

(2003) 06 GAU CK 0038

In the Gauhati High Court

Case No : Writ Appeal No's. 339 and 340 of 2001

Sahidur Rahaman and Another

APPELLANT

Vs

Hindustan Paper Corporation Ltd. and Others

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
HPC Conduct, Discipline and Appeal Rules — Rule 23, 25

Citation : (2003) 2 GLT 704

Hon'ble Judges : P.P. Naolekar, C.J; I.A Ansari, J

Bench : Division Bench

Advocate : B.K. Sharma, M.K. Choudhury and U.K. Nair, for the Appellant; A.K. Phukan, for the Respondent

Judgement

I.A. Ansari, J.—Against the common judgment and order, dated 18.7.2001, disposing of Civil RuleNos. 4358/95 and 350/97, these two appeals, namely, Writ Appeal Nos. 339/01 and 340/ 01 have been preferred by the Appellants/Writ Petitioners. By this common judgment and order, we dispose of both the writ appeals as similar questions of law and facts are involved in these two appeals.

2. In a nutshell, the case of the Appellants-Writ Petitioners may be narrated as follows:

By two separate Memoranda, both dated 14.10.1991, issued by the Deputy General Manager(P&A) Hindustan Paper Corporation Limited (hereinafter referred to as the HPC Ltd.), the Appellants-Petitioners were served with charge-sheets. The Appellants submitted their separate statements in defence to the charge-sheets served on them. The authority concerned appointed an Enquiry Officer to conduct an enquiry in respect of the charges brought against the Appellants. On conclusion of the enquiry, the Enquiry Officer submitted on combined enquiry report, dated 1.2.1994, holding the Appellants guilty of misconduct. The copies of the enquiry report were served on the Appellants concerned. While the Appellant, M.S. Rahman, submitted his representation, on 27.01.95, against the findings of

the Enquiry Officer, the Appellant, UN Sharma, submitted, in this regard, his representation, dated 07.02.95. Upon considering the enquiry report as well as the replies/representations so made by the Appellants, the Disciplinary Authority, by two separate orders, dated 30.6.1995, awarded penalty of reduction to lower grade with consequential effects. The Appellants preferred departmental appeals, but the same having been turned down, the Petitioners/Appellants approached this Court by way of two writ petitions aforementioned. By the impugned judgment and order, dated 18.7.2001, the learned single Judge dismissed the writ petitions on the ground that the same had no merit. The Appellants-Writ Petitioners have, now, preferred the present writ appeals.

3. We have perused the relevant materials on record including the impugned judgment and order. We have heard Mr. B.K. Sharma, learned Senior Counsel appearing on behalf of the Appellants, and Mr. AK. Phukan. learned Senior Counsel appearing for the Respondents.

4. Presenting the case on behalf of the Appellants, Mr. Sharma has submitted that the Appellants were not served with the list of documents along with the charge-sheet, the Appellants applied for inspection of the documents relied upon by the Disciplinary Authority and though the Enquiry Officer fixed a date for inspection of the documents, in question, at the office of the CBI, at Guwahati, the Appellants were not allowed to inspect the documents.

5. It is also submitted by Mr. Sharma that on the same facts, which had given rise to the disciplinary proceedings, a criminal case was initiated against the Appellants by the CBI, but the same ended in final report on account of absence of any incriminating materials against the Appellants.

6. Mr. Sharma has also submitted that though the Appellants prayed for furnishing of certain documents before commencement of the enquiry to enable them to submit their statements in defence, the documents were not provided for. This apart, during the course of the enquiry too, points out Mr. Sharma, the Appellants had requested for giving them copies of some of the documents required for the defence of the Appellants but the copies of many of such documents, required which the Appellants had sought for, were not provided to them.

7. The omission to allow the Appellants inspection of documents in question and non-furnishing of the copies of all essential documents had, according to Mr. Sharma, caused serious prejudice to the Appellants and they were seriously handicapped in putting effective defence in the matter. Prejudice so caused to the Appellants is sufficient, contents Mr. Sharma, to set aside the findings of the enquiry report.

8. It is also submitted by Mr. Sharma that the Appellants were not examined by the Enquiry Officer on the incriminating pieces of materials on which the Enquiry Officer had relied upon to found his conclusions that the Appellants were guilty of misconduct. The Appellants were, thus, not given opportunity of offering their

explanation with regard to the alleged incriminating materials on record. This apart, points out Mr. Sharma, the Appellants were not even given the opportunity to adduce evidence and immediately upon conclusion of recording of the statements of the witnesses appearing on behalf of the Disciplinary Authority, the Enquiry Officer abruptly closed the enquiry, fixed the case for enquiry report and submitted the enquiry report accordingly. The Appellants were, thus, contends Mr. Sharma, denied the opportunity to effectively present their defence.

9. It is further submitted by Mr. Sharma that the findings of the Enquiry Officer were perverse inasmuch as the Enquiry Officer clearly held that there was no material to show that the Appellants had entered into any criminal conspiracy with the persons, who had gained out of the bills, in question, nor was there any material to show that the Appellants deliberately committed any fraud, yet the Enquiry Officer, on conjecture and surmises, held the delinquents guilty of misconduct. Though such findings were not based, according to Mr. Sharma, on the materials, which surfaced in the enquiry, yet the Disciplinary Authority arbitrarily accepted such findings and imposed penalties aforementioned.

