
(2015) 05 OHC CK 0031
In the Orissa High Court
Case No : OJC No. 8703 of 2001

Siba Prasad Pattnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) LabIC 2794

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : Jagannath Pattnaik, Senior Counsel, for the Appellant; B. Senapati, Addl. Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who was subjected to a disciplinary proceeding while working as Senior Asst. Manager (Civil) under Orissa Power Generation Corporation Ltd. has filed this application seeking to quash the initiation of disciplinary proceeding vide memo No. 552 dated 18.09.2000 Annexure-2, the inquiry report submitted by the inquiry officer dated 5.2.2001 vide Annexure-4, the notice to show cause issued vide order dated 23.2.2001 vide Annexure-5, the order of dismissal passed by the disciplinary authority vide office order No. 22/2001 dated 12.04.2001 under Annexure-7 and consequential adjustment of leave salary encashment and gratuity amount towards vehicle advance dated 3.7.2001 vide Annexure-9 and also the appellate order dated 14.01.2002 passed by the appellate authority vide Annexure-10 modifying the order of dismissal passed by the disciplinary authority to demoting him from Sr. Asst. Manager (E-2 Grade) to the rank of Asst. Manager (E-1 Grade).

2. The short fact of the case in hand is that the petitioner was appointed as an Asst. Manager with the approval of competent authority on 30.12.1992 under Orissa Power Generation Corporation (hereinafter referred to as OPGC Limited), a company established under the provisions of Companies Act. Thereafter the

petitioner was promoted to the post of Sr. Asst. Manager (Civil). While he was so continuing, as per the policy of privatization, 49% of the shares were transferred to A.E.S. a non-Indian company. Though the shares were transferred, the employees of the OPGC Ltd. continued to work under the said new management and their services remained protected. On 1.9.2000, the petitioner was placed under suspension and he was served with a memorandum of charge on the ground that the petitioner was in charge of execution and completion of the work of renovation of "F" type quarters in the ITPS colony at Banaharpali. In addition to it he was also responsible for execution of work of dispensing the debris and colony waste away from the colony area. The work order No. 5285 dated 3.6.1999 issued to Sri Nrupati Patra was valid upto 31.03.2000 under the terms and conditions mentioned therein. On 22.4.2000 the petitioner recommended the said work-done bill of Sri Patra for payment. On 3.5.2000 the petitioner was asked to furnish particulars of labour engaged in the said work for effecting provident fund deductions from the bills. Thereafter the petitioner immediately on the body of the bill made an endorsement which runs "the loading and unloading work of the debris have been carried out through departmental sweepers". On 8.6.2000 the petitioner put up a note before the General Manager (P&A) suggesting therein for entrustment of debris cleaning work to the existing contractor Sri Patra during the period from 8.6.2000 to 31.8.2000 at a total cost of Rs. 12960/-. After approval in the file, the petitioner issued order No. 78 dated 8.6.2000 entrusting the said work to Sri Patra. Consequently it follows that the petitioner was required to issue the work order with the similar terms and conditions embodied in order No. 5285 dated 3.6.1999. But on comparison of the work order dated 3.6.1999 and 8.6.2000, it is noticed that the words "including loading and unloading" were omitted. It was not mentioned in the work order dated 8.6.2000. It was notice that after approval of the G.M. (P&A) on 8.6.2000, the petitioner inserted the following sentence in his note dated 8.6.2000. The sentence which was inserted by way of interpolation by the petitioner runs as under:

"Provision for the same has been kept in the SE No. 7/2000-2001, 15% may be deducted as the scope does not cover loading and unloading."

In the said file, under the signature of Sri Patra, the petitioner has inserted an application wherein the petitioner assigned the date by way of overwriting as 29.5.2000 and there is no reference to the said application of Sri Patra in the note furnished by the petitioner.

3. The petitioner being the Sr. Asst. Manager (Civil) was aware to renovate "F" type quarters for better accommodation of its staff. Before full implementation of the proposal, as a token of sampling the quarter No. F-430 and F-431 were renovated and merged together converting them as one quarter and the petitioner was entrusted with the civil portion of the renovated work and he completed the same through contractor Sri Hemanta Panda. On 23.8.2000, the petitioner put up a note through Sri P.K. Padhy, Deputy Superintendent (E/M) for

approval showing an estimate of Rs. 38144/- towards renovation work and Rs. 2394/- towards collecting and spreading of morum. The General Manager (P&A) insisted upon the petitioner that the cost of renovation should have been around Rs. 32000/- but the petitioner insisted that the actual cost of renovation was Rs. 38144/- as the job was already completed. The General Manager (P&A) directed Deputy Superintendent (E/M) for joint measurement with Estimator of Community Department.

