* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 09.04.2024
Judgment pronounced on: 09.05.2024

\+ W.P.(C) 3195/2014 & CM APPL. 9832/2020

GYAN SINGH MEENA ..... Petitioner

versus

NATIONAL SEEDS CORPORATION LTD. AND ORS
..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Geeta Luthra, Senior Advocate with Mr. Vidya Sagar, Ms. Pragati Srivastava, Advocates.

For the Respondents : Mr. Yashvardhan, Ms. Kritika Nagpal, Mr. Akshay Gupta and Mr. Gyanendra Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-

"(a) Quashing/setting aside the impugned orders, namely, charge-sheet dated 10.10.2011 (Annexure-I), enquiry report dated 16.04.2012 (Annexure-II), penalty order dated 11.06.2012 (Annexure-III) and appellate order dated 17.10.2013 (Annexure-IV);
(b) Directing respondents to reinstate petitioner with all consequential benefits, including, back wages, seniority, increment, promotion as if petitioner were always in service.

(c) Pass any other order in favour of the petitioners as deemed appropriate in the facts and circumstances of this case.

(d) Award cost of this writ petition."

2. Facts of the case germane to the dispute and as culled out from the petition are as under:

(a) The petitioner was working as a Seed Officer with the respondent no.1-National Seeds Corporation Limited.

(b) The petitioner was posted as the Area Manager of Rajkot Unit for the period from 01.05.2010 to 28.08.2010.

(c) It is the case of the petitioner that he was initially placed under suspension and was then served with a charge sheet dated 10.10.2011 alleging misconduct, to which the petitioner filed his reply on 27.10.2011.

(d) The two Articles of Charge framed against the petitioner are that the petitioner while working as an Area Manager at Rajkot unit, unauthorisedly sold seeds to third parties in the name of M/s. Kanani Trading Company, Jamnagar (hereinafter referred to as *"M/s. KTC"*) which resulted in presumptive loss of Rs.44,37,175/- by way of subsidy and dealer/distributor commission, to the respondent Corporation; and that out of 2870.10 quintals Groundnut supply made by the petitioner in

the name of M/s. KTC, the gate passes were issued only for 1503.00 quintals and remaining 1367.10 quintals were moved without gate passes.

(e) The petitioner's case, in brief, is that the commodities were infact sold to M/s. KTC and the receipts etc. were also issued in the name of this particular firm, however, M/s. KTC disowned the transactions when the bills were raised in its name by Mr. Roop Singh, the subsequent Area Manager, Rajkot. It is submitted that no one from M/s. KTC was summoned as witness to verify genuineness of documents through which this firm was said to have disowned the transactions.

(f) The petitioner received a notice dated 01.12.2011 of preliminary hearing from the Inquiry Officer (hereinafter referred to as *"IO"*). Pursuant to the aforesaid notice, the petitioner submitted a letter dated 21.12.2011 to the IO, giving list of sixteen official documents which he needed for his defence.

(g) That first hearing was held on 21.12.2011. The petitioner appeared before the IO along with his Defence Assistant, Sh. S.P. Verma, a retired Assistant Manager of the respondent Corporation. However, the IO did not permit the petitioner to avail assistance of Sh. S.P. Verma on the ground that Sh. Verma was not a serving employee of the respondent corporation. It is the case of the petitioner that the IO also partly disallowed some of the required and desired documents to be submitted by the petitioner for his defence.

(h) That petitioner addressed a letter dated 06.01.2012 to the IO requesting for five more documents for preparing his defence. It is the case of the petitioner that the IO in its proceedings dated 06.01.2012, disallowed most of the vital documents needed by the petitioner for his defence and also once again recorded that only a serving employee could be permitted to defend the petitioner as a Defence Assistant in the enquiry proceedings.

(i) On 09.02.2012 and 10.02.2012, three official witnesses, namely, Shri Roop Singh, Shri Sachin Panwar and Shri S.N. Singh were examined. Besides, one defence witness, namely, Shri Praful Chawda was also examined on 10.02.2012. That on 10.02.2012 itself, the Inquiry Officer briefly examined the petitioner and closed hearing of the case.

(j) Thereafter, on 16.04.2012, the IO rendered his Inquiry Report, holding that the charges against the petitioner stood proved. That in response to the above Inquiry Report, the petitioner submitted a detailed representation dated 26.05.2012.

(k) It is the case of the petitioner that the Respondent no. 2 i.e., Chairman-cum-Managing Director, the Disciplinary Authority (hereinafter referred to as *"DA"*) without applying mind to deficiencies pointed by the petitioner, mechanically held that the charges were proved against the petitioner, and imposed penalty of removal from service, *vide* the impugned order dated 11.06.2012.

(l) An appeal was filed by the petitioner against the impugned order of dismissal dated 11.06.2012. The said appeal was dismissed *vide* order

dated 17.10.2013. The present writ petition was filed challenging the said dismissal.

CONTENTIONS OF THE PETITIONER:-

3. Ms. Geeta Luthra, learned senior counsel for the petitioner at the outset submits that broadly, the following issues are to be considered by this Court:-

(a) The petitioner was not allowed the assistance of a Defence Assistant;

(b) The petitioner was disallowed from placing relevant documents, nor were the two defence witnesses permitted to be examined;

(c) No official of the complainant, namely M/s. KTC was ever produced as witness for the department;

(d) The officer who had conducted the Preliminary Inquiry was made a primary witness for the department;

(e) That the findings in the Preliminary Inquiry could not have been considered in the final inquiry proceedings;

(f) That the Inquiry Officer could not have recommended the penalty and having done so, the proceeding would be vitiated;

(g) No financial loss was caused to the respondent on account of the alleged misconduct/irregularity and;

(h) That the punishment imposed is disproportionate to the misconduct alleged.

