
(2010) 10 DEL CK 0131

In the Delhi High Court

Case No : Writ Petition (Civil) No. 12496 of 2006

Sher Singh Nainwal

APPELLANT

Vs

High Court of Delhi

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 15, 18
Constitution of India, 1950 — Article 226
Employees (Conduct, Discipline and Appeal) Rules, 1977 — Rule 29, 31, 32, 33

Citation : (2010) 10 DEL CK 0131

Hon'ble Judges : Reva Khetrapal, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Raman Duggal, for the Appellant; Rajiv Bansal and Amandeep, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—By this writ petition, the Petitioner impugns orders dated 16.01.2006 whereby the Registrar General of the High Court of Delhi has conveyed the orders of Hon"ble the Chief Justice of this Court imposing the penalty of dismissal from service on the Petitioner under Rule 15(4) of CCS (CCA) Rules, 1965. This order has been passed after holding the regular departmental inquiry against the Petitioner in which charges stood proved.

2. Before advertng to the nature of challenge laid to the findings of the inquiry and the impugned order of dismissal from service, we deem it proper to recapitulate the facts in brief.

3. The Petitioner while working as Court Attendant in this Court was served with Memo dated 27.09.2003, on 29.09.2003 informing him that a Departmental Inquiry was sought to be initiated against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "the Rules"). The allegations in the said Memo were to the effect that certain

complaints had been received from different persons against the Petitioner. Precise charges, which were framed in the said Memo were as follows:

ARTICLE - I That Shri Sher Singh Nainwal, Court Attendant made a false promise to Shri Krishan Gopal, S/o Shri Laxmi Narain, R/o 11018/8, Block 5A, Sat Nagar, Karol Bagh, New Delhi 0110005, an unemployed commerce graduate, who was introduced to him in April, 2002 by Shri Sher Singh Bhati, S/o Shri Manvir Singh Bhati, R/o House No. 137, Gulabi Bagh, New Delhi-48 that he would get him (Shri Krishan Gopal) employed as Court Attendant in this Court by the month of June or July, 2002 on payment of ` 60,000/- as consideration for the same.

ARTICLE - II That in pursuance of the aforesaid false promise Shri Krishan Gopal after taking loan made the payment of ` 60,000/- to Shri Sher Singh Nainwal, in the month of April, 2002 in the official vehicle No. 0079 parked near India Gate in the presence of their common friend Shri Sher Singh Bhati, elder brother of Shri Krishan Gopal, namely, Shri Ramesh and two friends of Shri Sher Singh Nainwal, namely Shri Tarun and Shri Vimal.

ARTICLE - III That Shri Sher Singh Nainwal, Court Attendant unauthorizedly used the Staff Car No. 0079 allotted to PPS to Hon'ble the Chief Justice in the month of April, 2002 for the aforesaid purpose.

ARTICLE - IV That said Shri Sher Singh Nainwal, Court Attendant also made a false promise to Shri Manadatt Sharma, S/o late Shri Sadanand Sharma, R/o House No. V.1/10, Phase-I, Budh Vihar, Delhi-110041, who was introduced to him by his nephew Shri Kishore, Chowkidar, Tis Hazari Courts, that Shri Sher Singh Nainwal would get his two sons, namely S/Shri Devender and Virender, employed in the High Court on payment of ` 80,000/- each as consideration for the same, half of the amount was to be paid before appointment and the balance half after joining duties by the applicants.

ARTICLE - v. That in pursuance of the aforesaid false promise Shri Manadatt Sharma after taking loan made the payment of ` 80,000/- on 13.06.2000 to said Shri Sher Singh Nainwal, towards half payment for getting his aforementioned two sons employed in this Court, in the room of Shri R.K. Mehta, the then Deputy Registrar, in the presence of S/Shri Rajesh, Kishore, and Devender, his neighbour, nephew and son respectively.

ARTICLE - VI That said Shri Sher Singh Nainwal, Court Attendant also made a false promise to Shri Rajesh Kumar, S/o late Shri Gulab Chand, R/o House No. V.1/9, Budh Vihar, Delhi-11,41, who was introduced to him by Shri Manadatt Sharma that he would get him (Shri Rajesh Kumar) employed in the High court on payment of ` 80,000/- as consideration for the same.

ARTICLE - VII That in pursuance of the aforesaid false promise Shri Rajesh Kumar, after arranging money by mortgaging the documents of his house property, paid ` 50,000/- on 13.06.2000 to said Shri Sher Singh Nainwal, for securing employment for him in this Court, in the room of Shri R.K. Mehta, the

then Deputy Registrar, in the presence of Shri Manadatt Sharma, his neighbor, Shri Kishore and Shri Devender, nephew and son respectively of Shri Manadatt Sharma.