10. It is lastly submitted by Mr. Sharma that the penalties imposed on the Appellants were grossly disproportionate to the nature of misconduct allegedly committed by them inasmuch as the Appellants, according to Mr. Sharma, were, admittedly, not involved in any criminal conspiracy with the suppliers, who had gained advantage from the fake bills, which the Appellants were alleged to have passed, yet, the Appellants were not only reduced to lower grade but their entire period of service was obliterated and their reduction to lower grade was directed to be treated as fresh starting point of their service career in the HPC Limited. The penalties so imposed, on both the Appellants, were, according to Mr. Sharma, too harsh, but the learned single Judge did not correctly appreciate the case presented before him and passed the impugned judgment and order dismissing the writ petitions.

11. Controverting the above submissions made on behalf of the Appellants, Mr. A.K. Phukan has pointed out that though it has not been clearly mentioned in the records of the proceedings that the Appellants had inspected the documents, which they had sought for, yet, the enquiry proceedings will, if examined closely, clearly reveal that the Enquiry Officer allowed inspection of the documents sought for and after the inspection were so permitted, no complaints, at any stage, was made by the Appellants-Petitioners that contrary to the direction given by the Enquiry Officer, inspections had not been allowed. This apart, further points out Mr. Phukan, the Appellants-Petitioners, admittedly, sought for applying them with copies of a large number of documents at different stages of the proceedings, but while copies of some of such documents were furnished to the Appellants, the Disciplinary Authority did not furnish copies of some other documents, which were found to be not relevant. At no stage, the Appellants expressed, submits Mr. Phukan, any grievance of any prejudice having been caused to them for non-supply of copies of any particular document, as sought

for by the Appellants. Even while submitting their representations against the enquiry report, the Appellants did not even whisper, points out Mr. Phukan, that the inspections of the documents, which the Appellants had sought for, had not been allowed and/or that copies of large number of essential/relevant documents had not been furnished to them and/or that any prejudice had been caused to them and/or that they could not effectively cross-examine the witnesses produced on behalf of the Disciplinary Authority on account of non-supply of any documents and/or non-inspection of any documents. The plea of not allowing the Appellants to inspect the documents and/or non-supply of documents was, contends Mr. Phukan, a result of mutual consultations and subsequent deliberations.

12. Mr. Phukan has also submitted that the Appellants could not show before the learned single Judge that the writ petition were heard nor have they been able to show anything before this Court to indicate that any document, which was relevant for the purpose of enabling the Appellants to cross-examine the witnesses, had not been allowed to be inspected by them and/or copy of any relevant document, which they had sought for, was not provided to them.

13. According to Mr. Phukan, nothing was submitted by the Appellants in their representations made against the enquiry report to show that the findings were perverse and/or that there was no foundation for the conclusions that the Enquiry Officer had arrived at. In such a situation, points out Mr. Phukan, no credence can be given to the grievance of the Appellants that the findings were perverse. This apart, contends Mr. Phukan, the findings of misconduct arrived at by the Enquiry Officer were based on the materials, which emerged during the course of the departmental proceedings and such findings cannot be said to be bad in law and/or in fact.

14. As regards the quantum of penalties imposed on the Appellants, Mr. Phukan has submitted that though it is entirely for this Court to adjudge if the penalties imposed are disproportionate to the acts of misconduct, which the Appellants were found to have committed, yet, in view of the fact that the Appellants were senior officers of a Public Undertaking and it is the public money, which the HPC Ltd. deals with, and in view also of the fact that on account of the nature of the trust that was placed on the Appellants a high degree of sincerity and seriousness was expected from them, coupled with the fact that the charges of misconduct in discharge of their duties and function have been proved against the Appellants, the penalties may not be held to be too serve.

15. Before entering into the discussion on merit of the various grounds, which the Appellants have raised, as indicated hereinabove, it may be pointed out that in both the writ petitions, which have given rise to the present appeals, the accusations made against the Appellants by the Disciplinary Authority an almost similar. In Civil Rule No. 350 of 1997, which has given rise to Writ Appeal No. 339/01, it was alleged that while functioning as Executive (Accounts) and while holding the charge of the Section dealing with payment of bills for purchase of

bamboo and waste wood, the Writ Petitioners had failed to exercise necessary prudence and professional competence apart from maintaining absolute integrity and devotion to duty inasmuch as he had, between 17.5.1990 and 23.6.1990, checked and passed 14 numbers of false bills amounting to Rs. 93,969/- and in respect of 4 such bills, no verification and/or scrutiny to determine their genuineness had been carried out. In Civil Rule No. 4358//1995, which gave rise to Writ Appeal No. 340/2001, the accusation made was that while functioning as Assistant (Accounts) between 17.5.1990 and 28.5.1990, the Writ Petitioner had failed to maintain absolute integrity and devotion to duty in as much as on 17.5.1990, he had checked two bills without ascertaining their genuineness, which were, later on, found to be forged and on 25.8.1990, the Writ Petitioner had checked the bills of one Sri Maklian Bora in a most careless and irregular manner, which was also, later on, found to be forged. It was also alleged that these acts of the Writ Petitioner amounted to fraud, dishonesty, deception and corrupt practices in connection with the properties of the Company, willful negligence of work and negligence in performance of duty.

