

(2004) 10 AHC CK 0136
In the Allahabad High Court
Case No : C.M.W.P. No. 43787 of 2001

S.M.I. Kazim

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Central Vigilance Commission Act, 2003 — Section 8
Central Vigilance Commission Ordinance, 1999 — Section 3(1)
Companies Act, 1956 — Section 442
General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25, 25(2), 29
Prevention of Food Adulteration Act, 1954 — Section 20A
Uttar Pradesh Disciplinary Proceeding (Administrative Tribunal) Act — Section 4(4)

Citation : (2005) 1 ESC 297 : (2005) 2 UPLBEC 1362

Hon'ble Judges : S. Rafat Alam, J; Mukteshwar Prasad, J

Bench : Division Bench

Advocate : Ravi Kant, R.A. Akhtar, Akhtar Hussain and Nitin Sharma, for the Appellant; A.B. Saran, A.K. Singh and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S. Rafat Alam, J.—In the instant writ petition, the petitioner has prayed for quashing of the order of the General Manager dated 17.10.2001 imposing punishment of compulsory retirement of the petitioner from service and also for quashing the order of the Chairman-cum-Managing Director, dated 2.9.2002 dismissing his appeal against the above order.

2. The facts giving rise to the present writ petition, briefly stated, are that the petitioner while working as Manager of the Kanpur Regional Office in the New India Assurance Company Ltd., was found to have committed irregularities/misconduct in respect of approval of claims of the insured during the period 1996-1998. Accordingly, the General Manager, who was his disciplinary authority, decided to proceed against him departmentally. Consequently, the departmental proceeding was initiated vide office order dated 11.2.2000 and he was placed under suspension. The memo of charges alongwith list of documents relied upon

by the disciplinary authority was accordingly served upon the petitioner, which are as under :

"1. It is alleged that Sri S.M.I. Kazim, with ulterior motive and mala fide intention, approved and paid 2 survey fee bills submitted by M/s S.K. Ahuja & Associates, Kanpur as mentioned below :

(i) Rs. 21,916/- paid on 18.11.1997.

(ii) Rs. 59,130/- paid on 19.11.1997.

These bills were pertaining to Patna RO and Shri S.M.I. Kazim, without any authorisation and in a most irregular manner and also without ascertaining full details of the relevant bills from Patna RO, gave his approval for payment. The bill submitted to Patna RO was showing an amount of Rs. 57,649/- whereas the bill Submitted to Kanpur RO showed the amount of Rs. 59,130/-, which was paid on 19.11.1997.

Similarly, while Kanpur RO made a payment of Rs. 21,9167-on 18.11.1997 to M/ s. S.K. Ahuja & Associates, the bill submitted to Patna RO shows altogether a different amount. In this case there was a joint survey and the survey fee bill of joint surveyor was settled for Rs. 6,743/-. Therefore, there is a difference in bill amounts in this case also.

Shri S.M.I. Kazim has no locus-standi to settle the survey fees bills pertaining to Patna RO as the survey deputation was done by Patna RO and the bills should have been settled by Patna R.O. and/or its Divisional Offices only.

M/s. S.K. Ahuja & Associates refunded a sum of Rs. 57,649/- in December 1998 against the actual payment of Rs. 59,130/- by Kanpur RO and the balance of Rs. 1,481 is still to be returned. By settling these 2 bills, without ascertaining full details from Patna RO, a loss of Rs. 23,397/- was caused to the Company by Shri S.M.I. Kazim.

2. It is alleged that Shri S.M.I. Kazim, with ulterior motive and malafide intention, settled a claim (old Consumer Forum Case No. 41/93-new Claim No. 47/98/24) under Fishery Policy No. 4742010200244, A/c. Shri Tausiful Hassan. This claim was initially repudiated by Kanpur DOI and the case filed before the Consumer Forum was pending. It was revealed that the documents submitted by the insured, Shri Tausiful Hassan were forged and bogus. Instead of taking effective defence before the Consumer Forum. Shri S.M.I. Kazim obtained a favourable legal opinion from Advocate, Shri Gopi Shyam Nigam, and settled the claim of Rs. 1,18,000/- thereby caused wrongful loss of equivalent amount to the Company.