4. On 30.8.2000, the petitioner put up a measurement report wherein he reported that the value of renovation work was Rs. 33863.51 and for morum spreading and other jobs was Rs. 2394/-. The measurement report furnished by the petitioner on 23.8.2000 and 30.8.2000 are inconsistent in respect of quantity and rate. The petitioner put up fictitious note showing incorrect measurement to extend unwarranted benefit to the contractor at the cost of the corporation. Accordingly, the departmental proceeding was initiated against the petitioner for two charges, namely, (1) submission of false measurement report (2) manipulation of note dated 8.6.2000 of the Managing Director. Thereafter the petitioner was called upon to show cause and accordingly he submitted show cause reply to the charge levelled against him vide Annexure-3 dated 23.9.2000.

5. The opposite party Nos. 2 and 3 having not satisfied with the cause shown by the petitioner in reply to the notice of show cause, appointed an inquiry officer on 30.09.2000. The petitioner in course of inquiry proceeding requested the Managing Director, the disciplinary authority on 9.10.2000 vide Annexure-3/1 to change the inquiry officer. But such request was rejected on 23.10.2000 allowing the inquiry officer to proceed with the matter and accordingly the inquiry report was submitted by the inquiry officer on 5.2.2001 vide Annexure-4 wherein the charge of submission of false measurement report dated 22.04.2000, was not proved but the charge of false endorsement on bill, intentional omission of words "including loading and unloading" while issuing order dated 8.6.2000 and insertion of sentence in the notice dated 8.6.2000 and insertion of application dated 29.5.2000 without making reference to the same in the note was proved.

6. Considering such inquiry report, the disciplinary authority issued second show cause notice vide Annexure-5 dated 23.02.2001 to the petitioner as to why his services shall not be dispensed with. In response to the same, the petitioner submitted his second show cause reply, but the disciplinary authority imposed punishment of dismissal from service on the basis of the findings arrived at by the inquiry officer vide Annexure-7 dated 12.04.2001. Against such imposition of punishment of dismissal from service, the petitioner preferred an appeal before the Chairman vide Annexure-8 dated 7.5.2001. However, the appellate authority considering the contention raised by the petitioner and after perusing the records available, modified the order of punishment of dismissal from service dated 12.04.2001 under Annexure-7 by imposing punishment of demotion of the petitioner from Sr. Asst. Manager (E-2 Grade) to Asst. Manager (E-1 Grade) vide Annexure-10 dated 14.01.2002, pursuant to which, the petitioner submitted his

joining report vide Annexure-11 and on accepting his joining report, he was posted under General Manager-II (I/c) Berhampur Mini Hydel Division with headquarter at Berhampur vide Annexure-12 dated 16.1.2002. In response to the same, the petitioner reported to join his duty on 19.1.2002 vide Annexure-13. Against such imposition of penalty following disciplinary proceeding, this application has been filed.

7. Mr. Jagannath Pattnaik, learned Senior Counsel appearing for the petitioner urged that the petitioner has not been provided with adequate opportunity to show cause which is a part of principles of natural justice. Thereby the order imposing penalty suffers from non-compliance of principles of natural justice. It is further urged that the inquiry officer, who was appointed by the disciplinary authority happens to be the legal retainer of the company and his fairness is doubtful. Therefore, the inquiry is being biased against the petitioner. The inquiry having not been done in consonance with the provisions of law basing upon which the punishment has been imposed cannot be sustained in the eye of law. It is further urged that though the petitioner sought for personal hearing before the appellate authority and the same having been denied, there has been gross violation of principles of natural justice. The appellate authority instead of modifying the order of dismissal to punishment of demotion, should have set aside the entire order and allowed the petitioner to continue in service as before. In order to substantiate his contention, he relied upon the judgments in Union of India (UOI) and Others Vs. Naman Singh Sekhawat, (2008) 2 CLT 272 : (2008) 225 ELT 161 : (2008) 118 FLR 1121 : (2008) 4 JT 150 : (2008) 4 SCALE 360 : (2008) 4 SCC 1 : (2008) 3 SLJ 294 : (2008) AIRSCW 2813 , Union of India Vs. K.A. Kittu And Others, AIR 2000 SC 3727 : (2001) 88 FLR 244 : (2000) 3 JT 17 Supp : (2001) 1 LLJ 157 : (2000) 7 SCALE 435 : (2001) 1 SCC 65 : (2001) SCC(L&S) 8 : (2000) AIRSCW 4168 : (2000) 7 Supreme 717 , M.V. Bijlani Vs. Union of India (UOI) and Others, AIR 2006 SC 3475 : (2006) 102 CLT 635 : (2006) 109 FLR 717 : (2006) 4 JT 469 : (2006) 2 LLJ 800 : (2006) 4 SCALE 146 : (2006) 5 SCC 88 : (2006) SCC(L&S) 919 : (2006) 3 SLJ 184 : (2006) AIRSCW 2096 : (2006) 3 Supreme 393 , Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, AIR 2006 SC 1748 : (2006) 109 FLR 705 : (2006) 4 JT 404 : (2006) 2 LLJ 806 : (2006) 4 SCALE 181 : (2006) 4 SCC 713 : (2006) SCC(L&S) 840 : (2006) 3 SLJ 211 : (2006) 1 UJ 541 : (2006) AIRSCW 1969 : (2006) 3 Supreme 459 .

