

(2020) 06 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 2520 Of 2012

Syed Riazul Haque

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Assam State Warehousing Corporation (Staff) Regulations, 1989 — Regulation 12(v), 32, 33(6), 42(ii), 44

Citation : (2020) 06 GAU CK 0001

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : P K Roy

Final Decision : Allowed

Judgement

Heard Mr. P. K. Roy, learned counsel for the petitioner. Also heard Mr. L. P. Sarma, learned Standing Counsel, Assam State Warehousing

Corporation (ASWC), the respondent No. 2.

1. Mr. Roy mainly challenged the enquiry report dated 4.8.2010 on the basis of which penalties were imposed on the petitioner due to following

grounds:

A. The enquiry officer conducted the enquiry by taking into consideration some irrelevant facts and documents which were not mentioned in the

charge memo and the list of documents relied by the disciplinary authority.

B. The departmental proceeding was initiated on the charge mainly involving the mode of functioning of the Managing Director who is incidentally the

disciplinary authority of the petitioner. One of the witnesses from the management side produced a statement which was recorded by the said

disciplinary authority in order to supplement evidence against the petitioner. Under such circumstance the disciplinary authority had influenced the enquiry officer with his predetermined mind that the petitioner is punished at any cost.

C. The financial involvement and the recovery against the loss caused to the corporation are merely guess work inasmuch the facts and figures of the recovery amount nor the principal amount of 17 lacs and odd as mentioned in the second show cause notice were not part of charge memo.

D. The petitioner was deprived from inspecting the records more specifically the one relied by the disciplinary authority against charge No.5.

E. The enquiry officer was biased which clearly reflects from the conclusion arrived in the enquiry report wherein it is apparent that the enquiry officer took into consideration facts beyond the records.

F. The departmental proceeding was initiated for wrecking vengeance on the petitioner which could be seen from the enquiry report and the penalty imposed. Said intent is far more clear when the Managing Director, the disciplinary authority refused to grant earned leave on medical ground to the petitioner subsequent to imposition of the penalty. Further the petitioner was down graded from the higher position to the lower one in the gradation list of class II officers and staff of ASWC w.e.f. 4.4.2011. Accordingly Mr. Roy sought for setting aside the order impugned in this writ petition and the one affirmed by the appellate authority in the departmental proceeding no. 1/10 against the petitioner.

2. Mr. L. P. Sarma learned counsel for the respondent Corporation raised the issue of maintainability of the writ petition the petitioner failed to bring on record any specific instance of violation of the principle of natural justice. Charge no.5 was not at all traversed by the petitioner in his reply against the show cause notice dated 8.6.2010. Further the prayer of the petitioner for withdrawal of the enquiry officer was rejected and the same was not put to challenge rather the petitioner participated in the enquiry conducted by the said enquiry officer, respondent no.5 against whom the petitioner made specific allegation of bias. However the said allegation could not be proved. The enquiry report was furnished to him alongwith the show cause notice. The report of the Chartered Accountant was brought on record at the appellate stage which did not form the part of the enquiry report. As

such it was his contention that if at all the said irregularity is considered, de novo enquiry in respect of charge no. 5 may be allowed. Further it was his

contention that the grounds cited by the learned counsel for the petitioner cannot be gone into by this court while exercising the jurisdiction of judicial

review. In support of said argument, Mr. Sarma relies B.C Chaturvedi v. Union of India reported in (1995) 6 SCC 749. Mr. Sarma produced the

record and accordingly he sought for dismissal of this writ petition.

3. The petitioner was working as Warehouse Manager Grade-I at the Satgaon Centre of the ASWC the respondent no.2, represented by its Managing

Director respondent no.4. The petitioner alongwith one Sri Asti Ram Kalita were the President and General Secretary respectively of the ASWC

Employees Union registered under the Trade Union Act, 1926. Following the incident of extracting forced labour at the private residence of the

respondent No.4 which led to media /news paper reports and discussions in the ASWC Union meeting, show cause notice dated 25.5.2010 was issued

to the petitioner jointly with the said Sri Asti Ram Kalita, General Secretary of the Union by the respondent No.4. The extract of the show cause

seeking reply within 31.05.2020 is reproduced below:

