IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 23rd OF OCTOBER, 2024

WRIT PETITION NO. 15125 of 2019

VIJAY SINGH YADAV

VS.

BHOPAL DEVELOPMENT AUTHORITY AND ANOTHER

Appearance:

Shri K.C. Ghildiyal – Senior Advocate – assisted by Shri K.N.Fakhruddin – Advocate for the petitioner.

Shri Kapil Duggal – Advocate for the respondents.

Reserved on: 09.08.2024

Pronounced on : 23/10/2024

ORDER

This petition is under Article 226 of the Constitution of India and validity of the orders dated 07.05.2018 (Annexure P/10) and 05.03.2019 (Annexure P/13) has been assailed by the petitioner saying that the said orders are apparently illegal and deserve to be set aside. The petitioner has also claimed that after setting aside the impugned orders direction be issued to the

respondents to reinstate him in service on the post of Revenue Officer with all consequential benefits of salary and arrears.

2. To resolve the controversy, as has been raised by the parties by advancing their submission and also on the basis of record available, it is appropriate to mention necessary facts of the case, which in nutshell are as follows:-

3. The petitioner was working on the post of Assistant Grade I and was officiating as an Incharge Revenue Officer with the respondent-department i.e. Bhopal Development Authority (For short 'BDA'). As per the definition given under Article 12 of the Constitution India, the Bhopal Development Authority comes within the definition of 'State'. The service conditions of the petitioner are governed with the statutory rules i.e. known as Madhya Pradesh Development Authority Services (Officers and Servant) Recruitment Rules, 1987 (For short 'Rules, 1987'). The respondent-department has adopted the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 for the purpose of disciplinary proceeding.

4. The petitioner was holding the additional charge of Revenue Officer vide office order dated 01.08.2013 (Annexure P/1). Before holding the said charge, somewhere in the year 2005, the BDA invited bids for leasing out some land situated in ISBT Bhopal on public private partnership formula. M/s Raj Homes succeeded in the said bid and was allotted the land after fulfilling the requisite formality.

5. The petitioner came to know about the said lease deed in the year 2015 when the lease deed was to be executed between the parties and he was assigned the work of calculating the penalties and valuation of the lease deed. The said lease deed was executed on 07.09.2015.

6. However, vide order dated 19/20.07.2016 (Annexure P/2) the petitioner was placed under suspension as he was found involved and colluded with M/s Raj Homes in violation of certain clauses of agreement and caused loss to the respondent authority. Along with the petitioner, two other employees of the respondent-authorty were also suspended.

7. A charge sheet was issued to the petitioner on 29.08.2016 (Annexure P/3) leveling as many as six charges upon him and thereafter he submitted a reply to the said charge sheet denying the allegations made against him and afterwards Enquiry Officer and the Presenting Officer were appointed to conduct the enquiry.

8. A petition i.e. WP No. 4741/2017 was preferred by the petitioner challenging the order of his suspension asking his revocation. The said petition was disposed of by order dated 07.04.2017 (Annexure P/6) giving liberty to the petitioner to avail the remedy of appeal under the Rules whereupon he preferred an appeal against the order of suspension on 23.05.2017 (Annexure P/7).

9. During the course of enquiry, the petitioner made his regular appearance, but, as per the petitioner, no proper enquiry was held and the procedure for imposing penalties was not followed and non-compliance of the procedure as

provided under sub-rules (14) to (21) of Rule 14 of Rules, 1966 has vitiated the entire enquiry. No witness was examined by the respondents and petitioner was also not granted any opportunity to explain the documents relied against him. According to the petitioner, the allegations made against him in the charge sheet and the alleged misconduct were not proved by the respondents during the course of enquiry and, even otherwise, from the material contained in the statement of articles, it can be easily said that the allegations made against the petitioner do not constitute any misconduct. As per the petitioner, the misconduct alleged against him was actually against the Chief Executive Officer of respondent No. 1, but to save the said officer, the petitioner was made a scapegoat.