16. Upon hearing the learned counsel for the parties and upon perusal of the materials on record, we find that though in the writ petitions as well as Memoranda of Appeals, a number of grounds have been taken to assail the fairness of the enquiry as well as the correctness of the finding reached in the enquiry report and the legality of the penalties imposed, the Appellants have, at the time of hearing of the present appeal, challenged the fairness of the enquiry, the finding reached by the Enquiry Officer and the penalties imposed on them on the following grounds:

17. GROUND No. 1

It is contended, on behalf of the Appellants, as indicated above, that no list of documents was furnished along with the charge-sheets, in question, and even after the enquiry commenced, no inspection of documents, which were relied upon by the disciplinary authority, were allowed to be made by the Appellants despite their repeated request to allow them to inspect the documents. Not giving any opportunity of inspection of such documents has caused, it is submitted, serious prejudice to the Appellants.

18. There is no dispute before us that along with the memoranda served on the Appellants informing them about the disciplinary proceedings drawn against them, no list of documents was furnished. It is also not in dispute that before commencement of the proceedings, the Appellants-Petitioners have not raised any objection with regard to the fact that no list of documents had been furnished to them and/or that inspection of documents had not been permitted to them. It was, admittedly, on 11.10.1993, when the first sitting of the enquiry was held that the Appellants, according to the averments made in the writ petitions, asked for giving them an opportunity to inspect certain documents on which the Disciplinary Authority was relying upon. Apart from the averments so made in the writ petitions, the records reveal that the Appellant in Writ Appeal No.

339/01, namely, Sri M.S. Rahman submitted his written explanation on the day of the first sitting and sought for time to file further explanation, which was allowed. As far as the other Appellant, namely Sri. U.N. Sarma is concerned, he, on the day of the first sitting, sought for time to file his written statement and it was in this sitting that inspection of documents was sought for and the Enquiry Authority allowed the same after mutual consultations with the delinquents by giving direction that the documents in question, be allowed to be inspected by the Appellants at the CBI's Office, at Guwahati, on 30.10.1993 at 10.30 a.m. This was so directed, as reflected from the records, on account of the fact that the documents, in question, already stood seized by the CBI and were lying at their office. It was further made clear in this proceeding of the first sitting itself that within 10 days of the inspection of the documents, the delinquents would submit (a) a list of additional documents, if any, which the delinquents required the Management to produce. (b) list of witnesses and (c) list of the documents on which the defence proposed to rely.

19. It may be pointed out that the proceedings of each of sitting of the enquiry prepared by the Enquiry Officer were, admittedly, signed by the delinquents and the correctness of these proceedings is not disputed before us.

20. The minutes of the proceedings of the first sitting disclose as follows:

To start with, it is explained to the delinquents by the Enquiry Officer that since today only the preliminary hearing is to take place the enquiry meeting has been combined. Henceforth, it may be necessary to hold the proceedings for different delinquent separately. Mr. M.S. Rahman has submitted a letter addressed to the Enquiry Officer desiring to furnish detailed written explanation in respect of the various charges. Simultaneously, he also submits the detailed explanation, which is taken on record. Mr. U.N. Sharma and Mr. G.K. Nath have also given letters today stating that they desire to submit written statements of defence. As desired by them, 10 days time is allowed to them for submitting written statements to the Enquiry Officer with a copy to Presenting Officer.

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In the meantime the delinquents will have the opportunity of inspecting the documents on which the prosecution is going to rely. With the mutual consent of the delinquents and the Presenting Officer 30.10.1993. is the date fixed for inspection of documents at 10.30 A.M. at CBI Office, Guwahati. As far as possible the Presenting Officer will also kindly make copies of the documents available to the delinquents.

Within 10 days after the inspection of the documents, the delinquents will submit lists for the following to the Enquiry Officer with a copy to the Presenting Officer.

1. List of additional documents required to be produced by the Management, if any.

2. List of defence witnesses.

3. List of documents on which the defence may rely.

(Emphasis is supplied)

21. It was agitated in the two writ petitions that the Petitioners-Appellants came to the CBI Office, at Guwahati, on 30.10.1993, for inspection of documents, but no document was produced before them for inspection. This assertion has been seriously disputed by the Respondents. It, therefore, becomes a question of fact as to whether the inspection as directed by the Enquiry Officer was allowed or not. It is, no doubt, true that the proceedings of the second sitting of the enquiry does not reveal that the inspection, as had been directed on the previous date (i.e. on 11.10.1993) was allowed. This does not, however, necessarily mean that the inspection had not been allowed. It is of utmost importance to note that on 8.11.1993, when the second sitting was held, the Appellants made applications (Annexure-III to the writ appeal) asking for furnishing certain documents. In this application, no indication was given at all that no inspection had been permitted. This apart, no objection was raised on 8.11.1993, when the second sitting of the enquiry was held, on the ground that the inspection had not been allowed; rather, on 8.11.1993, the Appellants merely sought for copies of certain documents.

22. Coupled with the above, the enquiry report discloses that the Enquiry Officer had mentioned in his enquiry report, dated 1.12.1994 thus: "Inspection was allowed to the delinquents of all the Management's documents before the commencement of enquiry proceeding and on their identification and approval during the course of enquiry, those documents were taken as evidence and marked Exhibits". It may be carefully noted that on being served with the copies of the enquiry report, the Appellants submitted their representations against the enquiry report. Admittedly, in the representations, so made, not a word was used by the Appellants to show that the Enquiry Officer's declaration in his enquiry report that the inspection, as had been sought for by the delinquents, had been allowed was incorrect or false.

23. Situated thus, on over-all consideration of the materials on record, we are firmly of the view that it was, as contended on behalf of the Respondents, as a measure of subsequent thoughts, arising out of mutual consultations, that the Appellants have made allegations in the writ petitions that they had not been provided with any opportunity of inspection of documents, though sought for by them.