â??OFFICE OF THE ASSAM STATE WAREHOUSING CORPORATION::A.B.PATH
GUWAHATI

781005

NO.AWC 31/73/89/Pt-II/Estt./101 Date 25.5.2010

To

1. The President

Assam State Warehousing Corporation Employeesâ?? Union Christianbasti,
Dispur, Guwahati 781005

2. The General Secretary

Assam State Warehousing Corporation Employeesâ?? Union Christianbasti,
Dispur, Guwahati 781005

Sub: Show cause

You are hereby asked to show cause as to why appropriate action as deem fit and proper will not be taken against you for your following irregular and unauthorised activities.

1. That, you held a meeting of â??Karnadhar samityâ?? of Assam State

Warehousing Corporation Employeesâ?? Union on 7.5.2010 at 5.30 p.m. in

the office of the union at ASWC H.O. without prior information and permission of the undersigned . Further, the resolution adopted in the said meeting

bringing some allegation against the undersigned(who has not even completed one month of service in this Corporation) is quite vindictive and very

awkward.

2. That, on 17.5.2010, at 4.00 p.m. a meeting in the office room of the ASWCE Union was held wherein a few employees of the ASWC viz. 1. Sri

Asti Ram Kalita, 2. Sri Dharanidhar Sarma, 3. Sri Dwijendra Nath Das, 4. Shri Lakheswar Das, 5. Syed Riyazul Haque, 6. Sri Prasanta Kalita and 7.

Sri Jaynta Kr. Malakar were present. You did not obtain permission from the undersigned for holding the said meeting.

3. That, you submitted an application to the undersigned vide letter No. ASWCEU/2/2009-2010/16 dated 15.5.2010 requesting for permission for

holding a meeting of the Executive Committee of the ASWCE Union on 20.5.2010 at 11.00 a.m. at Head Office premises. But without getting

permission, you held the meeting on the aforesaid date. You did not care to wait for getting permission to hold the meeting.

4. That, it is noticed that you and a few other employees of the Corporation submitted individual application for granting casual leave to attend meeting

of Executive Committee of the ASWCE Union and remained absent in duties without permission from the authority. You should be aware that, casual

leave cannot be claimed as a matter of right.

Your reply should reach the undersigned within 31.05.2010 positively.

Sd/Illegible

Managing Director.â??

4. The petitioner submitted his reply on 31.05.2010 denying the allegations in the notice dated 25.05.2010. The respondent No.4 as the disciplinary

authority suspended the petitioner on 3.6.2010 pending drawal of departmental proceeding.

5. A formal show cause notice was issued on 8.6.2010 to the petitioner in his individual capacity as an employee but not as the President of the union

asking him to submit his written statement within seven days levelling five different charges which are as follows:

(A) Charge No.1:- Petitioner was chargesheeted for attending a meeting of ?? Karnadhar Samity ?? of ASWC Employees?? Union on 7.5.2010

at 5-30 PM in the office of the Union at ASWC, Head Office unauthorisedly wherein resolution was adopted bringing some baseless allegation against

the respondent No.4 regarding discharge of official duties in the corporation which has caused adverse effect on normal peaceful working atmosphere

of the corporation violating the general condition of service under regulation No. 12(v) of the ASWC (Staff) Regulation, 1989. The petitioner was

charged with misconduct, disobedience, insubordination etc.

(B). Charge No.2:- Petitioner was chargesheeted for attending a meeting on 17.5.2010 at 4.00 PM in the office of the Union at ASWC Head Office

leaving his working place during the office hours. Accordingly charged with negligence of duties, misconduct and unauthorised activities.

