

(2016) 02 DEL CK 0311
In the Delhi High Court
Case No : WP(C) 6777/2014

Union of India and Others

APPELLANT

Vs

Ashes Kiran Prasad

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227, Article 309, Article 311(2)
Evidence Act, 1872 — Section 134, Section 155, Section 18

Citation : (2016) 228 DLT 665 : (2016) LIC 2384 : (2017) 1 RSJ 357 : (2016) 3 SCT 304

Hon'ble Judges : Sanjiv Khanna and Najmi Waziri, JJ.

Bench : Division Bench

Advocate : V.S.R. Krishna and Rashmi Malhotra, Advocates, for the Appellant;
Ayushi Kiran, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—1. The Union of India through the Secretary, Railway Board and three others (the petitioner, for short), impugn the order and final judgment dated 16th May, 2014 of the Central Administrative Tribunal, Principal Bench at Delhi (Tribunal for short) allowing the Original Application No. 4251/2013 filed by Ashes Prasad (the respondent), quashing the penalty of reduction in pay scale in the same grade by two stages for a period of three months without cumulative effect. Order of penalty dated 22nd June, 2012, passed by the Disciplinary Authority and order of 4th October, 2013 of the Appellate Authority have been set aside. It has been directed that the respondent would be entitled to all consequential benefits.

2. The respondent an officer in the Indian Railway Traffic Service Group-A Central Service belongs to the East Central Railway. On being promoted to the Senior Administrative Grade, the Respondent was transferred to the North-East Frontier Railway and posted at Gauhati as the Chief Claims Officer (CCO).

3. By memorandum No. E(O)I-2008/PU-2/NW-14 dated 7th August, 2008,

disciplinary proceedings were initiated against the respondent under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, on three articles of charge, namely: (i) He had misused his official position to dispatch three and four poly bundles of wooden parts ex Lumding Junction to New Jalpaiguri on train No. 4055 DN on 12th July, 2005 and 14th July, 2005 respectively, and had then ensured dispatch of the said bundles from New Jalpaiguri to Patna by train No. 3245 DN on 6th August, 2005, without valid booking and documents; (ii) He had engaged and mis-utilized railway staff for loading, unloading and transportation of the aforesaid bundles; and (iii) He had deprived Railways of the freight earnings as the wood parcels were transported by rail without valid documents and billing.

4. The aforesaid charge-sheet was served after vigilance department of the North-West Railways (NF Railways, for short) had carried out detailed investigation, recorded statements and collected documents to establish that the wood, a banned produce, was illegally transported in the Railway wagons at the behest and on instructions of the respondent without payment of freight from Lumding, Assam to New Jalpaiguri, West Bengal on 12th July, 2005 and 14th July, 2005 and then to Patna on 6th August, 2005.

5. The enquiry officer in his report dated 18th August, 2011, exonerated the respondent holding that none of the charges were proved. His findings in brief and as recorded in the impugned order by the tribunal, for the sake of convenience and completeness are reproduced below:

"Charge - I.

Conclusions: Thus the charge that CO had instructed many junior officials telephonically was seen to be not exactly a correct representation of the reality on ground.

Only one person Shri Tapan Barua, CCI/HQ/Maligaon had claimed that CO had given him instructions from time to time. This claim has however not supported by any evidence in a direct manner or could be corroborated otherwise.

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CONCLUSIONS: it has been established that there is no direct evidence of any involvement of CO for the movement of the bundles from LMG to NJP.

Shri Tapan Barua, CCI/HQ/MLG, the main witness from PO side, had however, accused CO of forcing Shri Barua dispatch the wood bundles from NJP to Patna.

The testimony of Shri Barua to Vigilance and at the inquiry has quite a few inconsistencies and is such that the entire statement cannot be accepted as totally trustworthy and accurate. CO has claimed that the evidences presented at the inquiry establish beyond any doubt that the bundles of wood that was loaded at Lumding were not the one seized at Patna and hence he could not be accused of smuggling furniture quality wood to Patna.

IO feels that the statements of Sh. Barua putting all blame on CO cannot be relied upon without at least one other confirmatory evidence from a source independent of Shri Barua.

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CONCLUSIONS: This charge of CO misusing his official position to transport 7 bundles of wood from Lumding to New Jalpaiguri and then to Patna has thus not been established beyond reasonable doubt.

CO might certainly enjoy a high status in his own organization but no tangible evidence was available to convince the inquiry that his writ ran all over the NFR as well as ECR. The score of front line staff who were in no way under his control, had participated in illegal actions knowing full well the possible consequences. All this was supposedly on the basis of their being told by someone that the wood bundles they were smuggling out without booking, belonged to CCO/MLG.

Even Shri Barua who was the only staff belonging to claims department (which was headed by CO), had no convincing answer during his testimony as to why he must follow illegal orders given by the CO over phone.

This behaviour of Shri Barua indicated a strong possibility that he had indulged in this illegal movement for reasons other than alleged telephonic messages from CO. May be, linkages possibly established over a long period, was at the root of so many staff participating in his fraudulent movement at the say so by Shri Barua.

Charge -II

CONCLUSIONS: This charge of CO misusing his official position to transport 7 bundles of wood from Lumding to New Jalpaiguri and then to Patna has not itself been established and hence to raise the charge of CO engaging and misusing the score of Railway staff for such act of his could not be acceptable.

Therefore, this part of the charge was not established beyond all reasonable doubt.

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CONCLUSIONS: This charge that CO had used his official standing to avoid booking his 7 bundles of wood as parcel because of his apprehensions that the violation of the existing ban on movement of forest product could have been detected later because of the paper trail is not a logical construction. The simple act of mis-declaration of the bundles as furniture would have been easier.

Moreover, the ownership of the bundles was not traced to CO. Also the rationale behind prosecution making a claim about CO's ability to influence a large number of frontline staff not under his control to carry out a series of illegal acts on his behalf had no basis or logic and could not be simply accepted as normal

for a person holding CO's position in the system.