8. Mr. R.K. Rath, learned Senior Counsel appearing for opposite party Nos. 2 and 3 strenuously urged that the grounds which have been formulated in the writ application has never been urged before the appellate authority. Since the order of the disciplinary authority merges with the order of the appellate authority, unless the grounds which have been stated in the writ application is urged before the appellate authority, there is no question of reconsideration of the same at this stage. It is further urged that there is no pleadings available before the appellate authority to the extent that the inquiry officer is biased and no materials have been produced before this Court indicating that the petitioner has

ever filed application before the inquiry officer seeking his change making allegation against him. It is further urged that the petitioner is being represented by his counsel before the inquiry officer in a disciplinary proceeding, therefore, the entire proceeding is made known to the petitioner. In the event the petitioner wanted to change the inquiry officer then he could have filed an application before such inquiry officer. But it appears from the record that no such prayer has been made by the petitioner before the inquiry officer. Therefore having submitted to the jurisdiction of the inquiry officer and having participated therein subsequently the petitioner cannot raise an objection that the inquiry officer is biased and the proceeding has to be quashed. So far as personal hearing of the petitioner in the appeal proceeding is concerned, there is no such provision under the law to give a personal hearing to the appellant in the appeal stage.

9. So far as the allegation of non-compliance of principles of natural justice is concerned, it is urged that the petitioner sought for certain documents and the same was not provided to him but that ipso facto cannot be fatal to the inquiry proceeding if the same has not been relied upon in the inquiry. It is further urged that the grounds which have not been taken in the appeal, cannot be raised for the first time in the writ application and this Court is not acting as an appellate authority over the order passed by the appellate authority or disciplinary authority so as to interfere with the proceeding itself. To substantiate his contention, he has relied upon the judgments in Associated Cement Companies Ltd. Vs. T.C. Shrivastava and Others, AIR 1984 SC 1227 : (1984) 49 FLR 102 : (1984) LabIC 864 : (1984) 2 LLJ 105 : (1984) 1 SCALE 596 : (1984) 1 SCC 87 Supp : (1984) SCC 87 Supp : (1984) 3 SCR 361 : (1984) 1 SLJ 657 : (1984) 16 UJ 627 , Oriental Bank of Commerce and Another Vs. R.K. Uppal, (2011) 131 FLR 56 : (2011) 9 JT 1 : (2011) 4 LLJ 1 : (2011) 8 SCALE 634 : (2011) 8 SCC 695 : (2011) 10 SCR 218 : (2011) AIRSCW 5779 : (2011) 5 Supreme 490 , Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen, AIR 1975 SC 2125 : (1975) 30 FLR 169 : (1975) LabIC 1508 : (1975) 1 LLJ 391 : (1975) 4 SCC 731 : (1975) 7 UJ 161 , Thanjavur Textiles Ltd. Vs. B. Purushotham and Others, AIR 1999 SC 1290 : (1999) 2 JT 364 : (1999) 1 LLJ 1049 : (1999) 2 SCALE 216 : (1999) 3 SCC 316 : (1999) SCC(L&S) 677 : (1999) 1 SCR 1150 : (1999) AIRSCW 979 : (1999) 3 Supreme 409 , Saran Motors (Private) Ltd, New Delhi v. Viswanath and another, 1964 (II) LLJ 139 , Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another, AIR 2010 SC 142 : (2010) 124 FLR 108 : (2009) 10 JT 340 : (2009) 4 LLJ 644 : (2009) 10 SCALE 334 : (2009) 10 SCC 32 : (2009) 2 SCC(L&S) 729 : (2009) 11 SCR 972 : (2010) 1 SLR 649 , State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, AIR 2002 SC 1241 : (2002) 93 FLR 314 : (2002) 2 JT 459 : (2002) LabIC 978 : (2002) 2 LLJ 539 : (2002) 2 SCALE 413 : (2002) 3 SCC 443 : (2002) 2 SCT 305 : (2002) AIRSCW 1033 : (2002) 2 Supreme 191 , Syndicate Bank and Others Vs. Venkatesh Gururao Kurati, AIR 2006 SC 3542 : (2006) 108 FLR 1043 : (2006) 2 JT 73 : (2006) 1 LLJ 988 : (2006) 2 SCALE 101 : (2006) 3 SCC 150 : (2006) SCC(L&S) 487 : (2006) 1 SCR 920 : (2006) 2 SLJ 285 : (2006) AIRSCW 680 :

