

(2010) 07 DEL CK 0029

In the Delhi High Court

Case No : Writ Petition (C) No. 2749 of 1990

R.K. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 32
Railway Property (Unlawful Possession) Act, 1966 — Section 3, 5, 7
Railway Protection Force Act, 1957 — Section 21, 8, 9, 9(1)
Railway Protection Force Rules, 1959 — Rule 3, 44, 44(3), 44(5), 6
Railway Protection Force Rules, 1987 — Rule 152(1), 153(15), 153(5), 153(8), 154(1)

Citation : (2010) 07 DEL CK 0029

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : Raghenth Basant, for the Appellant; J.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of the present writ petition, the petitioner, a Company Commander of the Railway Protection Force (hereinafter referred to as 'RPF' for brevity), Tundla, has challenged the order dated 14th September, 1989 (wrongly mentioned as 18th September, 1989 in the writ petition) of the disciplinary authority finding the petitioner guilty of the charges levelled against him and imposing the punishment of removal from service. The petitioner also challenges the order dated 15th of June 1990 rejecting the appeal filed by him before the Director General, RPF, Railway Board, New Delhi.

2. The petitioner was appointed as a Sub Inspector in the Railway Protection Force by an order of appointment in the year 1965 passed by the General Manager, Northern Railway. He was promoted in September 1981, to the post of an Inspector and posted to the Northern Railway, Allahabad Division. The petitioner submits that he was rewarded with Rs. 350/- by the Divisional Railway Manager, Allahabad Division for his hard work, honesty and helping attitude to control crime in the area.

3. On receipt of source information that there were certain irregularities being committed by the petitioner, on 16th July, 1982, a preliminary enquiry by Shri B.R. Sharma, the then Assistant Security Officer/Crime/Headquarters, Baroda House, New Delhi was initiated by the respondents. The said officer submitted a report dated 8th September, 1982. On consideration of this preliminary report, the disciplinary authority placed the petitioner under suspension w.e.f. 2nd December, 1982.

4. The following three incidents were alleged against the petitioner:

(i) that on 29.6.1982, on account of monetary gratification, he had let off eight women who had been apprehended by the Civil Police, Etmadpur while committing theft of coal from a wagon at Etmadpur.

(ii) that he had booked three persons namely Sh. Lakhan Singh, Sh. Lajja Ram and Sh. Ram Swaroop for the offence of theft of coal whereas they had been apprehended in connection with theft of 12 bags of rice, thereby reducing the gravity of the offence. In this connection, he had also failed to register the Running Train Theft ('RTT' for brevity) case of rice in time and allowed the recovered rice to be dispatched to the Lost Property Office. He had also facilitated manipulation of records and misrepresentation of the number of bags of food grains.

(iii) that he had not arrested an accused namely Mahesh Khalasi and had let him off after accepting illegal gratification when Mahesh met him at his residence.

5. A chargesheet for imposition of major penalty was issued to the petitioner which was communicated to him on the 12th of January 1983 under Rule 44 of the Railway Protection Force Rules, 1959 (hereafter referred to as the "RPF Rules, 1959"). The ten charges framed against the petitioner communicated by the Section Officer, Allahabad read as under:

1) That he let off the women rounded by Civil Police Etmadpur on 29.6.82 while committing theft of coal at Etmadpur from a stabled wagon (with 25/30 kg. coal with each woman) made over to him for legal action, without any action with ulterior motive for monetary gains.

2) That he instructed his staff not to make entry in the GD for gain to Etmadpur.

3) That he instructed his staff to bring these women to his residence instead of office, and also not to make entry in the GD on their arrival from Etmadpur with women with, ulterior motive so that there may not be any documentary proof.

4) That Lakhan Singh, Lajja Ram & Ram Sawroop were arrested by RPF staff on 18.4.82 in connection with the RTT of 12 bags rice between Hiran gaon. He instead of booking them in connection with the said RTT booked them for the theft of coal so that the gravity of the offence may be lessened, with ulterior motive for monetary gains.

5) That the rice bags were made over to CGC/FZD for onward despatch to LPO

CNB as unconnected property with the ulterior motive to spoil the case.

6) That he registered the case RTT of rice too late.

7) That he did not arrest the criminal of the said RTT despite full knowledge about them with ulterior motive for monetary gain.

8) That he made no efforts to connect the recovered 12 bags rice.

9) That he did not arrest accused Mahesh Khalasi of case crime No. 32/82 u/s 3 RP (UP) Act case when he met him at his residence for bargaining to let him off.

10) That he accepted Rs. 1000/- as illegal gratification from Mahesh for not arresting him till 26.4.82 i.e. the date on which anticipatory bail was granted to him.

The petitioner was then informed that he was required to submit a written statement of his defense within 14 days from the day of framing charges.

6. In reply to the charges, the petitioner filed his defence statement before the Divisional Security officer on the 26th March 1983. In this reply, the petitioner clearly and unequivocally admitted that he had received a copy of the documents supporting the charge sheet as well as the preliminary enquiry report.

7. The petitioner refuted all the charges on the basis that he was not afforded an opportunity to be represented during the preliminary enquiry and that opportunity to cross-examine the witnesses examined therein was denied. He contended that the report was arbitrary. The petitioner also tried to put forward the plea that the witnesses were examined by officers other than the one who had compiled and signed the enquiry report and suggested that there was no application of mind nor any opinion contained therein and that the same was a mere compilation. He has also pointed out that there were contradictions and defects in the evidence and the same have been completely overlooked. In his reply, the petitioner made a further grievance that the proposed disciplinary action was motivated and a result of conspiracy by other members of the force for the reason that the petitioner had been refusing to accommodate their illegal activities.

8. One Shri D.P. Sharma the then Assistant Security Officer/Crime was nominated by the letters dated 4th May, 1984 and 30th November, 1984 to conduct the departmental inquiry against the petitioner with regard to the above charges. In June, 1984, the petitioner was transferred to South-Eastern Railway and went outside the disciplinary control of the Northern Railway.

9. Other RPF staff including SI/CIB Harshwardhan, H/C Jagannath Dubey, Constable Madan Pal Sharma and Lakshman Kumar Pandey were also issued chargesheets based on the report of Shri B.R. Sharma, Assistant Security Officer/Crime who conducted the preliminary inquiries and thereafter disciplinary proceedings were commenced against these personnel as well. Shri R.C. Dikshit, ASO, CNB was nominated by a letter dated 28th January, 1986 to conduct the

disciplinary proceedings against the other four persons.

10. In the meantime, the petitioner was transferred back to the Northern Railway and posted as reader to the Senior Security Commissioner/NR/NDLS. On a reference dated 20th June, 1986 and 2nd April, 1987 from Shri R.C. Dikshit, the inquiry officer, he was nominated by an order dated 22nd April, 1987 to conduct the inquiry against the petitioner as well as the other four RPF personnel. The disciplinary inquiry was conducted by him till his retirement on 31st July, 1988. Thereafter, Shri R.K. Mishra was nominated as the inquiry officer and the inquiry was entrusted to him.

11. It is noteworthy that based on the preliminary inquiry report, a charge-sheet dated 14th/19th April, 1983 was issued to SI J.N. Mishra and the disciplinary inquiry against him also was conducted by Shri R.K. Mishra.

12. In the report dated 30th July, 1989, submitted by Shri R.K. Mishra, it is mentioned that the findings and report in respect of disciplinary proceedings against SI Harshwardhan, H/C Jagannath Dubey, Madan Lal Sharma & Lakshman Pandey had already been submitted by him.

13. The petitioner contends that on transfer, he ceased to be an employee of the Northern Railway and consequently any enquiry or proceedings against him by the Northern Railway would be patently illegal and without jurisdiction. The petitioner remained under the South-Eastern Railway for a period of one and a half years i.e. till November 1985. Further, when the petitioner was transferred to the S. E. Railway, the file was sent to the CSO of S.E. Railway. However, he was transferred back to Northern Railway since a common inquiry was to be held in the cases involving several RPF personnels. The petitioner was with the Northern Railway for six months and remained there until his removal. It is to be noted that these transfers also resulted in delay in finalisation of the enquiry.

14. While the departmental proceedings were underway, the Railway Protection Force Act, 1957 came to be modified/amended by the Government of India vide Act No. 60 of 1985 which came into being w.e.f. 20th September, 1995. Pursuant to the amendment in the RPF Act and in exercise of powers conferred by Section 21 thereof, the Central Government had notified the Railway Protection Force Rules, 1987 vide GSR No. 951-E dated 3rd December, 1987. By virtue of Rule 280.1 of the RPF Rules, 1987, the RPF Rules of 1959 stood repealed. However, under Rule 280.2, all proceedings/actions taken earlier were deemed to have been taken under the provisions of the new rules. Rule 280.2 of the amended rules reads as follows:

280.2 Notwithstanding such repeal anything done or any action taken under the provisions of the said rules or regulations shall in so far as such thing or action is not inconsistent with the provisions of these rules, be deemed to have been done or taken under the provision of these rules as if these rules were in force when such thing was done or such action was taken and shall continue to be in force accordingly until superseded by anything done or any action taken under these

rules.