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CONCLUSION: This article of charge did not establish in absence of any basis for the allegation that CO had the ownership of the wood bundles and had expected to gain personally.

CHARGE -3

CONCLUSION: This part of the article of charge did not establish in absence of any basis for the allegation that CO had the ownership of the wood bundles and had arranged for its transit from Lumding to Patna depriving Railways of freight charges due to it.

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CONCLUSION:

CO was accused of organizing smuggling of 7 bundles of banned wood from NJP to PNBE on basis of confessional statement of one Shri Barua who had actually been at the forefront of this illegal act.

In the investigation, ownership of the smuggled articles could not be traced to CO. Adequate evidence direct or indirect to link CO with the staff who had actually loaded or unloaded the bundles could be established. Only the unsupported testimony of Shri Barua was relied upon by the prosecution to prove its case while CO had demonstrated lack of any official jurisdiction on his part on the staff involved.

CCO/MLG i.e. CO was thus not shown to be liable for being blamed for any act of omission or commission that made the unauthorized carriage of 7 bundles from NJP to PNBE possible.

No association of CO could be established in this illegal act that was detected vigilance investigation. Lapses on the part of the CO as were pinpointed could not be sustained through the inquiry."

6. The disciplinary authority vide Memorandum dated 18th April, 2012 circulated a disagreement note, which again for the sake of convenience and completeness is reproduced below:

"Article on Charge No. 1

Shri Tapan Barua, the then Chief Claims Inspector, MLG/NFR has clearly submitted that while he was on NJP, he received a telephonic instruction from ACM/CP on 12.07.2005 and again on 14.07.2005 to unload bundles of wood dispatched from LMG. This statement of Shri Barua is supported by the statement of PW-10 Shri S.N. Dey that the then ACM/Claims himself asked him to load the packages (in reply to Q-2). Both these statements, taken as coalesced, divulge that Shri Prasad instructed on phone to Shri Barua. Shri Tapan

Barua has also submitted that he spoke to CCO/MLG and informed about the consignments (in reply to Q-3). Shri Tapan Barua has further submitted (in reply to Q-4) that on telephonic instruction of CO given on 06.08.2005, these consignments were dispatched by 3245 Dn. Ex. NJP to PNBE. Hence, the observation of IO that the charge that CO had instructed many junior officials telephonically was seen to be not exactly a correct representation does not hold ground.

Further, Shri Tapan Barua, CCI/HQ/MLG has clearly accused CO of forcing him dispatch the wood bundles from NJP to PNBE. In reply to Q-13, he has stated that he was working under him and did this illegal act due to his pressure. Hence, the contention of IO that there is no direct evidence of any involvement of CO for the movement of the bundles from LMG to NJP and Shri Barua putting all blame on CO cannot be relied upon without at least any other confirmatory evidence from a source independent of Shri Barua is not agreeable.

Regarding misuse of the official position by the CO, IO has found is not established beyond reasonable doubt. It is a fact that Shri Prasad has worked in ECR as Dy.COM from December, 1999 to October, 2002 and as Dy. CCM from October, 2002 to October, 2003 and then after he was posted for NFR. Hence, it was possible for him to get his materials carried from one place to another place without coming into picture directly.

Hence, the charge at Article-I tentatively deserves to be taken as proved.

Article on Charge No. 2

Though, it is an admitted fact that Shri Prasad did not personally order any staff who were involved in flouting the rules by way of carrying the said wooden bundles, yet the documentary and other evidence clearly prove that an unbooked consignment of 7 poly bundles of wooden parts was loaded on 12.07.2005 and 14.07.2005; loaded for PNBE on 06.08.2005 and unloaded at PNBE by 3245 for which records were maintained in the name of Shri A.K. Prasad and an Inspector of claims department was instructed to stay at NJP on 11.07.2005 to 14.07.2005 to supervise unloading and loading. All these evidence prove that CO misused his official position to transport 7 bundles of wood from LMG to NJP and then to PNBE.

IO has observed that simple act of mis-declaration of the bundles as furniture would have been easier to avoid the charge of violation of ban on forest products. As the existing ban on booking was known to parcel staff it would have been difficult to get the packages booked after mi-declaration. Hence, the contention of IO that simple act of mis-declaration of the bundles as furniture would have been easier, does not seem to be rational. It is clear that commercial formalities were not followed in order to prevent generation of any records which could have ensured detection of violation of the existing ban on booking of wood at LMG and NJP.

As records related to unloading and subsequent loading were maintained in the name of Shri A.K. Prasad and an Inspector of claims department was instructed to stay at NJP on 11.7.2005 to 14.07.2005 to supervise unloading and loading, it is clear that this was done for the personal gain of Shri Prasad.

Hence, the charge at Article -2 tentatively deserves to be taken as proved.

Article on Charge No. 3

As mentioned hereinabove, all documentary evidence and statement of PWs clearly indicate that the said wood bundles in question were belonging to Shri Prasad and he has arranged its unloading and transshipment from LMG to NJP and further from NJP to PNBE though without observing commercial formalities and thereby, he deprived of freight charge due on it.

Hence, the charge at Article -3 tentatively deserves to be taken as proved."

7. The respondent protested and made a written representation, but the disciplinary authority did not agree and by the order dated 22nd June, 2012, imposed the penalty of reduction in pay in the same grade by two stages for a period of three months without cumulative effect. Appeal preferred by the Respondent was rejected vide order dated 4th October, 2013. Aggrieved, the Respondent filed the OA. No. 4251/2013 before the Tribunal which has passed the impugned order dated 16th May, 2014, quashing the order of the disciplinary authority dated 22nd June, 2012 and the appellate authority dated 4th October, 2013.

8. A reading of the impugned order shows that two separate grounds were raised. The first ground was that there was inordinate delay in finalizing the disciplinary proceedings. Secondly, factual findings recorded the disciplinary authority and the appellant authority were perverse and periphrastic; that vested interests were working against the respondent and that the departmental authorities were biased. It was a case of no evidence.