24. In short, the omission to challenge the Enquiry Officer's assertion in the enquiry report that the inspection was allowed beliefs the contention of the delinquents that no such inspection had been permitted. This inference further gains strength from the fact that while making the application on 8.11.1993 (i.e. in the day of second sitting), nothing was submitted before the Enquiry Officer either orally or in writing to show that no inspection, as had been directed by the Enquiry Officer, was provided to the delinquents. In fact, it is not alleged before

us that the delinquents had raised any objection in this regard, but the same was not reflected in the proceeding of the enquiry. We, therefore, find no substance at all in the allegations made by the delinquents that inspection of necessary documents, despite requests made by them, was not provided to them.

25. We may mention here that Mr. Sharma has also pointed out that the stage at which inspection is allowed is very important for determining whether prejudice has been caused to a delinquent or not. In this regard, Mr. Sharma has pointed out that the inquiry commenced without affording opportunity of inspection of documents to the delinquents and this has caused serious prejudice to the delinquents. Reliance has been placed by Mr. Sharma, in support of his submissions, on Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, While dealing with this aspect of the matter, it is worth noticing that though it is true that no inspection has been made by the delinquents before the first sitting of the inquiry was held on 11.11.1993, yet the fact remains that no witness was examined during this sitting and on the requests made by the Appellants, a direction was given to allow the Appellants to inspect the documents at the office of the CBI as indicated hereinabove. We have also noticed, as already indicated hereinabove, that before the second sitting of the inquiry held on 18.11.1993, the delinquents were allowed to inspect the documents in question and at the third sitting held on 20.11.1993, when the examination of witness commenced, no grievance was raised by the delinquents that the inspection, as had been sought for, had not been done by the delinquents. Hence, it cannot be said that no effective opportunity was given to the delinquents for inspection of the documents in question. The law laid down in the Committee of Management Kisan Degree College (supra) does not, therefore, help the case of the Appellants at all.

26. Coming to the question of alleged non-furnishing of documents to the Appellants, it is of utmost importance to note that though the Writ Petitioners have alleged in the writ petitions that they were not provided with the copies of the documents, which they had sought for, the minutes of the proceedings of the first sitting clearly show that till 11.10.1993, when the first sitting of the enquiry was held, no copy of any documents had been sought for by the delinquents, rather on 11.10.93, the delinquents were directed by the Enquiry Officer to give (a) a list of additional documents (i.e. the documents other than the documents on which the Disciplinary Authority was relying upon), which needed to be produced by the Management, (b) list of defence witnesses and (c) list of documents on which the defence proposed to rely.

27. It was only on 8.11.1993 (i.e. when the second sitting of the enquiry was held) that the Appellants, for the first time, filed the application (Annexure-III) seeking copies of certain documents. The relevant minutes of the proceeding reflect that this application contained a combined list, which included not only the documents on which the Disciplinary Authority was relying upon, but also the documents on which the delinquents were placing reliance.

28. Coupled with the above, it is of utmost importance to note that though at some places, the documents sought for by the delinquents were termed as "prosecution documents", what the expression "prosecution documents", admittedly, meant was the documents, which were in the possession of the Management/Disciplinary Authority and not the documents on which the Disciplinary Authority were relying upon. This aspect of the matter becomes clear from the following passage appearing in the minutes of the second sitting-

...since all the documents aforesaid are required for defence purposes, the Management will ensure that the documents are made available before the defence commences and direction is given to the Management accordingly. In the meantime the Presenting Officer will proceed with the prosecution with necessary witness and evidence....

(Emphasis is added)

29. The above observations also make it clear that copies of the documents, which the Appellants had sought for on 8.11.1993, were all required to be furnished to them before their defence were to commence and it was not really required for the purpose of cross-examining the witnesses produced by the Presenting Officer. Be that as it may, even in the second sitting, no witness was, as indicated hereinabove, examined.

30. It was only in the third sitting of the enquiry held on 20.11.1993 that the examination of witnesses and production of documents started. No objection was raised during the third sitting by the delinquents that the delinquents were handicapped on account of non-furnishing of copy of any of the documents required by them for effective cross-examination.

31. Coupled with the above, the fourth, fifth and sixth sittings were held on 14.2.1994, 15.2.1994 and 7.4.1994 respectively. In the fourth and fifth sitting too, no objection had been raised that in cross-examining the witnesses produced on behalf of the Disciplinary Authority, the delinquents were facing any limitation on account of non-supply of copies of any document to them.

32. We have already indicated hereinabove that the delinquents had themselves clarified that copies of the documents, which they had sought for, were (as reflected from the minutes of the proceedings) really meant for the purpose of adducing evidence in defence and they had agreed to receive the documents before the commencement of recording of evidence of the defence witnesses. It was in the sixth sitting held on 7.4.1994 that the delinquents pointed out to the Enquiry Officer that the copies of the "prosecution documents" (i.e. the documents in possession of the Disciplinary Authority) had not yet been made available to the delinquents and the Presenting Officer submitted, (as reflected from the minutes of the proceeding of the sixth sitting), that he had no objection if the documents were supplied "as desired by the delinquents before the commencement of the defence."