15. The inquiry officer examined the prosecution and defence witnesses between 7th October, 1987 to 20th July, 1989. The petitioner participated in these proceedings and fully cross-examined all the prosecution witnesses.

16. The inquiry officer submitted his findings and report on 30th July, 1989 to the Chief Security Commissioner/RPF who passed the order dated 14th September, 1989 holding the petitioner guilty of the charge Nos. 1-3, 5, 6, 8 & 9 and exonerated the petitioner of charge Nos. 4, 7 & 10. The disciplinary authority further imposed the penalty of permanent removal from service upon the petitioner.

17. The respondents have pointed out that Rule 154.1.1 of the RPF Rules, 1987 requires that while communicating the order imposing punishment, a copy of the findings of the inquiry officer is required to be given to the party charged. Accordingly, the findings and report of the inquiry officer was also supplied to the petitioner along with the final order dated 14th September, 1989.

18. The petitioner filed an appeal dated 16th October, 1989 to the Director General, Railway Protection Force against the order of removal from service which was dismissed by a detailed order dated 15th of June, 1990.

19. It appears that the petitioner did not invoke further statutory remedy of a revision petition against the appellate order and has instead filed the present writ petition, assailing the said orders dated 14th of September, 1989 and 15th June, 1990.

Petitioner's contentions

20. The petitioner challenges the proceedings of the inquiry and the impugned orders on several grounds which may be summed up as follows:

(i) The petitioner has contended that he was not given a copy of the preliminary enquiry report and the statements recorded during the preliminary enquiry.

(ii) The petitioner has complained denial of a fair opportunity on the ground that he was deprived of the assistance of a defence counsel of his choice. In this behalf, reliance is placed on Rule 153.8 of the RPF rules which explicitly entitles the charged officer to seek assistance of a 'friend' to defend himself.

(iii) The petitioner submits that important documents requested by him in his letter dated 28th June, 1989 and 14th July, 1989 were not granted. The inquiry officer rejected the request of the petitioner vide a communication dated 20th July, 1989 on the ground that they were not relevant.

(iv) The petitioner submits that he was not granted the statutory period of 10 days to file his written statement as stipulated under Rule 153.15 of the RPF Rules. It is contended that the communication dated 20th July, 1989 requiring the petitioner to submit his final defence statement by the 26th July, 1989 was

received by the petitioner only on 25th July, 1989. The petitioner requested the inquiry officer for ten days time to file the defence statement by his letter dated 26th July, 1989 and reiterated his request for supply of the said documents. Both requests were denied by the inquiry officer by the letter dated 26th July, 1989 and the petitioner was called upon to submit his defence by 27th July, 1989. In this background, the petitioner sent a letter dated 26th July, 1989 to the inquiry officer submitting that on account of insufficiency of time, he was not in a position to file the defence statement and that his reply to the charge-sheet may be treated as his final defence statement. It is submitted that in view of undue haste and the failure to grant sufficient time to the petitioner, he has been deprived of a reasonable and fair opportunity to establish his innocence. In addition, it is contended that the proceedings were conducted in violation of the specific Rule No. 153.15 of the RPF Rules which provided for ten days time to file the written statement of the defence.

(v) The petitioner has challenged the removal order on the ground that it has been passed by an officer subordinate to the petitioner. The submission is that the impugned orders are therefore in violation of Art 311 of the Constitution of India and Rule 248.1 and in violation of principles of natural justice.

(vi) The petitioner has also contended that the appeal of the petitioner was not decided within three months thus violating Rule 220(1) of the RPF rules. The appellate order dated 15th June, 1990 is also assailed for the reason that no opportunity for hearing was granted to the petitioner by the Director General of the RPF before the rejecting the appeal.

(vii) The petitioner contends that there is no material to support the charges which were laid against him and the impugned orders are based either on no evidence or on wholly irrelevant material. It is contended that they are consequently not sustainable in law.

Respondents' contentions

21. The respondents justify the impugned action and orders on the ground that the same are based on an inquiry conducted in accordance with the applicable rules, wherever relevant, and principles of natural justice. It is contended that the findings of the inquiry officer and the disciplinary authority as well as the conclusions of the appellate authority are based on relevant material and cannot be faulted on any legally tenable ground.

22. So far as the rejection of the request of the petitioner for appointment of a particular person as a defence counsel is concerned, the respondents have contended that as per the applicable rules, a person functioning as a prosecuting officer on behalf of RPF is not permitted to be appointed as a defending officer or defence assistant in such like disciplinary proceedings and the first person requested by the petitioner could not be appointed for this reason. So far as the second choice of the petitioner was concerned, the person who was named by the petitioner was not a member of the force. The applicable rules do not permit

representation of a charged personnel by a person who is not a member of the force. The respondents have pointed out that on denial of the appointment of the two names that the petitioner suggested, he never approached them with any other appropriate name. It is, therefore, contended that the inquiry proceedings cannot be faulted on this ground of challenge laid by the petitioner.

23. The respondents further state that the petitioner was appointed by the Chief Security officer, N Rly (now the CSC) and not by the General Manager. He was posted as the Coy Commander/RPF post Tundla on 27th September 1981. The removal order against the petitioner has not been passed by an officer lower than his appointing authority and no illegality can therefore be found in the impugned order. The respondents admit that he was granted cash reward of Rs 300 and not of Rs. 350 and the cash entry was never omitted from the record as alleged by the petitioner. The contention is that this reward is immaterial so far as the present proceedings are concerned.

24. The respondents also explain the circumstances in which the inquiry officer was changed. It is pointed out that the enquiry was conducted by Shri. R.K. Mishra since his predecessor, Shri Dixit who initiated the enquiry, had retired.

25. As per the respondents, the petitioner cannot rely on Rule 248.1 of the RPF rules since the same relates to the complaints made by public against the RPF personnel. The said rule reads as under:

248 Public complaints against to misconduct of the members of the Force:

248.1 Whenever a complaint against the misconduct of any member of the Force is received from the members of the public or where such complaint is received through a court wherein civil or criminal proceedings against a member of the Force have been instituted or otherwise, and controlling officer of such member of the Force is of the opinion that allegation are verifiable or otherwise an inquiry is called for he may proceed to inquire himself into the complaint against a member of the Force specified in column (1) of the table below or depute any other officer as specified in the corresponding entry in column (2) of the said table:

Table Members of the Inquiry Officer Force against whom complaints received (1)
(2) Constables/Naiks/Head Of and above the Constables rank of Inspector

Sub- Of and above the Inspector/Assistant rank of Assistant Sub-Inspector Commandant
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Inspector/Assistant Of and above rank of Security Commissioner Security Commissioner.

Security Commissioner Chief Security or above Commissioner or the Additional or the Deputy Chief Security Commissioner, if so authorized by him.
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The instant case relates to departmental action against the petitioner, an RPF personnel, without involvement of a public complaint. For this reason, rule 248.1

has no application.

It is further contended that the rules are to be applied without any modification since the modifications were not tabled in the Lok Sabha for annulment.

26. The preliminary enquiry is stated to have been held by an Asst. Security officer, an officer who is higher in rank to the petitioner. Therefore, as per the respondents, the petitioner's contention of Article 311 being violated in his case, does not hold any ground.

27. The respondents have contended that so far as the access to documents is concerned, the same was never denied to the petitioner. The petitioner was granted access to all necessary and relevant documents and was enabled to take extract of the relevant portion thereof.

Whether the principles of natural justice have been violated for the reason that all demanded documents were not supplied.

28. The respondents have explained that the receipt of the charge-sheet and the proposal for initiation of major penalty was acknowledged by him on 21st January, 1983. The petitioner was advised by the respondents and was afforded an opportunity to take extracts of documents which were relied upon by them for the proof of charges.

29. In view of the objections taken by the petitioner, it becomes necessary also to examine the rule position in this behalf. Rule 44 of the Railway Protection Force Rules, 1959 provides for the procedure for imposition of major penalties. So far as documents are concerned, Rule 44(3) of the rules provides that the delinquent official shall be permitted to inspect and take extracts from such official records as he may specify for the purposes of preparing his defence. The rule also provides that such permission may be refused, if for the reasons to be recorded in writing, in the opinion of the disciplinary authority, such records are not relevant for the purpose or it is against the public interest to allow him access thereof.

30. In this regard, Rule 153.5 of the amended Rules of 1987 on the same issue reads as follows:

153.5 The disciplinary authority shall deliver or cause to be delivered to the delinquent member, at least seventy-two hours before the commencement of the inquiry, a copy of the articles of charge, the statement of imputations of misconduct or misbehavior and a list of documents and witness by which each article of charge is proposed to be sustained and fix a date when the inquiry is to commence; subsequent dates being fixed by the Inquiry Officer.

31. The respondents have submitted that the petitioner had examined/inspected the records from 26th February, 1983 to 28th February, 1983 and taken copies of all relevant documents of the case to prepare his defence and reply. In this behalf, the respondents have placed a copy of the petitioner's acknowledgment

on record that he had examined the case file and taken extracts of the documents.