9. The tribunal agreed and has held that the disagreement note was arbitrary, fanciful and therefore the penalty imposed was illegal. The advice rendered by the Union Public Service Commission ("UPSC" for short) too was capricious and illogical for it wrongly and fallaciously opines that the charges stand proved. The appellant authority erred in blindly following the UPSC's advice without application of mind. On delay, it has been held that after the articles of charge were served on 7th August, 2008, it took five years for culmination of the proceedings as the respondent's appeal was dismissed by the appellate authority vide order dated 4th October, 2013. Central Vigilance Commission has proscribed that enquiry proceedings to be completed in all respects within a period of one year and three months. The delay had caused prejudice and has vitiated the proceedings.

10. As the findings of the Tribunal are primarily factual, we would like to reproduce in entirety the reasoning given by the Tribunal, which reads as under:

"16. We have heard the learned counsel for the Applicant Ms. Ayushi Kiran and the learned counsel for the Respondents Shri V.S.R. Krishna and Shri Rajinder Khatter. The charges against the Applicant in brief are that (1) he gave instructions to junior officials and got 3 + 4 poly bundles of wooden parts loaded ex LMG to NJP without booking & documents, (ii) he got the same 7 poly bundles moved to PNBE ex NJP in the same way, (iii) he misused official position and misutilize Railway staff to load 3+ 4 poly bundles of wooden parts at LMG ignoring ban in force, (iv) For unloading at NJP to PSNB he did not observe commercial formalities for transit from LMG, (v) For reloading ex NJP to PNBE he did not follow commercial formalities to escape the ban on booking of timber from LMG and NJP, (vi) he deprived Railways of due freight for moving 7 poly bundles from LMG to NJP & then to PNBE and (vii) he had shown lack of absolute integrity, lack of devotion and acted in a manner unbecoming of a railway servant. Further, according to the charge, the Applicant instructed Shri T. Barua, CCI/HQ/MLG, from time to time for the transportation of those bundles. The crux of the charge is that the Applicant got 7 bundles of wooden parts loaded ex LMG to NJP through his junior officials without booking and documents. The Enquiry Officer held a very detailed enquiry in the matter and came to conclusion that the none of the aforesaid charges leveled against the Applicant have been proved. The Enquiry Officer has held very specifically that the charge that CO had instructed many junior officials telephonically was seen to be not exactly a correct representation of the reality on ground. He has also held that only one person Shri Tapan Barua, CCI/HQ/Maligaon had claimed that CO had given him instructions from time to time. This claim has however not supported by any evidence in a direct manner or could be corroborated otherwise. Further according to the Enquiry Officer, the statements of Shri Barua were not trustworthy to be relied upon as he had no convincing answer during his testimony as to why he must follow illegal orders given by the CO over phone. It was also been held that the behaviour of Shri Barua indicated a strong possibility that he had indulged in this illegal movement for reasons other than alleged telephonic messages from CO. From the aforesaid conclusions arrived at by the Enquiry Officer, it is manifestly clear that the allegations made against the Applicant were false and Shri Tapan Barua was the person behind them and they have been made to purposely implicate the Applicant. In fact the integrity of Shri Barua itself is in doubt as he himself admitted that he followed the alleged illegal orders given to him by the Applicant. That was the reason why the Enquiry Officer submitted in his report that the behaviour of Shri Barua indicated strong possibility that he had been indulging himself in the illegal movement and he had the linkage established over a long period. But the Disciplinary Authority disagreed with the report of the Enquiry Officer relying on the very same deposition of Shri Tapan Barua that he received a telephonic instruction from the Applicant to unload bundles of wood dispatched from LMG. Again the Disciplinary Authority in his disagreement note said Shri Tapan Barua, CCI/HQ/MLG has clearly accused CO of forcing him dispatch the wood bundles from NJP to PNBE. Thereafter, the Disciplinary Authority assumed that it was possible for him

(Applicant) to get his materials carried from one place to another place without coming into picture directly. In our considered view, when the Enquiry Officer who understands the ground reality more than anyone else, has held that the statements of Shri Tapan Barua was not trustworthy for the reasons that emerged from the enquiry itself and the charges have not been proved, the Disciplinary Authority cannot rely on the very same statement of Shri Barua and hold that the charges have been proved. The Enquiry Officer who conducted the enquiry after considering all aspect of the case, is the best judge to say whether charge has been proved or not. Unless his findings are biased, mala fide, arbitrary and contrary to the prescribed procedure, the reasons given by the Enquiry Officer cannot be rejected that too on the ground there was the possibility for the Applicant to commit the misconduct alleged in the Articles of Charge. The Disciplinary Authority failed to give any reasons as to why the findings of the Enquiry Officer that the statements of Shri Tapan Barua was not trustworthy was wrong. Such a disagreement note can be treated as only arbitrary and whimsical. In view of the above position, the disagreement note of the Disciplinary Authority and its order imposing the penalty upon the Applicant are illegal and liable to be rejected. The Union Public Service Commission has also in its advice to the Appellate Authority held in an arbitrary manner that the charges against the Applicant have been proved. The Appellate Authority has simply followed the Commissions advice without any application of mind and rejected the appeal of the Applicant. We also observe that there was inordinate delay in finalizing the disciplinary proceedings initiated against the Applicant. The Articles of Charge issued to the Applicant on 07.08.2008 took over five years for its culmination in the Appellate Authority's order dated 04.10.2013 whereas the CVC had prescribed a period of maximum of only one year and 3 months for an enquiry proceedings to be completed in all respects.

17. In view of the above facts, circumstances and legal position, we allow this OA. Consequently, the impugned order of the Disciplinary Authority dated 22.06.2012 and the Appellate Authority's order dated 04.10.2013 are quashed and set aside with all consequential benefits. The Respondents shall also pass appropriate orders in implementation of the aforesaid directions within a period of two months from the date of receipt of a copy of this order."