3. It is alleged that Shri S.M.I. Kazim, with ulterior motive and malafide intention settled Claim No. 44/93/005 under Boiler Insurance Policy No. 4442170233001 A/ c. M/s. Balarampur Chini Mills Ltd. for a sum of Rs. 3,84,450/- by appointing different surveyors in order to obtain a favourable survey report, totally ignoring

the opinion given by the first surveyor, M/s. Premier Consultancy Services, who had stated that the claim does not fall under the purview of the Policy. The concerned claim file was examined by the Technical Deptt. Head Office who had obtained a technical expert's opinion, according to which the claim was not payable. The action of Shri S.M.I. Kazim resulted in a financial loss of Rs. 3,84,450/- to the Company.

4. It is alleged that Shri S.M.I. Kazim, with ulterior motive and mala fide intention, settled Claim No. 44/93/010 under Boiler Insurance Policy No. 4442170233001 A/c. M/s. Balarampur Chini Mills Ltd. for a sum of Rs. 1,89,232/- by appointing different surveyors in order to obtain a favourable survey report, totally ignoring the opinion given by the first surveyor, M/s. Premier Consultancy Services, who had stated that the claim does not fall under the purview of the Policy. The concerned claim filed was examined by the Technical Deptt. Head Office who had obtained a technical expert's opinion, according to which the claim was not payable. The action of Shri S.M.I. Kazim resulted in a financial loss of Rs. 1,89,232/- to the Company."

3. The petitioner challenged the order of his suspension before this Court by filing Civil Misc. Writ Petition No. 13149 of 2000, which was disposed of vide order dated 20th April, 2000 with the direction to conclude departmental proceedings within three months and till the completion of enquiry, the petitioner would be paid full salary and allowances and was also to be paid all benefits which he was getting prior to his suspension.

4. Aggrieved, New India Assurance Company (respondent No. 1) challenged the aforesaid order before the Hon"ble Supreme Court in Civil Appeal No. 5015 of 2000. The Hon"ble Supreme Court vide order dated 17.1.2001 disposed of the appeal with the direction that the enquiry in question may be completed within four months from the date of the order and quashed the order of this Court dated 20.4.2000.

5. The petitioner contested the proceeding before the Enquiry Officer. The Enquiry Officer thereafter submitted his report on 14.5.2001. Consequently, a notice dated 22.5.2001 was given to the petitioner to give his reply to the finding of the Enquiry Officer. The Disciplinary Authority thereafter having considered the report of the Enquiry Officer and the show cause furnished by the petitioner and looking to the seriousness of the misconduct committed by the petitioner, awarded punishment of compulsory retirement vide order dated 17.10.2001. It further appears that the petitioner thereafter went in appeal before respondent No. 2, Chairman-cum-Managing Director, the appellate authority, which was also not found favour, and was dismissed vide order dated 2nd September, 2002, and has been impugned in this petition.

6. The petitioner, who appeared in-person, and made his submissions. He also filed written submissions, which are on record.

7. It is, inter alia, argued that the petitioner joined the services of respondent

No. 1 in the year 1971 and till the impugned charges were levelled against him, he had unblemished service record with impeccable integrity and his work was always appreciated by the superior officers because of his managerial skill and hard work. It is submitted that during his posting as Regional Manager, Bhopal Region, the business of respondent No. 1 got tremendous boost and even at Kanpur due to his sheer hard work and devotion the profit of respondent No. 1 registered steep rise more than the profit earned by the entire company, which was highly applauded by the Chairman/Managing Director. However, when he was not given his due promotion to the post of Assistant General Manager he lodged protest and filed Writ Petition No. 36105 of 1997 before this Court, which possibly was not liked by the high-ups and for that reason false complaints were engineered malafidely to spoil his spotless career. It is submitted that Shri S.K. Basu posted at regional office Calcutta was deputed to find out some materials against the petitioner, who in his report dated 31.3.1999 alleged that irregularities were committed by the petitioner in giving approval of four claims of the insured while working as the Manager, Kanpur Region on the basis of which the impugned charges (Annexure-2) were framed against him. He further urged that the impugned proceeding was initiated at the dictate and behest of Chief Vigilance Commissioner and thus, it is violative of Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (in short "the Rules"), which provides that the competent authority i.e. the disciplinary authority alone having been satisfied that there are grounds for inquiring into the truth of any imputation or misconduct or misbehaviour against an employee, can either himself inquire into the charges, or appoint any public servant as inquiring authority to inquire into the truth thereof, and the Chief Vigilance Commissioner has no role in the matter of disciplinary proceeding against the officers and employees of the respondents-Company. But in the case in hand the impugned proceeding was initiated on the direction of the Chief Vigilance Commissioner. Even the inquiry officer Shri R.K. Bajaj was also nominated by the Chief Vigilance Commissioner to conduct the proceeding and thus, the whole proceeding stands vitiated. In support of this contention the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, .