ARTICLE - VIII That Shri Sher Singh Nainwal, Court Attendant while working in the Lawyers' Chamber Block, on 24.7.2003 at about 7.00 A.M. stealthily and mischievously, cut-off the "Choti" of his senior, Shri Ramlok Sharma, Court Officer, with a pair of scissors, while the latter was looking into the attendance register in the Court Officer's room in the lawyers, chamber block, on the pretext of clearing the "Jala" behind the seat of Shri Ramlok Sharma and fled away with the "Choti" abusing and threatening to kill him using filthy language, causing humiliation, besides hurting religious sentiments of his superior.

Thus, the said Shri Sher Singh Nainwal by his aforesaid acts of commission and omission acted very irresponsibly and is thus guilty of unauthorizedly extending also promises of employment in the High Court to the above named persons; soliciting and receiving money in consideration of the false promises so extended and misusing his official position; misbehaving his senior by cutting off the "Choti" besides threatening and abusing him amounting to unbecoming of a servant of this Court.

The statement of imputations in support of the articles of charge may be stated as under:

A complaint dated 4.4.2003, addressed to Hon"ble the Chief Justice of this Court was submitted by Shri Krishan Gopal, S/o Shri Lasxmi Narain, an unemployed Commerce graduate, R/o 11018/8, Block 5A, Sat Nagar, Karol Bagh, New Delhi - 110005, against Shri Singh Nainwal, charged official alleging that on being introduced in April, 2002 through another person also named Shri Sher Singh Bhati, S/o Shri Manvir Singh Bhati, R/o House No. 137, Gulabi Bagh, New Delhi -48, received `60,000/- from him, promising that he would secure employment for him in the High Court by the month of June or July, 2002. However, neither any such job was managed for him nor did the charged official refund the amount of `60,000/- despite requests and promises made by the charged official to the complainant.

According to Shri Krishan Gopal, he made the payment of `60,000/- to the charged official in the month of April, 2002, in the official vehicle No. 0079 parked near India Gate in the presence of their common friend Shri Sher Singh Bhati who works in Pant Hospital, and Shri Ramesh, the elder brother of Shri Krishan Gopal, and two friends of the charged official namely, Shri Tarun and Shri Vimal. The charged official had promised that he would get him (Krishan Gopal) employed in June/July, 2002. After the month of July had passed, he asked the charged official about his job to which the charged official replied that since Hon"ble the Chief Justice had been transferred he would get him employed in the month of August or September, 2002. When the charged official did not get his employment till September, 2002, he suspected that the charged official would

not be able to get him employed as promised. Then, he asked him to refund `60,000/- but the charged official refused to pay. However, he continued to demand the money back and the charged official promised that he would refund the amount after taking loan from his GPF. To prove his bonafide, the charged official gave a photocopy of the application for continued to visit the High Court regularly for several months but instead of paying the money the charged official called names and even gave beatings to him. In support of his complaint, the complainant has also submitted two affidavits dated 22.4.2003 and 28.5.2003 (one in Hindi and the other in English), duly sworn by him.

A second complaint/affidavit dated 2.6.2003 has been received from Shri Manadatt Sharma, S/o late Shri Sadanand Sharma, R/o Hose No. V-1/10, Phase-1 Budhvihar, Delhi 110041, to the effect that he came to know from his nephew, namely, Shri Kishore Sharma, working as Chowkidar in Tis Hazari Courts, that a person namely Shri Sher Singh Nainwal, S/o Shri Trilok Singh Nainwal, working as peon in the Delhi High Court could get people appointed in government service. According to him, Shri Kishore Sharma knew the charged official for the last about 5 years. According to the complainant, the charged official met his nephew, Shri Kishore Sharma in Tis Hazari and urged him that he could get a person, very close to him, employed in the High Court. When his nephew told him he (Complainant) got allured for the Government job and asked for arranging a meeting with the charged official.

When contacted, the charged official asked them to see him at Gate No. 1 in Tis Hazari. Accordingly, Shri Manadatt Sharma along with Shri Rajesh met the charged official outside Court No. 1, Tis Hazari Court where the charged official demanded `40,000/- as half payment in consideration of getting each of his two sons, namely, S/Shri Devender and Virender employed in the High Court and the balance amount was to be paid to him on joining duties. Thereupon his neighbour, Mr. Rajesh also requested for employment for himself. On the next day, i.e. 13.06.2000, the charged official telephonically informed them to come to the High Court along with the money. On 13th June, 2000, i.e. during the summer vacation, Shri Manadatt Sharma along with Shri Rajesh came to the High Court and gave the charged official `80,000/- as half payment for getting his two sons, namely S/Sh. Devender and Virender employed. The said amount was given to the charged official in the room of Shri R.K. Mehta, the then Deputy Registrar. Thereafter the charged official asked them to wait and claimed that he would make a telephone call to Shri Kamlesh Kumar, Administrative Civil Judge, Tis Hazari Courts. However, they were not aware whether any telephone call, as claimed, was made or not but the charged official informed them that Sahib was not in the Court. Then he counted `80,000/-. Then Shri Rajesh also paid `50,000/- to the charged official in their presence.