(C). Charge No.3:-- Petitioner was chargesheeted for attending an unauthorised meeting of Executive Committee meeting of ASWCEU on 20.5.2010

at 11.00 A.M. in the Head Office premises by submitting a Casual Leave(C.L) application. But without grant of C.L. petitioner remained absent and

attended meeting unauthorisedly which is deemed misconduct entailing disciplinary proceedings as per regulation No.32 of ASWC (Staff) Regulation,

1989. Accordingly charged with negligence of duties, breach of trust etc.

(D). Charge No.4:- Petitioner was chargesheeted for publication of a news item on the subject ??role of Managing Director has caused destruction

of Warehousing Corporation? published in ?? Dainik Agradoot ?? in its issue on 7.6.2010. Petitioner violated the provisions of Assam Civil

Services Conduct Rules, 1965 appended in Schedule 4 of ASWC (Staff) Regulation, 1989. Accordingly charged with breach of trust, misconduct,

unlawful activities under Rules and Regulation of the Corporation.

(E). Charge No.5:- Petitioner was chargesheeted that during his tenure as Warehousing Manager at ASWC Centre-I delivered private stocks on

different dates during the month of August to October 2009 but he issued cash receipt after a gap of eight months violating rules and proceedings of

the Corporation. He was charged for temporary misappropriation of storage charges, negligence of duties etc.

The list of documents and names of witnesses were mentioned in the show cause notice. It would be relevant to reproduce the list of documents

below:

â??List of documents :

1. Letter No. ASWCEU. 2/2009/2010/15 dated 12..5.2010
2. Statement of Sri Anil Chandra Das, Security Guard, ASWC,H.O.
3. Application dated 19.5.2010 submitted by Syed Riazul Haque, Warehouse Manager Gr.-I Satgaon Centre-I praying for grant of C.L. on 20.5.2010.
4. Reply to preliminary show cause notice.
5. News item published in Assamese Daily â??Dainik Agradootâ?? in its issue dated 7.6.2010
6. Notes and order in â?? Realisation of Storage charges fileâ?? of F&A Branch of ASWCâ??
6. The petitioner after receipt of the show cause notice dated 8.6.2010 submitted an application on 11.6.2010 requesting for allowing him to inspect the relevant documents and for furnishing copies thereof. But as stated he was not allowed to inspect the original documents relied by the authority rather some copies were handed over to him. Once again request was made for allowing the petitioner to inspect the original documents vide application dated 19.6.2010 and grant extension of time for submitting his written statement. But as there was no response from the authority he had to submit his written statement on 24.6.2010 simply denying the charges but without traversal. It was mentioned in the written statement that as against the charges No.1, 2 and 3 the reply dated 31.5.2010 against the show cause notice dated 25.5.2010 be treated as a part of the written statement filed on 24.6.2010.
7. The disciplinary authority being not satisfied with the reply submitted by the petitioner decided to draw a departmental proceeding and appointed one Sri Jyotish Kumar Sutradhar, Divisional Manager, ASWC(respondent No.5) as the Enquiry Officer to conduct the enquiry and one Sri Bapan Ch. Das, Area Manager, Zone I ,ASWC as the presenting officer.
8. The respondent No.5 served as the Warehouse Manager of Goalpara Centre. The petitioner was transferred and posted at Goalpara Centre vide order No. AWC 34/74/Pt-II/Estt/263 dated 29.1.1998 and had to take charge from the respondent No.5 . During the time of handing over and taking over charges of the Centre some discrepancies as well as shortage in stock were

detected by him under the supervision of senior officials deputed from the Head Office and as a result the respondent No.5 was placed under suspension vide order No. AWC 92 /81/ Estt. /394 dated 17.2.1998. So the petitioner vide his written representation on 8.9.2010 requested the respondent No. 4, the disciplinary authority to appoint any other officer in place of the respondent No. 5 apprehending bias against the petitioner. But the authority rejected the said request vide order dated 22.9.2010 holding the apprehension as preconceived.

9. The enquiry officer (respondent No.5) submitted his report and findings on the enquiry on 31.12.2010 to the disciplinary authority, respondent no. 4 .

On perusal of the enquiry report it is found as follows:

(a) Charge No.1 : The petitioner was present in the Unionâ??s â?? Karnadhar Samityâ? meeting held on 7.5.2010 without obtaining prior permission

from the authority concerned. The petitioner could not produce any document relating to allotment of their office room to the Employeesâ?? Union

by the authority and as such it was necessary to obtain permission from the authority to hold any meeting of the Union at the Head Office premises.