4. Of the aforesaid contentions, Ms. Luthra, learned senior counsel contended that the non-examination of any official from M/s. Kanani Trading Company, Jamnagar as a witness would be a relevant issue to be considered

since it was on the basis of a complaint submitted by M/s. KTC that the disciplinary proceedings were initiated against the petitioner.

5. She submits that not only were any official from M/s. KTC summoned but also that the said complaints on the basis whereof the allegations were leveled against the petitioner were also never proven in accordance with law. That apart, it is submitted that the said documents of M/s. KTC have different signatures on them, which indicate *malafide* and would go to the root of the matter. She submitted that the respondents cannot be permitted to consider an unsigned and unproven letter of complaint to predicate the disciplinary proceedings upon and at the same time, deny the petitioner the right to cross-examine such an important and relevant witness. That having not been done, there has been a gross violation of principles of natural justice vitiating the very substratum of the disciplinary proceedings. Reliance is placed on the judgement of the Supreme Court in ***Roop Singh Negi vs. Punjab National Bank and Others*** reported in **(2009) 2 SCC 570** wherein it was held that mere production of documents is not enough and the contents of documentary evidence has to be proved by examining the witnesses.

6. It is submitted that by virtue of not having examined the prime witnesses from M/s. KTC, even on the asking of the petitioner, the indelible right of the petitioner to cross-examine and elicit the truth in his defence from the most relevant witness has been infringed, depriving the petitioner of his right of defence. Such denial has led to a sham inquiry proceedings being carried out against the petitioner. According to learned senior counsel, this coupled with the deprivation of examination of two defence witnesses sought

to be produced by the petitioner to counter such allegations, has led to not only the violation of principles of natural justice but also denial of a fair opportunity to establish his defence. In order to buttress her arguments, learned senior counsel referred to para 11 of the Inquiry Report dated 16.04.2012.

7. Ms. Luthra had forcefully argued that the two defence witnesses sought to be examined by the petitioner were retailers who would have proved that the orders were indeed placed by them on behalf of M/s. KTC upon the respondent; deposed about working relationship with M/s. KTC or that the orders placed by M/s. KTC could have been made through phone call also; and that M/s. KTC ordinarily did buy seeds from the respondent on account of other retailers since M/s. KTC enjoyed a 60 days' credit period. It is submitted that statement of these witnesses gathered relevance since the aforesaid statements could have disproved the charges leveled against the petitioner and thus, the denial of such examination has resulted in the charges being proved against the petitioner without even affording an opportunity to the petitioner to fairly defend himself. She submits that as such, the proceedings are vitiated and the impugned orders ought to be quashed.

8. Ms. Luthra, learned senior counsel next attacked the denial of providing a Defence Assistant to the petitioner. Learned senior counsel submits that the Inquiry Officer had asked the petitioner to furnish the name of his Defence Assistant in accordance with the Rules. The petitioner in pursuance thereto had furnished the name of a Defence Assistant who was an ex-employee of the respondent. She submits that the Inquiry Officer on a flimsy reason that

Rule 31(7) of the National Seeds Corporation Limited Employees Conduct, Discipline & Appeal Rules, 1992 (hereinafter referred to as *"Rules"*) stipulated that only a serving employee of the respondent could be engaged as a Defence Assistant, had rejected the name of the Defence Assistant as submitted by the petitioner. She submits that despite the petitioner requesting the IO and informing him that no serving officer was ready and willing to be his Defence Assistant and that with great difficulty, he was able to arrange for an ex-employee, the IO did not permit the said Defence Assistant, violating the right of the petitioner of valuable assistance from a Defence Assistant. Ms. Luthra submits that apart from the aforesaid, admittedly, there was no staff available in the office at Rajkot apart from a Peon, who obviously could not be made a Defence Assistant in such complicated matter. On this issue, Ms. Luthra submitted that in exceptional circumstances like the present case, the IO could and ought to have permitted the petitioner for the assistance of the said ex-employee as the Defence Assistant since the right to defence could not have been violated or curtailed by any Rules or Regulations. According to her, the right to defend himself through a Defence Assistant would be a fundamental right of the petitioner which has been denied. Such denial would vitiate the entire disciplinary proceedings. In support of her arguments, learned senior counsel relies upon the judgment of ***V.S. Ayangar Vs. The Karnataka Handloom Development Corporation Ltd., Bangalore*** reported in **1991 SCC Kar 1984.**

9. Ms. Luthra, learned senior counsel referred to various statements of the witnesses and the cross-examination conducted by the petitioner to submit

that the relevant issue regarding demands being placed by M/s. KTC through retailers on phone calls was a normal business transaction. She submitted that it was also elicited from the witnesses of the Department that it was not necessary for every indent/demand to be in written and the same could be orally placed as well. According to her, this admission would vindicate the stand of the petitioner, inasmuch as the petitioner had tried to establish that the retailers would often place their demands through a well established dealer like M/s. KTC for the benefit of getting 60 days' credit period before actual payment was to be paid to the respondent. Moreover, the admission also indicated that the retailers deposited the amounts sometimes directly to the respondent at offices other than the office where such demand was raised.

10. From the aforesaid admissions elicited from the witnesses of the department, Ms. Luthra submits that since the aforesaid aspects were taken to be the normal business transactions, the same could not have been leveled as misconduct or an irregularity on the part of the petitioner. She submits that the petitioner as such can be exonerated and discharged on this ground alone.

