
(1999) 05 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 5718 of 1996

Tapan Kr. Roy

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-05-1999

Acts Referred:

Constitution of India, 1950 — Article 20(3), 21, 226
General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25, 25(12),
25(6), 3, 4(1)

Citation : (1999) 2 GLT 316

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B.C. Das and P.C. Dey, for the Appellant; S.K. Borkataky and D. Sarma, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—The Petitioner was appointed as a Sub-Staff (Bank Peon), in C.B.O.-II in the Regional office in the year 1984. As a Bank peon his duty was to collect the cash from the cashier and deposit the same in the Company's Bank account. In 1992 he appeared before the Departmental Promotion Test and qualified for promotion to the post of Record Clerk. On 6.11.92 the Petitioner was served with a charge sheet alleging misappropriation of fund. It was alleged that on 10.12.91, 20.2.92, 6.4.92 and 29.4.92 he did not deposit the entire amount and misappropriated Rs. 28,749/-. The Article of charges and statement of allegations which are at Annexure-I and II are quoted below:

Article of Charges against Shri Tapan Kumar Roy, Sub-Staff (Bank Peon) C.B.O.-II, Guwahati.

Shri Tapan Kumar Roy while functioning as sub-staff (Bank Peon) at CBO-II, Guwahati during the year 1991-92 committed the misconduct mentioned herein after.

1.(a) He, with dishonest intention to permanently misappropriate the Company's funds, did not deposit the days cash collections to the tune of Rs. 28,749/- in the Company's Bank Account as per details below:

Dt. Amount Amount Amount Given deposited misappropri To him for by him
ated by Depositing in bank him In bank (in Rs.) (in Rs.) (in Rs.)

10.12.91 5749.00 NIL 5749.00 20.02.92 17575.00 7575.00 10000.00 06.05.92
3325.00 325.00 3000.00 29.04.92 11426.00 1426.00 10000.00 28749.00

(b) He dishonestly and with malafide intention, forged/prepared the bogus pay-in-slips to show as if the full cash were deposited in Bank Account on 10.12.91 and permanently misappropriated to Rs. 5749/-.

(c) He with malafide and dishonest intention altered the figure of Rs. 7575/- (cash actually) deposited with bank) to Rs. 17575/- on the counterfoil of bank pay in slip on 20.02.92 and has permanently misappropriated Rs. 10000/-.

(d) He dishonestly and with malafide intention, altered the figure of Rs. 325/- (cash actually deposited with bank) to Rs. 3325/- in the counterfoil of bank pay in slip on 06.04.1992 and has permanently misappropriated Rs. 3000/-.

(e) In the same way he with malafide and dishonest intention altered the figure of Rs. 1426/- to Rs. 11426/- on the counterfoil of bank pay in slip on 29.04.92 and permanently misappropriated Rs. 10000/-.

Shri Tapan Kumar Roy has thus acted dishonestly, with malafide intention and a manner prejudicial to the interest of the Company. The act constitute wilful misappropriation of company fund resulting in wrongful loss to the Company and wrongful gain to himself, breach of trust, falsification, forging, tempering of office records and lack of integrity devotion to duty. He thus contravent Rules 3(i), (ii), (iii), 4(1,5,20) of CDA Rules 1975.

Sd/ Regional Manager. Statement of allegations in support of article of charges against Mr. Tapan Kumar Roy, Sub-staff

At all times, Mr Tapan Kumar Roy was posted and functioning as Sub-Staff(Bank Peon) at CBO-II, Guwahati. The functions of a Bank peon are to collect the cash from cashier and to deposit the same in the Co's bank account.

1. Mr Tapan Kumar Roy collected Rs. 5749/- in cash on 10.12.91 from the cashier for depositing it in Co's bank account, but he did not deposit the cash in bank but manipulated the pay-in-slip counterfoil with forget bank stamp, as if the amount were deposited therein. By this fictitious pay-in-slip he misled the officials of the B.O. and misappropriated the amount of Rs. 5749/-.

2. On 20.02.92 he collected Rs. 17,575/- in cash but in bank he deposited Rs. 7575/- only. He then altered in the pay-in-slip counterfoil the amount of Rs. 7,575 Rs. to Rs. 17,575/- (in figures and in words both). He thus not only misappropriated the amount of Rs. 10,000/- but also forget, altered changed the

pay-in-slip.