10. A petition i.e. WP No. 621/2018 was also preferred by the petitioner challenging the applicability of Rules, 1966, issuance of suspension order, charge sheet and appointing Enquiry Officer and the Disciplinary Authority and the Court by order dated 24.01.2018 issued notices to the respondents, but during the pendency of said petition, finally the Enquiry Officer submitted its report recommending imposition of major penalty upon the petitioner, but, according to the petitioner, copy of the enquiry report was not supplied to him. The Disciplinary Authority with the approval of respondent No. 2 inflicted the major penalty of dismissal by the impugned order dated 07.05.2018 (Annexure P/10) upon the petitioner without supplying copy of the enquiry report and affording any opportunity to him in terms of Rule 54 of the Rules, 1987. Faced with the said situation, the petitioner withdrew WP No. 621/2018 and preferred an appeal against the order of Disciplinary Authority dismissing him from

service, but that appeal was also dismissed vide order dated 05.03.2019 (Annexure P/13).

11. The petitioner then preferred a petition i.e. WP No. 15252/2018 challenging the competency of the authority but that petition got disposed of directing Appellate Authority to decide the pending appeal of the petitioner. The petitioner then filed the present petition challenging the orders of Appellate Authority and also of the Disciplinary Authority.

12. The challenge is made mainly on the ground that it is a case of no evidence because no witness was examined by the respondents.

13. Learned counsel for the petitioner has also challenged the impugned order saying that the Disciplinary Authority has acted on the opinion of the Enquiry Officer and has not applied its own mind while inflicting the major punishment upon the petitioner. As per the counsel, the proposed punishment of Enquiry Officer influenced the Disciplinary Authority and as such he had not applied his own mind. He has also pointed out that the impugned orders suffer from discrimination as the other officers, facing the same allegations, have been exonerated.

14. Learned counsel for the petitioner has relied upon the decisions reported in **ILR 2024 MP 61-K.C. Kandwal vs. State of M.P.& others** and also the order passed in **WP No. 1859/2021-Dinesh Kumar Bilthare vs. State of M.P. & others**. He has also relied upon the decisions reported in **(1993) 4 SCC 727-Managing Director ECIL Hyderabad vs. B. Karunakar and others, (2018) 1 SCC 231 ---Uttarakhand Transport (Earlier known as UPSCRTC) and**

others vs. Sukhveer Singh and **(2015) 2 SCC 610 – Union of India and others vs. P. Gunasekaran.**

15. Reply has been filed by learned counsel for the respondents denying the submission made by the learned counsel for the petitioner. He has submitted that the enquiry was conducted in accordance with law and the orders passed by the Disciplinary Authority as well as the Appellate Authority do not call for any interference because the scope of interference in the matter of disciplinary proceeding in a petition under Article 226 of the Constitution of India is very limited.

16. I have heard the arguments advanced by the learned counsel for the parties and also perused the record. On perusal of enquiry report – Annexure P/9, it is clear that the Enquiry Officer although in his report has considered the charges levelled and reply submitted by the petitioner, but he has given his own opinion. From the enquiry report, it is also clear that no witness was produced and examined by the Enquiry Officer on behalf of the respondent-prosecution and as such whatever documents were produced have not been proved by any of the officer related to those documents during the enquiry. As such, the Enquiry Officer has considered those documents as per his own will and arrived at a conclusion and has given final opinion that from the charges levelled upon the petitioner, Charge Nos. 1,3,4 and 6 have been found fully proved and Charge Nos. 2 and 5 have been found partially proved. The Enquiry Officer in its report has observed that the mistake committed by the petitioner is of serious nature and therefore it is recommended that the major punishment

be inflicted upon him. Consequent upon the said recommendation, the Disciplinary Authority in his order dated 07.05.2018 has reiterated the report of enquiry submitted by the Enquiry Officer and without any reason has passed the order of dismissal observing that taking note of the enquiry report, the conclusion drawn on and the recommendation made by the Enquiry Officer and also the decision taken by the President, punishment of dismissal is imposed.

17. From the impugned order, nowhere it reflects that the Disciplinary Authority has applied his own mind and has given any reason as to why the reply to the charges submitted by the petitioner is not sufficient and as such charges are found proved and the opinion of Enquiry Officer is also proper. Thus, it is clear that the order passed by the Disciplinary Authority inflicting the major penalty upon the petitioner is a non-speaking order and also without application of mind as it is fully based upon the report of enquiry. Thus, in absence of assigning any reason by the Disciplinary Authority as to why the punishment of dismissal is proper to be imposed makes it clear that the said authority has not examined the charge and its gravity. In my opinion, such type of opportunity, as has been given to the petitioner, is nothing but an eyewash. Applying the principles of natural justice does not mean that for the sake of satisfaction of the employee it is provided, but it is provided so as to reach to a logical conclusion after taking into account the stand taken by the delinquent and assigning reason as to why as per the Disciplinary Authority the said stand is not proper.