33. In short, in the third, fourth and fifth sittings aforementioned, elaborate cross-examination of the witnesses took place at the hands of the delinquents with no grievance expressed by them that they had been handicapped or facing inconvenience on account of non-supply of copy of any documents. The minutes of the sixth sitting clarify, once again, that documents sought for were actually meant for adducing evidence by the delinquents and the delinquents had agreed that these documents be provided to them before opening of the delinquents' case. This is clear from the following observations made in the minutes of the sixth sitting:

...Sri M.S. Rahman points out that copies of prosecution documents have not yet been made available to the delinquents. The Presenting Officer does not have any objection if the documents are supplied as desired by the delinquents before commencement of defence....

(Emphasis is added)

34. What crystallizes from the above discussions is that at no stage during the progress of the proceeding and/or even after the enquiry report were furnished to delinquents, they (Appellants) raised any objection that they had not been allowed to inspect any documents and/or that the delinquents needed copies of any document for the purpose of cross-examining the witnesses produced on behalf of the disciplinary authority. The word "prosecution documents" appearing in the proceeding really indicated that these were the documents, which were with the Disciplinary Authority, but were required by the delinquents for the purpose of presenting their defence evidence. The Appellants cannot, therefore, be said to have been, in any way, handicapped in cross-examining the witnesses aforementioned.

35. What is, now, essential to note is that in the seventh sitting of the enquiry held on 8.4.1994, the Appellant, MS Rahman, requested for furnishing him with two more documents. One of the documents, so sought for, was received by him and the other document was directed to be made available to him. The relevant portion of the minutes of the seventh sitting is as under:

...Today also Sri Rahman submits a letter requesting disclosure of two additional documents of which one is already handed over today and receive by Sri Rahman. Arrangement will also be made to hand over the other document as soon as possible.

Sri Rahman has also prayed for liberty to disclose some more defence documents. If necessary. Keeping in view the principles of natural justice, the liberty is granted despite objection from the Presenting Officer.

The representative for Sri Sharma and Sri Nath also prays for the same liberty as granted to Sri Rahman and it is granted....

(Emphasis is added)

36. The above contents of the proceeding clearly disclose that no objection was raised in the seventh sitting by the delinquents regarding non-supply of any document.

37. Turning to the eight and final sitting of the enquiry held on 24.6.1994, it is important to note the relevant minutes of the proceeding, which read as follows:

In pursuance of the requisition given by Sri M.S. Rahman and the record note of the 7th sitting, the following vouchers and relevant papers are produced by Sri K.N. Singh and taken as defence documents:

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The enquiry proceeding are otherwise closed today with the following directions in consultation with the parties:

(a) The presenting officer will submit his brief to the Enquiry Officer by post with a copy to the delinquents by 15.7.1994.

(b) The delinquents will submit their written arguments, if any, by post to the Enquiry Officer with a copy to the Presenting Officer within 15 days of receipt of the brief from the Presenting Officer.

(Emphasis is added)

38. The above minutes of the proceedings of the eight sitting reveal two things, namely, (i) that the delinquents did adduce evidence by obtaining and producing some documents in their defence and (ii) that the proceedings give no indication at all that because of the non-furnishing of the copies of any of the documents on which the delinquents were to rely for the purpose of setting up of their defence case, they had been, in any way, prejudiced.

39. GROUND No. II.

It has been pointed out, as has been indicated hereinabove, that during the course of the enquiry, the Appellants had applied for copies of certain documents, but copies of many of the documents, so sought for, were either not furnished to the Appellants or furnished immediately preceding the examination of the witnesses causing thereby serious prejudice to the Appellants inasmuch as they could not effectively cross-examine the witnesses and put up their defence.

40. It is well settled that though, normally, supplying of copies of documents mentioned in the memoranda of charges is essential in a disciplinary proceeding, non-compliance thereof will not ipso facto vitiate the proceeding unless the document is relevant for the purpose of the establishing the charge or unless the document has been used and relied upon by the inquiry officer or the disciplinary authority for holding the delinquent guilty of the charge. In State of Tamil Nadu Vs. Thiru K.V. Perumal and others, the Apex Court made it clear that each and every document asked for by a delinquent need not be supplied and only such documents are required to be supplied, which are relevant. Reference may also

be made to Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), wherein the Apex Court has laid down the position of law in the following words:

4.***** The procedure at the enquiry must be consistent with the principle of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party chargee should be given to him and he should be afforded opportunity to cross examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principle of natural justice rendering the enquiry and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court.

We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges; instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the Appellant we find that the obligation to supply copies of the document is confined only to material and relevant documents and the enquiry would be vitiated only if the non supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.

9.***** If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

(Emphasis is added)

41. In the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, the Apex Court has clearly laid down that mere non-compliance with principle of natural justice will not have any adverse effect on the penalty imposed if prejudice cannot be shown to have been caused.

42. It is, no doubt, true that the HPC Rules envisages that the delinquent shall be

supplied with the list of documents by which the article of charges are proposed to be sustained and that the Rules also contemplate supplying of copies of relevant document, the fact of the matter remains that mere omission to furnish list of documents or mere non-supply of document will not vitiate the proceeding unless the non-compliance of such documents can be shown to have caused prejudice. What is essential to note is that when the procedural formalities are allegedly not observed in a departmental proceeding, this cannot in itself be a ground for holding that the proceedings stand vitiated. The Court has to, first, determine whether the provisions, which have been violated, are substantive in character. If the provisions are substantive, it should be normally complied with and if it is procedural, then, the violation must be shown to have caused prejudice. Reference may be made to the *State Bank of Patiala and others Vs. S.K. Sharma*, In the case at hand, no list of document was, admittedly, furnished to the delinquents, but the delinquents were, as held above, allowed to inspect the documents sought for and, as indicated above, no application was made by the delinquents for furnishing them with copy of the documents on which the disciplinary authority, was relying upon in this view of the matter, we do not find that mere nonfurnishing of list of documents to the delinquents can be said to have vitiated the proceedings.