Thereafter the charged official kept on lingering the matter by making false promises. The charged official by then had started driving Staff Car of Shri D.K. Batra, PPS and promised the complainant that he would get the work done

through Shri D.K. Batra. The complainant also met the charged official many a times at the tea shop near Delhi High Court for return of the money. Thereafter Shri D.K. Batra removed the charged official from his office. When the complainant went to the house of the charged official demanding refund of his money and also talked to his father, his father told him that there was no need to come or make telephone call there and advised him to see the charged official in the Court only.

Then the complainant met the charged official in the High Court and the charged official again assured the complainant that he would get the complainant employed. Thereafter, the complainant continued to visit the residence of Hon'ble Mr. Justice C.K. Mahajan to see the charged official where he was posted. The charged official kept on assuring the complainant that he would get the complainant employed. Frustrated by this, the complainant lost hope of getting employment and demanded refund of his money, i.e., `80,000/- from the charged official who evaded refund thereof. The charged official also promised the complainant that he would refund the money in instalments of `20,000/- per month to the complainant after refund any money even after lapse of a long period and told him that he would pay when the money is available with him. The complainant has also enclosed with the complaint a copy of GPF withdrawal form given by the charged official.

A third complaint dated 2.6.2003 has been received from Shri Rajesh Kumar, S/o late Shri Gulab Chand, R/o House No. V.1/9, Budh Vihar, Phase-I, Delhi-110041. Shri Rajesh has stated that he had come to know that the charged official who is employed as a peon in the High Court arranges Government jobs for people. He had come to know about this through Sh. Manadatt Sharma. Sh. Rajesh has also stated that he, along with Shri Manadatt, met the charged official outside the Court No. 1 in Tis Hazari Courts. The facts mentioned in the affidavit/complaint of Shri Manadatt Sharma and Shri Rajesh are almost identical. Shri Rajesh has, inter alia, stated that the charged official called him along with Shri Kishore and Shri Manadatt on 13th June, 2000 at 4.00 P.M., with half payment as consideration for getting them employed in the High Court. On reaching the High Court premises, the charged official took S/Shri Manadatt, Kishore, Devender and the complainant, to the chamber of Shri R.K. Mehta, Deputy Registrar. The Charged official received `80,000/- from Manadatt and `50,000/- from Shri Rajesh. Then he claimed to have made a telephone call to Shri Kamlesh Kumar, Administrative Civil Judge, Tis Hazari Courts, and informed them that Sahib was not in his chamber and he was going to the residence of Shri Kamlesh Kumar to hand over the amount to him. Shri Rajesh has further stated that he is a very poor person and had arranged the money after mortgaging his house on which he is still paying the interest. Thereafter the charged official kept on lingering the matter for a long time. He neither got him employed as govt. servant nor did he refund the amount. To prove his bonafide for refund of the money, the charged official also handed over to the complainant a copy of affidavit/complaint.

A fourth complaint dated 24.07.2003 was received. Shri Ramlok Sharma, court Officer, wherein it has been, inter alia, stated that on 24.07.2003, at 7 A.M. after opening Lawyers' Chambers Block, he became busy in his routine work. At that time, the chartered official Room Attendant, who was in the room, went outside and asked Smt. Daya Wati, Billoo and other Safai-wallas to go from there. Then he came back to his room and asked Shri Ramlok Sharma whether he (Sher Singh) should clean the "Jala" behind him in the room, where he was sitting. As Shri Ramlok was busy in his work, he told the charged official to do his duty at other places on that floor. Thereafter the charged official insisted that he wanted to clear the "Jala" and while the Court Officer was busy in his work, the charged official cut-off the "Choti" of Shri Ram Lok Sharma from behind with a pair of scissors and went outside with the "Choti" uttering untasteful words and threatening the Court Officer to finish him.

Thus, the charged official by his aforesaid acts of omission and commission acted very irresponsibly and is thus guilty of unauthorizedly extending false promises to the above named persons; soliciting and receiving money in consideration of false promises so extended and misusing his official position; besides misbehaving, abusing and threatening his superior.

4. It is clear from the above that the charge-sheet was based on the complaints given by certain persons alleging that the Petitioner had taken money from them giving assurance that he would get them job in the High Court. It was alleged that these were false promises, as no such jobs were secured by the Petitioner. Three complaints were of this nature. Fourth complaint was by a Court Officer of this Court, viz., Shri Ramlok Sharma alleging that the Petitioner had cut off his "Choti" from behind with a pair of scissors and went outside with the "Choti" uttering untasteful words and threatening the Court Officer to finish him.