18. The High Court in case of **Dinesh Bilthare (supra)** has considered the aforesaid aspect and observed as under:-

> "**9.** The doctrine of proportionality exists in India from time immemorial. This doctrine is applied by Courts in criminal cases on regular basis. The principle is that one cannot be visited with an extreme order / punishment which is not commensurate to the conduct / misconduct /offence. It is noteworthy that first separate rock edict of emperor **Ashoka** at **Dholi** shows that Ashoka expressed his anxiety that undeserved and harsh punishment should not be imposed. ***Dharmakosa*** contains a *Shloka* :
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> अपराधानुरूपं च दण्डं दण्डयेषु दापयेत्।
>
> सम्यग्दण्डप्रणयनं कुर्यात्।
>
> **द्वितीयमपराधं न कस्यचित् क्षमेत।**
>
> Let the king inflict punishments upon the guilty (i) corresponding to the nature (gravity) of the offence (ii) according to justice and (iii) not pardon anyone who has committed the offence for the second time.
>
> **11.** If the impugned order dated 27.11.2020 (Annexure P-6) is minutely examined, it will be clear like cloudless sky that there is no iota of reason assigned in the entire order as to why the punishment of 'removal' from service was found to be adequate for committing the offence under Section 324 of IPC. The disciplinary authority was required to examine the gravity of conduct which led to conviction on the principles of proportionality. There is no finding that the conduct which led to conviction was so grave that no such other punishment would be commensurate to the offence / conduct. Thus, the order dated 27.11.2010 is **set aside**. The District Education Officer, Chhatarpur is directed to re-consider the punishment on the anvil of doctrine of proportionality

> and pass a fresh order in accordance with law within 30 days from the date of production of copy of this order."

In case of **K.C. Khandelwal (supra)** also the High Court has considered the proportionality of punishment and observed as under:-

> "**11.** In the above backdrop, it is to be seen whether the punishment imposed on the petitioner is disproportionate. The imposition of adequate punishment commensurate to misconduct is essential and became cause of concern for our society from time immemorial."

In the above case, the High Court has also considered the scope of interference in the matter of enquiry and observed as under:-

> **Substitution of penalty:**
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> 19. The ancillary question is whether this Court itself should modify the punishment or relegate the matter back to the disciplinary authority.
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> 20. Shri Ghildiyal, learned Senior Counsel although cited the judgments of Supreme court wherein while holding that punishment as excessive, the Supreme Court itself substituted the punishment. A careful reading of the said judgments in the factual backdrop of the case shows that Supreme Court in order to do complete justice between the parties exercised its power under Article 142 of the Constitution. The question whether this court should substitute the punishment while interfering with the punishment is no more res Integra. The Apex Court after taking stock of its previous judgments in (2017) 2 SCC 528 (Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. v. K. Hanumantha Rao) opined asunder:—
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> > "7.3 The impugned order is also faulted for the reason that it is not the function of the High Court to impose a particular punishment even in those cases

where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to be inflicted upon the delinquent employee. No doubt, the administrative authority has to exercise its powers reasonably. However, the doctrine that powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp the discretion of the public authority. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice. In Lucknow Kshetriya Gramin Bank v. Rajendra Singh [Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372 : (2013) 3 SCC (L&S) 159], this principle is formulated in the following manner : (SCC pp. 380-81, paras 13-14).

"*13*. Indubitably, the well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the disciplinary authority. In Apparel Export Promotion Council v. A.K. Chopra [Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759 : 1999 SCC (L&S) 405] this principle was explained in the following manner : (SCC p. 773, para 22)

'22…. The High Court in our opinion fell in error in interfering [Apparel Export Promotion Council v. A.K. Chopra, 1997 SCC OnLine Del 973 : (1997) 77 FLR 918] with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct…. The High Court should not have substituted its own

discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone.'