43. Moreover, when during the course of the departmental proceedings, the Appellants did not claim that a particular document, which is sought to be relied upon by the disciplinary authority, had not been furnished to them or had not been allowed to be inspected by them and/or since they did not refuse to cross-examine the witnesses until the copies of the documents, sought for, were furnished to them, the Appellants cannot, on completion of the enquiry, agitate that the non-supply of any particular document had prejudiced their case. In the case at hand, apart from the fact that the delinquents have failed to show that they were-in any way, prejudiced, the fact of the matter remains that before the recording of the statements started, the delinquents had already inspected the documents and they never asked for furnishing to them any of the copies of the documents relied upon by the disciplinary authority. In such a situation, it cannot be said that the inquiry was vitiated, because the list of the documents relied upon by the disciplinary authority have not been furnished to the delinquent and/or that any document has been relied upon by the inquiry officer, when the same had not been offered for inspection or copy thereof had not been furnished to the delinquents. We are guided to take this view from the decision in *Syed Rahimuddin v. Director General, CSIR and Ors.* reported in (2001) 9 SCC 574.

44. We may also pause here to reiterate that mere non-supply of copy of any document or non-providing of opportunity of inspection of documents cannot vitiate a disciplinary proceeding unless two conditions are satisfied, namely, that the documents sought to be inspected or copies sought to be obtained are relevant and, secondly, omission to allow inspection of such documents and/or non-supply of such documents has caused prejudice to the delinquents.

45. In the case at hand, despite a pointed query made by this Court, Mr. B.K. Sharma, learned Senior Counsel appearing on behalf of Appellants, could not show as to which was/were the document/documents, the non- supply of which can be said to have caused prejudice to the delinquents. The delinquents have, thus, completely failed to show as to what prejudice has been caused to them by non-supply of the documents. Had the delinquents opted to adduce any evidence, besides the documents aforementioned, which they had produced, as already indicated above, at the eight sitting, presented their own case, the question of prejudice might have been considered, but when (as it will be shortly seen hereinbelow) the delinquents, eventually, decided not to give any further evidence in support of their case, the fact that the documents, (which they wanted to rely upon for the purpose of adducing defence evidence) had not been supplied to them cannot be said to have caused any prejudice to them.

46. GROUND No. III:

It is submitted on behalf of the Appellants, that the enquiry was abruptly closed without giving any opportunity to the Appellants to examine witnesses in defence and that the Appellants were not even given opportunity of offering their explanation on the alleged incriminating pieces of materials on which the enquiry officer has relied upon. The Appellants were, thus, it is contended, denied effective opportunity of placing their defence during the course of the enquiry.

47. While dealing with the above aspect of the matter it is important to note that under Rule 25(xv) of the HPC Conduct, Discipline and Appeal Rules, if the employee does not give evidence, then, the Enquiry Authority, on closing of the case of the prosecution shall, generally, question the delinquent for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him. In the present case, no such examination has been, admittedly held.

48. It may be noted that the provisions contained in Rule 25(xv) are similar to the provisions of Section 313 of the Criminal Procedure Code. It is well-settled that on the conclusion of the enquiry, the delinquent shall be questioned, in general, on the circumstances appearing against him in the evidence produced before Enquiry Officer so as to enable the delinquent to explain the circumstances appearing against him in the evidence and if the delinquent has not been questioned on any particular incriminating circumstances, such a circumstance cannot be, generally, considered against the delinquent. There is, however, a rider attached to such a general rule and the rider is that the omission to put the question in respect of any material circumstance must be shown to have caused prejudice; otherwise, mere omission to question the delinquent cannot ipso facto vitiate the enquiry. In the case at hand, while replying to the correctness or otherwise of the findings arrived at the enquiry report, the delinquents did not raise any objection that they had been, in any way, prejudiced by Enquiry Officer's omission to question on the incriminating circumstances. Reference may be made to Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, Basavaraj R. Patil and Others Vs. State of Karnataka

and Others, and State (Delhi Administration) v. Dharampal, reported in (2001) SCC 2924.

49. Coupled with the above, the Apex Court has laid down in Dharampal (supra) that even if an accused is not examined on an incriminating circumstances by the trial Court u/s 313 Code of Criminal Procedure, the appellate Court may ask the counsel, if required, as to what explanation, if any, the accused has with regard to such an incriminating piece of evidence on which the trial Court has relied upon for founding the conviction of the accused without questioning the accused u/s 313 Code of Criminal Procedure. Following the principle laid down in Dharampal(supra), we made a pointed query from Mr. BK Sharma, learned Senior Counsel appearing on behalf of the delinquents, if the delinquents have any explanation on the incriminating pieces of materials on which the Inquiry Authority has relied upon, but Mr. Sharma could not point out as to what explanation, if any, the delinquents can be said to have on any of the circumstances on which the Inquiry Authority has based its findings.

50. What has, however, been pointed out, on behalf of the Appellants, is that the enquiry was abruptly closed as soon as the recording of statements of the witnesses presented on behalf of the Disciplinary Authority was closed.