11. Reading of the aforesaid paragraph manifests that the tribunal had ventured into the factual matrix as an appellate authority and has primarily relied on the enquiry officer's report to overturn and set aside factual findings of the disciplinary authority and appellate authority and has arraigned the opinion rendered by the UPSC. The decision holds that statement of a single witness Tapan Barua CCI/HQ/Malagaon does not resonate adequate support from any other direct or corroborative evidence and would not bring home the charges. Tapan Barua's statement was untrustworthy and unconvincing. There was no cause or reason for Tapan Barua to follow and obey alleged illegal orders statedly given by the respondent on telephone. Behavior of Tapan Barua was such that it indicts him and he had indulged in illegal transportation and wrongful acts for

reasons other than the directions given by the respondent. The view of the enquiry officer, who understood the ground reality was more sustainable and a better view. The enquiry officer was the best judge, to say whether the charge was proved or not, and unless the findings of the enquiry officer were biased, mala-fide and arbitrary, his report cannot be rejected on the ground that there was a possibility that the respondent had committed the charged mis-conduct.

12. We perceive and believe that the tribunal has mis-directed and faulted on several accounts. The tribunal is not an appellate forum which can reappraise and evaluate the evidence and facts. The power of judicial review is confined to examination whether the procedure established by law was followed and principles of natural justice were complied with. The tribunal could examine whether the orders under challenge were predicated on irrelevant and extraneous evidence or there was exclusion of admissible material evidence, or admission of inadmissible evidence, which had affected and vitiated the decision making exercise. Power of judicial review is also exercised when the decision is wholly arbitrary and capricious and is based on no evidence. The test is whether a reasonable man, well conversant in the said field, could have arrived at the decision under challenge. Pertinently, enquiry report is neither final nor binding on the disciplinary authority. Disciplinary authority may disagree with the findings recorded in the enquiry report. Law does not give primacy to the enquiry report, but expressly authorizes issue of a disagreement note recording reasons and tentative findings, which should be confronted to the charged officer for his reply. Observations in the impugned order that the enquiry officer was the best judge, for he knew the ground realities and that his findings were conclusive unless the findings were biased, malafide or arbitrary, are inaccurate and unsound. A single witness when credible and reliable can prove even a criminal charge. Section 134 of the Evidence Act states that a single witness may establish and prove the prosecution case. Statement of Tapan Barua is duly corroborated by ocular and documentary evidence.

13. On the question of scope and ambit of judicial review, we would refer to the recent judgment of the Union of India and Anr. v. P. Gunasekaran , (2015) 2 SCC 610, which extensively dealt with the case law on the subject and holds as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappraising even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence."

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappraise the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

14. The aforesaid decision refers to *State of A.P. v. Sree Rama Rao*, , AIR 1963 SC 1723, which elucidating the law of judicial review holds that the High Court (the tribunal in the present case) is not a court of appeal which examines merits of the findings recorded in the departmental enquiry. Power of judicial review is confined to; whether the enquiry was held by a competent authority; according to the procedure prescribed and whether rules of natural justice were violated. The court/tribunal can interfere when the authorities had disabled themselves from reaching a fair decision by consideration of extraneous evidence or by allowing them to be influenced by irrelevant considerations. They can also interfere when the conclusion on the face of it was arbitrary and capricious as no reasonable person could have arrived at such conclusion. However, when there was legal evidence on which the finding could be based, the adequacy or reliability of that evidence cannot be examined and canvassed before the High Court or tribunal. When there was some evidence that had been accepted by the authorities and the same reasonably supports the conclusion, then it is not the

duty of the High Court or the tribunal to re-examine the issue on factual merits by re-appreciating and evaluating the evidence.

15. *State of A.P v. Chitra Venkata Rao* , (1975) 2 SCC 557, strives to draw a distinction between criminal trial where the offence is not established unless proved by evidence beyond reasonable doubt and departmental proceedings where principle of preponderance of probabilities applies. Standard of proof beyond reasonable doubt is not applicable to departmental proceedings against a public servant. Courts/tribunal in exercise of power of judicial review can correct an error which is apparent on the face of the record, but not a finding of fact, on the ground that they would have reached to a different conclusion. Adequacy or sufficiency of the evidence led on the point and inferences of fact to be drawn from the said finding, are within the exclusive jurisdiction and domain of the authorities.

16. *State of Haryana v. Rattan Singh* , (1977) 2 SCC 491, examines the question of hearsay evidence in domestic enquiry and observes;-

"4. ... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

17. *P. Gunasekaran (Supra)* quotes and relies on *Railway Board v. Niranjan* , (1969) 1 SCC 502, on the question that the courts/tribunal should not exceed their jurisdiction in interfering with the finding of the disciplinary authority. On the aspect whether the disciplinary authority could disagree with the finding recorded by the enquiry committee, it was held in *Niranjan (Supra)* as under:--

"....This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the

conclusion."

18. In *Managing Director ECIL v. B. Karunakar*, (1993) 4 SCC 727, the Supreme Court dealt with aspects relating to effect of the 42nd amendment of the Constitution, furnishing of enquiry officer's report to the delinquent employee etc. On the question of the enquiry officer's report and the power of the disciplinary authority it was held:--

"27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

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29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

19. In *Punjab National Bank v. Kunj Behari Misra*, (1998) 7 SCC 84, after referring to several earlier decisions, the Supreme Court had following observations to make:

"17....It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of

being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

18.....When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

The aforesaid findings record that the first stage of enquiry is not complete till the disciplinary authority has recorded its findings. Further, the disciplinary authority can differ with the conclusions in the enquiry report. No fetters or restrictions can be inferred and are discernable, for ultimately importance is to the findings of disciplinary authority. Enquiry Officer's report is only a step in the disciplinary proceedings and finality and conclusiveness is not attached to his report. However, the delinquent employee must be given right to represent before the disciplinary authority.