3. On 06.04.92 he collected Rs. 3,325/- in cash from the cashier for depositing it in CO's bank account but he deposited Rs. 325/- only. He then altered in the pay-in-slip counterfoil the amount of Rs 325/- as Rs. 3325/-(in figures and in words both). He thus not only misappropriated the amount of Rs. 3000/- but also forget, altered and changed the pay. in-slip.

4. On 29.04.92, he collected Rs. 11,426/- in cash but in bank he deposited Rs. 1,426/- only. He then altered in the pay-in-slip counterfoil the amount as Rs. 11,426/-(in figures and words both). He thus misappropriated Rs, 10,000/- and also forget, altered, changed the pay-in-slip.

Mr. Tapan Kumar Roy has thus acted dishonestly with malafide intention and in a manner prejudicial to the interest of the Company. His act constitute wilful misappropriation of Co's funds for personal use resulting in wrongful loss to the Company and wrongful gain to himself, breach of trust, falsification, forging, tempering of office record and lack of integrity devotion on duty.

He thus contravent Rules 3(i)(ii)(iii), 4(1,5,20) of CDs Rules 1975.

Sd/- Regional Manager.

2. On 13.11.92 the Petitioner approached the authority with the prayer to allow him to see the official counterfoils and the bank's portion of the relevant pay-in-slips to enable him to submit his explanation. That is Annexure-B to the writ application That is quoted below:

To, The Regional Manager The Oriental Insurance Co. Ltd, G.S. Road, Ulubari, Guwahati-7. Dt. 13.11.92

Sub: Article of criminal charges against this Petitioner.

Ref: Your letter dated 6.11.92 together with article of charges and list of relevant supporting documents.

In this respect I pray your honour to be kind enough to allow me to see the official counter foil of relevant pay in slips and copies of Banks portion of the same. So as enable me to submit my Explanation, at the earliest.

Your faithfully, Sd/- Tapan Kr. Roy, Sub-staff, C.B.O.II, Guwahati-7.

Thereafter he also filed another application before the Enquiry officer when he wanted to inspected certain documents. That is Annexure-C. These documents were never shown to the Petitioner. On 4.8.93 the Petitioner appeared before the Enquiry officer and denied all the charges. He also submitted a written explanation. His defence was that he was on leave on these 4 days. He admitted that the pay-in-slips dated 20.3.92 and 29.4.92 had been written by him, but he explained that he had written the same on the previous day. Before the enquiry officer 5 witnesses were examined on behalf of the company and 5 defence witnesses were examined and the Petitioner was examined as D.W.-4. on

15.11.93 P.W. 4 was recalled and his evidence was again recorded. The Petitioner himself was examined by the presenting officer as P.W. 6 and cross-examined by the Enquiry officer. On 14.12.93 P.W. 5 was recalled and his evidence was again recorded. On 15.12.93 P.W. 2 was recalled and he was re-examined. On 17.12.93 P.W. 1 was recalled and reexamined. DW-1 was also recalled and reexamined. The Enquiry officer submitted his report holding that charge No. 1 and 3 as not proved and charge No. 2 as proved. The Enquiry report is dated 27.1.94 vide Annexure- F. On 4.8.94 the Disciplinary authority agreed with the findings of the Enquiry officer, but it came to the finding that all the charges against the Petitioner as proved and imposed the major penalty of dismissal from service. On 10.8.94 an appeal was preferred by the Petitioner. On 5.1.95 the appeal was rejected by the appellate authority. On 16.2.95 the Petitioner preferred a "memorial to the Chairman-cum-Managing Director. On 9.6.95 the memorial was rejected. A Review application was filed on 31.8.95 on 31.8.95. But as it was not disposed of this writ application has been filed.

3.I have heard Sri B.C. Das, learned Advocate for the Petitioner and Sri S.K. Borkataky, learned Advocate for the Respondents.

