

(2014) 01 AHC CK 0134

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (S/S) No. 5584 of 2012

Sanjeewan Lal Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2014) 2 ADJ 16 : (2014) 2 ESC 701

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : A.P. Singh, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri A.P. Singh, learned counsel for petitioner, Sri Vikrant Raghuvanshi, learned State counsel and perused the record. Petitioner who was working on the post of Stenographer and posted under Sub-Divisional Magistrate, Tarabganj placed under suspension by order dated 3.12.2009 pending disciplinary proceedings.

2. A charge-sheet has been issued to the petitioner on 27.12.2009, served on him through Tehsildar, Sadar, after receiving the same he sought time by letter dated 15.2.2010 from the Inquiry Officer to submit reply to the charges leveled.

3. On 17.2.2010, he wrote a letter to the Inquiry Officer demanding certain documents, after receiving the said letter the Inquiry Officer on 23.2.2010 has given the documents as demanded by the petitioner. Again on 5.3.2010, petitioner wrote a letter demanding certain other documents in response to which the Inquiry Officer has written letter dated 8.3.2010. But, the petitioner not participated in the inquiry proceedings, filed a Writ Petition No. 295 (SS) of 2010, disposed of by order 22.1.2010, relevant portion quoted as under:

Considering the peculiar facts and circumstances of the case, it is provided that in case, the petitioner requires the copies of any document and makes an

application in that behalf, the Enquiry Officer shall consider the application of the petitioner for supply of documents and after being satisfied about the relevancy of such documents within three days from the receipt of such application, he shall supply the copies of such documents to the petitioner and in case it is not practically possible or for any other valid reason to supply the copy of any such document, he may allow inspection of such document to the petitioner by fixing date, time and place for such inspection within next seven days. The Enquiry Officer shall ensure free access to the petitioner to such documents, which are to be inspected by the petitioner. The petitioner shall thereafter submit reply to the charge-sheet within the next fifteen days and the Enquiry Officer shall complete the enquiry within the next two months from the date of submission of the reply. The Enquiry Officer shall submit his report on or before the expiry of the aforesaid period of two months to the disciplinary/appointing authority, who shall take necessary steps and pass final orders within the next one month. In case the petitioner seeks any adjournment, the period of such adjournment shall be excluded from the time schedule referred to above. The petitioner shall co-operate in the enquiry, failing which, it will be open to the enquiry officer to conclude the enquiry ex parte within the period provided hereinabove.

In case the enquiry is not completed within the time provided, despite the co-operation of the petitioner, the order of suspension shall stand revoked and the petitioner would be at liberty to approach the Court again.

With the above directions, the writ petition is finally disposed of.

4. After passing of the said judgment, the Inquiry Officer has wrote a letter to the petitioner to inspect the documents as sought by him and submit his reply positively by 30.3.2010, which was received by the petitioner on 27.3.2010. After receiving the same, he submitted reply to the charge-sheet on 31.3.2010.

5. However, on 11.3.2010, the petitioner wrote a letter to the competent authority for change of Inquiry Officer/Chief Revenue Officer, Gonda. The said request made by the petitioner has been accepted and City Magistrate, Gonda was appointed as Inquiry Officer.

6. The newly appointed Inquiry Officer on 27.4.2010 given opportunity to the petitioner to cross-examine the witnesses, produced by the department in support of the charges levelled on him, thereafter on 11.5.2010 the petitioner was allowed to cross-examine Sri Nand Kumar Tiwari, Lekhpal/Prabhari Tehsil, Tarabganj, on 17.5.201, Sri Kalka Prasad, Tehsildar, Gonda, on 30.4.2010, Sri Indresh Kumar, SDM, Tarabganj, on 30.4.2010, Sri Radhey Shyam Bahadur, Tehsildar, Tarabganj, and on 30.4.2010 Sri Triloki Nath Tiwari, Lekhpal, and on 30.4.2010 Sri Haribansh Ardali, Up Ziladhiari, Gonda, the cross-examination of the abvoesaid witnesses have been done by way of question and answer form, however, at that relevant point of time, the petitioner has not raised any grievance that the said procedure is not as per law for conducting the disciplinary proceeding and he has not been given any opportunity for cross-examining the

said witnesses orally.

7. On 29.5.2010, after completing the domestic inquiry, the Inquiry Officer submitted his report to the competent authority/Commissioner, Devi Patan Mandal, Gonda, thereafter competent authority issued a show-cause notice dated 1.6.2010 alongwith the inquiry report dated 29.5.2010 to the petitioner to submit his response, submitted on 14.6.2010, the petitioner was given an opportunity of hearing by the competent authority, only thereafter on the basis of material on record the punishment order dated 9.7.2010 has been passed by which following punishment has been awarded:

8. Further, by order dated 24.9.2010, the punishing authority as per the provisions as provided under Uttar Pradesh, Government Servant Disciplinary Appeal Rules, 1991 has also forfeited the salary of the petitioner for the period in which he was under suspension.