5. The Petitioner was asked to submit his written submission of defence. However, he failed to do so. In these circumstances, orders dated 17.1.2004 were passed appointing Shri B. Radhakrishna, Registrar (Admn.) as the Inquiring Authority to inquire into the aforesaid charges. By a separate order of even date, Shri H.C. Suri, Deputy Registrar was appointed as the Presenting Officer. The inquiry was held wherein nine witnesses were produced by the Department in support of the said charge. In defence, the Petitioner did not produce any witness. However, he appeared himself as a witness and was cross-examined by the Presenting Officer. After the conclusion of evidence, the Inquiry Officer gave opportunity to both the parties to file their written submissions. Whereas the Presenting Officer filed the written arguments, the Petitioner chose not to avail this opportunity.

6. The Inquiry Officer considered the evidence on record. He took Articles of Charges No. I to III together and after discussing the evidence, held these charges to be proved against the Petitioner. Thereafter, the Inquiring Authority took up articles of charges No. IV to VII jointly for discussion and returned the finding that these charges also stood proved against the Petitioner. Both sets of

articles pertain to taking money and holding out false promises of securing jobs for the complainants.

7. The Inquiring Authority thereafter discussed the last charge based on the complaint of Shri Ram Lok Sharma and opined that in absence of any independent witness to substantiate this article of charges, the Department had failed to do the same. The Petitioner, this time, responded to the said Memo by submitting his written representation dated 10.05.2005. After considering the inquiry report, evidence and representation submitted by the Petitioner, the impugned dismissal order dated 16.01.2006 was passed as mentioned above.

8. Mr. Duggal, learned Counsel appearing for the Petitioner, spearheaded a two-pronged attack to the inquiry report and impugned dismissal order. Insofar as the findings of the Inquiry Officer in the inquiry report are concerned, the submission of learned Counsel was that the false complaints were filed against the Petitioner, which were motivated and there was no evidence worth being named on the basis of which it could be held that these charges were proved. It was, thus, argued that the findings were perverse. As far as the impugned order is concerned, the main plank of attack is that it is an unreasoned order and therefore, should be struck down on this ground. We refer to the following case law relied upon by the counsel in support of his submission: 1) Hero Vinodh (minor) Vs. Seshammal, wherein it has been held that the meaning of "decision based on no evidence" refers not only to a case where there is total dearth of evidence but also refers to any case where evidence, taken as a whole, is not reasonably capable of supporting finding.

2) Kuldeep Singh Vs. The Commissioner of Police and Others, which is on the point that the findings recorded in domestic enquiry can be characterized as perverse if it is shown that no reasonable man could have come to those findings on the basis of evidence brought on record. The Court further held that if the findings are based on no legal evidence and the findings are mereipse dixit or based on conjectures and surmises then inquiry suffers from infirmity of non-application of mind and stands vitiated.

3) M.L. Jindal v. D.V. B. and Ors. [2006 VII A.D. (Delhi) 333] wherein the issue dealt with is the non-examination of material witness vitiating the enquiry and preponderance of probabilities.

4) Anil Kumar Vs. Presiding Officer and Others, , wherein the Apex Court held that the disciplinary enquiry is quasi judicial enquiry. Inquiry Officer is duty bound to act judicially and must record the reasons for conclusion by speaking order in the sense that the conclusion must be supported by reason.

5) Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, wherein it was held that the inferences from evidence be distinguished from conjectures or speculation. There can be no inference unless there are objective facts, direct or circumstantial, leading to the other facts which are sought to be established. The Court also held that the standard of proof is the

same both in civil cases and domestic enquiries.

6) Ministry of Finance and Anr. v. S.B. Ramesh [JT 1998 (1) SCC 319]. This judgment of the Apex Court deals with the minimum standard of proof in the following words:

13. We must observe that no serious attempt was made by the learned Counsel for the Appellants to attack the findings of the Tribunal rendered in the first part of the judgment. The Respondent, who appeared in person, presented his case by pointing out the portions in the first part of the judgment of the Tribunal and also placed his written arguments.

14. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW-1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18.6.91, observed as follows:

After these proceedings on 18.6.91 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18.6.91. Under Sub-Rule 18 of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry authority. The learned Counsel for the Respondents argued that as the inquiry itself was held ex-parte as the applicant did not appear in response to notice, it was not possible for the Enquiry authority to question the applicant. This argument has no force because, on 18.6.91 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex-parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the inquiry authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under Sub-rule 18 of Rule 14 of CCS (CCA) Rules. The omission to do this is a serious error committed by the enquiry authority. Secondly, we notice that the enquiry authority has marked as many as 7 documents in support of the charge, while SW-1 has proved only one document, namely, the statement of Smt. K.R. Aruna alleged to have been recorded in his presence. How the other documents were received in evidence are not explained either in the report of the enquiry authority or in the proceedings. Even if the documents which were produced along with the charge sheet were all taken on record, unless and until the applicant had requested the enquiry officer to mark certain documents in evidence on his side, the enquiry authority had no jurisdiction in marking all