8. It is next urged that the provisions contained in Rule 29 of the Rules were also not adhered to by adopting the procedure of common proceeding, which is mandatory in nature. It is submitted that the other delinquent employees facing similar charges and having collective responsibility in respect of the claims approved by the petitioner which were the subject-matter of the impugned charges, dealt separately and procedure of common proceeding as prescribed in Rule 29 of the Rules was not followed, which has caused serious prejudice to the petitioner.

9. The next contention of the petitioner is that the copy of the report of preliminary inquiry made by Shri S.K. Basu was not supplied to the petitioner on account of which he could not give effective reply to the charges as he was not

aware of the contents of the report, which has also caused serious prejudice to the petitioner and thus, there is violation of the principles of natural justice. It is also submitted that the defence assistant was not provided to the petitioner to present his case before the inquiring officer, which also amounts to denial of reasonable opportunity. It is also urged that the disciplinary authority adopted double standard while inflicting punishment inasmuch as different punishment has been inflicted to different employees facing similar charges for instance Shri K.B. Singh, Assistant General Manager facing similar charges was given minor punishment whereas the petitioner has been given major punishment and thus, the disciplinary authority has not acted fairly and made discrimination in the award of punishment. He also placed the statement of the witnesses examined in support of the charges and sought to argue that the charges have not been proved beyond doubt. In short, the petitioner has assailed the impugned order mainly on the ground of malafide, violation of the provisions contained in the Rules, violation of principles of natural justice, discrimination in the award of punishment and on the ground that the punishment awarded to him is too harsh and does not commensurate with the charges.

10. Referring to charge No. 1, i.e. in respect of payment of two survey bills pertaining to Patna Regional Office of M/s. S.K. Ahuja & Associates, Kanpur, it is submitted that during the visit of Shri S. Rangarajan, General Manager a meeting was held wherein Shri S.K. Ahuja, Surveyor lodged a complaint that their bills amounting to few lakhs were pending with Patna office for the last ten years whereupon the General Manager expressed his displeasure and directed to ensure that the payment of the pending bills of Shri S.K. Ahuja is made without any further delay and thereafter Shri K.B. Singh, the then Assistant General Manager asked Shri S.K. Ahuja to submit duplicate bills pertaining to Patna Regional Office pursuant to which twenty bills were submitted, which was forwarded by Shri K.B. Singh to the concerned department out of which eighteen bills were sanctioned by the department and only two bills, the amount of which were above the financial limit of the departmental head were sent to the petitioner after processing and recommendation of Shri Icchaprani (Deputy Manager). The petitioner having been satisfied, approved the payment keeping in view that the other eighteen bills pertaining to Patna were already passed and approved and thus, no prudent mind can accept that the action of the petitioner was with ulterior motive and malafide intention in giving approval in respect of the payment of those two bills.

11. In respect of charge No. 2 it is contended that the petitioner keeping in view the legal opinion given by Shri Gopi Shyam Nigam, Advocate and in the interest of the company to save it from the exaggerated amount of compounding loss gave approval for settlement of the claim for Rs. 1,18,000/-. It is submitted that no evidence has come that the petitioner with ulterior motive and malafide intention caused wrongful loss to the company.