4. The learned Advocate for the Petitioner makes the following submissions:

(1) The Petitioner, who was in the position of an accused, was examined as a departmental witness by the Presenting officer in support of the charges and cross examined by the Enquiry officer thereby compelling him to be a witness against himself. This is violative of Article 21 of the Constitution of India which accords every person the fundamental rights to silence and right against self-incrimination as part of right to life and liberty. Such a procedure adopted by the Enquiry officer has no mandate of law and has vitiated the enquiry(2)A departmental proceeding is an adversary proceeding and not inquisitorial. It is neither a civil proceeding nor a criminal proceeding but more akin to a criminal proceeding. If the charges are established, the delinquent employee is liable to face any. penalty as prescribed by law. In such adversary proceedings, the maxim "nemo tenetur seipsum accusare" is the basic portulate which means no man can represent himself as guilty. In consonance with the said pernicious, Rules have been framed viz. the general Insurance (Conduct, Discipline and Appeal) Rules, 1975. The Enquiry officer has given a complete go-by to the aforesaid Rules vitiating the entire enquiry.

(3) The enquiry officer recalled the witness for the Department and after the close of the prosecution case, recorded the defence of the delinquent employee and thereafter recorded the defence evidence. But after completion of the case from both the sides, prosecution witnesses were recalled and fresh evidence was taken. Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 provide a detailed procedure to be followed in conducting Enquiry. Although Rule 25(12) permits recalling of witness, that is permissible before the close of the prosecution case and not after the close of the case of both sides. This provision is of fundamental nature and any departure from it vitiates the enquiry.

(4) The Petitioner who was a grade IV staff and facing serious charge of misappropriation, was not given the assistance of any other employee to defend himself against the charge. This is violative of Rule 25(6) of the Rules which is substantive provision and requires strict compliance.

(5) The finding on charge No. 2 and 4 is perverse. The Enquiry officer, in his assessment of evidence arrived at the following factual position.

i) There was a practice to get the bank peon write the pay-in-slips the previous day. (ii) The Petitioner was made to submit a confessional statement instantly by the Branch Office (iii) Concerned DCB's might not have contained acknowledgement signatures of the Bank peon and the same could have been easily obtained subsequently, (iv) Attendance record was tampered with and one attendance sheet was completely got signed afresh by all the employees and (v) Leave records of the Petitioner were tampered with and all his leave applications were missing.

On the basis of the above conclusions, the Enquiry Officer held the charge No. 1 and 3 as not proved. It was that although the attendance sheet showed the Petitioner 1st half present and 2nd half C.L., he was made to sign the same subsequently. It was also held that initially there was no acknowledgement signature in the DCB and it was taken subsequently. But while dealing with Charge No. 2 and 4, the Enquiry officer relied upon the same set of evidence to hold that he was present on these days and committed misappropriation. This finding on the face of it, is so arbitrary and capricious that no reasonable person could have ever reached that conclusion.

(6) Considering the nature of the charges and the finding of the Enquiry officer pointing to the erring officials there ought to have been a joint enquiry against all of them. While the others have not been charged with and left scot free, the Petitioner has been made the scapegoat. In that view, the imposition of extreme penalty of dismissal from service is arbitrary and disproportionate which shocks the conscience of justice.

5. Let us take up the contentions in seriatim. In support of Contentions No. 1 and 2 the learned Advocate for the Petitioner first places reliance in *Nandini Satpathy Vs. P.L. Dani and Another*, wherein paragraphs 29, 30 and 34 the Supreme Court has pointed out as follows:

The first obligation of the criminal justice system is to secure justice by seeking and substantiating truth through proof. Of course, the means must be as good as the ends and the dignity of the individual and the freedom of the human person cannot be sacrificed by resort to improper means, however worthy the ends. Therefore, "third degree" has to be outlawed and indeed has been. We have to draw up clear lines between the whirlpool and the rock where the safety of society and the worth of the human person may co-exist in peace.

We now move down to the role of the Latin maxim "nemo tenetur seipsum

tenetur" which, literally translated means, a man cannot represent himself as guilty. This rule prevailed in the Rabbinic courts and found a place in the Talmud (no one can incriminate himself). Later came the Star Chamber history and Anglo- American revulsion. Imperial Britain transplanted part of it into India in the Code of Criminal Procedure. Our Constitution was inspired by the high-minded inhibition against self-incrimination from Anglo-American sources. Thus we have a broad review of the origins and bearings of the fundamental right to silence and the procedural embargo on testimonial compulsion. The American cases need not detain us, although *Miranda v. Arizona* being the lodestar on the subject may be referred to for grasping the basics of the Fifth Amendment bearing on oral incrimination by accused persons.