32. The petitioner submitted his reply to the charge-sheet on 26th March, 1983 to the disciplinary authority. Perusal of the copy thereof which has been filed by the petitioner on the record of the present writ petition, shows that in para 7 thereof, the petitioner has extensively discussed the statements of Shri Hari Shankar Pathak, Shahabuddin, Ram Babu Verma & Mahesh Chand Sharma which could only have been possible if such documents were in his power and possession. The petitioner has also enclosed copy of the report of the preliminary inquiry as an annexure to the writ petition. Despite possession of these statements, the petitioner persisted with an unwarranted demand for copies of the statements vide his application dated 28th June, 1989.

33. The inquiry officer also explains that the demand of the petitioner for TA claims of Shri B.R. Sharma who had conducted the preliminary inquiry and of the other CIB staff for the period August, 1982 and the CSO/Circular cited by him in his application dated 28th June, 1989 were not considered relevant to the charges and therefore not produced in the disciplinary inquiry. The inquiry officer points out that the petitioner was clearly informed about the same by the letters dated 6th July, 1989 and 20th July, 1989.

34. The petitioner's demand for documents made in the letter dated 14th July, 1989 also includes such documents as are relating to charge No. 0. The petitioner stands exonerated of such charge.

35. Under the cover of a letter dated 14th July, 1989 to the petitioner, the demanded statements of the persons which has been recorded in the case of Mahesh Khalasi during the preliminary inquiry as demanded by the petitioner, were duly supplied to him.

36. Several other documents including the certified copies of roznamcha entry of the RPF post Tundla, required by the petitioner were further supplied on 20th July, 1989 while the individual position with regard to the other documents informed to the petitioner in this communication which required the petitioner to attend the inquiry on 26th July, 1989 and submit his final defence statement.

37. It is noteworthy that the statement of the last prosecution witness was recorded on 9th June, 1989 while the defence evidence was also concluded on 20th July, 1989. The respondents have entertained and dealt with the requests of the petitioner for documents despite this position on record. In view of the above, there could be no occasion for supply of further documents inasmuch as evidence on behalf of the petitioner also appears to have been concluded.

38. Yet another application was made by the petitioner on 26th July, 1989 reiterating the demand for the documents made on 14th July, 1989. The inquiry officer considered the requests of the petitioner and was of the view that documents which have been cited in the application were not relevant to the

charge for which the inquiry was being conducted. This was communicated to the petitioner by the inquiry officer vide his communication dated 26th July, 1989 wherein it was also informed to the petitioner that other documents demanded have already been supplied to him.

39. Before this Court, the petitioner has taken a blanket objection that the refusal of the respondents to give copies of the documents has prejudiced the petitioner's defence. No details of the documents which were denied by the respondents, have been pointed out. On the contrary, the respondents have clearly recorded that certain specified documents were not being supplied for the reason that either they were not available or were considered unnecessary or irrelevant for consideration of the issues involved.

40. It needs no elaboration that only material and relevant documents can be called for by a delinquent official. In this regard, the pronouncement of the Supreme Court reported at State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, can be usefully adverted to. The observations of the court and the principles that would govern the adjudication on an issue of prejudice on account of non-supply of documents are to be found in paras 11 and 12 of the said pronouncement which read as follows:

11. Learned Counsel for the appellant has further submitted that particular documents copies of which are said to have not been supplied are not indicated by the respondent much less in the order of the High Court nor their relevance has been pointed out. The submission is that the delinquent will also have to show as to in what manner any particular document was relevant in connection with the inquiry and what prejudice was caused to him by non furnishing of a copy of the document. In support of this contention, reliance has been placed upon a case reported in Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), . It has been observed in this case that the obligation to supply copies of documents is confined only to material and relevant documents which may have been relied upon in support of the charges. It is further observed that if a document even though mentioned in the memo of charges, has no bearing on the charges or if it is not relied upon or it may not be necessary for cross-examination of any witness, non-supply of such a document will not cause any prejudice to the delinquent. The inquiry would not be vitiated in such circumstance. In State of Tamil Nadu Vs. Thiru K.V. Perumal and others, relied upon by the appellant, it is held that it is for the delinquent to show the relevance of a document a copy of which he insists to be supplied to him. Prejudice caused by non-supply of document has also to be seen. In yet another case relied upon by the learned Counsel for the appellant, reported in (2001) 6 S.C.C. State of U.P. v. Harendra Arora and Anr., it has been held that a delinquent must show the prejudice caused to him by non-supply of copy of document where order of punishment is challenged on that ground.

12. Learned Counsel for the appellant submitted that no material or document has been relied upon by the Inquiry Officer, copy of which or inspection thereof

may not have been allowed to the respondent. No material has been obtained after the date of hearing nor any such material has been made use of by the Inquiry Officer. It is further submitted that in the judgment of the High Court it has nowhere been indicated that any material or document, copy of which has not been supplied to the respondent, was used much less any prejudice, if caused to the respondent. Learned Counsel for the respondent could not pinpoint any particular document which may have been made use of by the Inquiry Officer for establishing the charges leveled against the respondent, copies of which or inspection thereof may not have been allowed to the delinquent by the Department. No submission has been advanced on behalf of the respondent on the point of prejudice which may have been caused to the respondent by non-supply of document, if any. The high Court has also not gone into the question of the relevance of the documents copies of which are said to have not been supplied to the respondent and consequent prejudice, if caused. We therefore find that the finding of the High Court that principles of natural justice have been violated for non supply of documents to the respondent is sustainable. The cross-examination of a witness which was sought for, had unfortunately died which fact was also brought to the notice of the respondent.

41. As noticed hereinabove, in the instant case as well, the petitioner has failed to point out the relevancy of the documents, copy whereof has not been supplied to him. The petitioner also does not disclose what was the prejudice caused to him for non-furnishing of the said copies. Merely because a demand for some documents was made and the same was denied without anything more, cannot ipso facto vitiate the action taken by the respondents or the proceedings of the inquiry. There is substance in the contention of learned Counsel for the respondents that the petitioner has not been able to point out any relevant material document available with the respondents of which the petitioner has not been permitted inspection. The petitioner is not able to even suggest any prejudice which resulted to the petitioner's defence by non-availability of any particular document. The respondents have reasonably exercised the discretion vested in them so far as the denial of access to irrelevant documents was concerned. This contention of the petitioner is, therefore, devoid of legal merit and is hereby overruled.

Whether the disciplinary action stands vitiated for non-availability of the defence assistant of the choice of the petitioner?

42. Mr. Basant, learned Counsel for the petitioner has laid a strong objection that the petitioner has been denied a defence assistant of his choice. Reliance has been placed on the provisions of Rule 153.8 of the RPF Rules, 1987 which provides that an enrolled member who has been charged shall not be allowed to bring in a legal practitioner at all. However, he may be allowed to take assistance of any other member of the force. Such 'friend' must be (a) a serving member of the force or below the rank of sub-inspector posted in the same division or battalion where the proceedings are pending; and (b) he should not be acting as

a friend in any other pending proceedings anywhere. The rules contain the restriction on the kind of assistance by such a friend to the effect that he shall not be allowed to address the inquiry officer or cross-examine the witnesses.

43. The petitioner submits that vide a letter dated 14th of October 1987, he requested for the appointment of one Shri N.P. Singh Kalse as a defense counsel. This request was turned down vide an order dated 19th October, 1987 for the reason that Shri N.P. Singh Kalse was a prosecuting Inspector of the RPF and was not permitted to appear as a defense counsel.

44. The petitioner thereafter made a request by a letter dated 19th October, 1987 itself nominating one Shri R.H. Thakkar, Vigilance Inspector of the Northern Railway to act as a defence counsel. This request was rejected by the inquiry officer on the ground that Shri Thakkar was on the said date, not a member of the Railway Protection Force and consequently could not be allowed to appear as a defence counsel. These rejections have been challenged by the petitioner who urges that denial of a defence assistant/friend of his choice has severely prejudiced the petitioner's defence and that there was no prohibition under the applicable rules for appointment of either of the two persons as the defence assistant of the petitioner. The petitioner places reliance on the order dated 17th November, 1987 passed by the High Court of Rajasthan at Jodhpur in Civil Writ Petition No. 1703 of 1987 entitled Jogeshwar Singh v. Union of India in support of his contention.

45. The respondents have pointed out that the petitioner had originally requested for the assistance of Mr. N.P. Singh Kalse, prosecuting inspector, RPF, DLI Division. This request was rejected by a letter dated 19th October, 1987 for the reason that as per the extant rules, a prosecuting inspector of the RPF was not permitted to appear as a defence counsel in any departmental case. In support of his rejection, the respondents rely on a circular dated 9th April, 1974 from the Northern Railway informing the decision of the Board to the effect that in keeping with the practice followed in other departments of the Railways where law assistants are not allowed to act as a defence counsel in departmental proceedings, the prosecuting inspectors and sub-inspectors of the Railway Protection Force should also not be permitted to act as defence counsel in disciplinary cases.

46. So far as the request of the petitioner for appointment of Shri N.P. Singh Kalse is concerned, the same was made on 14th October, 1987 while the request for appointment of Shri Thakkar was made on 19th October, 1987. It will be relevant here to quote Rule 44(5) of the extant Rules of 1959 which provides as follows:

44(5) The member so charged may be permitted by the inquiring authority to present his case with the assistance of any other member of the Force of the Zonal Railways serving in the same division in which the member so charged is working :

Provided that the member of the Force whose assistance is sought under this sub-rule has not been at that time, assisting more than one member of the Force.