11. The next issue which Ms. Luthra argued was in respect of the examination of one Mr. S.N. Singh, Manager (Vigilance) who is stated to have conducted the preliminary inquiry. She submits that not only the officer carrying out the preliminary inquiry was examined as a witness, but the documents and the preliminary inquiry report, issued by said Mr. Singh, were also exhibited through the same person. According to her, the exhibition of preliminary inquiry report alongwith documents as also examination of such Inquiring Authority could not have been done since the same led to apparent

bias against the petitioner. Learned senior counsel vehemently argued the aforesaid issue on the ground that the said Mr. S.N. Singh had only recorded the statements of M/s. KTC over the phone without actually recording the statements in physical. It is submitted that disowning of transaction by M/s. KTC was telephonically received by the IO, who had self-attested the statements so made by M/s. KTC. She also submits that the said Mr. S.N. Singh was a senior officer to the petitioner and was biased against him. In that regard, the petitioner is stated to have submitted a representation dated 26.05.2012 to the Disciplinary Authority, which was not responded to by the Disciplinary Authority.

12. Ms. Luthra also submitted that the allegations against the petitioner are false inasmuch as no financial loss was caused to the respondent on the alleged misconduct/irregularity committed by the petitioner. The respondent corporation had not denied the factum of having received the amounts against the demands so made, which were alleged to be fake. According to her, in case the amounts against the so called fake transactions were received by the respondent, the question of a bill or a demand being fake, does not arise. In any case, Ms. Luthra submits that the petitioner was a fresh employee in the Unit at Rajkot and had no assistance or training for the aforesaid transactions or process and may have committed some errors which did not lead to any financial loss. Since no financial loss was faced by the respondent, no charges as leveled against the petitioner, could either have been made out or withstand the scrutiny of law.

13. Learned senior counsel also attacked the Inquiry Report on the ground that the findings in the preliminary inquiry were blindly relied upon by the IO to conclude that the petitioner was blameworthy. She submits that the preliminary inquiry was carried out only for the purpose of a *prima facie* consideration that a delinquent may be proceeded departmentally. Once the preliminary inquiry report is made part of the inquiry proceedings, the bias of the IO against the petitioner becomes apparent. According to her, this gathers significance because the preliminary inquiry from M/s. KTC and recording of such statement over phone could, at best, be hearsay evidence which could not have been relied upon by the IO unless such statements of the M/s KTC were tested in the inquiry proceedings. That having not been done, the reliance on the preliminary inquiry would vitiate the Inquiry Report. Learned senior counsel submits that on this ground too, there being a procedural violation, the impugned orders are liable to be set aside.

14. Next argument of learned senior counsel was on the aspect that the Inquiry Officer, by violating all Rules of prudence, had acted beyond his authority and jurisdiction by recommending the penalty in so many words which the IO could not have done. She submits that the role of IO is only limited to gathering of evidence, finding of facts and submitting a report as a fact finding authority alone. The moment the IO enters the jurisdiction of recommending an imposition of a penalty, the bias is apparent which would ordinarily vitiate the Inquiry Report itself. In case the aspect is considered from this point of view, learned senior counsel submits that, the inquiry proceedings alongwith the impugned orders are rendered unsustainable in law.

15. The penultimate argument of Ms. Luthra was in respect of disproportionality of the penalty imposed. She submits that there was no financial loss caused to the respondent coupled with the fact that the departmental witnesses have categorically admitted that demands/indents could be oral and over the phone also, should have been considered by the DA to impose a lesser penalty than that of removal from service. According to learned senior counsel, it is not disputed by the respondents that the petitioner had joined the services of the respondent recently and was never given a proper training and was a novice in the field coupled with the fact that apart from the petitioner, there was only one Class IV employee in the Unit/Area Office where the petitioner was serving, the same ought to have been sympathetically considered by the DA and the punishment other than removal from service could have been passed. Learned senior counsel submitted that apart from no financial loss having been caused to respondents, there has been no proof to establish the money trail alleged to have been illegally gained by the petitioner from the so called private traders and without such cogent proof, the punishment of removal from service is highly disproportionate. She submits that this Court may, after considering all the aforesaid facts, alternatively direct alteration of the penalty as imposed.

CONTENTIONS OF THE RESPONDENT:-

16. Arguing for the respondents, Mr. Yashvardhan, learned counsel draws attention firstly to the Rule 31 of the Rules, particularly sub-rule (7) according to which a Charged Officer is entitled to the service of a Defence Assistant, provided the said Defence Assistant is an employee working in the particular

unit where the said Charged Official works/worked at the time of happening of alleged charges. He submits that this being the rule position, the argument of the petitioner that he was entitled to engage the services of an ex-employee of the respondent as a Defence Assistant does not arise and is contrary to the statutory rules. He further submits that the said Rule having not been challenged by the petitioner, the rule position can neither be changed nor be interpreted in any other manner. He thus submits that the argument regarding deprivation of a Defence Assistant is untenable in law.

17. On facts, in regard to the aforesaid contentions, learned counsel refers to various daily order sheets dated 01.12.2011, 21.12.2011, 06.01.2012 and 09.02.2012 to submit that not only was the petitioner afforded an opportunity to choose an appropriate Defence Assistant in accordance with the statutory rules but the IO even granted sufficient time and ample opportunity to the petitioner to engage the services of any employee of the respondent from offices at Rajkot, Ahmedabad or Headquarters to represent the petitioner as his Defence Assistant. He thus submits that even on facts, the petitioner was allowed both, extension of time and sufficient opportunity to engage the services of a Defence Assistant which the petitioner failed to do. Learned counsel also invited attention to the letter dated 21.12.2011 of the petitioner communicated to the IO wherein no complaint or objection regarding any concern of the non-availability of any other Defence Assistant was mentioned. According to the learned counsel, in a case of disciplinary inquiry, the IO is obligated only to provide a sufficient opportunity which would be in consonance with the principles of natural justice. Learned counsel submits

that having regard to the above facts on record, it is clear that there has been no violation of principles of natural justice.

18. Further to the aforesaid argument, learned counsel also submitted that the petitioner had not placed on record any proof to show that he had made any efforts to engage or request any other employee working in any of the aforesaid offices to assist him as a Defence Assistant. He further submits that since objection has been raised for the first time in the present writ petition and is conspicuous by its absence, both before the Disciplinary Authority as also the Appellate Authority, the petitioner would be precluded from raising this issue before the Court now.

