "it is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable materials that are not proved strictly in conformity with the Evidence Act. The relevance must be germane to the facts in issue.

17. But the question which falls for consideration in this case is whether hearsay evidence is admissible in a departmental enquiry to bring home the charges against the delinquent.

18. The concept of hearsay evidence is better known than understood. In my view the concept has been best explained by the Privy Council in the case of Subramaniam v. Public Prosecutor reported in (1956) 1 WLR 965. At page 970 of the report the following precise observation has been made pointing out that is hearsay evidence and in what context it is admissible. The relevant portion is set out below:

Evidence of a statement made to a witness by a person who is not himself toiled as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made.

19. About the admissibility of hearsay evidence in departmental or domestic enquiries, the approach of the Hon"ble Supreme Court has undergone some perceptive changes in course of time as will appear from its decisions noted below:

20. In a Constitution Bench judgment in the case of Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others, , Justice J.C. Shah, His Lordship then was, speaking for the Constitution Bench, observed in paragraph 15 at page 1252 of the report. "Even though the tribunal is not bound by formal rules relating to procedure on evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature, would be contrary to rules of equity and natural justice". The inquiry in that case was an inquiry against a police officer under the provisions of the Police Act, 1861. In Jagannath Prasad Sharma's case (supra), the Supreme Court did not consider whether the hearsay evidence of a high probative value is admissible in such an inquiry. But its consideration was confined to admissibility of evidence which is purely hearsay.

21. In the next judgment of the Hon"ble Supreme Court in which it had to consider again the question of admissibility of hearsay evidence is in the case of Central Bank of India Ltd. Vs. Prakash Chand Jain, . In that case the question before the Supreme Court was when a tribunal is asked to give its approval, to

an order of dismissal, u/s 33(2)(b) of the Industrial Disputes Act, whether the tribunal can disregard the findings given by the Enquiry Officer if such findings are perverse. In that case the Tribunal refused to grant approval and that was upheld by the Hon''ble Supreme Court and in doing so the Hon''ble Supreme Court observed in paragraph 8 at page 988 of the report that the finding of a domestic inquiry may be perverse if it is not supported by any legal evidence. While elaborating the principles of legal evidence. Justice Bhargava, as His Lordship then was, speaking for the two-Judge Bench of the Apex Court, observed in paragraph 8 itself that "Learned Counsel for the Bank was unable to point out any case at all where it has been held by this Court or any other Court that a domestic tribunal will be justified in recording its finding on the basis of hearsay evidence without any direct or circumstantial evidence in support of those findings.

But on the admissibility of hearsay evidence before a domestic tribunal several decisions were rendered by that time both in Britain and the United States of America. However the attention of the learned Judges of the Supreme Court was not unfortunately drawn to those decisions.

22. Again this question cropped up before the Hon''ble Supreme Court in the case of Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, . In a matter relating to Industrial Dispute arising out of the claim of bonus, the Hon''ble Supreme Court observed in paragraph 13, page 339, that even though the Evidence Act is not applicable to Industrial Tribunal that does not mean that where the issues are seriously contested and have to be established the requirements relating to proof cannot be dispensed with. In paragraph 14 at page 339 of the said report. Justice P. Jagmohan Reddy, as His Lordship then was, speaking for the two Judge Bench observed that "Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay.

23. Before proceeding to deal with the subsequent approach of the Hon''ble Supreme Court and also of the High Court to the admissibility of hearsay evidence in a departmental/domestic enquiry, this Court proposes to consider the law on the subject both in Britain and United States.

24. This question has been best expressed in the words of Lord Justice Diplock in the case of R.v. Deputy Industrial Injuries Commissioner, Ex Parte Moore reported in (1965) 1 All ER 81. In a concurring opinion given by Lord Justice Diplock His Lordship explained the rationale in the difference between the approach of a common law Courts and the tribunals relating to admissibility of hearsay evidence in words which are precise and at the same time very profound in laying down the principle. I can do no better than set out those observations:

For Historical reasons, based perhaps on the fear that juries who might be illiterate were incapable of differentiating between the probative values of

deferent methods of proof, the practice of the common law Courts has been to admit only what the judges then regarded as the best evidence of any disputed facts, and thereby to exclude much material which, as a matter of common sense, would assist a fact finding tribunal to reach a correct conclusion; *Myers v. Director of Public Prosecutions* (16); but these technical rules of evidence form no part of the rules of natural justice. The requirement that a person exercising quasi judicial functions must base his decision on evidence means no more than that it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer; but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.