12. In respect of charge Nos. 3 and 4, which are regarding settlement of claim of

the insured M/s. Balram Chinni Mills for the damage caused on account of explosion of Boiler of the Mills, it is contended that M/s. Vinay Consultant was deputed by the Regional Office and the loss suffered by the insured was assessed to Rs. 5.50 lacs. Since this appeared to be excessive the Regional Office, Kanpur deputed M/s. S.K. Ahuja, who assessed the loss for Rs. 5.45 lacs. The claim was thereafter placed before the claim committee consisting of three members of which the petitioner was also one of the members. The committee having examined both the reports formed its opinion and passed the claim of Rs. 3.80 lacs and, therefore, the allegation that, the petitioner with malafide intention and ulterior motive allowed the aforesaid two claims were also not supported with the evidence on record. It is submitted that these two charges also do not stand proved against the petitioner.

13. On the other hand, Shri A.B. Saran, learned senior Counsel appearing for the respondents submitted that there is sufficient evidence on record wherefrom the charges against the petitioner have duly been established and, as such, the finding of the inquiry officer cannot be said to be without any material on record or perverse or arbitrary and, as such, there is no scope for interference in the judicial review where the scope of interference is limited, and unless the finding is found to be utterly perverse the same cannot be interfered with under the writ jurisdiction of this Court. He further submitted that the allegation of malafide is baseless, unfounded and in the absence of any positive evidence cannot be accepted.

14. In respect of the contention of the petitioner regarding violation of Rule 25, it is submitted that the Chief Vigilance Commission did not issue any direction to the respondent-company, but on the material placed, it simply advised which was taken into consideration by the disciplinary authority, who having been satisfied, ordered for initiation of the disciplinary proceeding for imposing major penalty under Rule 25 of the Rules. It is submitted that the petitioner was holding the post of Manager at the relevant time and, therefore, it was necessary as per practice and norms to refer the matter to the General Insurance Corporation and the Vigilance Commission and, therefore, after having taken the recommendation of the Vigilance Commission, the impugned proceeding was initiated against the petitioner. It is also submitted that the name of Sri R.K. Bajaj as Enquiry Officer was suggested by the Chief Vigilance Commissioner and the disciplinary authority in exercise of its power under sub-rule (2) of Rule 25 of the Rules, appointed Sri R.K. Bajaj, who was a public servant, as Enquiry Officer, and therefore, there is no violation of Rule 25 as alleged.

15. In respect of the contention of the petitioner that the impugned departmental proceeding against the petitioner was conducted in breach of Rule 29, it is argued by Sri Saran that the said Rule is not mandatory in nature and discretion rests with the disciplinary authority to exercise the same in relevant cases. It is further submitted that as per advice of the Vigilance Commission the disciplinary proceeding was to be initiated against six officers of the Company including the

petitioner, and two officers out of them had already retired before initiation of the proceedings and, therefore, their cases were to be governed under the provisions of the General Insurance Employees Pension Scheme, 1995 and, therefore, it was not considered expedient to initiate common proceeding against all of them.

16. In respect of the contention of the petitioner regarding non-supply of copy of the preliminary enquiry report, it is submitted that the same was not a listed document in the charge-sheet nor it was relied upon in the enquiry proceeding and, therefore, the petitioner cannot raise grievance regarding non-supply of it.

17. In respect of the grievance of the petitioner that he was not allowed to engage defence assistant, it was submitted that in fact, the petitioner had engaged one Sri M.A. Khan as his defence assistant who had also appeared before the Enquiry Officer but subsequently the petitioner on his own, chose himself to represent his case and not continue with the defence assistant engaged by him, and now he falsely alleges in the present petition that he has been denied opportunity to engage defence assistant. It is submitted that the charges against the petitioner are of serious nature, causing financial loss to the respondent-Company, which have duly been proved in the proceeding and, therefore, major penalty of compulsory retirement has rightly been imposed against him.

18. We have carefully considered the rival contentions made on both the sides.

19. The object and scope of judicial review is different from that of appeal. It is settled legal position that the judicial review is not akin to adjudication of the case on merit as the appellate authority and this Court in writ proceeding under Article 226 does not act as an appellate authority and would only exercise its jurisdiction within the limits of judicial review to correct errors of law or procedural error leading to manifest in justice or violation of natural justice but cannot re-appreciate the evidence. It is equally settled legal position that the provisions of the Evidence Act do not strictly apply in the matter of disciplinary proceedings. Reference may be made to the judgment of Hon"ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India and others, , wherein the Hon"ble Apex Court in para 12 held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on the charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein,

apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charges. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent

findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory Rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

20. Therefore, unless it is found that the conclusion or finding recorded by the disciplinary authority is based on no evidence or the finding is so unreasonable that no prudent person would have ever reached the same; the same cannot be interfered in judicial review. Similarly, the order of the disciplinary authority and the appellate authority cannot be interfered with unless it is found that the proceeding against the delinquent officer was held in a manner inconsistent with the rules of natural justice or in violation of statutory Rules prescribing the procedure of inquiry.