those documents which he had called for the purpose of defending himself on the side of the applicant while he has not requested for making of these documents on his side. It is seen that some of these documents which is marked on the side of the defence not at the instance of the applicant, has been made use of by the enquiry authority to reach a finding against the applicant. This has been accepted by the disciplinary authority also. We are of the considered view that this is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with law should not have been received in evidence and that, any inference drawn from these documents is misplaced and opposed to law. We further find that the enquiry authority as well as, the disciplinary authority have freely made use of the statement alleged to have been made by Smt. K.R. Aruna in the presence of SW1 and it was on that basis that they reached the conclusion that the applicant was living with Smt. K.R. Aruna and that, he was the father of the two children of Smt. K.R. Aruna. The S.W. 1 in his deposition which is extracted above, has not spoken to the details contained in the statement of Smt. K.R. Aruna which was marked as Ex.1. Further it is settled law that any statement recorded behind the back of a person can be made use of against him in a proceeding unless the person who is said to have made that statement is made available for cross-examination, to prove his or her veracity. The disciplinary authority has not even chosen to include Smt. K.R. Aruna in the list of witnesses for offering her for being cross-examined for testing the veracity of the documents exhibited at Ex. 1 which is said to be her statement. Therefore, we have no hesitation in coming to the conclusion that the enquiry authority as well as, the disciplinary authority have gone wrong in placing reliance on Ex. 1 which is the alleged statement of Smt. K.R. Aruna without offering Smt. K.R. Aruna as a witness for cross-examination. The applicant's case is that the statement was recorded under coercion and duress and the finding based on this statement is absolutely unsustainable as the same is not based on legal evidence. The other documents relied on by the Enquiry authority, as well as by the disciplinary authority for reaching the conclusion that the applicant and Smt. K.R. Aruna were living together and that they have begotten two children have also been not proved in the manner in which they are required to be proved.

Then, again after extracting the relevant portions from the disciplinary authority's order, the Tribunal observed as follows: "We have extracted the foregoing portions from the order of the disciplinary authority for the purpose demonstrating that the disciplinary authority has placed reliance on a statement of Smt K.R. Aruna, without examining Smt. Aruna as a witness in the inquiry and also on several documents collected from somewhere without establishing the authenticity thereof to come to a finding that the applicant has conducted himself in a manner unbecoming of a Government servant. The nomination form alleged to have been filed by Sri Ramesh for the purpose of Central Government Employees' Insurance Scheme, was not a document which was attached to the memorandum of charges as one on which the Disciplinary Authority wanted to

rely on for establishing the charge. This probably was one of the documents which the applicant called for, for the purpose of cross-examining the witness or for making proper defence. However, unless the Government servant wanted this document to be exhibited in evidence, it was not proper for the Enquiry Authority to exhibit it and to rely on it for reaching the conclusion against the applicant. Further, an inference is drawn that S.B.R. Babu mentioned in the school records (admission registers and Sh. Ramesh mentioned in the Municipal records was the applicant, on the basis of a comparison of the hand-writing or signature or telephone numbers are only guess work, which do not amount to proof even in a disciplinary proceedings. It is true that the degree of proof required in a departmental disciplinary proceedings, need not be of the same standard as the degree of proof required for establishing the guilt of, an accused in a criminal case. However, the law is settled now that suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding. Viewed in this perspective we find there is a total dearth of evidence to bring home the charge that the applicant has been living in a manner unbecoming of a Government servant or that, he has exhibited adulterous conduct by living with Smt. K.R. Aruna and begetting children."

9. Now, we will take both these arguments for discussion in detail.

10. Re: Perversity of Findings:

Article of Charges I, II and III:

Insofar as Articles I, II and III are concerned, they are based on the complaint of Shri Krishan Gopal. It has two aspects. First, the Petitioner was introduced to the complainant Shri Krishan Gopal by one Shri Sher Singh Bhati and the Petitioner held out an assurance that he would get Krishan Gopal employed in this Court by the month of June or July, 2002 on payment of `60,000 as consideration for the same. In pursuance thereto, the said sum was paid by Krishan Gopal to the Petitioner in the month of April, 2002 in the presence of their common friend Shri Sher Singh Bhati, Shri Ramesh (elder brother of Krishan Gopal), Shri Tarun and Shri Vimal (two friends of the Petitioner). Second aspect relates to unauthorized use of staff car No. 0079 allotted to PPS to Hon'ble the Chief Justice, i.e., the Petitioner who was driving that car had misused the said car and had taken money in the said car. The submission of Mr. Duggal was that Krishan Gopal, who appeared as PW-3 in support of this charge, had produced Ex.PW3/5 purported to be the affidavit-cum-receipt, which was a false document on the face of it. He submitted that only a photocopy of this affidavit was produced and original was not produced. No date was either mentioned thereupon. There are no signature of witnesses or any signature at all. No purpose, which could be related to the allegations was mentioned thereupon. It was also argued that though allegation was that this document was executed in April, 2002 when the Petitioner allegedly took money from Shri Krishan Gopal, the back page of the stamp paper clearly reveal that it was purchased much after, i.e., after October, 2002. This ex facie proved that the document was fabricated. It was emphatically argued that there

was no whisper of the complaint, which was filed earlier and in support of such a false claim, this document was fabricated and introduced at a later stage.