19. Learned counsel referred to the Articles of Charge as framed against the respondent. By referring to the said Article of Charge, learned counsel submits that in the preliminary investigation, it was revealed that groundnut seeds and other commodities in few thousand quintals were directly sold to private/unauthorized parties by the petitioner on fake SR/Bills which were raised in the name of M/s. KTC. He submits that the payments for the aforesaid transaction were made by collecting cheques through M/s. Bhagwati Enterprises, Rajkot in the name of the respondent after paying cash and commission through M/s. Adarsh Agro Seeds and M/s. S.M. Seeds and Fertilizers, Rajkot with the help of the petitioner. In this way, according to learned counsel, the petitioner had siphoned off Rs.44,37,175/. It is submitted that the petitioner has been unable to refute the aforesaid Articles of Charge even after having cross examined the witnesses. According to learned counsel, even on facts, the present writ petition is unsustainable in law.

20. Mr. Yashvardhan, learned counsel next submits that the argument of the petitioner that he was a novice and did not have the requisite knowledge of the process and transactions on account of no training having been provided, cannot be sustained. He submits that the said objection is a lame excuse for the reason that the petitioner was an Area Manager handling an independent unit and had requisite experience by that time. He submits that even otherwise, the petitioner knew the procedure to be followed and yet willingly and knowingly violated the said procedure to obtain unlawful gain. He submits that the lack of knowledge cannot be a defence in disciplinary proceedings.

21. To the argument of the learned counsel for the petitioner regarding non-examination of the witnesses of M/s. KTC is concerned, learned counsel submits that the reply of the petitioner, in vernacular, to the chargesheet makes it clear that the petitioner himself never disputed the aforesaid transactions and in fact had admitted that, in the name of M/s. KTC, the small retailers would place orders/demands on the respondent through telephone also. He submits that once the petitioner himself admits that the transaction did take place in the manner in which it was alleged by the respondent, the bogey of not having knowledge of the transaction would be irrelevant.

22. It is further submitted that the petitioner never made any request during the course of enquiry to examine M/s. KTC and the complaint made by M/s. KTC was duly verified by the IO and was found to be genuine, based on which the charges were framed against the petitioner. The letters sent by M/s. KTC were verified by the IO over telephone and furthermore, the letters did

not mention that any other person was authorized by M/s. KTC to collect seeds from the petitioner.

23. Learned counsel also referred to the contentions raised regarding the statement of the witnesses and their cross examination and the contentions raised regarding the IO putting questions to the witnesses to fill in the lacuna, on which, he submits that there is no law precluding the IO from putting questions to the witnesses in order to seek clarification regarding certain issues. In order to buttress the aforesaid argument, learned counsel referred to various cross examinations of the witnesses to demonstrate that wherever the IO had put questions, it was made clear that the same were only clarificatory in nature. On that basis, learned counsel submits that the contention that the IO was biased or asked questions to fill in the lacuna of the departmental witnesses, is not based on fact and has to be discarded.

24. From the aforesaid factual aspect, learned counsel submits that it is apparent that the petitioner got ample opportunity to cross examine all the departmental witnesses sufficiently and had no reason to raise grievance that he was not afforded a fair opportunity to defend himself. Learned counsel also submitted that the argument regarding deprivation of examining defence witnesses on behalf of the petitioner is concerned, the same is contrary to the facts on record. He submits by referring to the Report of the IO, that for sufficient and good reasons, the IO had refused examining the witnesses sought to be produced by the petitioner. According to learned counsel, the IO had categorically observed in his report that two of the witnesses were retailers and were deeply interested parties in the allegations leveled against

the petitioner and as such, were not allowed to be examined. He submits that the said refusal was never challenged by the petitioner at the relevant stage. He further submits that as per the Inquiry Report, one defence witness whose relevance was found appropriate was readily permitted. He thus submits that the argument of denial of an opportunity to examine the defence witnesses is contrary to the facts on record.

25. Learned counsel asserts that the petitioner was provided an ample opportunity to examine defence witnesses yet having failed to demolish the Articles of Charge, is raising false and frivolous grounds which are without any merit. That apart, learned counsel submits that it is borne out from the records that the petitioner kept attempting to file documents intermittently before the inquiry proceedings and sought to produce defence witnesses at a belated stage. Despite this, the IO permitted examination of defence witness, which has not been disclosed by the learned counsel for the petitioner.

26. Learned counsel relied upon the judgment of ***State of Haryana vs. Rattan Singh*** reported in **(1977) 2 SCC 491** to submit that it is well settled that in disciplinary proceedings, strict rules of the evidence are not to be followed and that all material which are logically probative for a prudent mind are permissible. He submits that the said judgment also held that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility.

27. Learned counsel submits that the law in respect of the jurisdiction and scope of interference in judicial review of proceedings held in domestic tribunal is well settled by the Supreme Court in the judgements of ***B.C.***

Chaturvedi Vs. Union of India & Ors. reported in **(1995) 6 SCC 749** and ***Union of India & Ors. Vs. P. Gunasekaran*** reported in **(2015) 2 SCC 610.**

28. Learned counsel further relies upon a judgement of the Supreme Court in ***Chairman & Managing Director, V.S.P. and Others vs. Goparaju Sri Prabhakara Hari Babu*** reported in **(2008) 5 SCC 569** which held that once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon the delinquent employee.

29. On the aforesaid arguments, learned counsel for the respondent summarized that in the present case, sufficient evidence was available against the petitioner, ample opportunity was provided to the petitioner to defend himself, the principles of natural justice were complied with in terms of opportunity of hearing and providing sufficient time and opportunity to place on record the material in his defence and as such, the present challenge to the impugned orders dismissing the petitioner from service, must fail.