(Underlining supplied)

47. We may also advert to Rule 153.8 of the amended RPF Rules of 1987 which made a provision for assistance to an enrolled member charged with misconduct and reads as follows:

153.8 The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force hereinafter referred to as "friend") where in the opinion of the Inquiry Officer may, at the request of the party charged, put his defence properly. Such "friend" must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a "friend" in any other proceedings pending anywhere. Such "friend" shall, however, not be allowed to address the Inquiry Officer nor to cross-examine the witnesses.

48. Rule 44 of the RPF Rules of 1959 which was applicable provided for limited assistance of a member of the force serving in the same division in which the charged member was serving. Rule 153.8 aforementioned became applicable on the 3rd December, 1987 and restricted the assistance to that from a serving member of force of or below the rank of a sub inspector posted in the same division or battalion where the proceedings are pending. The petitioner appears to have enclosed the consents of the two persons who had been nominated by him.

49. Mr. J.P. Sharma, learned Counsel for the respondents has submitted that the circular dated 18th January, 1974 was not incorporated in the RPF Rules, 1959 for the reason that there was no prosecution branch in the RPF and the same came into existence only later in 1960. We are unable to understand as to how this could impact adjudication on the issue raised by the petitioner.

50. Perusal of the judgment in Jogeshwar Singh v Union of India (supra) would show that it was held by the High Court of Judicature for Rajasthan at Jodhpur that prosecuting inspectors and sub-inspectors are included as members of the Railway Protection Force under Rule 3. Reliance was placed on an earlier pronouncement of the court reported at 1975 RLW 189 Jagdish Singh v Union of India wherein it was held that orders of the force cannot be regarded as a rule and consequently, the circular of the Board being Circular No. 73-SCC/SPL/6138 dated 18th January, 1974 cannot override the provisions of Sub-rule 5 of Rule 44 of the Railway Protection Force Rules, 1959.

51. Mr. Sharma has pointed out that directives were issued by the Inspector General of the Railway Protection Force and Railway Board in exercise of powers vested u/s 8 of the RPF Act, 1956 read with Rule 6 of the RPF Rules, 1959 and were hence binding.

52. The constitutional validity of Rule 158(3) reproduced hereinabove was

challenged before the Supreme Court in the case reported at D.G. Railway Protection Force and Others Vs. K. Raghuram Babu, wherein the court while upholding the constitutional validity of the rule, held that no personnel has a vested or absolute right of representation either through a counsel or through any other person unless the statute or the rules provide for such a right. It was also observed that the same may be granted as a restricted or controlled right. With regard to conduct of defence in a domestic/departmental inquiry, the following observations of the court throw valuable light on this issue:

7. It is well settled that ordinarily in a domestic/departmental inquiry the person accused of misconduct has to conduct his own case vide *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, . Such an inquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer. It is only if there is some rule which permits the accused to be represented by someone else, that he can claim to be so represented in an inquiry vide *Brook Bond India v. Subba Raman* 1961 (11) LLJ 417.

8. Similarly, in *M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another*, it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General Kamgar Union and Ors*, in which the whole case law has been reviewed by this Court.

9. Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through some one, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.

10. In the present case, Rule 153(8) only provides for assistance to a charge-sheeted employee by an agent. Thus, a restricted right of representation has been granted by Rule 153(8). Even if no right of assistance had been granted by the rules, there would be no illegality or unconstitutionality. How then can it be said that when a restricted right is granted, the said restricted right is unconstitutional?

53. In the instant case, the petitioner accepted the rejection of his request vide letter dated 14th October, 1987 and submitted an alternate request for appointment of Shri Thakkar by the letter dated 19th October, 1987. Certainly, the petitioner cannot be now heard to object that the rejection of his first request was incorrect or worked injustice to him in these facts.

54. Shri R.N. Thakkar is stated to have been on deputation to the Vigilance Department under the General Manager (Vigilance), Northern Railway at the relevant time and was not on the rolls of RPF.

55. The respondents have explained that Shri Thakkar was not a member of the Railway Protection Force. For this reason, he could not be appointed to render assistance in terms of either Rule 44(5) of the RPF Rules, 1959 or as 'friend' in terms of Rule 153.8 of the amended RPF Rules, 1987. Nothing to the contrary has been brought to our notice.

56. In *Sunil Kumar Banerjee Vs. State of West Bengal and Others*, ., the Supreme Court also had an occasion to consider a similar objection on behalf of the appellant who appeared in person. An objection premised on denial of the prayer for appointment of a lawyer in the course of proceedings was considered and rejected by the Apex Court inter alia on the ground of the appellant having adequately contested the charges and conducted his defence as well as on the ground that the request by the appellant was made at a grossly belated stage.

57. The respondents have not at any point denied assistance to the petitioner in accordance with rules.

58. In the instant case as well the petitioner accepted the orders of the respondents. Perusal of the record of this case would show that the petitioner's communications show his ability to comprehend all nuances and intricacies of the disciplinary proceedings. The petitioner's replies and communications reflect familiarity with the applicable statutory rules and regulations and do not indicate any prejudice in the conduct of his defence. The petitioner has incisively cross-examined the witnesses produced by the department and has examined two witnesses in defence as well. He has submitted detailed representations to the inquiry and disciplinary authority taking factual and legal objections.

In the given facts and circumstances, no prejudice to the petitioner by denial of the defence assistant of his choice has been pointed out or established. This objection of the petitioner is, therefore, not sustainable and is hereby rejected.

Whether the inquiry report is based on relevant material?

59. Learned Counsel for the petitioner has assailed the findings of the inquiry officer and the disciplinary authority on the ground that they are based on no evidence.

60. In so far as the inquiry proceedings against the petitioner are concerned, 22 witnesses were examined in support of the charges by the department while the petitioner examined two witnesses in his defence. Copies of the documents relied upon as well as the preliminary inquiry report were furnished to the petitioner before he filed his defence statement. During the inquiry, he was afforded opportunity to cross-examine the witnesses; to produce and inspect documents; to defend himself and to lead defence evidence. The inquiry officer had pointed out in his report that copies of the statement of the witnesses recorded during the disciplinary inquiry were duly supplied to him against signatures.

61. A perusal of the report dated 30th July, 1989 would show that so far as the charge Nos. 1, 2 & 3 against the petitioner are concerned, the same relate to an

occurrence on the 29th June, 1982 when the petitioner is allegedly let off some women rounded by the civil police at Etmadpur apprehended while committing theft of coal from a stable wagon and found in possession of 25 to 32 kg. stolen coal each. Charge Nos. 2 & 3 relate to instructions purportedly given by the petitioner to his staff in respect of this incident.

62. The inquiry officer has carefully considered the evidence laid in support of these allegations. Reliance has been placed on the statement of Inspector Prem Singh of the civil police, Etmadpur who has referred in detail of the apprehension of the women and recovery of the stolen railway property in the above circumstances by SI Chander Bhan Singh with other civil police personnel. Inspector Prem Singh had clearly stated that he had informed the petitioner on the phone about the apprehension of nine women with stolen coal when the petitioner informed him that he was sending his staff for escorting the women and stolen property. It is in evidence that Head Constable Jagannath Dubey and constable Madan Pal Sharma of the RPF were so deputed by the petitioner and the apprehended women along with the stolen coal were handed over to them. SI Chander Bhan Singh of the civil police who had apprehended the women with the stolen coal, also appeared as a witness has corroborated the statement of Inspector Prem Singh.

63. The apprehension of the women with the stolen coal on 29th June, 1982 is further established in the statements of Station Master Zorawar Singh from the Etmadpur station, waterman Dal Chand and SW Phoola. The inquiry officer had noted that Dal Chand and Phoola gave affirmative statements on this aspect in the preliminary inquiry held on 23rd August, 1982. Their statements recorded seven years thereafter on 15th March, 1989 in the departmental inquiry are contended to be evasive. The statements recorded during the preliminary inquiry were duly proved on record. In any case, no reason has been pointed out for disbelieving the statements of the Station Master Zorawar Singh, SI Chander Bhan Singh or Inspector Prem Singh who have deposed about and established the same facts.

64. At this stage, the defence statement of the petitioner dated 26th March, 1983 may appropriately be adverted to here. So far as the incident of theft of 29th of June, 1982 is concerned, in the defence statement the petitioner has split the allegations against him into the following six heads:

- i) On 29.6.82 some women committed theft of coal from a loaded wagon stabled at Etmadpur.
- ii) The women were apprehended by SI Civil Police, Etmadpur with the help of SM/Etmadpur.
- iii) The women were forwarded to RPF post TDL through HRK J.N. Dubey & RK M.P. Sharma.
- iv) The RPF staff so deputed brought the women & produced them at my

residence.

v) I freed the women with coal for illegal monetary gain with ulterior motive.

vi) I did not take action on the letter of SM/Etmadpur.

Referring to the preliminary enquiry, these allegations have been answered by the petitioner in the said defence statement in the following terms:

(i) Theft might have taken place on 29.6.82 at Etmadpur. The RPF cannot be said to be in connivance since it is a non RPF station & therefore connivance if at all can be attributed to either the station staff or the local police & not to RPF. Moreover the local RPF Staff under my command had arrested them more than once.