Further the enquiry officer took the help of documents which did not form the list of documents in order to verify the statements made by the

petitioner as the charged officer and gave his finding thereof. Such findings are irrelevant if the charge is considered. The cause shown as to

requirement of permission is totally irrelevant inasmuch as the issue was not in respect of allotment of the office room of the union formally by the

management but violation of general condition of service under the Regulation.

(b) Charge No.2: The enquiry officer took into consideration of the statement recorded by the Managing Director, the disciplinary authority

(respondent No.4) and submitted through Sri Anil Chandra Das, Security Guard as one of the witnesses of the management side. The Circular No.

180 vide Memo No. AWC- 231/68/72 dated 6.2.1975 relating to unauthorised absence from duty and leaving the headquarter without permission from

the Managing Director was taken into consideration which is beyond the list of documents and/or any reference in the said charge No.2. The provision

of the Rule was not recorded in the enquiry report giving the impression that the enquiry officer himself was unaware of the said Rules.

(c) Charge No.3: Similar Head Office Circular dated 6.2.1975 was taken into

consideration which was not mentioned in the charge memo.

(d) Charge No.4: The enquiry officer held that the charge was proved on the basis of circumstantial evidence and facts connected with the issue of

violation of the provisions of Assam Civil Service Conduct Rules 1965 as appended in Schedule No.4 of the ASWC (Staff) Regulation 1989. The

contents of the said Rule was not recorded in the report in order to show the conduct of petitioner in the charge memo satisfying the ingredients

required under the Rule including the element of circumstantial evidence.

(e) Charge No. 5: The enquiry officer took note of the deposition of the petitioner that the procedure followed by him was the practice followed prior

to his tenure and observed that the petitioner could not produce any document to that effect. On the other hand the petitioner was denied the request

to inspect the records which was sought for before filing his written statement after the charge memo was served on him. The presenting officer who

was aware of the said practice as per the petitioner sought for the leave to examine him by the petitioner which was denied. Further the Enquiry

Officer though referred to some office memorandum but failed to put on record while arriving at the conclusion that the charge against the petitioner

was proved.

10. The conclusion of the enquiry report is relevant which is reproduced hereinbelow:

CONCLUSION

From the facts and circumstances as above, it could be understood that the charged officer along with the Union executive body members had

summoned three meetings within a short span of 14(fourteen) days for no such beneficial cause and for the greater interest of the employees of the

corporation but, only to criticise the working procedures of the Managing Director to malign his personal reputation by bringing some ill motivated and

unfounded allegations such as the Managing Director since joining had spent few hours only in the corporation's interest which leads to

unnecessary delay as well as stagnation in the warehousing business and owing to the same unprecedented and distressful situation arises in the

corporation. The charged officer could not be able to produce any authentic and reliable evidence in support of his allegation against the authority.

Over the last few months during the course of my enquiry I have gone through

the business position of the corporation and it has been noticed from the records that the business as well as income position of the corporation have been considerably increased. The occupancy of the business has been increased from 65.9% during April 2010 to 73% during October, 2010 Likewise the income position of the corporation has gone up from 68.07 lakhs during April , 2010 to 81.32 lakhs during September, 2010. Monthly salary disbursement to the corporation staff have been remarkably advanced. Previously the corporation staff got their monthly salary during the end part of the next month but now a days they got the same by the 2 nd week of every next month. From all these instances it could be understood that the overall position of the corporation have been remarkably advanced and considerable achievements noticed during the tenure of the present Managing Director. Thus, it is confirmed that the allegations brought about by the charged officer in the Union executive body meeting against the authority was not based on truth . The intention of the charged officer from the very beginning was to put the authority into an awkward situation and thereby threatened the normal and peaceful working atmosphere of the corporation. From the facts and circumstances of the case and evidence on record , I have come to the conclusion that all charges levelled against the charged officer have been proved. Violation of Regulation No. 12(v). Regulation No. 42(ii), Regulation No. 32 and 33 (6) of the Assam State Warehousing Corporation (Staff) Regulations, 1989 and also violation of the provisions of Assam Civil Service Conduct Rules, 1965 as appended in Schedule No.43 of the Assam State Warehousing Corporation (Staff) Regulations, 1989 including violation of ASWC. Circular No. 180 vide Memo No. AWC-231/68/72 dated 6.2.1975 (exhibit 51 c) and violation of clause No.13 of Schedule of storage charges vide Memo No. AWC 6/74/ST/Pt-VI/FSC/170 dated 26.3.2008 (Exhibit 53 c to 56 c have been established. The charged officer Syed Riazul Haque have violated the rules and regulations of the Assam State Warehousing Corporation (Staff) Regulations, 1980 as narrated against the charges separately above. Therefore he was found guilty of misconduct, negligence of duty, disobedience to authority, breach of trust and unauthorised activities against the interest of the corporation.