REBUTTAL ON THE BEHALF OF THE PETITIONER: -

30. Ms. Luthra, learned senior counsel reiterates the submissions made by her and vehemently urges that the indelible right of opportunity to make a proper and effective representation through a Defence Assistant available to a Charged Officer in the enquiry proceedings has been infringed, thus violating the principles of natural justice. She very categorically asserts that the Rule 31(7) of the said Rules have been wrongly interpreted by the Respondent, causing prejudice to the case of the petitioner.

31. Learned senior counsel further submits that findings in the preliminary inquiry which is only a fact finding inquiry, is extracted *in verbatim* in the Inquiry Report. To substantiate, she relies upon a judgement of the Supreme Court in the case of ***Union of India and Others Vs. Mohd. Ibrahim*** reported in **(2004) 10 SCC 87.**

32. Learned senior counsel further re-agitates that it is a case of no evidence and the punishment imposed thereto is highly disproportionate, since, no official of M/s. KTC was ever called as a witness and there is no evidence against the petitioner either placed before the preliminary inquiry or the Inquiring Authority or even the Disciplinary Authority to base the punishment so imposed. She asserts that even factually, the complaint and accompanying documents relied upon by the inquiring authority, which is edifice of the entire inquiry proceedings against the petitioner, were neither proved nor authenticated by the IO, to base the said findings over the same.

33. Thus, learned senior counsel prays that the impugned orders be set aside and the petition be allowed.

ANALYSIS AND CONCLUSION :-

34. This Court has heard the arguments of Ms. Geeta Luthra, learned senior counsel for the petitioner, Mr. Yashvardhan, learned counsel for the respondent, scrutinized the records and considered the judgements relied upon by the parties.

35. Since the present petition revolves around the challenge to the inquiry proceedings and the consequent impugned orders of dismissal from service passed by the DA and the Appellate Authority, it would be apposite, at the

outset, to first consider the scope and jurisdiction of this Court to interfere in such proceedings on the anvil of judicial review. The celebrated judgements of the Supreme Court in ***B.C. Chaturvedi Vs. Union of India & Ors.*** reported in **(1995) 6 SCC 749** and ***Union of India & Ors. Vs. P. Gunasekaran*** reported in **(2015) 2 SCC 610** have long settled the guiding factors which have now been reiterated by the Supreme Court in ***Union of India & Ors. Vs. Subrata Nath*** reported in **2022 SCC OnLine SC 1617**. Relevant paragraphs of the said judgement are reproduced hereunder: -

> "***14.*** *It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.*
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> ***15.*** *In the above context, following are the observations made by a three-Judge Bench of this Court in B.C. Chaturvedi (supra):*
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> > *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the*

charge. ***The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.***

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal*. In Union of India v. H.C. Goel[6] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

[Emphasis laid]

16. *In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya[7], a two Judge Bench of this Court held as below:*

> *"7.* ***It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse****. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India[8], Union of India v. G. Ganayutham[9], Bank of India v. Degala Suryanarayana[10] and High Court of Judicature at Bombay v. Shashikant S. Patil[11]).*
>
> *[Emphasis laid]*

17. *In Chairman & Managing Director, V.S.P. v. Goparaju Sri Prabhakara Hari Babu[12], a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that:*

> *"21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."*

18. *Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India v. P. Gunasekaran[13] held thus:*

"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:*
(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) reappreciate 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."

19. *In Union of India v. Ex. Constable Ram Karan[14], a two Judge Bench of this Court made the following pertinent observations:*

> *"23. 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 the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.*
>
> *24. 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 scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."*

20. *A Constitution Bench of this Court in State of Orissa (supra) held that if the order of dismissal is based on findings that establish the prima facie guilt of great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order becomes unassailable and the High Court ought to forebear from interfering. The above view has been expressed in Union of India v. Sardar Bahadur[15].*

21. *To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the*

exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.

***22.** Applying the law laid down above to the instant case, we are of the view that the High Court ought not to have interfered with the findings of fact recorded by the Disciplinary Authority…"*

(Bold portions as in the original)

The principles of law has been clearly laid down and followed by the Supreme Court and various High Courts in India for the last many decades and still hold the field. The examination under the powers of judicial review in such matters is very narrow and limited. In that, only consideration open for judicial review is to examine and satisfy itself that the procedure has been duly followed in accordance with the statutory rules and to consider whether there appears any violation of principles of natural justice. Every infraction does not call for interference unless it violates the above principles. With that in mind, the case presented before this Court needs to be examined.

36. The first and foremost ground of challenge by the petitioner was to the non-summoning and consequent non-examination of the witnesses from M/s.

KTC. This was primarily based on the fact that the edifice of the disciplinary proceedings emanated from the complaints *vide* letters dated 18.10.2010 and 21.10.2010 sent by the said M/s. KTC to the respondent denying raising of any demand/indent upon the respondent for transaction worth Rs. 84,93,390/-. It is the case of the respondent that when the petitioner was replaced by a fresh incumbent at the Rajkot unit, during audit, it was found that a payment of Rs.1,85,070/- was due and pending from M/s. KTC. As a result thereof, a demand/bill for the shortfall was raised upon the M/s. KTC indicating all the transactions involved alongwith the bills, alleged to be fake and unauthorized and purported to have been issued by the petitioner. It was upon the receipt of this demand that the M/s. KTC had flatly refused the entire transaction worth Rs.84,93,390/- and thereafter, M/s. KTC had sent the aforesaid two complaints. It was upon the receipt of such complaints that the respondent initiated disciplinary proceedings against the petitioner.