21. In the case in hand, evidence has come in the departmental proceeding pointing that the approval in respect of those four claims which were the subject-matter of charges, was given by the petitioner. It is not the case of the petitioner that those four claims were not approved by him and, therefore, it cannot be held that the findings and conclusions of the Enquiry Officer are based on no evidence and material, and, as such, the same cannot be interfered with under the writ jurisdiction of this Court in view of the exposition of law as laid down by the Hon"ble Apex Court.

22. The contention that the impugned departmental proceeding was initiated at the behest of the Chief Vigilance Commissioner has also no legs to stand. The Central Vigilance Commission was constituted under Sub-section (1) of Section 3 of the Central Vigilance Commission Ordinance, 1999 (Ordinance No. 4 of 1999), which was replaced by the Central Vigilance Commission Act, 2003. It was constituted to enquire or cause enquiries to be conducted into the offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, Corporations established by or under any Central Act, Government Companies, Societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto. It has further been empowered to tender advice to the Central Government, Corporations established by or under any Central Act, Government Companies, Societies and local authorities, owned or controlled by the Central Government in the matters referred to it by the

above authorities. Its functions and powers are provided in Section 8 of Chapter III of the Act. Section 8(g) and (h) of the Act provides as under :

"8. Functions and powers of Central Vigilance Commission.--(1) The functions and powers of the Commission shall be to--

(a) *****

(b) *****

(c) *****

(d) *****

(e) *****

(f) *****

(g) tender advice to the Central Government, Corporations established by or under any Central Act, Government Companies, Societies and local authorities owned or controlled by the Central Government on such matters as may be referred to by that Government, said Government Companies, Societies and local authorities owned or controlled by the Central Government or otherwise ;

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government Companies, Societies and local authorities owned or controlled by that Government."

23. The above provisions, therefore, not only empowers the Central Vigilance Commission to tender advice to the Central Government and its instrumentalities, but has also jurisdiction to exercise superintendence over the matters pertaining to vigilance administration of the above authorities which are referred under the provisions of the Act under which the respondent-Company also comes. It has been stated in the counter-affidavit that since the petitioner was of the rank of Manager and, therefore, as per established practice and norms it was necessary to refer the matter to the Central Vigilance Commission and only after receipt of the advice of the Central Vigilance Commission, the disciplinary authority having applied his mind, ordered the initiation of the proceeding and also appointed Sri R.K. Bajaj, a public servant, to enquire into the charges and submit report. The Central Vigilance Commission is a premier body and is entrusted with the responsibilities of exercising general control and supervision over the matters pertaining to vigilance and anti-corruption of the departments under the Central Government, public sector undertakings etc. and thus, in view of the provisions of the Act, the advice given by the Central Vigilance Commission will not vitiate the proceeding as the same was of advisory nature and the disciplinary authority having considered the advice and also looking to the material on record, decided to hold departmental proceeding against the petitioner.