There is one touch of nature which makes the judicial world kin-the love of justice-inaction and concern for human values. So, regardless of historical origins and political borrowings, the framers of our Constitution have cognised certain pessimistic poignancies and mellow life meanings and obligated Judges to maintain a "fair state-individual balance" and to broaden the fundamental right to fulfil its purpose, lest frequent martyrdoms reduce the article to a mock formula. Even silent approaches, furtive moves, slight deviations and subtle ingenuities may erode the article's validity unless the law outlaws illegitimate and unconstitutional procedures before they find their first firm footing. The silent cause of the final fall of the tall tower is the first stone obliquely and obliviously removed from the base. And Article 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station. And in the long run, that investigation is best which uses stratagems least, that policeman deserves respect who gives his fists rest and his wits restlessness. The police are part of us and must rise in people's esteem through firm and friendly, not foul and sneaky strategy. The police reflect the State, the State society. The Indian legal situation has led to judicial concern over the State v. individual balance. After tracing the English and American developments in the law against self-incrimination, Jagannadhadas, J., in *M.P. Sharma's* case observed;

Since the time when the principle of protection against self-incrimination became established in English law and in other systems of law which have followed it, there has been considerable debate as to the utility thereof and serious doubts were held in some quarters that this principle has a tendency to defeat justice. In support of the principle it is claimed that the protection of accused against self-incrimination promotes active investigation from external sources to find out the truth and proof of alleged or suspected crime instead of extortion of confessions on unverified suspicion... On the other hand, the opinion has been strongly held in some quarters that" this rule human undesirable effect on social interests and that in the detection of crime, the State is confronted with overwhelming difficulties as a result of this privilege. It is said this has become a hiding place of crime and has outlived its usefulness and that the rights of accused persons are

amply protected without this privilege and that no innocent person is in need of it...

In view of the above background, there is no inherent reason to construe the ambit of this fundamental right as comprising a very wide range. Nor would it be legitimate to confine it to the barely literal meaning of the words used, since it is a recognised doctrine that when appropriate a constitutional provision has to be liberally construed, so as to advance the intendment thereof and to prevent its circumvention...

That nodoubt was a criminal case, but also in the Departmental enquiry a person charged with certain things cannot be compelled to be an witness against himself.

6. State of Andhra Pradesh Vs. Sree Rama Rao, where the Apex Court has pointed out that regarding power and jurisdiction of the court to interfere with in the matter like at hand in paragraph 7 as follows:

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

To the same effect is the decision of the Supreme Court in State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, where the same law as laid down in 1963 has been reiterated.

7. There are a set of Rules known as General insurance(Conduct, Discipline and Appeal) Rules, 1975 and there are certain guidelines clarifications with regard to that. The enquiry must be conducted in consonance with those rules.

8. Contention No. 2 and 3 Rule 25 which provides for procedure for imposing major penalties interalia is as follows:

25(6). The employee may take the assistance of any other employee but may not engage a legal practitioner for the purpose.

25.(8). If the employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence.

(i) inspect the documents listed with the chargesheet;

(ii) submit a list of additional documents and witnesses that he wants to examine, and

(iii) be supplied with the copies of the statements of witnesses, if any, listed in the charge sheet.

25.(11) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the competent authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine-the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the inquiring Authority. The inquiring Authority may also put such questions to the witnesses as it thinks fit.

(12) Before the close of the prosecution case, the inquiring authority may in its discretion, allow the presenting officer to produce evidence not included in the charge-sheet or may itself call for new evidence or recall or re-examine any witnesses. In such case the employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned.

(13) When the case for the competent authority is closed, the employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any appointed.

(14) The evidence on behalf of the employee shall than be produced. The employee may examine himself in his own behalf if he so prefers. The witnesses

produced by the employee shall than be examined and shall be liable to cross-examination, reexamination and examination by the inquiring authority according to the provision applicable to the witnesses for the competent authority.

A reading of Rule 25(12) will show that it gives the opportunity to recall or re-examine any witnesses before close of the prosecution case. In this case as indicated above the witnesses were recalled even after close of the prosecution case. This is violative of the aforesaid rules.