(ii) S.H.O. was requested to let me have the copies of the entries made by them in the Police records and also depute the witnesses to make statements. The SHO neither could send the papers nor the witnesses. I cannot understand the basis on which I could register cases against those women. If the department wants fabricated cases, at least I shall pray to be excused. The Enquiry Officer did or did not examine the police records is not known from his report. The arrest by police would not have been believed by any court in the absence of any entry in the G.D. & F.I.R. of the Police Station. The E.O. can still be asked to make a probe & find out if there is anything which the police can do without recording it in G.D.

(iii) It may be correct.

(iv) It is again contrary to the evidence. Only two witnesses have been examined, who have categorically stated that the women were brought to RPF Post and not at my residence. The findings of the E.O. contrary to the evidence on file is therefore his own conclusion and thus conjectural.

(v) This again is mere presumption. None of the witnesses have volunteered any such statement and the E.O. instead of declaring it to be a case of non-availability of evidence has translated the action of the petitioner in his own way brushing aside the facts and logic.

(vi) This is evident that the SM/Etmadpur addressed letter on 30.6.82, whereas the action had been completed on 29.6.82, after enquiries having been made on phone from him & his refusal to own the credit of arresting those women.

(Underlining by us)

65. The petitioner has referred to the depositions of the witnesses whose statements were recorded in the preliminary inquiry. However, the petitioner does not dispute that the SHO of the police station Etmadpur informed him about the apprehension of the women and the recovery of the stolen coal. There is clear admission by the petitioner of several material facts, especially knowledge of the incident in his defence statement.

66. The discussion recorded by the inquiry officer shows that it was adequately established on record that the petitioner was clearly informed about the apprehension of the nine women who were caught stealing coal and the stolen property in their possession. The inquiry officer has found that head constable Jagannath Dubey and constable Madan Lal Sharma were deputed by the petitioner for escorting the women and the stolen coal from the police station Etmadpur to Tundla. There is evidence that these two RPF personnel did not record their movements to and fro Etmadpur in the records of the force. However, it is in the evidence of constable Madan Pal Sharma that a DDE No. 73 was recorded by Constable Madan Pal Sharma in the roznamcha with regard to mounting for patrol duty at 2126 hours. The inquiry officer has found that the said Constable Sharma was late in mounting duty for the reason of delay in returning from Etmadpur with the apprehended women and stolen coal.

67. More serious in the whole incident is the fact that there is no record at all about any of the women who were escorted by these two RPF personnel from Etmadpur to Tundla at the Railway Protection Force post which was under the control of the petitioner. There is no record also of the stolen coal with which they were apprehended at Etmadpur and escorted to Tundla. The inquiry officer has found these facts sufficient to clearly establish the complacency of the petitioner who was posted at the RPF Tundla as an inspector and was admittedly in a position of authority to exercise jurisdiction.

68. Learned Counsel for the petitioner places strong emphasis on the inability of SI Chander Singh to identify Head Constable Jagannath Dubey & Constable M.P. Sharma as the RPF personnel who had escorted the women before the inquiry officer. The inability of this witness to identify these two persons has to be tested in the light of the fact that a witness was a serving police official at Etmadpur on the date of the incident and would have seen the RPF personnel only once when they visited Etmadpur to take charge of the women and stolen coal. The time gap of several years between when the witness saw these RPF personnel and the date of his deposition in the enquiry also requires to be borne in mind. The statement of this witness cannot be seen disjunctively. The same has to be tested against other circumstances established in the evidence with regard to these two persons having been assigned the task of taking custody of the women with the stolen coal.

69. While learned Counsel for the petitioner would suggest that the inferences and findings arrived at by the inquiry officer which have been accepted by the disciplinary authority are based on conjectures and are unsupported by material on record, learned Counsel for the respondents has urged that the evidence brought on record has to be examined based on probability and preponderance of possibility. The evidence brought on record has also to be tested against the aforementioned admissions made by the petitioner in the reply dated 26th March, 1983. Shri Jagannath Dubey and Shri M.P. Sharma also made statements to the effect that the women were brought to Tundla, though they attempt to create a

contradictions on record as to whether they were brought to the petitioner's residence or to the RPF post. We find from the record that disciplinary proceedings were drawn against these two RPF personnel as well with regard to their conduct relating to the same incident and they were obviously interested in creating confusion in the evidence to create a facade of contradictions so as to save their own skin.

70. So far as the registration of the case by the civil police is concerned, it has been pointed out by Mr. J.P. Sharma, learned Counsel for the respondents, that the theft of the property in the custody of the railways is an offence u/s 3 of the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as "Railway Property Act, 1966" for brevity) which is a non-cognizable offence u/s 5 of the same enactment. That is why the civil police handed over the offenders to the RPF staff at Tundla for further action.

71. Reliance has also been placed on Section 7 of the Railway Property Act, 1966 to contend that the SHO at Etmadpur had no option but to forward the offenders at the nearest RPF post and for this reason was bound to hand over the nine women found stealing coal and in possession of stolen property forthwith to RPF, Tundla which alone would have jurisdiction to proceed against the offenders.

72. Learned Counsel for the petitioner has contended that there is no documentary or other evidence at all of the happenings which have taken place at the RPF post at Tundla. This lack of record is the subject matter of the very charges against the petitioner. The fact that none of the occurrences on the 29th June, 1982 were documented, is one of the circumstances in the chain of evidence that clearly points towards the culpability of the petitioner. In his defence statement dated 26th March, 1983, the petitioner has contended that the SHO from the Etmadpur did not send the papers nor any witnesses to enable him to register the case against "those women". He clearly states in para (i) that the local RPF staff under his command had arrested them more than once. The petitioner therefore shows his awareness of the identity of the women which could be possible only if he had seen the women apprehended that day. Knowledge of the fact that women were apprehended at Etmadpur with stolen property of the railways on the given date is made out from the petitioner's defence statement.

73. We find that an effort has been made by the petitioner to indulge in legalese to avoid liability contending that Etmadpur was a non-RPF station. The petitioner has tried to attribute fault to the SHO of the Etmadpur station contending that copies of the police record were not sent for registration of the case. However, the petitioner does not deny that the women were forwarded to the RPF post, Tundla through RPF personnel, namely head constable J.N. Dubey and constable M.P. Sharma. The petitioner does not even suggest any action taken by him after receipt of the information of such a serious matter involving theft of coal from the railway wagon by nine women and recovery of large quantities of stolen coal from them when he clearly had knowledge of the same.

74. The petitioner suggests that "arrest by the police would not have been believed by any court in the absence of any entry in the GD and FIR of the police station". The inaction despite knowledge of the apprehension of the women and recovery of the large amount of stolen coal is adequately established on record. As incharge of the post and inspector of the force, a solemn duty lay upon the petitioner not only to take action in respect of the disclosed offence and the apprehended offenders but action was also required to be taken also with regard to the recovered property which was a large quantity of stolen coal. No record was permitted to be made of the dispatch of two RPF personnel to Etmadpur nor is there any evidence of the petitioner taking any action at all. On the contrary, it is in evidence that a DDE No. 60 was recorded by the petitioner at 1755 hours of his departure for his quarters. The evidence does not disclose that the petitioner made even a follow up phone call to the SHO of the Civil Police at Etmadpur or take any action. Such acts and omissions cannot be viewed lightly and the conduct of the petitioner deserves the seriousness with which it has been viewed.

75. So far as the allegations of ulterior motive is concerned, motive is a state of mind. The disciplinary authority in the order dated 14th September, 1989 has noted that no evidence with regard to ulterior motive attributed as part of the first charge, was available. The disciplinary authority has held that the very fact that the women were left without even registering a case given the fact that the petitioner was in a position of authority and had knowledge of the incident as given to him by the civil police at Etmadpur, gave rise to strong circumstantial evidence of the ulterior motive attributable to the petitioner. It is also not known as to what has happened to the recovered stolen coal.

76. With regard to charge Nos. 4, 5 & 6 the inquiry officer found that fourth charge relating to arrest of three persons on 18th April, 1982 involved in a running train theft of 12 bags of rice; the failure of the petitioner to book them for the same, and, instead booking them for theft of coal to lessen the gravity of the offence with ulterior motives for monetary gain, could not be proved by the department. The findings of the inquiry officer in this behalf have been accepted by the disciplinary authority. However, the fifth charge to the effect that the recovered rice bags were made over for onward despatch as property unconnected with the criminal case with an ulterior motive to spoil the case of the prosecution and the sixth charge against the petitioner to the effect that he registered the case of running train theft of rice too late in time were found to be established on record.