Sd/- Illegible

31.12.2010

ENQUIRY OFFICER??

11. The respondent No.4, the disciplinary authority on acceptance of the enquiry report issued the second show cause notice dated 4.4.2011. In the

said notice the respondent No.4 went beyond the charge memo after accepting the findings of the enquiry report which is required to be reproduced:

??It is worth mentioning that the extraordinary initiative taken by ASWC Employees?? Union office bearers , specially by you for holding 3(three)

frequent meetings within a short period of 16 (sixteen) days only just to malign the image of the Managing Director for no fault of his by levelling

unsubstantiated allegations . That you were in cahoots with a larger conspiracy was proved when the allegations brought by the Union was used by

one of the higher authorities of ASWC and ultimately became successful in managing the transfer order of the Managing Director in just little over

2(two) months of his joining as Managing Director. This proved amply clear that , you did nothing for the interest of the Corporation but for your own

personal interest. Again , you being the then President of the ASWC Employees?? Union suggested the then General Secretary of the Union to

make statements before the electronic media against the Managing Director. The most contrasting activity on your part is that while you pretended by

showing deep concern about the well?"being of the ASWC, you temporarily misappropriated several lakhs of rupees of the Corporation. This shows

the real intention of your malafide activities as active conspirator to oust the Managing Director from the ASWC for furtherance of your own vested

interest for the reason best known to you.

In regard to the charge no.5 relating to issuance of cash receipt after a gap of about 8(eight) months from the date of delivery of private stock in

Satgaon centre violating the rules and procedures of the corporation, the undersigned intends to emphasize that , during the period from 1st April/2009

to 31st May, 2010 in the capacity of Warehouse Manager, ASWC, Satgaon Centre you delivered stocks belonging to private parties without realizing

storage charges at the time of delivery but issued cash receipt after a gap to the extent of 8(eight) months against actual deliveries without any

approval from the ASWC authority which is a kind of temporary misappropriation of storage charges. The total amount of such storage charges

realized lately by you was Rs 17,60,131(rupees seventeen lakh sixty thousand

one hundred thirty one) only. (Copies of detailed lists of Cash Receipts of ASWC, Satgaon Centre for the period from 1st April, 2009 to 31st May, 2010 in 43 pages are enclosed).

Thus, you maintained irregular practices of realizing the storage charges at a time i.e. at the time of full delivery only of particular warehouse receipt

instead every delivery, which is violative of laid down procedures. But being a responsible Warehouse Manager and also the then President of ASWC

Employeesâ?? Union you did not care to obey the rules and procedures of the Corporation and acted at your sweet will against the interest of the

Corporation While the ASWC authority was struggling to overcome the financial hardships for payment of monthly salaries of its employees and to

meet other mandatory expenditure, you adopted irregular practices in realisation of storage charges which had affected economic situation of the

Corporation. You wrote to the Head Office on 12.5.2010 requesting to allow you to realize the storage charges as per the process maintained by you

in the business interest, which was against all official procedures and decorum. Rather, you were instructed to realize storage charges from private

parties against delivery of stocks irrespective of part or full delivery.

Now, upon consideration of the Enquiry report and other relevant aspects, the undersigned proposes to impose appropriate penalties upon you as per

ASWC (Staff) Regulation, 1989.

So, you are hereby asked to show cause on above observation. Any representation, which you may make in regards to the above, will be duly

considered. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 12th August , 2011.