37. At the first blush, the arguments of learned senior counsel on this issue appeared to be very attractive and appealing, however on a closer scrutiny, the same cannot be agreed to. It is well settled that in service jurisprudence, particularly involving disciplinary proceedings, strict rules of evidence do not apply and the hearsay evidence too, if prudent and having reasonable nexus with the allegation/charge, can be taken to sustain the disciplinary proceedings. All that is to be seen is the proximity of the complaint or hearsay evidence with the prudence of the allegations. The law on this issue is well settled by the Supreme Court in the case of ***Rattan Singh*** *(supra)*. The relevant para 4 is extracted hereunder:

> "***4.*** *It is well settled that 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 text books, 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, fairplay 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. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground*."

It is clear from the aforesaid that it is only the total absence of evidence that would be the triggering point and not the sufficiency or adequacy that would be vulnerable to judicial review. In fact, hearsay evidence has been held to be sufficient, provided it is logically probative for a prudent mind.

38. In the present case, while submitting his defence statement, the petitioner has in fact not disputed the transactions and has rather asserted that the transactions did take place as a matter of normal business transactions. He

also states that demands were infact placed orally over telephone by the retailers and amounts were deposited with the respondent, though not necessarily with the Unit upon which such demands/indents were placed. As such, the complaint of M/s. KTC finds reverberation in the statement of defence of the petitioner. Moreover, it is the case of the petitioner that he was a novice at that time and was not well versed with the process of business transactions. In that view of the matter, it can hardly be urged that the complaint of M/s. KTC was an unsigned and unverified document and remained unproven or that non-examination of the officials from M/s. KTC as witness has violated his fundamental right to defend himself. Thus, keeping in mind the statement of the petitioner himself, this challenge appears to be untenable.

39. That apart, the petitioner while cross examining the departmental witnesses has been able to elicit that some demands/indents were infact placed over telephone and that retailers would often deposit the amounts in other offices as well. This, to the mind of this Court, does not support the case of the petitioner, rather goes against him. This is for the reason that it is not the allegation of raising of fake or unauthorised bills alone against the petitioner but also the siphoning off of the dealer commission and subsidy which were extended as an incentive, not only to the dealers/distributors but also to the farmers to purchase good quality seeds from the respondent. It is relevant to note that as per the bills raised against M/s. KTC, as placed on record, both the aforesaid incentives would be nearly 40-50% of the total price which was the entitlement of the dealer. In such circumstances, the fundamental question

would be that if M/s. KTC had genuinely placed such orders, that too worth Rs. 84,93,390/- within a period of one month from 07.07.2010 to 06.08.2010, why the said firm would deny itself an incentive (discount in the form of Distributor's commission and farmer's subsidy) worth nearly Rs.35,00,000/- to Rs.45,00,000/-. It is also observed from the said bills that it was only a sum of Rs.1,85,070/- which remained balance and due from M/s. KTC, according to the audit, that was raised as a demand upon it. It defies reason and logic why the firm, namely, M/s. KTC would refuse such a paltry amount as against the incentives worth Rs.35,00,000/- or more. No explanation worth the name has been forthcoming on this aspect. This issue is very crucial and thus, even if the witnesses from M/s. KTC were not summoned, it would not prejudice the case of the petitioner, in view of his not denying the manner of the transactions.

40. Another relevant fact which would gather significance in this matter is that admittedly, apart from the petitioner, there was only a peon working in the Rajkot Unit headed by the petitioner as Area Manager. This fact has been asserted by the petitioner himself. If that were so, then the petitioner alone would be the whole sole incharge of the said Unit. There has been no proper or reasonable explanation forthcoming from the petitioner as to why and for what reason the gate passes and other documents did not contain the registration numbers of the trucks upon which the seeds were supplied to the retailers. It does not appeal to reason as to why the petitioner, even if one were to believe that he was a novice, would not fill the details of the truck numbers and the destination of the goods. It is on record that during the relevant time,

seeds worth more than 1300 quintals were transported without signatures of the truck drivers on the gate passes or there were no gate passes issued at all. No explanation has been offered at all on this score. In fact, since the petitioner was the whole sole incharge of the said Unit, grave suspicion would obviously be upon him. These facts and allegations are standalone and can exist without examination of any witness from M/s. KTC. Thus, in that view of the matter, the argument that non examination of witness from M/s. KTC tantamount to violation of principles of natural justice and deprivation of the right to defend is rejected.

41. The judgements relied upon by the petitioner regarding non-examination of material witnesses or failure to bring material evidence on record would also not come to the rescue of the petitioner in view of the aforesaid reasoning and the fact that this is not a case of no evidence. Rather, there are clear admissions of misconduct by the petitioner. Thus, the reliance upon the judgments in ***Moni Shankar Vs. Union of India & Another*** reported in **(2008) 3 SCC 484**, ***Roop Singh Negi*** *(supra)* and ***Hardev Singh Vs. State of U.P. and Others*** reported in **(2015) SCC OnLine All 7299** in support of the aforesaid contentions is misplaced.

42. In the above context, it would be relevant to also consider few relevant paragraphs of the Brief of Defense of the petitioner. The same are as under:

> *"...3. That I was trusted the responsibility of Area Manager, NSC, Rajkot by the then Regional Manager Sh. S.N Singh who is investigation officer in this case without giving any training or supervision under some senior officer. This Rajkot sub-unit was new established and was having all production, Processing, Engineering, Store and marketing etc. and needed most experienced officer to hold the charge of Area Manager.*

4. I was not given any helping hand by Sh. S.N Singh the then RM, NSC, Ahmedabad even though the General Manager (Mktg.) asked for providing additional technical staff and appreciated my work while he was on visit to Ahmedabad Region. The order and advice of the General Manager (Mktg.) was not given and hearing and weightage and left me alone at the Rajkot subunit by Sh. Singh.

5 That none of Sectional heads (Mktg.),(Accounts) and others including the then R.M., NSC, Ahmedabad never pointed out about set procedures and practices of the corporation even statements pertaining to marketing and Accounts were being sent in time regularly.