51. The relevant portion of the minutes of the proceeding of the eighth and final sitting held on 24.6.1994 reads as follows:

In pursuance of the requisition given by Sri M.S. Rahman and the record note of the 7th sitting the following vouchers and relevant papers are produced by Sri K.N. Singh and taken as defence documents.

The aforesaid two documents will indicate that the Bill forms as well as the challans are completely different from each other.

The following weighment cards are also produced and taken on record:

1. 01226-accompanying voucher No. 0421, dtd. 9.4.90.
2. No. 9920-accompanying voucher No. 6418, dtd. 9.8.89.
3. No. 1015-accompanying voucher No. 7838, dated 29.9.89.
4. No. 09751-accompanying voucher No. 14167, dtd. 8.12.89.

The aforesaid two documents will indicate that the bill forms as well as the challans are completely different from each other.

*** *** *** These weighment cards will indicate differences in size, printing as well as the procedure of certification by Forestry/sometimes signing with official seal and sometimes without the seal. This will also indicate that the officers countersigning the weighment card are not always above the rank of Dy. Manager.

The enquiry proceedings are otherwise closed today with the following direction

in consultations with the parties:

(a) The Presenting Officer will submit his brief to the Enquiry Officer by post with a copy to the delinquents 15/7/94.

(b) The delinquents will submit their written arguments, if any by post to the Enquiry Officer with a copy to the Presenting Officer within 15 days of receipt of the brief from the Presenting Officer.

52. For fair adjudication, the above minutes have to be read along with the enquiry report, wherein the Inquiring Authority has stated as follows:

After the evidence of management was closed the delinquents were given opportunity to bring their witnesses if any but they did not bring any witness and chose to rely on certain documents. As desired by them, direction was given to the management to produce all those documents, which the management did. The Presenting Officer on behalf of the management, however, cross-examined all the delinquents.

(Emphasis is supplied)

53. Admittedly, in their representations made against the enquiry report, the delinquent did not refute the above assertions of the Inquiring Authority. The inference, therefore, which is irresistible to draw is that after the evidence of the management was closed, the delinquents adduced evidence by exhibiting certain documents and, then, though they were given the opportunity to bring their witnesses, if any, but they declined to bring any such witness and chose to rely on certain documents and it was for this reason that as desired by the delinquents themselves, direction was given to the management to produce all those documents which the delinquents had sought for and the management complied with this direction.

54. Thus, in the face of undenied and uncontroverted assertions of the Inquiring Authority made in the enquiry report that the delinquents chose not to examine any witness, the delinquents cannot, now, be allowed to say, at the stage of filing of the writ petitions, that they were not given the opportunity to adduce their evidence.

55. It will be pertinent to mention that even the minutes of the eight sitting of the enquiry were signed by the delinquents and the proceedings show that the delinquents agreed to submit their written arguments and they nowhere claimed that they wanted to adduced further evidence before submission of their written arguments.

56. We find, therefore, no force in the submissions of Mr. Sharma that the enquiry was abruptly closed and the Appellants were denied the opportunity to adduce evidence.

57. GROUND No. IV:

It is submitted, on behalf of the Appellant that the findings of the enquiry were perverse inasmuch as the same were based on conjecture and surmises and not on the basis of the materials on record.

58. It is important to note that the Inquiring Authority has clearly mentioned in its enquiry report that in the absence of any direct evidence, he is unable to hold that any of the delinquents had committed acts of fraud by entering into a criminal conspiracy with the waste wood suppliers or Ors. , but it found them guilty of misconduct for the following four reasons:

(i) On the same date, i.e. 17.5.1990, twelve bills were passed of which ten were genuine and two fake. The punch Card S.I. No. of the genuine bills are in four thousand series whereas fake bills are in two thousand series.

(ii) two signatures of the checking forest officials on the same set of bill i.e, on the road challan and the bill form are different. This difference is found invariably in respect of all the fake bills.

(iii) The signature of one and the same supplier in the road challan and bill form are different.

(iv) The signature of the supplier on receiving payment does not tally with the signatures put previously on the same bill and the road challan.

If the conclusions reached by the inquiry officer are based on the evidence or the materials on record, the same cannot be upset in a writ petition is not without any materials or unless the conclusion itself is found to be not a reasonable one. We may refer to *Syed Rahimuddin v. Director General CSIR (Supra)* wherein the Apex Court has held as follows:

5. It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the Court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable man. Having examined the report of the enquiry officer, we are unable to accept the contention of the learned Counsel for the Appellant that the findings of the enquiring officer cannot be held to be findings based on no evidence.

(Emphasis is added)

59. In the case at hand, the inference which the inquiry officer has drawn, are based on materials on record and we, therefore, see no reason to interfere with the findings, when the findings, so reached, are reasonable one.

60. The law on the scope of judicial review of findings reached by disciplinary authority is, now well-settled strict rules of evidence do not apply in disciplinary proceedings and the Courts will not interfere except when the findings reached are mala fide or perverse i.e. where there is no evidence to support the finding or where a finding is such that no man acting reasonably or with positivity could arrive at such a finding. The Writ Courts do not and shall not stand in the

position of appellate Courts and re-appreciate the evidence. In this regard, reference may be made to Bank of India and Another Vs. Degala Suryanarayana,

11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel the Constitution Bench has held:

The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is acceptable as true, does the conclusion follow that the charge in question is proved against the Respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.

(Emphasis is added)

61. On the basis of what were noticed above the Inquiring Authority has, in effect, held the delinquents guilty of misconduct of acting in a manner prejudicial to the interest of the Corporation and guilty of neglect of work or negligence in the performance of duty.