77. It is on record that the Chief Goods Clerk forwarded twelve stolen bags to lost property officer, Kanpur as unclaimed property. The inquiry officer has held that twelve rice bags were made over as lost property and were dispatched to the goods shed for dispatch to the lost property office instead of their being kept in safe custody as safe property relating to a criminal case. An effort was also made by the petitioner to attribute the entire actions in this occurrence to sub Inspector J.N. Mishra, who brought the twelve bags of rice and wrote the memo

for sending them to the goods shed. The inquiry officer has found that the petitioner cannot be exonerated of responsibility for the reason that SI J.N. Mishra was under the command of the petitioner. Reference is made also to the documentary evidence contained in DDE No. 48 made by ASI S.N. Tiwari in the roznamcha of the RPF post, Tundla which contains the report about the deposit of twelve bags dropped from the train at the goods shed on return to Ferozabad. The inquiry officer refers to the grant of bail of accused Lakhan Singh by the petitioner on 18th April, 1982 as recorded in the DDE No. 54 at 1550 hours which manifests his knowledge about the incident. The inquiry officer noted the responsibility of the petitioner to give proper guidance to the personnel below him and in the afore-noticed circumstances has deduced the approval of the petitioner in the dispatch of the bags as unclaimed property to the goods shed on the part of the petitioner.

78. The impact of sending these rice bags as unclaimed or lost property was clear. They could have been so sent only if they were not case property in any offence and, therefore, not much important. To put it plainly, as per the dispatch record, these bags were not property which had been stolen from the train. The petitioner, an experienced officer, cannot deny knowledge of the manner in which he was required to proceed in a theft case. Such action as taken was obviously intended to dilute the case of theft of the railway property by the accused.

79. So far as charge No. 6 relating to the delay in recording of the FIR of the case is concerned, the inquiry officer has found that the recovery of 12 bags and the shortage of rice in the railway wagon should have been registered as a running train theft case and included in the monthly crime review for April, 1992. This was, however, not done. When ordered to do so by the ASO/TDN vide his letter dated 24th May, 1982, the case was registered as a running train theft case only on 26th May, 1982 which was more than a month after the date of the incident. The disciplinary authority has noted the responsibility of the petitioner as incharge of the RPF post to have properly registered the case. The disciplinary authority had also observed that it was for the petitioner to obtain details of the shortage and get the FIR lodged with the GRP which he failed to do.

Reliance of the petitioner on the circular of the Railway Board to the effect that the registration of the case should be effected at the destination, has been held to be unfounded for the reason that the circular relates to a case where the offence is not localised and the deficiency is discovered at the destination. In his discussion, the disciplinary authority has found that in the instant case, the stolen bags were recovered on the rail track which was clearly located within the petitioner's jurisdiction but he still failed to perform prescribed duties. For this reason, charge 6 was also found to have been clearly established against the petitioner.

80. Charge No. 7 against the petitioner was to the effect that he did not arrest the persons involved in the theft despite full knowledge about their identity for monetary gain has also been disbelieved.

81. However, charge No. 8 to the effect that he made no effort to recover the twelve bags of rice stood proved against the petitioner. The inquiry officer held that the recovery of twelve bags of stolen rice stands duly proved. The recovery was found proved in the statement of ASI S.N. Tiwari.

82. So far as charge No. 9 is concerned, the inquiry officer had examined the record and found that RP (UP) Act case No. 33/1982 was registered against one Rajbir & Mahesh. While Rajbir was arrested, Mahesh was absconding. The inquiry officer has mentioned that the witnesses had given evidence of familiarity with the absconding accused and therefore could recognize him. It was observed that his co-accused and associate, Rajbir, stood arrested and that Tundla was a small station. These facts coupled with the familiarity with the absconding accused of the five witnesses have led the inquiry officer to hold that there was no warrant for the petitioner's inability to arrest the absconder. The lack of efforts and failure of the petitioner to arrest Mahesh before he surrendered in court on 26th April, 1982 is a strong circumstance pointing towards the guilt of the petitioner so far as this charge is concerned. The inquiry officer has observed that in his defence, the petitioner led evidence to show the efforts made by him to interrogate Rajbir placing reliance on the case diary and documents and held that these facts have no bearing on the case or with the accused Mahesh.

The petitioner's explanation for not arresting Mahesh is to be found in DDE No. 3 dated 14th April, 1982 wherein the petitioner has recorded that the arrest of this accused could not be effected for want of an identification mark. The inquiry officer has observed that accused Mahesh was well known in the town and was also an employee of the Indian Railway and such explanation by the petitioner was not credible.

83. So far as the allegations in charge 10 to the effect that the petitioner accepted Rs. 1,000/- as illegal gratification from Mahesh for not arresting him till 26th April, 1982 is concerned, the inquiry officer has held that the same was not proved. The conclusions of the inquiry officer have been accepted by the disciplinary authority.

84. Our attention has been drawn to the pronouncement of the Apex Court reported at Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, . in the context of departmental inquiry. The Supreme Court has observed that the inquiry officer had elaborately discussed each charge and given reasons which were considered by the disciplinary and appellate authority before concluding that the charges stood proved. The petitioner had raised the objection that the inquiry was vitiated for the reason that in order to support the proof of the charges, none of the witnesses had been examined nor any opportunity was given to cross-examine them when the petitioner disputed liability. The inquiry officer had discussed the evidence in detail and given reasons for the findings returned by him in the inquiry report. Rejecting the contention of the petitioner, the court held as follows:

3. xxx We find no force in the contention. The thrust of the imputation of charges was that he 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 loans. It is based upon the documentary evidence which has already been part of the record and copies thereof had been supplied to the petitioner. Under those circumstances, we do not think there is that any manifest error apparent on the face of the record, warranting interference. It is then contended that no reasons have been given in support of the conclusions to substantiate the charges. The enquiry officer had elaborately discussed each charge and given reasons which were considered by the disciplinary authority and reached the conclusion that the charges were proved. So, had the appellate authority. They are not like civil court.

85. The principles with regard to the standard of proof which applies in disciplinary inquiry proceedings are also well settled in pronouncements of the Apex Court. Mr. J.P. Sharma, learned Counsel for the respondents has drawn our attention to the pronouncement reported at Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram Pravesh Singh, wherein the respondents had challenged the findings of the inquiry officer as to misconduct by the workmen on the ground that no independent witness were examined. The court held that once the findings of the inquiry officer are found to be based on evidence, the court is not to substitute the findings of the inquiry officer by its own opinion. The Supreme Court reversed the order of the tribunal which had set aside the report of the inquiry officer and the order of dismissal passed by the punishing authority. In this regard, in paras 15, 16 & 19 of the judgment, the court placed reliance on the earlier pronouncements which were as follows:

15. This Court in Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, , held that:

From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh has since been followed by this Court in Devendra Swamy Vs. Karnataka State Road Transport Corpn., .

16. In U.P. State Road Transport Corporation v. Vinod Kumar (2007) (13) SCALE 690), this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the Enquiry Officer or the punishment

awarded by the Punishing Authority.

xxx xxx xxx 19. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

(underlining by us)

86. On the same issue, in the judgment reported at 2005 (2) Kar LJ 47 D. Murlidhar v. Central Bank of India, the court held as follows:

36. This Court has the power only to examine the procedural correctness of the decision making process. It cannot embark upon appreciation of evidence to substitute its own finding of fact in place of those of disciplinary/Appellate Authority. Adequacy of evidence or reliability of evidence cannot be gone into by this Court. However, if the conclusion upon consideration of the evidence reached by the Disciplinary Authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

xxx xxx xxx 43. In a departmental enquiries although the rules of evidence and procedure by a Civil Court is not strictly applicable, in cases involving serious charges with consequences as grave as dismissal, the standard of fairness and reasonableness as interpreted and adopted by the Civil Court will apply to meet the ends of justice. Although the strictly rule of evidence is not applicable to the disciplinary proceedings, and the onus of proof also does not always lie upon the department, but depends upon the nature of charges and the nature of explanation. In the present case, the charges that are alleged against the petitioner is that because of his negligence and having not exercised no control over the activities of one of his subordinate official, the Bank was exposed to pecuniary loss and this alleged misconduct of the delinquent officer, in my opinion, must be established by cogent evidence by the management, on which objectively a finding can be given about the commission of the offence or misconduct. The minimum requirement of rules of natural justice is that, there must be some evidence which points to the guilt of the accused in respect of the charges alleged against him. It is no doubt true that in the disciplinary enquiry proceedings, the standard of proof that is required is that of preponderance of probability and not proof beyond doubt.

44. In this case, the findings of the enquiry officer is not based on any evidence which was adduced before him. It is merely based on his assumptions and presumptions. It is incumbent on the enquiry officer to indicate in his report as to what is the evidence on which he is relying upon to find that the charge-sheeted

officer is guilty of the offences. In my view, the findings of the enquiry officer is based on no evidence whatsoever and therefore, the same is perverse and cannot be accepted.

(Emphasis supplied)

87. In *High Court of Judicature at Bombay v. Shashikant S. Patil* (supra), also the Supreme Court set out the parameters of judicial review into the orders of departmental authorities in para 16 laying down the following principles:

16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court interference with the decision of departmental authorities can be permitted while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case or if the conclusion made by the authority on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

(Emphasis supplied)

88. In *Union of India (UOI) and Others Vs. K. Rajappa Menon*, , the court had occasion to consider a challenge to the order of disciplinary authority on the ground that it did not record its findings on each charge despite the rule requiring the same. In this behalf, the court had held as follows:

5. xxx All that the Rule requires is that the record of the enquiry should be considered and the disciplinary authority should proceed to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in detail and write as if it were an order or a judgment of a judicial tribunal. The rule certainly requires the disciplinary authority to give consideration to the record of the proceedings which, as expressly stated in Exh. Rule 8, was done by the Chief Commercial Superintendent. When he agreed with the findings of the Enquiry Officer that all the charges mentioned in the charge sheet had been established it meant that he was affirming the findings on each charge and that would certainly fulfil the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way and so read it is difficult to escape from the conclusion that the Chief Commercial Superintendent had substantially

complied with the requirements of the Rule. The interference by the High Court, therefore, on the ground that there had been non-compliance with Rule 171.3 was not justified.