20. In *Yoginath D. Bagde v. State of Maharashtra*, (1999) 7 SCC 739, the Supreme Court reiterated that where disciplinary authority does not agree with finding of the enquiry report, the only obligation in such a situation is to record the reasons for such disagreement and call upon the charged officer to make

submissions. It was observed:--

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

21. Question can be raised, what is meant by the term "hearing"; whether the law mandates personal or oral hearing before the disciplinary authority. The Supreme Court in *J.A. Naiksatam v. Prothonotary & Senior Master, High Court of Bombay*, (2004) 8 SCC 653 after examining earlier decisions in *Kunj Behari Misra* and *Yoginath D. Bagde* (supra) rejected a similar contention and did not accept the plea that principles of natural justice will be violated if the disciplinary authority fails to provide an opportunity of oral hearing. It was held as under:--

"6.....In the instant case, the appellants were given a copy of the tentative decision of the disciplinary authority and the appellants furnished detailed explanation and we are of the view that the principles of natural justice have been fully complied with and we do not find any infraction of rules or infirmity in the said decision.

7. The counsel further contended that from the tentative decision it could be spelt out that the disciplinary authority had already taken a final decision in the matter and the details have been given therein and the opportunity which was given to the appellants was only an exercise in futility. We are not inclined to

accept this contention. It is true that the disciplinary authority gave its reasons for disagreement with the report of the enquiry officer and the appellants had given their full-fledged explanation and if at all the disciplinary authority gave detailed tentative decision before seeking explanation from the appellants, it enabled them to give an effective representation and the principles of natural justice were fully complied with and it cannot be said that the appellants were not being heard in the matter."

This position was referred to by a Division Bench of this Court in *Union of India and Others versus Kushal Pal Singh*, W.P. (C) No. 2612/2014 decided on 28th November, 2014, in which it has been held:--

"8. It is thus clear that the first part of the finding, that the Enquiry Officer did not give a disagreement note and denied the applicant an opportunity to represent against the hearing, arrived at by the CAT, is in fact without foundation. What Kunj Bihari Mishra and subsequently Arvind Kumar Shukla (*supra*) require is that as a matter of course, if the disciplinary authority proposes to arrive at a finding contrary to that of Enquiry Officer, a disagreement note spelling briefly the reasons why the contrary opinion is to be formed, has to be given to the charged officer. The reasons are that the charged officer should be given an opportunity to air his views on the proposed opinion and the reasons in support of it. Like in the case of an enquiry report which does not exonerate but records findings of guilt (where the officer is given a copy of the report to elicit his response), equally when a contrary view which seeks to override findings of the Enquiry Officer and arrive at a findings of guilt is proposed, the same standard i.e. granting opportunity to the charged officer is insisted upon. Although, the observations in Kunj Bihari Mishra and Arvind Kumar Shukla (*supra*) and *Yoginath D. Bagde v. State of Maharashtra & Anr.*, , 1999 (7) SCC 739 appear to be broad and general as to the nature of hearing, this aspect was clarified in the ruling reported as *J.A. Naiksatam v. Prothonotary & Senior Master*, , (2004) 8 SCC 653. It was held that the nature of the opportunity need not necessarily comprehend a mandatory personal hearing but an opportunity to represent against the proposed findings. This, in the opinion of the Court, is in line with the logic of providing an opportunity. Whenever a finding of guilt based upon materials discussed in the course of the enquiry proceedings are recorded, the final order is to be made after considering the representation of the charged officer. The hearing, therefore, extends only to the grant of opportunity to represent against the proposed contrary findings and not to the extent of a compulsory personal or oral hearing in every case, as has been held by the CAT in the present case."

22. When we turn to the facts of the present case, the respondent was served with disagreement memo dated 18th April, 2012 and had in response filed written submissions dated 30th April, 2012. Thus, there was compliance with the principles of natural justice. The disciplinary authority has not ignored the written submissions and has dealt with the contentions and issues raised therein in the

order dated 22nd June, 2012 imposing penalty. The said order also records that personal hearing was not prescribed in the Railway Servants (D&A) Rules, 1968. The appellate authority has referred to the Railway Servants (D&A) Rules, 1968 and observed that the Rules do not postulate personal or oral hearing.

23. Rule 10 of the Railway Servants (D&A) Rules, 1968 read as under:--

"10. Action on the inquiry report:--(1) If the disciplinary authority:--

(a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

(b) is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9, as far as may be.

(2) The disciplinary authority:-- (a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule(1) (a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant;

(b) shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11, make an order imposing such penalty: Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the

articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses(v) to (ix) of rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed: Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the railway servant."

It is not the case of the Respondent or a finding of the Tribunal that Rule 10 was violated and not followed.

24. Adverse observations of the Tribunal with regard to the opinion rendered by UPSC is erroneous. UPSC is a constitutional authority, who had examined the factual matrix in the present case and rendered their advice by letter dated 10th June, 2013. The opinion of the UPSC dated 10th June, 2013 is by an independent person. It is a detailed opinion after examining ocular and documentary evidence on record. It cannot be described as an arbitrary and a cryptic exercise with a predetermined or prejudiced mind. It specifically records that the statement of Tapan Barua was supported by S.N. Dey and asks the pertinent question why did the name of the respondent crop up if the consignment did not have any connection with him. Bundles had no railway marking but somebody had put the marking CCO/MLG, which had reference to the respondent and the consignments were marked to SS/NJP. The UPSC has mentioned that the respondent had used his official standing for booking of seven bundles of parcel/wood, but did not directly give instructions because of the ban on transportation of forest products and the paper trail would have put him into problem. There were documentary and other evidence that unbooked consignments of seven poly bundles of wooden parts were dispatched to Patna. As per records the consignment was for the respondent. Unloading records maintained at Patna name the respondent. The respondent had directed Tapan Barua to stay at New Jalpaiguri at 11 to 14th July, 2005 for supervising the unloading. On this question of statement of D. Bose, the then ACM who had allegedly abetted the act of loading of timber at Lumding and had denied his involvement, the UPSC has opined that D. Bose was an accomplice to the illegal act. This was the apparent reason for him not to implicate the respondent. Tapan Barua and T.K. Paul had obliged the respondent, possibly in deference to the wishes of the senior officer. The seven poly bundles of wooden parts dispatched to Patna record the name of the respondent. The consignment had no marks on the parcels but the owner's name was mentioned in the unloading book as "CCO, E. Rly. Mr. A.K. Prasad". The train guard had told Rabindra Prasad, Sr. Parcel Clerk at Patna that the consignment was for Mr. Prasad, CCO. The entire system had surrendered to the irregular instructions of the CCO and his junior functionaries of the claim department.