24. Judgment of the Hon''ble Apex Court in the case of Nag Raj Shiva Rao Karjagi v. Syndicate Bank (supra), on which strong reliance has been placed by the petitioner, is of no help to him as it does not apply in the facts of the present case. In that case it appears that direction was issued by the Ministry of Finance that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceeding should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and therefore, looking to the provisions contained in Section 8 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Apex Court held that the Ministry of Finance, Government of India, has no jurisdiction to issue the impugned directives to the Banking institutions. It further appears that the Bank itself found that the imposition of punishment of compulsory retirement as recommended by the Central Vigilance Commission was too harsh and excessive in view of the petitioner's excellent performance and unblemished service, and made two representations, one in 1986 and the other in 1987 to the Central Vigilance Commission for taking a lenient view in the matter and to advise lesser punishment to that petitioner, which was not accepted by the Vigilance Commission. In that view of the matter, the Apex Court held that the disciplinary authority and the appellate authority had, therefore, no choice in the matter and they had to impose punishment of compulsory retirement as per advice of the Central Vigilance Commission as the same was binding in view of the directives of the Ministry of Finance. It was further held relying on its earlier judgment in the case of A.N.D. Selva v. Union of India, 1962 (Supp.) 1 SCR 968, that the Vigilance Commission is not an appellate authority over the enquiry of the disciplinary authority and the advice given by the Central Vigilance Commission is not binding on the Bank or the punishing authority. Therefore, in that case, though the Bank was of the opinion that lesser punishment should be awarded but on account of circular of the Ministry of Finance, treated the advice of the Vigilance Commission as binding and inflicted punishment of compulsory retirement which was not approved by the Hon''ble Supreme Court as the directive of the Ministry of Finance was without jurisdiction and contrary to the statutes and regulations governing the disciplinary matters.

25. In the case in hand, after receipt of complaints, the matter was referred to the Central Vigilance Commission for its advice and the Vigilance Commission having examined the material on record, tendered his advice u/s 8(g) of the Act. The disciplinary authority thereafter having applied his mind on the material placed before it, decided to initiate proceeding under Rule 25 of the Rules and after receipt of enquiry report, having fully satisfied with the findings, imposed punishment of compulsory retirement upon the petitioner. Besides that it is not the case of the petitioner that after initiation of the proceeding any advice or opinion was tendered by the Central Vigilance Commission. Further, from a perusal of the office memorandum of the Central Vigilance Commission, contained in Annexure 5 to the writ petition, it is apparent that the advice was given on the reference made by the General Insurance Corporation vide No.

VIG/271 dated 8.12.1999 and it only suggested for initiation of major penalty/pension cut proceeding against the petitioner alongwith other officers.

26. The contention that the provisions contained in Rule 25 of the Rules have been violated, has also no force as it is apparent from the office memo of the Central Vigilance Commission dated 28.12.1999 (Annexure-5), that the Commission having examined the investigation report and the comments furnished by the Chief Vigilance Officer of the General Insurance Corporation Ltd., was in agreement with the advice of the General Insurance Corporation for initiation of major penalty/pension cut proceeding against the petitioner and nominated Sri R.K. Bajaj as Enquiry Officer and also advised that in the meanwhile the petitioner may be placed under suspension as he is likely to tamper with evidence. Thereafter, the disciplinary authority vide order dated 13.4.2000, in exercise of its power conferred by sub-rule (2) of Rule 25 of the Rules, initiated the disciplinary proceeding and appointed Sri R.K. Bajaj, a public servant, to enquire into the charges against the petitioner. Therefore, there is no merit in the contention that while initiating proceeding the provisions contained in sub-rule (2) of Rule 25 has been violated.

27. The contention of the petitioner that Rule 29 is mandatory and its violation vitiates the departmental proceeding has also no merit. Rule 29 provides as under :

"29. Common proceedings.--Where two or more employees are concerned in a case, the authority competent to impose a major penalty on all such employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings and the specified authority may function as the competent authority for the purpose of such common proceedings."

28. The words "may" used in the statute are ordinarily enabling words and they only confer capacity, power or authority and imply a discretion and not compulsion on the authority vested with such a statutory function. It is true that the word "may" sometimes is capable of meaning "must" or "shall" with reference to the context in which it is used where a discretion is conferred upon a public authority coupled with an obligation, the expression "may" though denotes discretion should be construed to mean a command. In the case of State of Uttar Pradesh Vs. Jogendra Singh, , the Hon"ble Apex Court while considering the expression "may" used in Section 4 (4) of the U.P. Disciplinary Proceeding (Administrative Tribunal) Rules, 1947 held that there is no doubt that the word "may" generally does not mean "must" or "shall" but it is well settled that the word "may" is coupled with the meaning "must" or "shall" in the light of the context. It is further held that it is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" denotes discretion and should be construed to mean a command. Similar view was taken by the Hon"ble Supreme Court in the case of Textile Commissioner of Government of India and Ors. v. Jagdish Process Pvt. Ltd. and Ors. 1977 (2) SCC 579. In the case of The Official Liquidator Vs. Dharti Dhan (P) Ltd., , the Hon"ble