14. Yet again, in State of Meghalaya v. Mecken Singh N. Marak [State of Meghalaya v. Mecken Singh N. Marak, (2008) 7 SCC 580 : (2008) 2 SCC (L&S) 431], this Court reiterated the law by stating : (SCC pp. 584-85, paras 14 and 17)

'14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to

> the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."
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> **(Emphasis Supplied)**
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> 21. Since the respondents used a sledge hammer to kill a fly, the punishment order dated 28.05.2012 and appellate order dated 23.06.2012 and order dated 17.9.2012 (Annexure P/5) are set aside. The matter is remitted back to the disciplinary authority to take afresh decision on the question of punishment. The disciplinary authority shall take a fresh decision within 60 days from the date of communication of this order by taking into account the findings of this order."

19. In case of **B. Karunakar (supra)**, the Supreme Court has also observed that getting copy of enquiry report is a right of the delinquent so that he may get an opportunity to meet out the opinion of the Enquiry Officer, but, here in the case at hand, neither enquiry report was supplied to the petitioner nor any reason was given as to why the enquiry report was not required to be supplied.

The Supreme Court has very categorically observed that when Enquiry Officer is the authority other than the Disciplinary Authority then it is essential to supply copy of the enquiry report to the delinquent because it is a right of the delinquent to get a reasonable opportunity to represent against the finding of Enquiry Officer. The Supreme Court has observed as under:

> "28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty

proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

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.

30. Hence the incidental questions raised above may be answered as follows:

> [i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny

the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

[ii] The relevant portion of Article 311(2) of the Constitution is as follows:

> "(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

[iii] Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-

> furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

20. Thus, it is clear that it a case of violation of principles of natural justice and to deprive the petitioner to defend himself properly.

21. The Supreme Court further in case of **P. Gunasekaran (supra)** has also observed the scope of interference in a matter of disciplinary enquiry and observed that if the enquiry is conducted in accordance with the procedure established by law and principle of natural justice is followed then interference is not required but if the finding of Enquiry Officer is based upon no evidence

and his conclusion is such that no reasonable man could ever arrive at, the same can be interfered with. The Supreme Court observed 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, reappreciating 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 reappreciation of the evidence. The High Court can only see whether:
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> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
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> (c) there is violation of the principles of natural justice in conducting the proceedings;
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> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
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> (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;
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> (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.

22. In view of the aforesaid enunciation of law and considering the report of enquiry, the order of Disciplinary Authority and also the order passed by the Appellate Authority, it can be easily inferred that the punishment inflicted upon the petitioner is without following any procedure established by law and it is in complete violation of principles of natural justice. It is a case of no evidence and everything is based upon the report of Enquiry Officer, who has considered the charges levelled and the reply of the charge sheet submitted by the delinquent and arrived at a conclusion by his own that the major punishment be imposed upon the delinquent. The Enquiry Officer has not followed the procedure, which is required to conduct the enquiry.

23. I have also perused the rejoinder and the documents annexed thereto showing that the other officers facing the same type of the charges have been exonerated and a lesser punishment has been inflicted upon them. One of the delinquents namely, Anees Hyder had faced almost the same type of charges as that of the petitioner but he was exonerated. As such, when there was no evidence then I am unable to understand as to on what basis the petitioner and the other delinquent namely, Anees Hyder were given different treatments. Thus, in my opinion, it is a fit case in which this Court in a judicial review of disciplinary matter, exercising power under Section 226 of the Constitution of India, can interfere.

24. Learned counsel for the respondents has although submitted that the opportunity was granted to the petitioner, he also participated in the enquiry but not appeared on several occasions when the case was fixed by the Enquiry Officer, however it does not mean that the Disciplinary Authority and the Appellate Authority without there being any foundation and material placed by the department can inflict the punishment that too of dismissal against the petitioner.

25. Resultantly, in my opinion, the procedure adopted by the respondents inflicting the punishment of dismissal upon the petitioner is purely illegal and apparently contrary to the principles of natural justice. The impugned order passed by the Disciplinary Authority is without application of mind and perverse because it is based upon the report of Enquiry Officer and therefore it is not sustainable in the eyes of law. The order of Disciplinary Authority as well as of the Appellate Authority are therefore liable to be set aside.

26. Accordingly, this **petition is allowed**. The impugned orders dated 07.05.2018 (Annexure P/10) and 05.03.2019 (Annexure P/13) are hereby set aside. The respondents are directed to reinstated the petitioner with all back wages and consequential benefits.

27. Looking to the facts and circumstances of the case, there shall be no order as to costs.

(SANJAY DWIVEDI)

JUDGE

Raghvendra