25. Before us, counsel for the respondent had drawn our attention to the enquiry

report and to the statement of Tapan Barua and S.N. Dey. Tapan Barua, in his statement, has elaborated that he had been instructed by the respondent to stay at New Jalpaiguri between 11th to 14th July, 2005; and on the instructions of the ACM, he had unloaded three bundles of wood with marks CCO to SS/NJP from SLR No. 97703 train No. 4055 DN on 12th July, 2005 and had thereafter advised one Partha S. Seal, to take delivery on 13th July, 2005, but when he refused to do so, he contacted Vijay Prasad on 14th July, 2005. On 14th July, 2005, he was informed by the ACM to supervise unloading of four bundles of wood in the front compartment of Rear SLR No. 99702. This was done and the bundles were without railway marks, except CCO LMG to NJP. These consignments were kept in the godown. There was no transit permit or railway mark on both the consignments. Tapan Barua had accordingly informed the respondent, that the bundles were without railway mark etc., who had then replied "let me see". These consignments were later on dispatched from New Jalpaiguri to Patna on 6th August, 2005 by train No. 3245 DN. Tapan Barua had given reasons why they could not earlier load these bundles and transport them to Delhi.

26. Tapan Barua was himself charge-sheeted for his mis-conduct and had submitted his reply. It is accepted that Tapan Barua was punished for his lapses and misconduct. In his cross-examination, by the respondent, Tapan Barua accepted that the dispatched goods were prohibited and it was illegal to transport wood without permit. On being questioned, why had he agreed to follow instructions of the respondent, Tapan Barua had responded that he was working under the respondent and he was pressurized. He was candid and categorical in stating that the wooden bundles were booked and dispatched at the behest of the respondent and that he had reported the matter to the ACM, Tarak Nath Bhattacharya.

27. S.N. Dey in his statement has stated that on 12th July, 2005, he was on duty at Lumding station between 6:30 and 13:00 hours and had noticed three bundles of wooden parts without railway marking, but with the marking of CCO/MLG to SS/NJP. He had loaded these bundles in the SLR compartment and a card label with marking LMG to PNBE was prepared by him. S.N. Dey had admitted that this was the only parcel loaded in the SLR compartment and he had sealed the compartment for Patna. Further, the ACM was present at that time and had asked him to load the said goods. On questioning by the respondent, S.N. Dey had stated that he was told that the consignment belonged to the respondent, and therefore, he had not checked the booking particulars before loading. S.N. Dey was candid that he had never talked to the respondent and had in fact never seen the respondent in his entire career.

28. We would at this stage consider in brief the contentions raised by the respondent in their written submissions, which for the sake of convenience are narrated point wise:

"(i) It is unexplained why the goods were unloaded at New Jalpaiguri, when the wood in the two trains could have been transported to Patna.

- (ii) The wood transported to Patna was cheap quality fire wood.
- (iii) The wood transported to Patna, was different from the wood loaded at Lumding and unloaded at New Jalpaiguri.
- (iv) The wood got destroyed in the fire at the Patna parcel godown.
- (v) The respondent was not the direct senior of Tapan Barua, S.K. Dey etc. and therefore, he could not have influenced or pressurized them.
- (vi) Respondent has been targeted by foisting this false and fabricated case for as the CCO he had checked corruption by reducing pending/outstanding claims.
- (vii) Tapan Barua was an unreliable and untruthful witness.
- (viii) Tapan Barua had indulged in wrongs and misconduct and had a grudge and ill will towards the respondent.
- (ix) There is a discrepancy as to the size of the wood that was loaded at Lumding and New Jalpaiguri and the measurements/sizes recorded at Patna on 3.2.2006.
- (x) Disciplinary authority was biased and prejudiced against the respondent since he had approached the Jaipur Bench of the Tribunal and adverse orders were passed."

The respondent asserts that the disagreement note was arbitrary and his reply reflects the true factual position.

29. Most of the factual contentions and inferences drawn by the respondent, we would observe, are mere assumptions and far fetched suppositious. For example, the claim that the wood was cheap quality fire wood, a finding also given by the Inquiry Officer is fallacious and unfounded. There could be several apparent reasons why the wood was first unloaded at New Jalpaiguri and after about two months sent to Patna. The transportation of wood was banned and illegal and no railway freight had been paid. The respondent himself in the written submissions has accepted that transportation of wood from North-East was banned/prohibited. It did not matter, whether or not the respondent was the Reporting or Reviewing Officer or immediate senior of Tapan Barua. Respondent was the CCO and holding a senior and powerful post. Tapan Barua was also proceeded departmentally and it was accepted at the Bar that he had suffered punishment. The wood was transported to Patna on 6.8.2005. Patna is the home town of the respondent. Transportation, including loading of goods at Lumding, unloading at New Jalpaiguri, the fact that the wood was then stored in the Railway godown and after about two months sent to Patna would clearly indicate involvement of a railway officer of standing and who could influence and pressurize the staff at three stations. It is apparent that the witnesses have in seritim referred to the respondent, who was then the CCO. At Patna in the records name of the respondent was recorded. It was not possible for a junior officer like Tapan Barua or S.N. Dey to have conducted themselves in this manner, unless there were instructions and directions from a senior officer. Tapan Barua was cross-

examined by the respondent at some length. There is nothing to either suggest or show that Tapan Barua had any ill-will or had deliberately introduced the words "CCO" to falsely implicate the respondent.