Supreme Court, while considering the expression "may" used in Section 442 of the Companies Act, 1956, held that the word "may" used before "stay" in Section 442 of the Act really means "may" and not "must" and "shall" in such context, and further held that the power to grant stay is discretionary and not mandatory. The Hon'ble Supreme Court in the case of Bhagwan Das Jagdish Chander Vs. Delhi Administration, , while considering the word "may" in Section 20A of Prevention of Food Adulteration Act, 1954 observed in para-23 of the judgment that the special provision of Section 20A are only enabling and do not give rise to a mandatory duty. In the case of A.R. Antulay Vs. R.S. Nayak and Another, , in para 120 Hon'ble Venkatachaliah, J. observed that an accused person cannot assert any right to a joint trial with his co-accused. Therefore, its context in which the expression "may" is used is relevant for holding that whether it means "must" or "shall" and thus mandatory or it just confers discretion on the authority vested with the power. But in exceptional cases where discretion is coupled with an obligation it has been construed as "shall". The discretion conferred upon the disciplinary authority under Rule 29 is not coupled with any obligation and, therefore, it cannot be interpreted to mean command, rather it appears to be a discretion given to the disciplinary authority to enable him to hold common proceeding for two or more delinquent employees facing identical charges. Its object is to avoid multiplicity of the proceeding. We are, therefore, of the view that on a plain reading of Rule 29 it can only be construed to be directory in nature. It is, in fact, in the nature of enabling provision to be availed of by the disciplinary authority where two or more employees are involved in a departmental proceeding facing identical charges and its non-compliance will not invalidate or vitiate the proceeding held under the Rules.

29. The contention regarding non-supply of the copy of the preliminary enquiry report has also no substance for the reason that admittedly the same has not been referred or relied upon by the Enquiry Officer against the petitioner and therefore, non-supply of the same has not caused any prejudice to the petitioner. The charges against the petitioner were made known to him before the commencement of the enquiry, witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine and was given sufficient opportunity to present his case before the Enquiry Officer and, therefore, we are of the view that no error or irregularity is committed in the proceeding which causes manifest injustice, nor there was any violation of principles of natural justice. The allegation of malafide can also not be accepted in the absence of any convincing or clinching evidence on record. Heavy onus was on the petitioner to bring such evidence on record to establish the allegation of malafide, which he failed to discharge and, therefore, it cannot be held that the action against the petitioner suffers from the vice of malafide.

30. We are, however, of the view that the last submission of the| petitioner that the punishment inflicted upon him is harsh and does not commensurate with the charges has some force, as it is argued by the petitioner that the other officers, S/Sri K.B. Singh, Assistant General Manager, Sri J.S. Ichchaprani, Deputy

Manager and Sri R.K. Seth, Deputy Manager, who were also facing similar charges to that of the petitioner, have been given only minor punishment. It is to be noticed that in the instant case the petitioner has been inflicted punishment of compulsory retirement which is major punishment under Rule 23-F of the Rules and also disentitles him to get pensionary benefits as per para 22 of Chapter-IV of the Pension Rules, which practically amounts to dismissal or removal from service. Besides that the disciplinary authority have also not taken into account the past record of the petitioner as it has been claimed by the petitioner that he has unblemished and spotless career of service which has not been categorically denied by the respondents in their counter-affidavit, moreso, when there is a categorical statement by the petitioner in the writ petition that he was always appreciated by his high-ups for his good work. Undoubtedly, the above factors are relevant to be taken into account while awarding punishment, which has not been taken into account in the case in hand and, as such, we are of the view that a case for reconsideration on the quantum of punishment is made out by the petitioner.

31. We, therefore, remit the matter back to the disciplinary authority to reconsider the matter on the quantum of punishment awarded by the impugned orders to the petitioner. Accordingly, the impugned orders, in so far as the award of punishment is concerned, is set aside. It is further provided that the disciplinary authority shall re-consider the matter on the quantum of punishment and pass a reasoned order, as expeditiously as possible, preferably within a period of two months taking into consideration the observations as made above.

32. The writ petition is, accordingly, disposed of with the above order Parties shall bear their own costs.