9. Aggrieved by the said orders, the petitioner filed an appeal before the appellate authority/Board of Revenue, U.P., Lucknow dismissed by order dated 8.8.2012.

10. In view of the said factual background, the present writ petition has been filed by the petitioner challenging the order dated 8.8.2012 (Annexure 1) passed by appellate authority as well as order dated 9.7.2010 (Annexure. 2) and 24.9.2010 (Annexure. 3) passed by the punishing authority/O.P. No. 4.

11. Sri A.P. Singh, learned counsel for petitioner while challenging the impugned order submits that after giving the reply by the petitioner to the charge-sheet, the Inquiry Officer did not conduct the inquiry proceedings in the manner and procedure prescribed to conduct the same but adopted the procedure which is totally defective and the same is drastic deviation from the established procedure generally adopted in the inquiry proceedings.

12. In order to elaborate the said submission, learned counsel for petitioner submits that as per the established procedure for conducting a disciplinary proceedings after submitting a reply to the charge-sheet, the department has to lead his evidence and established the charges which have been levelled on him as mentioned in the charge-sheet but in the present case, the said procedure has not been followed whereas the petitioner was only allowed to cross-examine the witness in question and answer form during the course of inquiry proceedings, so the said procedure which is adopted by Inquiry Officer while conducting the disciplinary proceedings is contrary to law as laid down by Hon''ble Apex Court in the case of Roop Singh Negi Vs. Punjab National Bank and Others, as well as the law laid down by Hon''ble the Apex Court in the case of State of Uttaranchal and Others Vs. Kharak Singh, and by judgment and order dated 16.10.2010 passed by a Division Bench of this Court in Writ Petition No. 8876 (SB) of 1987 (Vidya Prasad Rao v. State of U.P. and others). Hence, the inquiry/disciplinary proceeding vitiates as the same is against the principles of natural justice, resulting that the punishment order as well as the appellate order, passed on the

basis of inquiry proceeding also vitiates thus, the same are liable to be set aside, so the present writ petition be allowed.

13. Sri Vikrant Raghuvanshi, learned State counsel, in rebuttal, submits that in the present case after holding a preliminary inquiry, a charge-sheet has been issued to the petitioner to which he submits that after submitting of the reply in the disciplinary proceedings the relevant documents which are sought by the petitioner have been supplied to him, thereafter, he was allowed to cross-examine the witnesses in the form of question and answer, thus, adequate opportunity has been given to the petitioner during the course of disciplinary proceeding to protect himself to establish that he is not guilty of the charges levelled on him by the charge-sheet, after conducting the inquiry proceedings in accordance with the established principles in which adequate and proper opportunity has been given to the petitioner. Inquiry Officer submitted an inquiry report inter alia stating therein that all the charges levelled against the petitioner stood proved to the punishing authority.

14. Accordingly, punishing authority issued a show-cause notice to the petitioner alongwith inquiry report and taking into consideration the reply submitted by the petitioner to the show-cause notice, after giving personal hearing to him passed the impugned order dated 9.7.2010, affirmed in appeal by the appellate authority by order dated 8.8.2012, hence there are no illegality or infirmity in the impugned orders under challenge in the present case, in support of his submission he has placed reliance in the case of K.L. Tripathi Vs. State Bank of India and Others, .

15. He further submits that if the petitioner has any grievance in respect to procedure adopted by Inquiry Officer to conduct the inquiry proceeding then during the course of inquiry proceeding he should have taken the said objection that what prejudice has been caused to him due to non-observation is established procedure for conducting the inquiry proceeding by the Inquiry Officer, the said act has not been done by the petitioner, so at a belated stage, he cannot take the same as it is a after thought one.

16. Another argument advanced by learned State counsel that petitioner has given a confession in respect to admission of charges before the Investigating Officer who has investigated the matter on the basis of FIR lodged against him, so the impugned order are perfectly valid. In support of his argument, he has placed reliance in the case of State Bank of India and Others Vs. Narendra Kumar Pandey, and in the case of Commissioner of Police, New Delhi Vs. Narender Singh, . Hence, the present writ petition filed by the petitioner liable to be dismissed.

17. In rebuttal, Sri A.P. Singh, learned counsel for petitioner submits that so far as argument advanced by learned State counsel that the petitioner has given a confession before the Investigating Officer who has investigated the matter on the basis of KIR, so the petitioner is guilty of the charges is totally incorrect and

wrong submission as the same material is not a piece of evidence in the charge-sheet and on the said fact no finding has been recorded by the Inquiry Officer. In support of his argument he placed reliance on the judgment given by the Apex Court in the case of Nirmala J. Jhala Vs. State of Gujarat and Another, .