62. Though the delinquents have agitated in their writ petitions that findings of the Inquiring Authority are perverse, the fact remains that nothing could be submitted before us, on behalf of the delinquents, to show that the four irregularities, which the Inquiring Authority has noted above, are without any materials on record or contrary to the materials on record. Far from this, on a careful scrutiny, we find that the four reasons assigned by the Inquiring Authority are supported by the materials on record brought during the course of the enquiry.

63. In the face of the above, it cannot be said that the Appellants omission to do what they were ordained to do did not construe misconduct.

64. GROUND No. V:

It is submitted, on behalf of the Appellants, that the penalties imposed on them are disproportionate to the gravity of the misconduct claimed to have been

proved.

65. Turning to the question of penalties imposed by the Disciplinary Authority, it needs to be noted that as far as the Appellant, M.S. Rahman, is concerned, penalty imposed is of reduction to a lower grade carrying a pay scale of Rs. 2150-100-3850 and he has been designated as Senior Accountant in the pay scale of Rs. 2150-100-3850, his basic pay is directed to be fixed as per Rules, his seniority in the pay scale is directed to be fresh starting from the date he resumes duty without any claim whatsoever of seniority in the pay scale of Rs.2400-120-4320 from which he was reduced/demoted. This apart, the period of suspension from 05.07.1990 till the date of resumption of duty is directed to be treated as not on duty and he was not to be entitled for any salaries etc. except the subsistence allowance for the period of suspension. As far as the Appellant, Sr. UN Sharma, is concerned, he too was imposed the penalty of reduction to a lower grade carrying pay scale of Rs. 1355-41-1765-45-1990, he was designated as Junior Assistant Accounts), his basic pay was to be fitted as per Rules, his seniority in the grade/pay scale of Rs. 1410- 50-1910-60-2330 was directed to be counted afresh from the date he resumes his duty without any claim of seniority in the scale from which he has reduced/demoted and the period of suspension from 5.07.1990 till the date of resumption of duty was not to be treated as on duty and this Appellant too was held not entitled to receive any salaries etc. except the subsistence allowances for the period of suspension.

66. In view of the fact that the Inquiry Officer's categorical finding was that the Appellants had not forged any document and/or entered into any criminal conspiracy with the suppliers concerned for the purpose of committing any fraud and in view also of the fact that the Appellants were merely found to be negligent in discharging duties, the severe penalties imposed on the Appellants are wholly disproportionate to the gravity of the misconduct. Had the Appellants been found to have committed any forgery or helped in the commission of forgery or proved to have entered into any criminal conspiracy with the suppliers concerned to commit fraud or to give wrongful gain to the suppliers concerned, the Appellants would not have deserved any leniency, but in view of the fact that the clear finding is that the Appellants had been negligent in discharging their duties, the penalties imposed on them are very harsh and will shake the conscience of any prudent person. In view, however, of the fact that the Appellants are experienced senior persons in the employment of the HPC and any laxity given to them in the matter of imposition of penalty will emanate wrong signals to other workers in the public undertakings like HPC, we are firmly of the view that this Court must modify the penalties to make the same commensurate with gravity of the misconduct. For the nature of the misconduct that the Appellants committed, it will be, to our mind, just and proper to reduce them to a lower stage in a time scale in terms of Rule 23(e) of the HPC Conduct Discipline and Appeal Rules.

67. What, thus, crystallizes from the above discussions is that the findings

arrived at by the Inquiry Officer against the Appellants and acceptance thereof by the Disciplinary Authority do not need any interference, but as far as the penalties imposed on the Appellants are concerned, the same needs to be interfered with and modified as indicated herein above.

68. In the result and for the reasons discussed above, these writ appeals partly succeed. The impugned judgment and order is set aside and while the findings reached by the Inquiry Officer against the Appellants and acceptance thereof by the Disciplinary Authority are not interfered with, the penalties imposed on the Appellants are set aside and the Respondents are directed to pass necessary order(s) imposing, on each of the Appellants, the penalty of reduction to a lower stage in their own time scale in terms of Rule 23(e) aforementioned. With the modifications of the penalties so directed, both the writ appeals shall stand disposed of.

69. Before parting with these writ appeals, it needs to be pointed out that though the Appellants agitated in their memoranda of appeal that the pre-recorded statements of the witnesses were supplied to the Petitioners and that witnesses were not examined in the inquiry proceeding. Mr. Sharma, on a query made by this Court, has conceded that the witnesses, whose pre-recorded statements were produced at the inquiry, were allowed to be cross-examined by the delinquent. In view of the fact that the Appellants failed to show as to what prejudice had been caused to them on account of production of prerecorded statement of witnesses and when the witnesses, admittedly, were allowed to be cross-examined by the Appellants, we do not find that on this ground, the disciplinary proceeding deserves to be interfered with. In *State Bank of Bikaner and Jaipur Vs. Srinath Gupta and another*, the statements of witnesses recorded u/s 161 Code of Criminal Procedure were furnished to the delinquent in a disciplinary proceeding and he was given full opportunity to cross-examine the witnesses concerned. The Apex Court held that supplying of prerecorded statements in the disciplinary proceeding did not vitiate the proceeding inasmuch as no prejudice had been caused to the delinquent. In fact, even Mr. Sharma has conceded that the Appellants do not press for setting aside the penalties imposed on them on the ground that pre-recorded statements of witnesses had been used at the disciplinary proceeding.

70. No order as to costs.