(underlining by us)

89. The findings of the inquiry officer were placed before the disciplinary authority who has considered them in detail. In this regard, reference can also be usefully made to the judgment reported at Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, wherein a question was raised as to whether the appellate court was right in its view that if an order of removal is based on number of grounds and one or more of these grounds are found to be unsustainable, the entire order is required to be struck down. On this issue, in para 7 of the judgment, the court observed as follows:

7. xxx It was not disputed before us that the first charge leveled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed if we hold that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in State of Orissa v. Bidyabhan Mohapatra [1962] Supp. 1 S.C.R. 648 wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanor for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question.

90. It, therefore, needs no further elaboration that the departmental proceedings and orders emanating therefrom are not like proceedings or orders by courts. The standard of proof which has to be applied is preponderance of probabilities. Furthermore, punishment can be imposed on any finding of a substantial misdemeanor, without regard to other charges which have been found as unproved.

91. In the instant case, the charge Nos. 4, 7 & 10 were held by the inquiry officer to be not proved whereas the inquiry officer found that charge Nos. 1, 2 & 3 relating to one incident; charge Nos. 5 & 6 relating to the second incident and charge Nos. 9 relating to the third incident had been established. The findings were based on detailed reasons recorded by the inquiry officer. The report of the inquiry officer was considered by the disciplinary authority who then passed the impugned order dated 14th September, 1989 concurring with the findings of the disciplinary authority.

92. The available material and circumstances as established when tested on standards of preponderance of possibility, lead to the reasonable and inevitable conclusion of the guilt of the petitioner in respect of the acts alleged against him

for which he has been found guilty. The findings reflect application of mind in the matters in issue.

93. In this background, the Appellate Authority in the order dated 15th June, 1990 has also agreed with the findings and conclusions of the disciplinary authority.

94. The Appellate Authority had observed that, belying the petitioner's contention, his conduct shows no sense of urgency inasmuch as the petitioner has made no efforts to locate the absconding accused in his official capacity. The disciplinary and Appellate Authority had observed that such conduct would only infer the factum of illegal gratification. However, the findings returned by the inquiry officer on charge No. 0 have not been reversed.

95. It is trite that it is only if findings recorded by the inquiry officer and the disciplinary authority are perverse; not supported by evidence on record or findings recorded at the domestic trial are such as to which ordinary or prudent man would reach, would the power of judicial review be available to this Court to interfere with conclusions so reached.

96. Reference in this regard can be made to the judgments reported at *Yoginath D. Bagde Vs. State of Maharashtra and Another*, . (2001) 1 SCC 182 *Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant and Ors.*

97. In *Yoginath D. Bagde v. State of Maharashtra and Anr.* (supra), the observations of the court in para 51 set out the limitation on the exercise of power of judicial review may usefully be adverted to and read as follows:

51. It was lastly contended by Mr. Harish N. Salve that this Court cannot reappraise the evidence which has already been scrutinised by the Enquiry Officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or 32 of the Constitution, act as the Appellate Authority in the domestic enquiry or trial and it is not open to this W.P.(C) No. 995/1988 Page No. 23 of 69 Court to reappraise the evidence. The proposition as put forward by Mr. Salve is in very broad terms and cannot be accepted. The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In *Kuldeep Singh Vs. The Commissioner of Police and Others*, , this Court, relying upon the earlier decisions in *Nand Kishore Prasad Vs. State of Bihar and Others*, ; *State of Andhra Pradesh Vs. Sree Rama Rao*, ; *Central Bank of India Ltd. Vs. Prakash Chand Jain*, ; *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, as also *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, , laid down that although the court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to

a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

(Emphasis supplied)

98. In para 19 of the Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant and Ors. (supra), the observations of the court shed valuable light on the permissibility of the challenge by the petitioner and may usefully be adverted to. The same reads as follows:

19. While it is true that in a departmental proceeding, the disciplinary authority is the sole Judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the Court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above however do find some support from the decision of this Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra, .

(Underlining supplied)

99. Learned Counsel for the petitioner has contended that charge Nos. 9 & 10 were composite charges and the petitioner having been exonerated of charge No. 0, no culpability for the allegations which form part of charge No. 9 could have been found.

100. On the other hand, Mr. Sharma, learned Counsel for the respondents has urged that in the previous statements recorded in the preliminary inquiry, witnesses had given statements in support of this charge. However, before the inquiry officer, they resiled from their previous statements. As a result, the inquiry officer held that the charge of negotiating the bribe has not been proved. However, the failure to arrest Mahesh Khalasi, a railway employee, despite arrest of his co-accused was held to be unjustified and, therefore, suspicious.

101. In view of the above discussion, the charge Nos. 4, 7 & 10 being found unproved against the petitioner would have no bearing on his culpability of the other charges against him.

102. The petitioner has assailed the orders against him not on the ground that there was no evidence led against him but on grounds of sufficiency of the evidence to support the charges. Such a challenge is clearly beyond the

permissible limits of judicial review laid down by the Supreme Court in the judgments noticed above. Submissions on these aspects were permitted in view of the long period since the commencement of the action against the petitioner. The challenge by the petitioner based on evidence is clearly devoid of legal merit especially having regard to the required standard of proof in these proceedings.

103. So far as the delay in finalisation of the report of the Appellate Authority is concerned, it is explained that the record of the inquiry was voluminous and examination thereof was time consuming. For this reason, the Appellate Authority took that much longer in deciding the appeal.

104. The petitioner has placed reliance on Rule 220 of the Railway Protection Force Rules, 1987 which reads as follows:

220. Time limit for disposal of appeal or revision:

220.1. Every appeal or application for revision submitted by an enrolled member of the Force shall, as far as possible, be disposed off within a period of three months from the date of its receipt by the authority competent to decide it.

105. Rule 220 of the RPF Rules 1987 only states that appeal or revision by an enrolled member shall as far as possible be disposed of within three months from the date of its receipt by the authority. It does not set an absolute time limit for the disposal of the appeal or revision. Given the reasonable and plausible explanation and reasons rendered by the authorities for the delay which has occasioned in the present case, the orders passed by the appellate authority cannot be faulted on the ground that the impugned orders were belated.

The challenge to the orders of the disciplinary & appellate authority on the ground that they are based on no material or on irrelevant material is without merit and is hereby rejected.

Whether the order of dismissal has been passed by a competent authority

106. The petitioner contends that the Chief Security Commissioner/RPF who passed the order dated 14th September, 1989 was not the competent authority to pass the impugned order in view of Rule 40 of the RPF Rules, 1987.

107. So far as this submission is concerned, our attention has been drawn to Rule 25 & 40 read with Schedules II & III of the RPF Rules, 1987 which prescribes the administrative and disciplinary powers respectively of the superior officers of the force. Rules 25 & 40 of the RPF Rules, 1987 read as under:

25. General powers and responsibilities of superior officers:

The superior officers of the Force shall exercise such administrative and disciplinary powers over the members of the Force placed under their command as are specified in Schedules II to IV and such other powers as are conferred on railway servants of equivalent rank by any rules relating to such servants and discharge such responsibilities as are specified in these rules or may be specified

in any directions issued by the Central Government or the Director-General in this behalf.

xxx xxx xxx 40. Powers and responsibilities of other superior and subordinate officers of the division:

The powers and responsibilities of other superior and subordinate officers posted to assist the Divisional Security Commissioner shall be such as may be specified in the Directives.

108. The petitioner was posted and working as Inspector RPF/Reader to the Senior Divisional Security Commissioner, RPF, Northern Railway, New Delhi under the administrative control of the Chief Security Commissioner/RPF/Northern Railway. Under Schedule II of the Railway Protection Force Rules, 1987, the Chief Security Commissioner is also the competent disciplinary authority so far as an inspector is concerned.

109. The provision dealing with dismissal, removal etc. and members of the Force is contained in Section 9 of the RPF Act which reads as follows:

9. Dismissal removal etc. of enrolled members of the Force:

(1) Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may:

(i) dismiss, suspend or reduce in rank any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty or unfit for the same; or

(ii) award any one or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely:

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen, days with or without punishment drill, extra guard, fatigue or other duty

(c) removal from any office of distinction or deprivation of a special emolument.

(2) Any enrolled member of the Force aggrieved by an order made under sub-section (1) may, within 30 days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed: [++++]1

Provided that the prescribed authority may entertain the appeal after the expiry of said period of 30 days if it is satisfied that appellant was prevented by sufficient cause from filing the appeal in time.