(2006) 1 Supreme 582 , Government of Tamilnadu and others v. S. Vel Raj, AIR 1997 SC 1990 , Shardul Singh Vs. The State of Madhya Pradesh and Others, AIR 1966 MP 193 : (1967) J LJ 21 : (1968) 2 LLJ 274 : (1966) 11 MPLJ 144 , State Bank of India Vs. Ram Lal Bhaskar and Another, (2011) 131 FLR 1109 : (2011) 12 JT 286 : (2011) LLR 1233 : (2011) 11 SCALE 589 : (2011) 12 SCR 1036 : (2012) 1 SLJ 108 , State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, AIR 2011 SC 1931 : (2011) 129 FLR 937 : (2011) 4 JT 14 : (2011) 3 LLJ 13 : (2011) LLR 634 : (2011) 4 SCALE 56 : (2011) 4 SCC 584 : (2011) 1 SCC(L&S) 721 : (2011) 3 SCR 589 : (2011) AIRSCW 2583 , State Bank of India and Others Vs. Ramesh Dinkar Punde, (2006) 110 FLR 1159 : (2006) 7 JT 383 : (2006) 3 LLJ 563 : (2006) 8 SCALE 11 : (2006) 7 SCC 212 : (2006) SCC(L&S) 1573 : (2006) 4 SCR 511 Supp : (2007) 2 SLJ 78 , Pfizer Limited Vs. Mazdoor Congress and others, (1996) 6 AD 346 : AIR 1996 SC 2618 : (1996) 74 FLR 2198 : (1996) 7 JT 239 : (1996) 2 LLJ 891 : (1996) 6 SCALE 6 : (1996) 5 SCC 609 : (1996) 4 SCR 716 Supp : (1997) 1 SLJ 39 , Syama Sundar Pani v. RDC, Central Division and others, 1985 (1) OLR 541.

10. On the basis of the facts pleaded above, it is to be considered whether:

1. The petitioner has been given adequate opportunity to defend his case in compliance to principles of natural justice;
2. The inquiry officer has ever been biased against the petitioner while conducting inquiry.
3. This Court in exercise of power under judicial review can reassess the evidence which are available on record and come to a different finding from that of the finding arrived at by the fact finding authority, namely, the disciplinary authority and appellate authority;
4. This Court can interfere with the quantum of punishment imposed in a disciplinary proceeding and
5. What other relief.

Issues Nos. 1 to 3:

11. As it appears from the charges levelled against the petitioner in Annexure-2. Paragraph-10 of the same is quoted below:

"10. From the foregoing facts it is apparent that Sri S.P. Pattnaik, Sr. Asst. Manager (Civil) with criminal intention in order to extend unwarranted benefits to the contractor Sri Nrupati Patra and Hemanta Panda submitted false measurement report and manipulated note dated 8.6.2000 inserved new document into the file and acted in a manner prejudicial to the interest of the Corporation and neglected in his work. Being an employee of executive cadre his above acts not only misrepresented the whole facts to his controlling officer with an ill intention but also lost the confidence as a subordinate."