25. That passage has been followed in the subsequent decision of the Court of Appeal in the case of *T.A. Miller Limited v. Minister of House and Local Government and Anr.* reported in (1968) 2 All E.R. 633. Lord Denning, Master of Rolls, while delivering the main opinion of the Court observed at page 634 of the report "Hearsay is clearly admissible before a Tribunal. No doubt in admitting it the Tribunal must observe rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the Tribunal must give the other side a fair opportunity of commenting on it and contradicting it". Saying so, the learned Judge approved the law as propounded in *R. v. Deputy Industrial Injuries Commissioner, Ex-parte Moore* (supra).

26. In two subsequent decisions, one by the Queen's Bench Division in the case of *R. v. Hull Prison Board of Visitors, Ex-parte St. Germain and others* (No. 2) reported in (1979) 3 All E.R. 545, the said passage of Lord Justice Diplock has been followed at page 552 of the report. In another judgment also of the Queen's Bench Division in the case of *Regina v. Commissioner for Racial Equality, Ex-parte Cottrell and Rothon* reported in (1980) 1 W.L.R. 1580, the same passage has again been quoted with approval by Chief Justice Lord Lane at page 1588 of the report.

27. The approach towards hearsay evidence in the United States of America is substantially the same. In a decision between *Consolidated Edison Co. v. National Labor Relations* reported in 305 U.S. 83, this question came up as to the nature of evidence which is required to sustain the finding by a statutory tribunal. Explaining the position Chief Justice Hughes of the Supreme Court of United States of America explained at page 140 of the report that it is substantial evidence" which can sustain such finding. In explaining substantial evidence¹ the learned Chief Justice observed "substantial evidence is more than

a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The learned Chief Justice further explained that the rules of evidence prevailing in the Courts of law or equity shall not control the findings of such Tribunals which are given some freedom from the technical rules so that mere admission of matters which would be deemed incompetent in judicial proceeding would not invalidate the findings of such Tribunals, But His Lordship further also observed "this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumour does not constitute substantial evidence.

28. Actually by explaining the concept of substantive evidence, as above, the learned Chief Justice was elucidating the principle of Legal Residuum Rule" which has been discussed by Professor Bernard Schwartz, on his treatise on "Administrative Law". Discussing the said principle, the learned author said that in order to accept the findings of such a tribunal the Court should see whether there is a residuum of legal evidence to support the finding of a tribunal. The learned author explained the said concept by saying that where there is no substantial support for a finding, apart from pure hearsay, such finding may not be tenable. But the learned author has hastened to add that the required residuum need not be enough to establish the facts found independently of the hearsay" (page 339). it is sufficient if it lays any support by way of corroboration though wholly through circumstantial evidence. The learned author also reiterated in page 342 of the said treatise the same principle which emerges from the opinion of Chief Justice Hughes, extracted above.

29. From the aforesaid discussion, it is clear that in a departmental/domestic enquiry there is no bar to the admission of hearsay evidence provided it is relevant and cogent and is of a rational and probative value and there is some residuum evidence, may be corroborative or circumstantial to support it.

30. In a Full Bench judgment of Punjab & Haryana High Court, Justice O. Chinappa Reddy, as Acting Chief Justice of that. Court also propounded the aforesaid view. The said decision is in the case of State of Haryana v. Ram Chandra reported in AIR 1996 P & H 381. That was also a case of disciplinary inquiry against a Government servant. In that judgment of State of Haryana (supra), the learned Judge explained the Constitution Bench decision of the Supreme Court in the case of Jagannath Sharma (supra), by saying that what the Supreme Court excluded from consideration is something which is purely hearsay. But the learned Judge laid down, with considerable authority, the following proposition about admissibility of hearsay evidence before a Tribunal in paragraph 4 of the judgment, at page 384 of the report:

We are therefore, of the view that while there is no bar against the reception of hearsay evidence by the domestic tribunal, the extent to which such evidence is to be received and used must depend upon the facts and circumstances of the case and the principles of natural justice.

31. In coming to the said conclusion, the learned Judge relied on the opinion of Lord Justice Denning in the case of T.A. Miller (supra).

32. Subsequently two three Judge Bench decisions of the Hon"ble Supreme Court reflect the changed attitude of the Supreme Court about admissibility of hearsay evidence in such enquiry. This changed attitude is consonant with the proposition expounded by Lord Justice Diplock and Chief Justice Hughes as noted above and also with the views of Justice Chinappa O. Reddy, as noted above.

33. Justice Krishna Iyer, speaking for the Court in the State of Haryana and Another Vs. Rattan Singh, , held in paragraph 4 at page 1513 of the report that there is no allergy to hearsay evidence in such enquiry provided it has reasonable nexus and credibility. But the learned Judge has added a word of caution that the departmental authorities or administrative tribunal must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.