11. We may mention that from the records, it is revealed that Shri Krishan Gopal(PW-3) has produced the document on 04.06.2004 at the time when his statement was being recorded. In examination-in-chief, he had supported the allegations made in the complaint (which was marked as Ex. PW3/1) supported by the affidavit dated 22.04.2003 marked as Ex. PW3/2. Affidavits dated 22.04.2003 and 28.05.2003 were marked as Ex. PW3/2 and 3/3 respectively. He had also stated that he had applied for the post of Court Attendant vide application dated 15.04.2002, which was marked as Ex. PW-3/4. He further stated that the Petitioner could not get him the job and thus he demanded his money back, but had not received the amount from the Petitioner.

12. In the cross-examination, the first question which was put to this witness was that whether any receipt of payment of `60,000 was taken by the witness. At that time, the witness produced a copy of the agreement dated NIL (Ex. PW-3/5). Significantly, no question on this affidavit was put to the said witness in cross examination and not even a suggestion was given that this document was forged; it did not bear his signature; why it was undated; where was the original, etc. Maybe, the stamp paper was purchased in October, 2002. Only on asking the question, witness could have explained as to whether the receipt was received in April, 2002 or in October, 2002.

13. Be that as it may, even if we exclude this document, we find that sufficient evidence was produced to prove this charge.

14. In the first place, there is a testimony of the complainant Mr. Krishan Gopal(PW-3). It is supported by his elder brother Mr. Ramesh (PW-7), who stated that an amount was given to the Petitioner in his presence near India Gate in the staff car of the High Court, which was driven by the Petitioner. He has corroborated with testimony of PW-3. As the misuse of staff car was linked with this car, as is clear from the above, Mr. D.K. Batra, the then Secretary of Hon'ble the Chief Justice was also examined as PW-4. He stated that the Petitioner was driving the car bearing No. 0079 of High Court, which was allotted to Mr. Batra. He also stated that the Petitioner used to keep the key of the car with him. Once or twice he came to know that the Petitioner was keeping the car in the High Court at late hours. He also categorically stated that it was brought to his notice that one Krishan Gopal had paid certain amount to the Petitioner. Significantly, Mr. Batra is not cross-examined at all. As pointed out above, no question was put to PW-3 by the Petitioner on this point.

15. Based upon the aforesaid testimonies and the nature of cross-examination, the Inquiry Officer concluded that this charge was proved. Insofar as Ex. PW3/5 is concerned, the Inquiry Officer has observed that during the preliminary inquiry before the Registrar (Vigilance) of this Court, the Petitioner has admitted this document as having been signed by him, though later on he denied his

signaturesthereupon in the regular inquiry. The Inquiry Officer observed that there is noreason for the complainant to produce a fake document. Be as it may, even if thisdocument is discarded, there was no reason to discard the oral testimony of theaforesaid witnesses, as their credibility could not be shaken by the Petitioner. Therefore, we are of the opinion that there was some evidence on the basis of whichthe Inquiry Officer returned his findings, which cannot be called to be a case of "no evidence" or perverse findings. It also cannot be said that no reasonableperson could have come to this findings on the basis of evidence brought on record. Therefore, the judgments cited by the learned Counsel for the Petitioner are notapplicable here.

16. Articles of Charges IV, V, VI and VII: In these charges two complainants areexamined, viz., Shri Manadatt Sharma and Mr. Rajesh Kumar. Again allegation in thecomplaint of Mr. Manadatt Sharma was that the Petitioner had demanded `40,000 ashalf payment in consideration of getting each of his two sons, viz., Sh. DevinderKumar and Sh. Virender Kumar to be appointed in the High Court. Balance paymentwas to be paid on joining. Complaint of Mr. Rajesh Kumar is also on similar line. As per the complaints, Shri Manadatt Sharma and Sh. Rajesh Kumar came to the HighCourt and gave the charged officer `80,000 in the room of Shr. R.K. Mehta, then Dy. Registrar of this Court, as half of the payment for getting his two sons employedin the High Court. Sh. Rajesh Kumar also gave him `50,000 in the said meeting. It is further mentioned in the complaint that a telephonic call was allegedly made bythe charged official to Sh. Kamlesh Kumar, Administrative Civil Judge, Tis HazariCourts. The charged official then informed them that Shri Kamlesh Kumar was not inthe Chamber and so the charged official was going to the residence of Sh. KamleshKumar to hand over the amount to him. It is further mentioned in the complaintthat the charged official kept on lingering the matter by making false promises. It is further submitted in the complaint that the charged official did not refundany money to them.