So far as the false measurement report is concerned, the inquiry officer has

found that the disciplinary authority while framing charge misconstrued the estimates as the final measurement. Therefore, he has concluded that this charge has failed. So far as other charges are concerned i.e. unwarranted benefits to the contractor, both the inquiry officer and the disciplinary authority have held against the petitioner. But before coming to such a conclusion, it is to be examined whether the principles of natural justice has been complied with in letter and spirit. As it appears, the General Manager (M.W.3) has stated that "the insertion made in Ext.3/1 by the CSO will not benefit the contractor (volunteers) but will benefit the CSO." This statement is made available at page 96 of the writ petition. The allegation of unwarranted benefit to the contractor has not been supported by the relevant witness of the department and as such the petitioner has not been provided any opportunity to indicate whether his conduct is to extend the unwarranted benefit to the contractors, rather it is just reversed. In any case, the inquiry officer has not made any reference to the vital evidence M.W.-3. More so, the inquiry officer examined two witnesses as E-1 and E-2 without providing their names prior to the inquiry proceeding, since those witnesses have not supported the case of the department. Even though they have been examined, the inquiry officer has not taken into consideration their evidence while submitting the inquiry report. It is further urged that there is violation of the principles of natural justice due to non-supply of documents. To that extent, it can be construed that if the documents have not been relied upon, non-supply of the same may not be fatal to the delinquent officer, as such it does not vitiate the proceeding in any manner. With regard to the allegation that the inquiry officer is the legal retainer of the company and was biased against the petitioner cannot be inferred unless the same is established by cogent materials on record. But nothing has been produced to establish the allegation that the inquiry officer was biased against the petitioner.

12. The entire proceeding is regulated by the OPGC Ltd. (Disciplines and Appeal) Rules, 1998, which is applicable to the petitioner. If the inquiry has been conducted in consonance with the 1998 Rules, that ipso facto is sufficient to rule out the allegation of bias against inquiry officer in the proceeding itself. It is strenuously urged that interpolation in Ext.3/1 as alleged has not caused any loss to the organization even taking into consideration as it is, it has not caused any financial loss to the organization and as such if the 15% will be taken into consideration then 15% of Rs. 12390/- becomes around Rs. 800/- and for that purpose the disciplinary authority could not have imposed a major penalty of dismissal from service. This Court is not sitting as an appellate authority over the orders passed by the disciplinary authority as well as the appellate authority. Therefore, this Court refrains from giving any finding on that score at this point of time.

13. Reliance has been placed on the decision in *Union of India and others v. Naman Singh Shekhawat* (supra), wherein the apex Court held that the bias on the part of the inquiry officer is explicit from the record.

14. In *Union of India and K.A. Kittu and others* (supra), the apex Court held that the inquiry report is bad in law inasmuch as the evidences of all the witnesses examined by the delinquent officer was not at all considered by the inquiry officer. Therefore, the court below held that the inquiry officer was biased and also there was violation of principle of natural justice.

15. On the evidences adduced by the witnesses referred to E-1 and E-2, it is to be considered whether such evidence has been taken into consideration by the inquiry officer at the time of reaching a conclusion of finding of guilt against the delinquent officer. But at it appears, those evidences were not taken into consideration. Therefore, non-furnishing the names of the aforesaid witnesses prior to their examination is fatal to the proceeding itself.

16. In *Narinder Mohan Arya* (supra), the apex Court held that the Court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. Applying the said principle, the evidence adduced on behalf of the management opposite party Nos. 2 and 3, it appears has no nexus with the charges. Therefore, while giving finding the inquiry officer has not referred to the evidences of E-1 and E-2. Even though they have been examined by the inquiry officer, the same does not affect the delinquent officer in any manner.

17. In *M.V. Bijlani v. Union of India and others* (supra), in paragraph-25, the apex Court states as follows:-

"25. It is true that the jurisdiction of the Court in judicial review is limited. Disciplinary Proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charges. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing 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. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

Applying the test to the present context, it would appear that even though the inquiry officer examined two of the witnesses and their evidence has not been utilized against the delinquent officer, it cannot be construed that there has been non-compliance of principle of natural justice.

18. It appears from the record and looking into Annexure-8, the appeal memo filed by the delinquent officer, the petitioner before the appellate authority that

the question which has been raised in the writ application had not been urged before the appellate authority. For the first time, the petitioner raised question with regard to biasness of the inquiry officer, who acted illegally and put 159 questions and relied upon additional documents. Those questions were not pleaded in the appeal memo vide Annexure-8. Therefore, whatever pleadings are made available before the appellate authority, the appellate authority took into consideration the same and modified the punishment of dismissal to punishment of demotion and allowed the petitioner to continue in service. If this contention was not raised before the appellate authority, it is difficult to accept the argument now advanced before this Court for just and proper adjudication of the matter that the inquiry officer was biased against the petitioner. It is appropriate to know the principle of law laid down by the Constitution Bench of the apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 . Paragraph-8 of the said judgment is quoted below:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, AIR 1952 SC 16 : (1952) 1 SCR 135 :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.