9. The learned Advocate for the Petitioner places reliance in State Bank of Patiala and others Vs. S.K. Sharma, wherein paragraph 11 the Supreme Court pointed out that in special case the test is whether all things taken together the delinquent employee had or did not had hearing or whether prejudice was caused to him. In paragraph 33 the Supreme Court summarised the principles emerging from the discussions made earlier. The Supreme Court further pointed out that these are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee.

10. The principle to be observed in the disciplinary proceeding before a domestic tribunal is being out quasi judicial character the minimum requirement of rule of natural justice is that the authority should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect to the charges against him. The suspicion cannot be allowed to take place of proof as pointed out by the Supreme Court in the case of Union of India v. H.C. Goyal which was later on relied on in Nanda Kishore Prasad v. State of Bihar and Ors. AIR 1977 SC 1277 The principle is that in punishing the guilt in a criminal trial it must be taken into consideration that innocent are not punished applies inasmuch as to regulate criminal trial as to disciplinary authority held under the statute/rules. The second principle which is corollary from the first is that if the disciplinary enquiry has been conducted fairly, without bias or being vitiated in accordance with relevant disciplinary rules and the situation, the orders passed by such authority cannot be interfered with in a proceeding under Article 226 of the Constitution of India merely on the ground that it was based on evidence which would not be sufficient for conviction of the delinquent on the same charge at a criminal trial. Nodoubt minor irregularity in the matter in an enquiry cannot vitiate the inquiry if the finding which is so obvious is correct. The question in this case is that whether the recalling the witnesses to plug the loopholes in its earlier statement is of such a fundamental nature as to vitiate the enquiry and to cause prejudice to the Petitioner.

11. In Ranjit Thakur Vs. Union of India (UOI) and Others, the Apex Court in paragraph 5 pointed out as follows:

The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the "plenitude of the summary jurisdiction of the

Court Martial and the severity of the consequences that visit the person subject to that jurisdiction. The procedural safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the Statute. The oft quoted words of Frankfurter, J. in *Vitarelli v. Seaton*, 359 US 535 are again worth recalling:

...if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed... This judicially evolved rule of administrative law is now firmly established and, if I may add right so. He that takes the procedural sword shall perish with that a word.

The history of liberty" said the same learned Judge" has largely been the history of observance of procedural safeguards.

Procedure means manner and form of enforcing law. It must be taken to by some steps or methods or manner or practice leading to the conclusion of the things. An enquiry cannot be made an empty formality by throwing to the winds procedure laid down in the rules. But that is what has been done in the instant case. So, the contention No. 2 is answered in favour of the Petitioner.

12. Contention No. 4: This contention can be answered on the basis of the decision of the Apex Court in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, where in paragraph 5 the Apex Court has inter alia pointed out as follows:

To be precise, the provisions contained in 1965 Rules, do make adequate provisions for the same. The question is whether it has been substantially complied with, and when we say substantial compliance, we mean that it is too much to presume that a Government servant of the level of a Forest Guard would be fully aware of all the intricate rules governing a disciplinary proceeding contained in 1965 Rules that he must seek permission for proper assistance at a proper stage as contemplated by the Rules. In fact, justice and fairplay demand that where in a disciplinary proceeding the department is represented by a Presenting officer, it would be incumbent upon the Disciplinary authority while making appointment of a presenting officer to appear on his behalf simultaneously to inform the; delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the inquiry without obtaining assistance, one can say there is substantial compliance with the rules. But in the absence of such information, being

conveyed. If the inquiry proceeds, as it has "happened in this case, certainly a very vital question would arise whether the Appellant delinquent Government servant was afforded a reasonable opportunity to defend himself and if the answer is in the negative, the next question is whether the inquiry is vitiated?

To the same effect there are decisions of this Court. So, this contention is also answered in favour of the Petitioner.