34. In taking the said approach the learned Judge was probably echoing the same principles which have been Lald down by Chief Justice Hughes while explalning the scope of-substantial evidence.

35. The subsequent three Judge Bench decision of the Apex Court has been delivered by Justice Baharul Islam in the case of J.D. Jain Vs. Management of State Bank of India and another, , and this judgment in J.D. Jain expressly approves the aforesaid principle of Ratan Singh (supra). This shows the shift in the attitude of the Supreme Court towards admissibility of hearsay evidence before the Administrative Tribunal and departmental proceeding.

36. In fact what was ruled out by the Supreme Court in the Constitution Bench judgment in Jagannath Prasad Sharma (supra), was something "which is purely hearsay". That obviously is not admissible but where hearsay evidence is of highly probative character and has a nexus and credibility to the context in question, its admissibility does not vitiate the enquiry proceeding.

37. Thus the following position emerges from the decisions discussed above:

(i) Admission of hearsay evidence in departmental/domestic enquiry is not peremptorily ruled out.

(ii) But it must not be in the nature of a rumour or uncorroborated hearsay" or a mere Scintillia.

(iii) The hearsay evidence in order to be admissible in such enquiry must have some probative value" in the words of Lord Diplock in Deputy Industrial (supra) and it must have reasonable nexus and credibility" [vide observation of Justice Krishna Iyer in State o/Haryana (supra)] to the issue to be determined.

(iv) There should be some residuum of legal evidence" other than the mere hearsay to sustain the findings reached by such authority. But the required residuum need not be enough to sustain the finding independently of hearsay. It

would be sufficient if the residuum lends any support by way of corroboration even by circumstantial evidence (See Schwartz: Administrative Law Article 117, page 339).

(v) This residuum rule has been noted by the Apex Court in Rattan Singh (supra) and explained very lucidly as follows:

The simple point is, was there some evidence or was there no evidence--not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and worldly wisdom, will accept.

(vi) If the aforesaid requirements are met, High Court should not in exercise of its supervisory power interfere, on the question of sufficiency of evidence.

38. Applying those principles it is difficult for this Court to discard the evidence which has been adduced by the management witness on the basis of his conversation with the old man. Therefore, this Court cannot hold that it is a case of no evidence in the said enquiry. Since there is some evidence in the said enquiry and the hearsay evidence is of a rational and probative value, the findings of the enquiry authority are not perverse.

39. But this Court finds that there is one infirmity in the order of the Enquiry Officer and which has also been overlooked by the appellate authority. The Enquiry Officer in his report refused to examine the two documents which were forwarded by the petitioner by way of his defence and which were part of the written argument on the ground that they have not been properly introduced. If the Enquiry Officer can accept hearsay evidence arising out of the conversation between the management witness and that old man, there should be no reason why the documentary evidence which has been annexed with the petitioner's written argument by way of defence should be rejected. Under the aforesaid Regulation, it has been provided under Sub-regulation (18) of Regulation 6 of the said Regulations that the enquiry authority may, after the completion of production of evidence, hear the Presenting Officer, if any, appointed and the Officer employee, and permit them to file written briefs of the respective cases within 15 days of the date of completion of the production of evidence, if they so desire. Under Sub-regulation (21) of Regulation 6 of the Regulations it is incumbent upon the inquiry authority to prepare a report which shall contain under Clause (b) a gist of the defence of the officer employee in respect of each article of charge. Therefore, the Enquiry Authority was under an obligation to consider the documentary proof which was adduced by the defence as part of his written argument. The Enquiry Officer cannot suddenly become technical and discard the explanation further in the defence statement on the ground that "they have not been properly introduced." Unfortunately the appellate authority has also affirmed the said finding.

40. Considering the aforesaid infirmity this Court remands the matter once again to the appellate authority with a direction upon the appellate authority to consider the relevance and importance of those two documents in the context of

the petitioner's defence. As such this Court does not interfere with the order of punishment or with the order passed by the enquiry authority but this Court quashes the order passed by the appellate authority which is Annexure-4 and directs the Appellate authority to consider the petitioner's defence in the (sic) of his defence statement which was filed before the enquiry authority. Since the matter is an old one, such consideration may be made by the appellate Authority within a period of three months from the date of receipt/service of a copy of this judgment upon the said appellate authority and if upon consideration of the said defence statement of the petitioner, the appellate authority comes to the conclusion that the punishment of the petitioner is to be reduced or revoked the consequential financial benefit should be given to the petitioner.

41. With the above direction, this writ petition is disposed of in the manner indicated above. There will be no order as to cost.