A Caveat."

19. The inquiry officer while conducting the inquiry found the petitioner guilty of the charges levelled against him on the basis of materials against him. So far as the interpolation of documents is concerned, even though the same may not cause loss to the organization but the conduct of the person has to be taken into consideration and considering the same punishment has been imposed. Subsequently in appeal since no ground has been taken as raised before this Court in the present proceeding and the order of the disciplinary authority having merged with the final order, this Court is of the considered view that in absence of any material available, the finding arrived at by the appellate authority should not be interfered with.

20. This Court is of the considered view that since the points which have been raised before this Court having not been raised before the appellate authority vide Annexure-8, it is not just and proper to adjudicate the same in a writ jurisdiction in exercise of power under Article 227 of the Constitution of India.

21. It is urged before this Court that while hearing the appeal though the delinquent officer sought for personal hearing, the same has not been granted. Therefore, there is violation of principles of natural justice.

22. In *Oriental Bank of Commerce (supra)*, the apex Court held that personal hearing may not be required where appellate authority on consideration of entire material placed before it, confirms, reduces or sets aside order appealed against. Applying the said principle to the present context, even if the petitioner asked for personal hearing at the appellate stage that ipso facto cannot be construed that there is non compliance of principles of natural justice and this Court should quash the entire proceeding. Asking several questions by the inquiry officer, which is clarificatory in nature cannot defeat the purpose of inquiry and cannot construe that there is non compliance of principle of natural justice. To find out truth if the inquiry officer has formulated various questions which is clarificatory one, then in that case it cannot be construed that there is violation of principles of natural justice.

23. In *Mul Chandani Electrical and Radio Industries Ltd. (supra)*, the apex Court held that if the inquiry officer has put questions to witnesses by way of clarification, enquiry proceeding cannot be impeached as unfair.

24. In view of the facts and circumstances narrated above, this Court is of the considered view that the charges against the petitioner so far as false measurement is concerned has not been proved but only allegation of interpolation on the document having been proved, the penalty has been imposed. Even if there is no loss caused to the organization because of the interpolation of the sentence in the office note dated 8.6.2000, but reasons for such interpolation has not been explained in proper perspective. Therefore, the contention raised that there is non compliance of principle of natural justice while adducing evidence and non supply of documents and the inquiry officer being biased has reached such conclusion cannot be sustained in the eye of law in view of the fact that such questions have never been raised before the appellate authority while filing memo of appeal. Rather the appellate authority considered the materials placed before him and modified the order of the disciplinary authority and passed order demoting the petitioner from Sr. Asst. Manager to Asst. Manager and as such there is no perversity in awarding such punishment by the appellate authority so as to interfere with the same at this stage. The materials having been not utilized against the petitioner for giving such conclusion, this Court is of the considered view that the allegation of non-compliance of principles of natural justice cannot be sustained in the eye of law. The issues are answered accordingly.

Issue Nos. 4 and 5

25. It is well settled principle of law and the apex Court time and again in *State Bank of India v. Ram Lal Bhaskar and another*, *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya* and *State Bank of India and others v. Ramesh Dinkar Punde* has held that the Court cannot act as an appellate authority over the order passed by the disciplinary authority and the appellate authority. Therefore, in exercise of judicial review, this Court can only examine whether there is infraction of any statutory provision governing the field while following the procedure and if there is procedural lapses and in that case, the Court can interfere with the same. But as it appears in the present case, no instance of any statutory infraction done by the enquiry officer, the disciplinary authority or the appellate authority at any point of time has been brought to the notice of this Court. So far as non compliance of principle of natural justice and biasness of the inquiry officer are concerned, the same have been answered while dealing with issues Nos. 1 to 3 mentioned supra. Therefore, there is no need to answer the same once again.

26. In that view of the matter, this Court is of the considered view that the jurisdiction of the Court in exercise of judicial review being very limited in nature, this Court is not inclined to interfere with the order passed by the appellate authority. Issues Nos. 4 and 5 are answered accordingly.

27. In view of the findings arrived at by this Court as discussed above, this writ petition merits no consideration and accordingly the same is dismissed. However, there is no order as to cost.