30. Reliance placed on Sections 18 and 155 of the Evidence Act, 1872 has to be rejected for several reasons. Evidence Act, per se is not applicable to departmental proceedings. Pertinently, Section 134 of the Evidence Act specifically stipulates that no particular number of witnesses, are required to prove any fact. A single witness can prove a fact. In a case of this nature, it would be difficult to find direct witnesses who would have interacted with the respondent as the goods transported were banned and freight charges had not been paid.

31. It would be incorrect to state that the statement of Tapan Barua is not corroborated. The Relied Upon Documents (RUDs) and statement of S.K. Das, S.N. Dey, T.K. Paul and Belan Chandra Mashashary and others, negate the said contention. No doubt, S.N. Dey had not interacted with the respondent but he has mentioned that the wooden parts loaded had the markings of CCO/MLG to SS/NJP. B.R. Mishra, Senior Goods Guard had stated that he had seen a label card fixed on the SLR door lock on train No. 4055 (Dibrugarh town to Delhi) on 12.7.2005 and on the card it was recorded that the consignment belonged to CCO/MLG. The respondent was the CCO. The transshipment clerk had also told him that the consignment belonged to CCO/MLG. S.K. Das, Senior Goods Guard affirms that on 14.7.2005 they had loaded a consignment of wood at Lumding. He had referred to RUD 6, which mentions that the consignment was for SS/NJP and should not be touched. K.L. Biswas, transshipment clerk at New Jalpaiguri had stated that he was intimated that some packages of CCO/MLG were coming by train and these were to be unloaded at New Jalpaiguri. He had opened the compartment in the presence of Tapan Barua and had seen the label card and the guard had also told him that the packages were of CCO/MLG. Three poly bundles of woods were unloaded and taken into possession by Tapan Barua. There were no railway markings on the said parcels, which had private markings of CCO/MLG to SS/NJP. The said statement of K.L. Biswas tallies with his contemporaneous written recoding made in the RUD 12 and the fact that there was marking CCO/MLG on the packets, which had wood. A.K. Rabha, Chief Transshipment Clerk has stated that he was charge-sheeted and punished for unloading of parcel consignment from 4055 Express at New Jalpaiguri on 14th July, 2005. The consignment of four poly bundles had the marking of CCO/MLG to SS/NJP. He had been intimated in advance by Tapan Barua regarding the consignment. The label card had mentioned that the consignment was for NJP and also PNEB (Patna). The guard had stated that the consignment was from CCO/MLG, which was a private marking. He affirmed that Tapan Barua had told him that the bundles belonged to CCO/MLG. Rabindra Prasad, Sr. Parcel Clerk, Patna Jn., has narrated that they had unloaded goods from the rear compartment SLR No. 02713 in train No. 3245 UP on 7.8.2005, which had poly bags of wood sleepers without any railway marking. The compartment had a

private padlock, which was opened by the guard who had told him that the consignment belonged to A.K. Prasad, CCO, i.e. the respondent. The guard had told him that the consignment was for the Station Master. The name of the CCO was recorded by him in the unloading tally book and he had deposited the consignment in the inward shed. Ram Dutta Pathak, Guard, on train No. 3245 UP who had taken over the charge at Barauni, has stated that he was informed verbally by the incoming guard B.K. Singh that the consignment belonged to A.K. Prasad Saheb and was to be unloaded at Patna. He was handed over a key of a private padlock. In his cross-examination, Ram Dutta Pathak was questioned whether the consignment was for Station Master, Patna as well as CCO? He replied having reproduced what was written on the relief memo of the incoming guard.

32. Belan Chandra Mashahary, who was the Vigilance Officer and had investigated the case, has supported the department's case. He has stated the record of the transshipment at NJP and Patna established involvement of the respondent. As per official records, the consignment were from CCO/MLG. The consignment of three poly bundles of wood and four poly bundles of wood were loaded at Lumding and unloaded at New Jalpaiguri. Thereafter, on 6.8.2005 these were sent to Patna and unloaded at Patna junction on 7.8.2005. These bundles were transported without any booking authority and valid documents and at the behest and on instructions of A.K. Prasad, the respondent. H.P. Paswan, who was working as the guard, had noticed a label with the markings SS/PNBE/EC Railway from CCO/MLG affixed on a compartment, which had a private padlock. At the bottom of the label, name A.K Prasad was mentioned. T.K. Paul has stated that he had loaded four bundles of wood parts with the marking CCO/MLG to SS/NJP. He has added NJP to the label card, which already had the marking of PNBE and DLI. He had got instruction from Barua to load the said bundle on the train. He has accepted that he did not get any instructions from CCO/MLG. We have already referred to the statement of SN. Dey. To repeat, he has affirmed that three bundles of wooden parts had the markings of CCO|MLG to SS/NJP. He affirmed having been orally informed that the consignment belonged to CCO and the ACM was himself present. This witness had never talked to CCO or even seen him in his entire service period. There is no reason and cause for the witnesses, one after the other, to name the respondent. Contemporaneous written official records mention/reflect that the consignment belonged to the CCO/A.K. Prasad.

33. Question No. 13 put to the respondent during the course of enquiry and his answer reads as under:

"Q. 13 Is it not a fact that all relevant RUDs right from LMG were created as per direction and orders of Shri Tapan Barua? Let me explain at LMG, Shri Pal was told by Shri Barua to load the poly bundles on behalf of CCO and Shri Pal made out the card label as from CCO to SS/NJP. At NJP, Barua was present to unload the consignment and told everyone that it was from CCO. The tally book was

filled up accordingly in absence of any other documents. At NJP, when the packages were loaded for Patna, Shri Barua informed the guard verbally that the consignment was for CCO. This was repeated by the last in the guard Chain, Shri Pathak to parcel clerk at Patna and this was again recorded at tally book at Patna.

Ans. At Lumding, one lot was loaded by Shri Dey, who had stated that he was instructed by ACM/CPR/MLG."