6. That none of Area Managers in Ahmedabad region was following any set procedures and practices. There was no practice of obtaining signatures on SRs, Bills and Gate Passes etc. This may please be seen from some Xerox copies being enclosed with this Brief. Annexure –I

7. That there was no security arrangements to Rajkot sub-units surroundings. Every time there was fear of theft and damages from cattle's etc and for that I had to be a part of watch and ward.

xxx xxx xxx

10. That due to rush of work in absence of required staff strength not provided by the then Regional Manager, NSC, Ahmedabad some lapses might had happened and needed to be ignored.

xxx xxx xxx

Charge No. 2

The charge no.2 contain that the bills, SRs & Gate passes were not got singed by the concerned distributor or so. In this regard it is mention that in Ahmedabad Region no such practices was being followed and I was not given any guidance either by RM or by any other senior officers while 1was posted as Area Manager, NSC, Rajkot.

As regards non issuance of gate passes for full quantity. This happened due to over loading of work of Production, Processing, Marketing, Engineering Accounts, Store etc. and so on and cannot be defined as melafide intention for personal gain. The gate passes for 1367,10 Qtls. were not issued but do not carry any bad intention as such this quantity was recorded in SRs, Bills & Out ward Register. Here I can say that procedure lapses cannot be termed as violation of procedures. There is vast difference between

deliberate and ignorant intention. Here I want to appraise that I was not kept under any experienced supervision before 1was entrusted the responsibility of Area Manager, Rajkot for which Sh. S.N. Singh the than Regional Manager, NSC, Ahmedabad is responsible. In addition I want to explain further that no such procedures and practices were being followed in full in all other units other Ahmedabad Region and were never point out by Regional Office, NSC and for this nobody except Sh. S.N. Singh the than Regional Manager, NSC, Ahmedabad in person was responsible and require through probe. Non obtaining of Signatures on SRs, Bills and Gate passes do not carry any substance when NSC got full payment of the procedure sold and under reference…"

43. Another fundamental challenge laid upon the disciplinary proceedings was predicated upon the denial of services of a Defense Assistant. In this regard, it would be relevant to examine the rule position. Relevant rule being Rule 31(7) of the National Seeds Corporation Limited Employees Conduct, Discipline & Appeal Rules, 1992. The same is reproduced hereunder:

"31. Procedure for imposing minor penalties:
(7) The employee may take the ***assistance of any other employee working in the particular unit where the employee is working / was working at the time of happenings of alleged charge(s) to which the inquiry relates or where the inquiry is being conducted*** *to present the case on his behalf but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits."*

(emphasis supplied)

A perusal of the said rule makes it apparent that only a serving employee of the unit where the Charged Officer is or was working, would be entitled to be nominated as a Defense Assistant.

44. In the present case, it is not disputed that the Unit where the petitioner was posted had, apart from him, only a peon. It appeals to reason that the petitioner would obviously not take the services of the peon for a case

regarding accounts and other complicated issues of facts and law. But at the same time, it is worth noting that the IO had in fact, *vide* the proceedings sheet dated 21.12.2011 provided the opportunity to the petitioner to engage the services of any other employee from the offices of the respondent at Rajkot, Ahemdabad, or even the Headquarters as a Defense Assistant. However, despite such opportunity having been granted on more than one occasion and repeated orders for such engagement *vide* the proceedings sheets dated 01.12.2011, 21.12.2011 and 06.01.2012 and extending the period to more than a month, the petitioner failed to engage a Defense Assistant. The relevant portions of the proceedings sheets are extracted hereunder:

Order Sheet dated 21.12.2011:

> *"4. CO submitted letter dated 21.12.2011 to the undersigned seeking permission to engage Sh. S.P. Verma, Ex-Asst. Manager as his Defence Assistant. Sub Rule (7) of Rules 31 of the NSC CDA Rules 1992, stipulates that only serving employee of the NSC can be engaged as Defence Assistant and thus, there is no provision in the CDA Rules to allow engagement of retired employee of NSC. This provision was got confirmed from AM (Vig), NSC, HQ; who informed that no retired employee can be engaged as Defence Assistant. It was clarified to CO that he can engage any serving employee of the NSC either from Rajkot or Ahmedabad or HQ. He was directed to submit a letter in this regard to the undersigned with consent of the concern employee by* ***30th December, 2011.*** *It was also clarified to CO that there is no need of taking approval of the Reporting Officer of the proposed Defence Assistant or anybody else except that DA will have to take permission from his Reporting Officer to attend hearing as and when fixed by the undersigned."*

Order Sheet dated 06.01.2012:

> *"Hearing was held on 6th January, 2012 at 11.00 AM at the above cited venue. CO who was directed clearly vide para-4 of DOS dated 21.12.2011 to submit name of the officer to whom CO would like to engage as his DA, informed the undersigned that he could not identify any officer so far who*

could be appointed as his DA. He is again directed to seek permission of the undersigned for this purpose by submitting a request as early as possible but by 20th January, 2012; failing which it would be presumed that CO does not wish to engage DA. It was clarified to CO that it is for him to identify an officer from NSC for engaging as his DA, as it is not the function of the management of NSC to provide him an officer for this purpose. It is again clarified that officer who would agree to become the DA will have to take permission of his controlling officer only."

Thus, not having availed the opportunities so granted, this argument of the petitioner cannot be sustained. In such circumstances, it cannot be said that the principles of natural justice were violated or that the petitioner was deprived of the fundamental right to defend himself through the services of a Defense Assistant.

45. That apart, the petitioner has not even challenged the *vires* of Rule 31(7) of the Rules and as such, the said challenge being not found tenable on facts, cannot be considered by this Court on law too.