17. In support of these charges, Mr. Mandatt Sharma appeared as PW-1. In hisstatement, though he maintained that he had given the money but changed the stanceas his explanation was that this money was given as loan. He also stated that thematter had been compromised. Therefore, he wanted to withdraw the complaint forwhich purpose he filed an affidavit Ex. PW-1/1. Likewise, Rajesh Kumar (PW-2)reiterated that he had paid `40,000 out of `80,000 demanded by the Petitioner. He,however, further stated that since the Petitioner could not get him employed, hereturned money to PW-2.

18. Interestingly, the Petitioner did not dispute that he had received thepayments. However, his explanation is that the money taken from the said twopersons was by way of loans. The Inquiry Officer treated this plea as anafterthought and then observed as under:

To a question whether the charged official had taken permission to take loans aswas required under the conduct rules, he replied that he had taken loans fromprivate persons for which no permission was required and suggested that

permission was required only if the amount was taken from Government agency. This suggestion of the charged official is wrong as no Government official can demand and/or accept large amount of money even as a loan without prior sanction of the Government. The charged official has thus violated the provisions contained in CCS (Conduct) Rules in not applying for any such permission for raising a substantial amount of loan. If there had been any real need or intention to take loan the charged official should have taken prior permission to raise loan. Withdrawal of the complaint by the complainants is of no consequence, as it is proceeded that the charged official was taken huge amount from the complainants without even taking prior permission from the Department. Thus, Articles IV, V, VI and VII are proved against the charged official.

19. Mr. Duggal submitted that the Inquiry Officer went beyond the charge by entering into the question as to whether the Petitioner had violated the Conduct Rules in not taking prior permission for taking loans from private persons, as that was not the charge at all. However, we are of the opinion that the aforesaid observations of the Inquiry Officer are in the context that the Petitioner had not taken loan from the aforesaid two complainants. Otherwise, the Inquiry Officer has stuck to the charges. He had first arrived at the finding that giving of money by these two complainants to the Petitioner stood proved, then the Inquiry Officer dealt with the question as to whether the money was taken by way of loan or it was an afterthought plea. Holding that it was an afterthought plea, the Inquiry Officer also stated that if it was loan, then prior permission was required which was not taken. From this what is suggested by the Inquiry Officer is that the story/defence put for the by the charged official is afterthought. Therefore, it cannot be said that the Inquiry Officer has traversed beyond the charge-sheet. The findings of the Inquiry Officer are confined to Articles of Charges IV to VII, which have been proved according to the Inquiry Officer.

20. It was also submitted by Mr. Duggal that these two complainants were motivated. In fact, it was only loan, which was given by these two complainants to the Petitioner and as the Petitioner could not pay it back in time, just to put pressure upon him, they had given false complainant and insofar as Mr. Mandatta Sharma is concerned, he even withdrew the complaint after the matter was settled with him and money paid to him. Likewise, it was argued that the second complainant was also given back his amount.

21. After reading the statement of PW-1, Mr. Mandatta Sharma, we are of the opinion that the Inquiry Officer rightly returned the finding that he was withdrawing the complaint and had changed his stance in the inquiry alleging that he had given loan to the Petitioner. When he turned hostile, the Presenting Officer cross-examined him. Interestingly, in his first affidavit given in support of his complaint on the basis of which charge was framed against the Petitioner, he has even mentioned the name of Mr. D.K. Batra. If the complaint was wrong how he got the name of Mr. Batra or other names, who are the officials of the High Court in the said affidavit/complaint.

22. Insofar as Rajesh Kumar is concerned, he has maintained that his complaint was correct. However, he stated that he did not want to prosecute the complaint, as the money was refunded by the Petitioner. In his re-examination, he has again stated very clearly that the money was given on the assurance that the Petitioner will get him job in the office of District Judge and he had even applied for this job. No doubt, in the cross-examination, he has stated that the money was given as a loan, however, that does not jell with the Examination-in-Chief and re-examination. It becomes more apparent when we examine the statement of the Petitioner himself in the inquiry. He admitted that he had confessed that the amount was taken by him for arranging employment to the complainants in the following words:

When I gave the statement before Sh. H.P. Sharma, Registrar (Vig.), confessing that the amount was taken for arranging employment for the sons of Sh. Manadatt Sharma, Sh. Rajesh Kumar and Sh. Krishan Gopal. I was upset because they were demanding money back from me.

23. Thus, even in respect of this charge, the findings of the Inquiry Officer are based on evidence and cannot be treated as perverse.