34. The respondent in his reply dated 9th August, 2006 to questions Nos. 5, 6 and 7 has stated as under:

"5, 6 & 7. The fact that the consignments belonged to me or not is immaterial. Any one can purchase any furniture in the market. This is a free country. What is important here is why were these booked without observing Commercial formalities. For this, the loading clerk at LMG and Shri Barua at NJP should be asked. Even if the consignments belonged to CCO as they allege, why were these not properly booked? Did they book these consignments and send the bill to CCO? As far as Shri Barua is concerned, he has not met me since ages. Since he has alleged that the consignments were mine, he should have booked them and presented me with the freight bill. As far as LMG is concerned, I do not know which loading clerk claims that I even talked to him. At least, I am not aware of talking to any clerk or Inspector at LMG which is the source and origin of all this confusion."

35. On the question of delay in conduct of the inquiry proceedings, we notice that the impugned order is silent and does not primarily proceed on the said basis, except making reference to the Chief Vigilance Commissioner's instructions. The petitioner along with the written synopsis has furnished complete details of the events from July, 2005 till October, 2015. In July, 2005, vigilance inquiry was instituted against the respondent and his name was put on the Agreed list. On conclusion of the vigilance inquiry, the respondent was served with the charge sheet on 29th August, 2008 and his name was shifted from the Agreed list to the Secret List. In December, 2009, the respondent had filed OA No. 559/2009 before the Central Administrative Tribunal, Jaipur contending there were legal flaws and lacunas. This OA was subsequently withdrawn and a fresh OA No. 68/2010 was filed before the same tribunal seeking various reliefs, including direction to dispose of the respondent's reply to memo of charges with a speaking order. By order dated 4th January, 2011, the tribunal at Jaipur had given liberty to the respondent to make a representation within two weeks to the disciplinary authority for deletion of his name from the Secret List. Inquiry Officer gave his report dated 7th August, 2008. In the meanwhile, the respondent had filed Contempt Petition No. 14/2012 before the tribunal at Jaipur for violation of the order passed in OA No. 68/2010. On 18th April, 2012, the disagreement memo was served on the respondent to which he had responded on 30th April, 2012. Disciplinary Authority had passed its order on 22nd June, 2012 and punishment as noted above, was imposed. On 4th July, 2012, the tribunal dismissed the contempt petition filed by the respondent. The respondent filed an

appeal before the President on 3rd July, 2012. In August, 2012, the respondent moved another OA No. 535/2012 before the Tribunal at Jaipur for removal of his name from the Secret List and had stated that there was non-compliance of the CVC directives for completion of inquiry proceedings within fifteen months. The respondent's name had remained on the Secret List for seven years, whereas it should have remained in the Secret List for four years and three months. The said OA was disposed of vide order dated 9th October, 2012, without giving any relief to the respondent, inter alia, holding that as per the Rules the respondent's name had to be put in the Secret List for a period of three years from the date of punishment. There is obviously a disconnect between this order and the impugned order. The respondent had filed yet another OA No. 714/2012 before the Tribunal at Jaipur for quashing of punishment, which was not accepted and was disposed of with the direction to approach the Tribunal after a period of six months. The petitioner thereupon had filed OA No. 62/2013 before the Tribunal at Jaipur, which was disposed of directing that the Railways would dispose of the appeal within three months. This time was extended vide order dated 28th April, 2013 for three more months. Subsequently, on 10th June, 2013, UPSC's advised was received. For this reason another application was filed and time for passing of the appellate order was extended by two weeks with a specific condition that in case appeal was not decided, the punishment order would be treated as quashed. On 4th October, 2013, the appellate order was passed and served on the respondent on 8th October, 2013.

36. The delay in the departmental proceedings and the appellate proceedings had bothered us, as the respondent's name had remained on the Secret List for the entire period of the inquiry and after punishment from the period 22nd June, 2012 to 21st June, 2016. In these circumstances, by order dated 3rd February, 2016, we had asked the petitioner to file an affidavit, noticing that the respondent had claimed that as a result of the punishment, he had been denied promotion to Higher Administrative Grade and to the post of Chief Commercial Manager whereas his batch mates and juniors had been promoted or granted non-functional HAG and consequently, the respondent would become junior to them. The petitioner has contested the said submission relying upon paragraph 4 of their affidavit filed before the Supreme Court in the Special Leave Petition (C) No. 31466/2014. It was also stated that the respondent's case for grant of non-functional HAG was considered and rejected by the Departmental Promotion Committee. We note that the meeting of the Departmental Promotion Committee was held on 20th October, 2015 i.e. after the respondent's name had been removed from the Secret List. The affidavit records that the respondent was declared as unsuitable for empanelment by the Selection Committee consisting of Chairman, Railway Board, Secretary, DOP and Member Traffic, Railway Board. The Selection Committee had gone on performance. It is highlighted that the respondent was not denied promotion during pendency of the disciplinary proceedings from 2005 till 20th October, 2015. The affidavit sets out the reason for the delay in proceedings and gives details of proceedings initiated by the

respondent from time to time. It is noticeable that the respondent had filed another OA No. 2848/2014 questioning his grading in the Annual Performance Appraisal Reports, which was disposed of vide order dated 7th April, 2015, i.e. after the impugned order herein dated 16th May, 2014 was passed. The respondent has filed contempt petition in the said OA in which we are informed arguments have been heard and order is reserved. The subject matter of the said OA includes challenge to the recommendation of the Selection Committee in their meeting held on 20th October, 2015. Pertinently, we are not directly concerned with the said minutes of the Selection Committee or their final outcome as they were not a subject matter of OA No. 4251/2013 in which the impugned order was passed.

37. For the reasons aforesaid, the present writ petition is allowed and the impugned order dated 16th May, 2014 passed by the tribunal allowing OA No. 4251/2013 and quashing the penalty imposed in the disciplinary proceedings vide order dated 22nd June, 2012 and affirmed in appeal vide order dated 4th October, 2013 is set aside. The penalty is affirmed. In the facts of the case, there would be no order as to costs.