18. I have heard learned counsel for parties and perused the record.

19. In order to decide the controversy in the matter, I feel appropriate to go through the judgments cited by the learned counsel for the parties first.

20. In the case of Roop Singh Negi Vs. Punjab National Bank and Others, , on which the reliance has been placed by the petitioner are paragraph Nos. 14 and 15 which are reproduced herein-below:

Para No. 14 --Indisputably, a departmental proceeding is a quasi-judicial proceeding. The Enquiry Officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witness merely tendered the documents? did not prove the contents thereof Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

Para No. 15 We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

21. Further, in the case of State of Uttaranchal and Others Vs. Kharak Singh, held as under:

11. From the above decisions, the following principles would emerge:

(I) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(II) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known

after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(III) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(IV) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

22. Further, the said view has been reiterated by Division Bench of this Court in the case of Writ Petition No. 8876 (SB) of 1987 (Vidya Prasad Rao v. State of U.P. and others).

23. Hon"ble the Apex Court in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, , has held as under (relevant paragraphs):

Para 26--A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer? proceed with the inquiry ex parte.? in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the Government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a Judge. Enquiry Officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see is to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

Para 27.--Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being hear in any proceeding which may culminate in a punishment being imposed on the employee.

Para 28--When a department enquiry is conducted against the Government Servant it cannot be treated as a causal exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of *Shaughnessy v. United States*, 345 US 206 (1953) (Jackson, J.), a Judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied".

Para 31--As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.

24. Hon'ble the Apex Court in the case of *Commissioner of Police, New Delhi Vs. Narender Singh*, , held as under:

Para No. 25.--It is now well-settled that the provisions of the Evidence Act are not applicable in a departmental proceeding. [See *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, ; *Lalit Popli Vs. Canara Bank and Others*, ; and *N. Rajarathinam Vs. State of T.N. and Another*,].

Para No. 26.--In *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, , this Court held:

The High Court was not correct in holding that the domestic enquiry before the Tribunal was the same as prosecution in a criminal case.

Para No. 27 - It was further held:

The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of A.P. v. S. Sree Rama Rao*. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High

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

[See also State of Haryana and Another Vs. Rattan Singh,]

25. Hon"ble the Apex Court in the case of K.L. Tripathi Vs. State Bank of India and Others, , after placing reliance on the judgment given in the case of Khem Chand Vs. The Union of India (UOI)and Others, , held as under:

Para No. 39.--In that decision, the Court was concerned with the expression Reasonable opportunity of showing cause under Article 311(2) of the Constitution". The facts of that case were entirely different from the facts of the instant case. However, Das C.J., dealing with opportunity to show-cause explained at pages 1096-97 of the report the position under the said Article as follows:

If the opportunity to show-cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the Government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this

appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessary require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case. To summarise: the reasonable opportunity envisaged by the provision under consideration includes- 206

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

Para No. 40 - In substance, in the facts and circumstances of this cases, the provision of the rules under which the enquiry was conducted, the procedure mentioned above has been followed. Here also the appellant was allowed to show that the evidence against him was not worthy of credence or consideration. The evidence was discussed. His explanation was sought for and recorded. The materials and other records were shown to him. He did not ask for any chance to cross-examine the witness or to examine himself or any other witness in support of his defence. Indeed, as we have noted before, he admitted the facts. He was also given in addition an opportunity of showing that he has not been guilty of any such misconduct as to merit the particular punishment proposed to be meted out to him. This opportunity was given. He gave his explanation and that was considered. He asked for a personal hearing which, we have noted in this case, was duly given to him. We are, therefore, of the opinion that the aforesaid passage relied on behalf of the appellant would not be of any assistance to the appellant in this case.

26. Recently, in the case of *Nirmala J. Jhala Vs. State of Gujarat and Another*, , Hon"ble the Apex Court held as under:

Para No. 6 - LEGAL ISSUES:

I. Standard of proof in a Departmental Enquiry which is Quasi Criminal/Quasi-

judicial in nature:

A. In *M.V. Bijlani Vs. Union of India (UOI) and Others*, , this Court held:

... Disciplinary proceedings, however being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.

(Emphasis added)

(See also : *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, ; *Roop Singh Negi Vs. Punjab National Bank and Others*, ; and *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*,)

B. In *Prahlad Saran Gupta Vs. Bar Council of India and Another*, , this Court observed that when the matter relates to a charge of professional mis-conduct which is quasi-criminal in nature, it requires proof beyond reasonable doubt. In that case the finding against the delinquent advocate was that he retained a sum of Rs. 15,000/- without sufficient justification from 4-4-1978 till 2-5-1978 and he deposited the amount in the Court on the latter date, without disbursing the same to his client. The said conduct was found by this Court as "not in consonance with the standards of professional ethics expected from a senior member of the profession". On the said fact-situation, this Court imposed a punishment of reprimanding the advocate concerned.