Sd/-Illegible

(P.C.Bhagawati,ACS)

Managing Director

Enclo:-

1. Copy of Enquiry Report

2. Copies of lists(43 pages) of cash Receipts of ASWC, Satgaon Centre.â??

12. From the above it is seen that the enquiry officer in his report made a specific mention that during the course of enquiry he had gone through the

business position of the corporation and from the records he found the income

position of the corporation increased considerably. Further he relied on various Rules and Regulation but he did not mention the contents of the Rules in order to show violation of such Rules by the petitioner. In the second show cause after the enquiry report, the disciplinary authority again took note of some facts which are beyond the charge memo like the Managing Director was almost transferred within just about two months of his joining on the basis of the allegation of the Union which was used by one of the higher authorities . Again it was stated that during the period from 1st April, 2009 to 31st May 2010 the petitioner caused a temporary misappropriation of storage charges of Rs. 17,60,131/-. For the said allegation the disciplinary authority relied cash receipts of ASWC, Satgaon Centre in 43 pages which were enclosed with the notice. On the basis of the said allegations the Managing Director (disciplinary authority) proposed to impose appropriate penalties by the second show cause notice. This shows that the disciplinary authority instead of placing all the documents before the enquiry officer resorted to develop the case against the petitioner step by step which amounts to violation of principle of natural justice keeping in view the surrounding circumstances.

13. The petitioner replied on 21.04.2011 against the second show cause notice. In the said reply the petitioner reiterated the issue of bias by the enquiry officer, the fact of disallowing him to inspect the documents that the disciplinary authority pursuing his own cause through the enquiry , pre-set mind of the disciplinary authority etc. But the disciplinary authority accepted the enquiry report and inflicted the following penalties vide Memo No.

AWC 827/2010/Estt/130 dated 25.7.2011 :

1. Reduction to the post of Warehouse Manager Gr.-II

Further , the amount of financial loss to the ASWC caused by him due to his delay in realisation of storage charges against charge No.5 as may be worked out, will have to be recovered from his pay & allowances.

The charged officer Syed Riazul Haque, Warehouse Manager Gr. I, ASWC, Satgaon Centre (under suspension) is reinstated in service as Warehouse

Manager Gr. II with immediate effect and he is posted at Howragat Centre until further orders.

His pay & allowances during the period of suspension will be limited to the subsistence allowances as admissible as per usual rules. The Departmental

Proceedings case No. 1/2020 stands disposed of.

Sd/-(P.C.Bhagawati, ACS)

Managing Director??

14. That the respondent no.3 i.e the Board of Directors through its Chairman is the appellate authority wherein the petitioner preferred an appeal

against the order of penalty imposed by the disciplinary authority . There was delay in disposal of the appeal for which and for other reasons the

petitioner had to file WP(C) No. 443/2011. The said writ petition was disposed of vide order dated 2.9.2011 directing the respondent no.3 , Board of

Directors to dispose of the appeal within a period of 40 days from the date of receipt of the certified copy of the order. The appellate authority in its

meeting dated 2.11.2011 having noticed the impugned order of punishment imputing the financial loss caused to the corporation in reference to charge

no.5 of the show cause dated 8.6.2010 and also second show cause notice dated 4.4.2011 advised the Managing Director(respondent No.4) to take

necessary steps for calculation of said financial loss and to place the same in the next meeting of the Board. The respondent No.4 requested the

Chartered Accountant firm M/s B. L. Puruhit and Co. to provide clear guidelines for calculation of actual loss caused by the petitioner.

15. The petitioner who was imposed the punishment of reduction of post in terms of the punishment was transferred to Howraghat Centre of the

ASWC, had to avail earned leave on medical ground. For the said reason the petitioner submitted applications dated 29.8.2011 and 17.9.2011 seeking

for grant of earned leave on medical ground. The respondent No.4 upon consideration that the petitioner had moved the Honâ??ble Gauhati High

Court vide W.P(C) No. 4431/2011 and also on the count that he preferred appeal before the appellate authority held that application for earned leave

had no merit for consideration. The petitioner had to remain at the 50% of the subsistence allowance even after the enquiry was over. The petitioner

was put at serial no. 21 in the gradation list of Class-II officers and staff of ASWC as on 1.4.2011. The respondent no.4 also issued a notice dated

25.8.2011 directing the petitioner to show cause as to why he failed to comply with the order of the disciplinary authority by not joining in the new

place of posting. Thereafter the petitioner had to file the said WP(C) No. 4431/2011 wherein the direction was given to the respondent to dispose of

the appeal preferred by the petitioner.