13. Contention No. 5: On the basis of evidence the Enquiry officer came to the following finding: The signature of the Bank peon could have been obtained subsequently. Attendance register was tampered with and one attendance sheet was signed afresh by all the employees. Leave records of the Petitioner were tampered with and all the leave applications were missing. On the basis of the above evidence the Enquiry officer held that the charge Nos. 1 and 3 were not proved. It was further found that though attendance sheet shows the Petitioner's presence on the first half and C.L. on the 2nd half he was made to sign the same subsequently. It was also held that initially there was no acknowledgement signature in the DCP and it was taken subsequently. But while dealing with charge Nos. 2 and 3 the Enquiry officer relied on some type of evidence, but held that he was present on this day and committed misappropriation. Same set of evidence cannot be disbelieved for one set of charge and accepted as proof of another set of charge. But the finding with regard to the Charge Nos. 2 and 4 are based on no evidence and no reasonable man could have arrived at on this finding. With regard to finding of charge, there must be some evidence which can be accepted and that evidence must reasonably support the conclusion that the delinquent officer is guilty of the charges. On this basis also it must be held that charge Nos. 2 and 4 also were not established. There is further defect in the matter of fact found by the Enquiry officer in the concluding portion which is quoted below:

In the course of conduction of the said enquiry and upon conclusion of the same it is evident as stated above that the misappropriation of the Company's fund was committed by Shri T.K. Roy, Sub-staff (Bank Peon), Shri David John, Sr. Asstt. and Shri H. Sarma, the then Cashier of CBO-II, Guwahati. It has been observed that the then Sr. Asstt. in the Branch Shri A.C. Sharma had tampered with the attendance and leave records and was given support for the same by the Branch Manager, Shri N. Bhattacharjee. The acknowledgement signature in the DCs was subsequently obtained by the Cashier, Shri H. Sharma with the support of the Branch Manager, Shri N. Bhattacharjee and also the then Sr. D.M. of CDO-II, Guwahati, Shri S.K. Debchoudhry. It was evident that on certain instances the Asstt.(T) in the Branch, Smt. Ila Paul Roy, the other Asstt(T) in the Branch Shri B. Doley and the other Sub-staff in the branch Shri J. Talukdar had given false evidences in order to save their colleagues as has been evident from the assessment of the evidences done by the undersigned herein above. Lastly it has been evident that the Charged employee was in fact made to submit the Confessional statement and thereby solely taking responsibility for having

committed the misappropriation of the Company's fund on all the four days involved.

This also will show that the Petitioner was made goat. It is really unfortunate that others were let off and the enquiry was conducted against the Petitioner. The letter dated 4th August, 1994 by the disciplinary authority is quoted below:

Dear Sir,

I refer to the letter of charge dtd. 06.11.92 and subsequent domestic enquiry held against you in respect of the charges. I have now received the report of enquiry Officer, a copy of which was given to you on 27.01.94 for your perusal. I have examined the matter very carefully and I agree with the findings of the Enquiry officer.

I, therefore, find that the charge levelled against you in the aforesaid letter of charge have been proved and I find, you are guilty of the same. The charges proved against you are of serious nature and I impose on you the major penalty of "DISMISSAL" from service with immediate effect.

A copy of this letter is being kept in your service file for record.

Please return the duplicate copy of this letter duly signed by you in acknowledgement.

Yours faithfully, Sd/-Regional Manger and Competent authority.

From the letter will be seen that the Enquiry officer held all the charges to be proved, but that is not the position in the enquiry report as will appear from the finding at page 64 of the writ application, which is as follows:

From the letter No. GSR/CD. 132-133/ 92 dated 22/05/92 of United Bank of India, G.S. Road Branch, Guwahati it is evident that the said entire amount of cash deposit of Rs. 5749/- was misappropriated, by submitting a false counterfoil of the Pay-in-Slip in CBO- II, Guwahati and it has appeared that the same was done by Shri David John, Sr. Asstt, CBO-II, Guwahati.

So, there was no proper application of mind by the Disciplinary authority. It was a mechanical approach. Thereafter the Petitioner was dismissed in a most mechanical manner.

14. For all these reasons, this writ application is allowed. The order of dismissal dated 4th August, 1994 (Annexure-G) to the writ application alongwith the subsequent orders of the appellate authority shall stand quashed The Petitioner shall be taken back in service within a period of one month from the date of receipt of this order. But it is made clear that because of the conduct, the Petitioner shall not be entitled to any backwages. An affidavit-in-opposition has been filed on behalf of the Respondents No. 1 to 4 I have looked to that affidavit in- opposition. The affidavit-in-opposition does not throw any fresh light in the matter. No record was produced. The Petitioner shall obtain the certified copy of

this order and may produce the same before the authority to do the needful in terms of the order. I make no order as to costs.