46. From the scrutiny of the records of the case, particularly the cross examination of the departmental witnesses, it is observed that not only an adequate opportunity was granted to the petitioner but he had infact conducted cross examination on the basic issue. It is found as a fact that opportunity was granted to the petitioner to disprove the Articles of Charge and he availed of the same. Having found so, it cannot be said that principles of natural justice were violated during the inquiry proceedings. Moreover, it is trite that it is not the adequacy or sufficiency of evidence that can be looked into by the High Court in judicial review, rather the only parameters to be considered are whether the principles of natural justice and fairplay with sufficiency of opportunity to defend himself to the Charged Officer have been provided or

not. In the present case, this Court is unable to find any infraction of the above principles at all.

47. So far as the issue in respect of disallowing of the 2 witnesses of the petitioner are concerned, the same have been dealt with by the IO *vide* the proceedings sheet dated 10.02.2012. It appears from the reading of the proceeding sheet that it is for sound reasons that the IO had refused their examination. However, at the same time, it is relevant to also note that the IO did in fact permit examination of one Mr. Praful Chawda, Partner in M/s Green Farm Bio Tech, Junagarh, Gujarat on the ground that the said witness appeared to be justified. It is not denied that the witness was examined, cross examined and also examined for purposes of clarification by the IO himself and then discharged. Thus, this demonstrates that the petitioner was not denied a fair opportunity to defend himself but was also permitted to examine a witness on his behalf. Even in Civil Courts, the Courts may deny an opportunity to a party to summon a particular witness, subject to reasons. Here too, the IO has given sufficient reasons for such denial. Thus, this Court does not find sufficient reasons to hold that the denial of examining the 2 witnesses violated the fair opportunity of defense or that the principles of natural justice were violated.

48. In so far as the issue that the IO by way of clarification had put questions to the witnesses and covered the lacuna or deficiencies in the witnesses' statement is concerned, the respondent has been able to demonstrate that the IO had only sought certain clarification for the purposes of understanding the fact situation. Moreover, as per Rule 31(12) of the Rules,

the IO is entitled to put questions to the witnesses as he may think fit. In that view of the matter, this argument is found untenable.

49. Regarding the argument on disproportionality of penalty of removal from service is concerned, this Court has considered the overall facts and is of the opinion that the petitioner has committed misconduct/irregularities despite being an Area Manager and has not been able to demonstrate his innocence. On that basis, this Court does not find any reason to interfere with the quantum of penalty.

50. So far as the other issues are concerned, keeping in view the prescription of the Supreme Court in the three aforesaid authoritative pronouncements, once having found that the broader principles of natural justice have been sufficiently complied with, it would not be permissible for the Court under limited scope of judicial review to interfere in the disciplinary proceedings.

51. The petitioner relied upon a number of judgments in support of his case. In the case of ***V.S. Ayangar*** *(supra),* the Supreme Court was dealing with a case where the employer did not afford an opportunity to the employee to engage the services of a Defense Assistant on the ground that the co-employee cannot be a Defense Assistant in more than two enquiries. In the present case, as observed on facts, the petitioner was afforded an adequate opportunity for engaging the services of a Defense Assistant and that there were prescribed rules under which a Defense Assistant could be engaged. Thus, the reliance on ***V. S. Ayangar*** *(supra)* is misplaced.

52. So far as the case of ***Union of India Vs. H.C. Goel*** reported in **AIR 1964 SC 364** is concerned, the Supreme Court had held that mere suspicion cannot be allowed to take the place of proof even in domestic enquiries. This judgment was relied upon to argue that there was no tangible evidence upon which the Inquiry Report was based and as such, the said report would stand vitiated. This Court has perused the Inquiry Report and other relevant documents like various bills and statements forming part of the Inquiry Report and finds that the Inquiry Report had sufficient documentary and oral evidence which was evaluated before the said Report was generated. Therefore, the aforementioned judgment is distinguishable on facts.

53. The next judgment that the petitioner relied on is the case of ***Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and others*** reported in **(1993) 4 SCC 727** to submit that the punishment order of the DA and the appellate order does not deal properly with the objections raised against the Inquiry Report. The ratio in the said case would not be applicable since the Disciplinary Authority has given plausible reasons for concluding that the charges appear to have been proved while may not have dealt with the objections in detail. After having perused the said order, it appears to this Court that there is sufficiency of consideration by the Disciplinary Authority and as such, the said ratio of ***B. Karunakar's*** case *(supra)* would not be applicable to the facts obtaining in the present case.

54. With regard to the doctrine of proportionality, the petitioner relied upon the judgment of Supreme Court in ***Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar*** reported in **(2014) 10 SCC 301** wherein the

Supreme Court had laid down the law that only when the penalty imposed shocks the conscience of the Court and is apparently disproportionate to the charges leveled or the evidence produced on record, should the Court exercising powers of judicial review interfere with the same. In the present case, this Court has already observed above that the guilt of the petitioner and the penalty imposed are not disproportionate, thus, on factual basis, the judgment is distinguishable. The other judgment which the petitioner relied upon is the case of ***Mohd. Ibrahim*** *(supra)* wherein the Supreme Court, from the facts arising in that case, held that the ultimate conclusion of the Inquiry Officer being based upon the statement of persons made in the course of preliminary inquiry, would vitiate the proceedings. In the present case, the Inquiry Officer had also relied upon the statements of witnesses and documentary evidence other than the one gathered during preliminary inquiry and as such, it cannot be stated that the Inquiry Report was based only and only upon the preliminary inquiry. Accordingly, the judgment of the Supreme Court in ***Mohd. Ibrahim*** *(supra)* would not be applicable to the facts of the present case.

55. Having regard to the above, this Court finds no reason to interfere in the impugned orders dismissing the petitioner from service passed by the respondent authorities.

56. Accordingly, the present petition, along with the pending applications, is dismissed for want of merits, with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 09, 2024/*aj/ms/rl*