16. The respondent no.3 Board vide its minutes of meeting of the Board of Directors held on 17.2.2011 and the consequent order thereafter, disposed of the appeal by holding as follows:

“On perusal of the Appeal dated 8.8.2011 and subsequent written submission dated 2.2.2012, it is observed that the appellant could not advance

any valid ground in his defence for consideration by the Appellate Authority. His submission of not guilty for loss due to delay in realizing of storage

charges has no leg to stand upon, as he did not follow the standing instruction, guidelines and Schedule of Storage Charges of the Corporation in this

regard. The Board of Directors after perusal of the Appeal and all other relevant records and aspects, finds no merit of the appeal and upheld the

order of the disciplinary authority as follows:

Reduction to the post of Warehouse Manager Gr-II.

a) Recovery of financial loss amounting Rs.32,641.00(Rupees thirty two thousand six hundred forty one) only from the appellant which was caused to

ASWC due to delay in realization of storage charges by the appellant.

b) Reinstatement in service as Warehouse Manager Gr. II and posting at Howraghat Centre of the ASWC until further orders.

c) Limitation of his pay & allowances to the substance allowances during the period of suspension.

The appeal stands disposed of. Inform all concerned accordingly.

Sd/- S. Ahmed

Chairman

Board of Directors, ASWC

17. In *Narinder Mohan Arya Vs United India Insurance Co. Ltd and others* reported in (2006) 4 SCC 71 the parameters to be considered by the civil

court or writ court when the finding arrived at in the departmental proceeding are questioned held as follows:

Para 26. “..... In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental

proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside

sources during the conduct of the enquiry. [See *State of Assam & Anr. V.*

Mahendra Kumar Das & Ors (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand V. Union of India and State of Uttar Pradesh v. Om Prakash Gupta, (3)

Exercise of discretionary power involves two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a

condition precedent for exercise of the subjective element. [See K.L. Tripathi V. State of Bank of India . (4) It is not possible to lay down any rigid

rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis.

[See Sawai Singh V. State of Rajasthan (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the

basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection

Council of India & Ors. Vs. Kalyan Kumar Mitra & Ors. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The

writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. V.

Prakash Chand Jain, AIR 1969 SC 983, Kuldeep Singh v. Commissioner of Police .â??

18. Applying the aforesaid ratio in the enquiry report it is found that against the findings in all the charges the enquiry officer took note of various

statutory provisions but none of the provisions are recorded in order to establish that the petitioner violated the statutory rules satisfying the required

ingredients thereof. In the enquiry report the enquiry officer himself stated that over the last few months during the course of the enquiry , he had

gone through the business position of the corporation and noticed from the record that the business as well as income position of the corporation have

considerably increased. On the basis of the said observation alongwith other observation made on the basis of materials beyond the record he held that

the intention of the charged officer (petitioner) was to put the authority into an awkward situation and threatened the normal and peaceful atmosphere

of the corporation.

19. The disciplinary authority on the other hand while imposing the penalty took into consideration that the petitioner in a conspiracy brought allegation

through the union which was used by one of the higher authority of the ASWC

and become successful in managing the transfer order of the Managing Director in just two months of his joining. But only with the interference of the Honâ??ble Gauhati High Court the transfer order was subsequently withdrawn by the Government. In fact that was not the issue at all in the charge memo. It was further held that there was temporary misappropriation of Rs.17, 60,131/-. The said amount was not mentioned in the charge memo nor specified the period as reflected in the second show cause notice. As against the issue of bias by the enquiry officer, the disciplinary authority rejected the apprehension on the ground that the matter has no relevancy to the charge. This is absolutely a wrong finding inasmuch the apprehension of bias cannot have relevancy with the charges referred in the charge memo but it is the biased attitude which was apprehended which might affect the order in the proceeding. In *Ratan Lal Sharma-Vs-Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and others* reported in (1993) 4 SCC 1, the Apex Court held that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. Then it was held that in the said sense just must not only be done but must also appear to be done. But in the present case in hand there were no steps taken by the disciplinary authority to bring the impression on the petitioner that justice appeared to be done. The disciplinary authority also considered the evidence led by one Sri Asti Ram Kalita importing from a separate departmental proceeding wherein the petitioner was not at all a party to it while inflicting penalty to the petitioner.