(3) In disposing of the appeal, the prescribed authority shall follow such procedure as may be prescribed;

Provided that no order imposing an enhanced penalty under Sub-section (2) shall

be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

110. The issue relating to the competency of an officer to dismiss a force personnel from service had arisen for consideration before the Supreme Court in Union of India (UOI) and Others Vs. Rajendra Singh, & Union of India and Anr. v. Chandra Pal Pandey. The court construed the effect of Section 9 of the Act in the following terms:

13. A bare reading of Section 9 of the Act also shows that it is only subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under the Act, that any superior officer could exercise the powers mentioned in Section 9(1)(i) of the Act. If only the Chief Security Officer, who is one of the superior officers, alone have the powers of dismissal on the hypothesis that he alone was competent to appoint members of the Force then Section 9 of the Act would not have been worded in the manner it has been so enacted.

xxx xxx xxx 17. In this view of the matter we are of the view that since both the contesting respondents in the aforesaid two cases were appointed by the Assistant Security Officer who could also remove them and, therefore, their dismissals have not been in violation of Article 311 of the Constitution of India or the Act.

111. In view of Section 9 of the Act, any superior officer may dismiss any member of the force whom he shall think remiss or negligent in the discharge of his duty or unfit for the same subject to the provisions of Article 311 of the Constitution and to rules framed in this regard.

112. The communication dated 15th September, 1989 informs the petitioner that the penalty has been awarded to him by the Chief Security Commissioner who had also appointed the petitioner.

113. The objection of the petitioner on this count is therefore devoid of legal merit and is hereby rejected.

Whether sufficient time granted to file defence statement?

114. The petitioner has placed reliance on the provisions of Rule 153.15 of the RPF Rules, 1987 before us contending that he was entitled to ten days time to file the written statement of defence. Perusal of Rule 153.15 would show that after the evidence of the department has been recorded in terms of Rule 152(1) (2) and documentary exhibits taken on record in compliance with Rule 153.15, the party charged is required to get his statement recorded by the inquiry officer. If the officer pleads "not guilty", the rule mandates that he shall be required to file, within ten days, a written statement together with the list of such witnesses as he may wish to produce in his defence, giving therein a gist of evidence of each witness. If the charged officer declines to file defence statement, he shall again be examined by the inquiry officer on the expiry of the period allowed to

him to file his defence statement in case the same is not recorded.

115. The petitioner has contended that the letter dated 20th July, 1989 from the inquiry officer rejecting the documents sought by the petitioner on the ground of their being not relevant, was received by him only on 25th July, 1989. This communication required the petitioner to file his final defence statement by the 26th July, 1989. The petitioner's request for ten days time to file the defence statement made on 26th July, 1989 was rejected by the letter of the same date itself directing the petitioner to file a defence statement earliest by 27th July, 1989.

116. The petitioner has placed reliance on his letter dated 26th July, 1989 wherein he complained that denial of reasonable time to prepare the defence statement as well as denial of the supply of documents sought by applications dated 28th June, 1989, 14th July, 1989 and 26th July, 1989 have compelled him to state that he had nothing to say except what had already been stated in reply to the charge-sheet. The petitioner further submitted that he would have been in a position to answer only in case he was supplied these documents.

117. So far as this objection is concerned, the rule relied upon by the petitioner states that defence statement is to be filed within ten days of the prosecution evidence getting over and recording of the plea of the petitioner. In case of a plea of "not guilty", then the rule postulates that the charged person shall file within ten days his written statement together with the list of witnesses which he may wish to produce in his defence, with a gist of the evidence of each witness.

118. We find that the last prosecution witness was examined on the 9th of June, 1989.

119. Our attention has been drawn to the communication dated 14th June, 1989 addressed by Shri R.K. Mishra, the inquiry officer to the petitioner and the four other persons against whom also the inquiry proceedings were being held. This communication manifests that the statements of the prosecution witnesses stood recorded during the departmental inquiry in the presence of the petitioner who was also granted full opportunity to cross-examine the witnesses. The inquiry officer records that the statements of witnesses recorded during the inquiry proceedings stood delivered to the petitioner for preparing his defence.

120. The petitioner was informed vide communication dated 14th June, 1989 that he was required to prepare his defence and that his statement would be recorded on 16th June, 1989 as a defence witness in the inquiry of sub-inspector Harshwardhan. On 16th June, 1989, the inquiry was fixed for 24th June, 1989. The petitioner did not attend the inquiry on 24th June, 1989 but submitted the request for documents vide letter dated 28th June, 1989.

121. As noted above, these copies were again furnished on 14th July, 1989 even though the request of the petitioner stood dismissed by the inquiry officer on 6th July, 1989. It may be noted that after this, by the communication dated 14th of

July, 1989, the petitioner dropped the names of head constable Jagannath Dubey and Madan Pal Sharma as his defence witnesses.

122. The inquiry was being conducted with regard to a chargesheet issued on 12th January, 1983 relating to the allegations of the year 1982. In the above background, the respondents have submitted that the dilatory tactics of the petitioner have contributed to the delay in the completion of the inquiry and consequently, vide letter dated 20th July, 1989, the petitioner was informed that the defence statement had to be submitted by 26th July, 1989 at the earliest. It is noteworthy that by then almost forty seven days had passed after the completion of the prosecution evidence on 9th June, 1989 and over forty days since 14th of June, 1989 informing the petitioner that he was required to prepare his defence. In this background, it is evident that there was compliance of the rule requirements and that the petitioner was given adequate time to prepare and submit his defence statement.

123. In any event, the petitioner should have specifically pleaded and demonstrated the prejudice that he may have suffered on account of the alleged denial of sufficient time to submit his defence statement. No specific plea was raised by the petitioner in this regard in his departmental appeal. It is not sufficient that a bare statement about suffering of prejudice is made. How the prejudice has been suffered should also be stated. Therefore, the petitioner should have pointed out at the appellate stage, or at least before us, as to what further he could have stated in his defence statement than what was stated by him, had he been given further time to submit his defence statement, and how the same could have impacted the ultimate decision taken in his case. However, no such averments are found either in the departmental appeal preferred by the petitioner, nor in the present writ petition. We are, therefore, of the view that the petitioner has not suffered any prejudice due to him being deprived of further time to submit his defence statement.

124. So far as appellate order dated 15th June, 1990 passed by Shri R. Sreedharan, Director General of the RPF is concerned, the same has discussed the objections raised by the petitioner in detail including the evidence and the alleged contradictions pointed out by the petitioner.

125. This objection may be tested from another angle. Even if it were to be held, which in our view cannot be, that sufficient time was not granted to the petitioner to submit his defence statement, a further issue would still require to be answered. What is the prejudice which resulted to the petitioner thereby? Neither any submission nor any material on this aspect has been set out even in the appeal filed by the petitioner which stands rejected by the order dated 15th of June, 1990. The petitioner does not point out anything more in the appeal that he would have said if he had been given more time to file his defence. There is nothing material on this aspect even in the writ petition. It may be noted that in the appeal dated 16th October, 1989, which had been filed by the petitioner, reliance was placed on Rule 44 which also provided that at the conclusion of the

prosecution evidence, the party charged should be asked to file his final defence statement or to make a statement. The petitioner does not even advert to any particular time period, let alone explain or make out a case of prejudice.

126. The above discussion would also show that having regard to the long passage of time since 1982 when the alleged incidents occurred; the seven year period when the enquiry remained pending; the period of almost twenty years that the writ petition has remained pending and the serious rights of the petitioner which are involved, we have permitted detailed submission by the parties on every aspect of the matter, including those relating to the evidence led by both sides on the allegations made against the petitioner.

No element of prejudice which could effect the result of the inquiry could be pointed out on behalf of the petitioner. In this background, even if there was infraction of the said rule, in our view the same would not be fatal to the case of the respondents and the impugned orders cannot be quashed on such ground.

127. During the course of submission in the instant case, in view of the petitioner's plea that there was no evidence to support the charges before the inquiry officer, we had asked the respondents to produce the record of the case. Despite several opportunities, the record has not been produced before us. The respondents finally filed an affidavit of Shri Ratan Chand, Senior Divisional Security Commissioner, RPF, Delhi, West Division, P.K. Road, New Delhi to the effect that after an effort made pursuant to the orders of this Court on 12th October, 2009 to cause the original record of the inquiry proceedings to be produced, it was then revealed to the dealing assistant that the D & AR file of this case was missing. The erstwhile Delhi Division of the RPF/Northern Railway has also been since bifurcated into 11 divisions and headquarters have also been formed. It is disclosed in this affidavit that the files pertaining to the D & AR of the case are not traceable and that an inquiry has been ordered to fix responsibility of the staff for the loss of D & AR files.

In this background, a part of the original record of the inquiry was reconstructed from the documents available with the petitioner which record was examined by us. Both parties have made submissions based on this reconstructed records and copies of such extracts of the records which had been filed during the pendency of the writ petition.

Conclusions

128. We find that the findings and orders of the disciplinary authority and the Appellate Authority would show that other than the evidence to support the charge of ulterior motive, which formed part of charge No. 1 and charge Nos. 4, 7 & 10, all other charges were supported by oral and documentary evidence as well. The conclusions drawn by the inquiry officer, the order dated 14th September, 1989 of the Disciplinary and order dated 15th of June, 1990 of the Appellate Authority cannot be faulted on any legally tenable grounds. The orders reflect application of mind and detailed consideration.

We find no merit in this writ petition which is accordingly dismissed.