24. Validity of Impugned Dismissal Order dated 16.01.2006: As noted above, submission of the learned Counsel for the Petitioner was that it is a non-speaking order. Learned Counsel relied upon the judgment of the Supreme Court in the case of Roop Singh Negi Vs. Punjab National Bank and Others, and particularly Para 23 thereof which reads as under:

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the Appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merelyipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

25. This judgment, however, would not come to the aid of the Petitioner. In the instant case, the Disciplinary Authority agreed with the findings of the Inquiry Officer. The impugned order clearly mentions that while arriving at this conclusion, the Disciplinary Authority had not only considered the Inquiry Report, but the findings and more significantly, the representation of the

Petitioner aswell. Once the Disciplinary Authority was concurring with the findings of the Inquiry Officer, it was not necessary to pass detailed order as the reasons given by the Inquiry Officer stood adopted by the Disciplinary Authority. This was so held by the Supreme Court in the case of National Fertilizers Ltd. and Another Vs. P.K. Khanna, and particularly the following paras:

9. Apart from misreading the Enquiry Officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the Disciplinary Authority is required to give reasons only when Disciplinary Authority does not agree with finding of the Enquiry Officer. In this case the Disciplinary Authority had concurred with the findings of the Enquiry Officer wholly, in Ram Kumar Vs. State of Haryana, , the Disciplinary Authority after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the Enquiry Officer, the finding of the Enquiry Officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order passed by the Disciplinary Authority in this case. Learned Counsel appearing on behalf of the Respondent sought to draw a distinction on the basis that the Disciplinary Authority had, in Ram Kumar's case itself quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words:

In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the Appellant. The punishing authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the Appellant that the impugned order of termination is vitiated as it is a non speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order.

(Emphasis supplied)

10. We respectfully adopt the view. The position is further clarified by Rule 33 of the Employees (Conduct Discipline & Appeal) Rules. It reads as follows:

1. The Disciplinary Authority, if it is not itself the Enquiring Authority may, for

reasons to be recorded by it in writing remit the case to the Enquiry Authority for fresh or further Enquiry and report and the Enquiring Authority shall there upon proceed to hold the further Enquiry according to the provisions of Rule 32 as far as may be.

2. The Disciplinary Authority shall, if it disagrees with the findings of the Enquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

3. If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule-29 should be imposed on the employee shall, notwithstanding anything contained in Rule 31, make an order imposing such penalty.

4. If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

11. It is apparent from Sub-rule (2) that the Disciplinary Authority is not required to record its reasons if it concurs with the Enquiry Officer's findings in contradiction with the situation in which the Disciplinary Authority disagrees with the findings of the Disciplinary Authority. Only in the latter case does Sub-rule (2) expressly mandate that the Disciplinary Authority shall, if it disagrees with the findings of the Enquiry Officer record its reasons for such disagreement as well as its own findings on such charges.

12. The Respondent's reliance on the decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., is misplaced. That decision relates to the right of a delinquent officer to a copy of the Enquiry Officer's report. In the course of the judgment the Court had no doubt said that the report of the Enquiry Officer is required to be furnished to the employee to make proper representation to the Disciplinary Authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment if any to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the Disciplinary Authority. It does not require the Disciplinary Authority to record separate reasons from those given by the Enquiry Officer. The concurrence of the Disciplinary Authority with the reasoning and conclusion of the Enquiry Officer means that the Disciplinary Authority has adopted the conclusion and the basis of the conclusion as its own. It is not necessary for the Disciplinary Authority to restate the reasoning.

26. The scope and ambit of the power of the High Court, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, to interfere with the findings arrived at in the departmental inquiry and the order of the Disciplinary Authority is laid down in various judgments. Some of which may be mentioned here. In the case of State of Andhra Pradesh Vs. Sree Rama Rao, , the Court held that in considering whether a public officer is guilty of the

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, does not apply and even if that rule is applied, 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 inquiry invalid. The High Court is not supposed to act in a proceeding under Article 226 of the Constitution, as a Court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry 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. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry 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 in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

We may hasten to add here that it is not a case of the Petitioner that the inquiry is not conducted in accordance with the relevant Rules or there is any procedural lapse or the Petitioner was not given proper opportunity to defend himself.

27. The aforesaid decision is followed by the Supreme Court in the case of *The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S. Patil and Another*, . The legal position was reiterated by the Supreme Court in the case of *Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora*, in the following words:

18. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of nonobservance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to few decisions of this Court on this topic viz., *State of Andhra Pradesh v. S. Sree Rama Rao* 1963 (3) SCR 25, *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, , *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, and *Nelson Motis Vs. Union of India and another*, .

28. Yet again, in the case of *Lalit Popli Vs. Canara Bank and Others*, , the principle was revisited in the following words:

16. It is fairly well settled that the approach and objective in criminal

proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him: whereas in criminal proceedings the question is whether the offences registered against him are established and if established that sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. [See *State of Rajasthan Vs. B.K. Meena and others*, . In case of disciplinary enquiry the technical rules of evidence have no application.

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

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

18. In *B.C. Chaturvedi Vs. Union of India and others*, the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own findings.

19. As observed in *R.S. Saini Vs. State of Punjab and Others*, in paragraphs 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits.

29. We, therefore, are of the opinion that it is not a case for interference with the impugned punishment order in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. This writ petition is devoid of any merit, which is accordingly dismissed. However, party shall be left to bear their own costs.