C. In *Harish Chandra Tiwari Vs. Baiju*, , this Court made a distinction from the above judgment stating the facts in the aforesaid decisions would speak for themselves and the distinction from the facts of this case was so glaring that the misconduct of the appellant in the present case was of a far graver dimension. Hence, the said decision was not of any help to the appellant for mitigation of the quantum of punishment.

D. In *Noor Aga Vs. State of Punjab and Another*, , it was held that the departmental proceeding being a quasi-judicial one, the principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded there from. Inference on facts must be based on evidence which meet the requirements of legal principles. (See *Roop Singh Negi Vs. Punjab National Bank and Others*, ; *Union of India (UOI) and Others Vs. Naman Singh Sekhawat*, ;and

Vijay Singh Vs. State of U.P. and Others,)

E. In M.S. Bindra Vs. Union of India and Others, , it was held:

While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

F. High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, , this Court held:

The doctrine of proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct.

G. In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The Court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in Prahlad Saran Gupta (supra) does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee. (See also. Union of India (UOI) Vs. Sardar Bahadur, , State Bank of India and Others Vs. Narendra Kumar Pandey,).

27. In the instant matter, after serving of the charge-sheet dated 27.12.2009 on the petitioner and after receiving the same, the petitioner has sought time to give reply as well as asked for certain documents and from the record, the admitted position which emerged out that the time was given to the petitioner and he was also given necessary documents by the Inquiry Officer to which he has sought thereafter on the request of the petitioner, he has also been given the documents which was subsequently asked by him and also allowed to inspect the documents thereafter the petitioner submitted his reply to the charge-sheet and request for change of Inquiry Officer which was accepted by the punishing

authority and Inquiry Officer has been changed.

28. Thereafter, the petitioner was also given an opportunity to cross-examine the witnesses produced by the department in order to prove and establish the charges levelled on him. The said exercise has been done by way of cross-examination and Hon"ble the Apex Court in the case of Narender Kumar (Supra) after taking into consideration the other judgment on the point in issue, it is settled law that the provisions of Evidence Act are not applicable in the inquiry proceedings, so keeping in view the said fact, the argument advanced by learned counsel for petitioner that he has not been allowed to cross-examine the witnesses procedure by the department in support of charges orally. Coupled with the fact that when during the course of inquiry proceeding, the petitioner has not taken the said defence, hence on the basis of the said facts, it cannot be said that the disciplinary proceedings has been conducted by the Inquiry Officer is a defective one argument in question raised by learned counsel for the petitioner has no force, rejected.

29. Further, whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry, then only the thing which is to be seen is to the effect whether the inquiry is being conducted by the Inquiry Officer in fair and equitable manner in conformity with the principles of natural justice and giving a fair opportunity of hearing to defend the petitioner during the course of inquiry proceedings.

30. In the present case, the said exercise has been done by the Inquiry Officer and after giving adequate opportunity to the petitioner, the Inquiry Officer in its report dated 29.5.2010 had come to the conclusion that the charges levelled on the petitioner are being established and proved. It is also incorrect on the part of the petitioner to say that the Inquiry Officer has based his inquiry report only on the confession given by the petitioner before the Investigating Officer in respect to the matter in which an FIR was lodged as from the perusal of the inquiry report, the Inquiry Officer on the basis of the material evidence on record had come to a definite conclusion that the petitioner is guilty of the charges, thereafter a show-cause notice alongwith the inquiry report has been issued to the petitioner who submitted his reply and he was given an opportunity to put forward his defence only the punishing authority has passed the punishment order which was upheld by the appellate authority, accordingly, the impugned orders are perfectly valid and did take into consideration the said falls within the scope of judicial review as laid down by Hon"ble the Apex Court in the case of Nirmala J. Jhala (Supra), relevant portion quoted as under:

Scope of Judicial Review:

(i) It is settled legal proposition that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. The only

consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. (Vide: State of Tamil Nadu and another Vs. S. Subramaniam, ; and Govt. of A.P. and Others Vs. Mohd. Narsullah Khan,)

(ii) In Zora Singh, , this Court while dealing with the issue of scope of judicial review, held as under:

The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari the superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.

(Emphasis added)

(iii) The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set-aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the

Court should intervene.

31. In view of the abovesaid facts, I do not find any illegality and infirmity in the impugned orders under challenge in the present case.

32. For the foregoing reasons, the writ petition lacks merit and is dismissed. No order as to costs.