20. The petitioner apprehended the element of bias on the part of the enquiry officer and requested the disciplinary authority to change the enquiry officer. But it was rejected holding that â??biasâ?? has no relevancy to the charges as held by the disciplinary authority. But the enquiry report clearly shows that the enquiry officer going beyond the materials before him had considered materials which had no relevancy with the charges framed. Mr Sarma, the learned counsel for the respondent ASWC submitted that after rejection of the prayer the petitioner without challenging the same before higher authority participated in the inquiry. So he waived his right to raise the said issue in this writ petition. In the case law, A. M.

Allison Vs State of Assam reported in AIR 1957 SC 227 it was held that a point not raised before the tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding particularly when the plea requires investigation of fact. But if the plea goes to the root of the question and is based on admitted and uncontroverted facts which does not require investigation into a question of fact, the High Court is justified in entertaining the plea to do justice which is the paramount consideration of the court. If the said view is applied the submission of Mr. Sarma cannot be accepted. The enquiry report itself shows that the enquiry officer even going beyond the records of the proceeding concluded that the petitioner was found guilty against all the charges framed. This amply shows that with the available materials before the inquiry officer it is not sufficient to hold the charges as proved and only for that reason something alien to the records in the proceeding had to be relied for proving the charges. Similarly, the disciplinary authority also went beyond the materials before it and punished the petitioner.

21. The appellate authority while dealing with the appeal of the petitioner went a step further to bring materials beyond the charge memo. It would not be out of place to mention that the Managing Director (respondent no.4) is one of the members of the Board. The petitioner sought for his recusal from the appellate authority. But the Board authorised the respondent no.4 to assess the financial loss caused to the corporation due to the temporary misappropriation of 17 lacs and odd. The respondent no.4 in turn took the help of a Chartered Accountant firm to calculate the loss sustained to the corporation. Finally as per the resolution no.3 the appeal was disposed of by passing a speaking order. If the resolution is looked into, the members of Board of Directors (BOD) heard the Managing Director who himself is one of the members of the BOD whereafter it resolved to uphold the order of disciplinary authority passed on 25.7.2011. The speaking order shows that a sum of Rs.32,641/- was taken into consideration as the loss caused to the corporation due to the fault of the petitioner on the basis of the suggestion of the Chartered Accountant to calculate simple interest @ 10% for the period of delay on the storage charge. But the order nowhere speaks about the principal amount on the basis of which the simple interest @ 10 % was charged which is a perverse finding and accordingly the charge of temporary misappropriation and the finding thereof is liable to be set aside and

quashed. In fact the charge memo was devoid of any amount of temporary misappropriation by the petitioner and under such circumstances the findings of the appellate authority imposing the financial liability is totally baseless.

22. From the above discussion, I am inclined to set aside and quash the enquiry report dated 4.8.2010 in departmental proceeding Case No. 1/2010, the order under memo No. AWC 827/2010/ESTT/130 dated 25.7.2011 of the Managing Director , ASWC by way of which the petitioner was imposed penalty as prescribed under Regulation No. 44 on the petitioner in departmental proceeding Case No. 1/2010, resolution No. 3 dated 17.2.2012 of the meeting of the Board of Directors of ASWC , Guwahati the order dated 17.2.2012 issued by the Board of Directors, ASWC affirming the penalty imposed and other consequential orders by the disciplinary authority and the Managing Director. The respondents are directed to restore back the seniority of the petitioner in the gradation list and other benefits arising out of the service conditions at the earliest but not beyond a period of 60(sixty) days from the date of receipt of the copy of this order by the respondent No. 4.

23. This writ petition is allowed without any cost. Interim order if any stands vacated. Send back the LCR.