Narinder Mohan Arya vs United India Insurance Co.Ltd. & Ors on 5 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1748, 2006 (4) SCC 713, 2006 AIR SCW 1969, 2006 LAB. I. C. 2114, 2006 (2) ALL CJ 1251, 2006 (5) SRJ 365, 2006 (4) SCALE 181, 2006 (2) UPLBEC 1526, (2006) 4 ALLMR 15 (SC), (2006) 5 ALL WC 5314, 2006 ALL CJ 2 1251, 2006 (4) ALL MR 15 NOC, (2006) 2 UPLBEC 1526, (2006) 2 CURLR 298, (2006) 2 LABLJ 806, (2006) 2 LAB LN 846, (2006) 2 SCT 446, (2006) 5 SCJ 146, (2006) 3 SERVLR 92, (2006) 3 SUPREME 459, (2006) 4 SCALE 181, (2006) 109 FACLR 705, MANU/SC/1901/2006

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Bench: S.B. Sinha, Dalveer Bhandari

CASE NO.:
Appeal (civil) 7645 of 2004

PETITIONER:
Narinder Mohan Arya

RESPONDENT:
United India Insurance Co.Ltd. & Ors

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:

J U D G M E N T S.B. Sinha, J.

The appellant herein was appointed as an Inspector by the first respondent. He was at the material time posted at Hisar. He issued four insurance cover notes in favour of one M/s Aman Singh Munshi Lal (firm) on 21.10.1976. The payment in respect of all four cover notes was made by one cheque. The three cover notes were issued against goods to be transported through railways and one cover note for the goods to be transported by road. The cover notes were despatched from Hisar to its divisional office at Sirsa which were received on 23.10.1976. On 22.10.1976 bales of cotton despatched by the firm caught fire. The appellant was on leave from 23.10.1976 to 30.10.1976. He was in Chandigarh on 23.10.1976. The said firm raised a claim in respect of the loss of goods suffered by it in the said incident of fire.

However, in respect of the said incident a disciplinary proceeding was initiated against the respondent on or about 11.1.1978 on an allegation of antedating one insurance cover note for Rs. 1 lakh after the said fire broke out on 22.10.1976 which is said to have been issued on 31.10.76. In the departmental proceedings the Enquiry Officer found him guilty of the said charge, whereupon he was removed from service by an order of the Disciplinary Authority dated 24.7.79. No second show cause notice however, was served upon him. He preferred a departmental appeal in terms of Rule 37 of the General Insurance (Conduct, Discipline & Appeal) Rules , 1975 (Rules). The said appeal was dismissed by an order dated 29.9.1980.

In the meanwhile, the 'firm' filed a suit against the respondent herein for recovery of the insured sum of Rs. 1,22,795.64. The appellant herein was also impleaded as a party defendant therein. In the said suit, inter alia, the following issues were framed :

> "2. Whether valid contract of insurance was entered into between the plaintiff and defendant No. 1 through deft. No. 2?
>
> 3. Whether the contract of insurance entered into between the plaintiff firm and defendant no. 1 through cover note No. 09643 dated 21.10.76 is void ab-initio having been obtained in collusion with defendant No. 2 after the destruction of the goods through fire .."

On or about 7.10.1980 the trial court decreed the said suit for a sum of Rs. 98,550.16 on a finding that the said cover note was not antedated. For arriving at the said finding, reliance was placed on the opinion of the handwriting expert.

The first respondent herein being aggrieved by and dissatisfied with the said judgment and decree dated 7.10.1980 passed in Suit No. 50/59 of 1978-79 preferred an appeal before the said High Court which was dismissed by an order dated 4.10.1982. The matter was not carried further.

After delivery of the judgment by the civil court the appellant filed a memorial bringing to the notice of the Chairman-cum-Managing Director of the company thereabout, which was dismissed summarily stating:

> "I have considered the Memorial dated 15.11.80 submitted by Shri N.M. Arya against the order No. NRO: PER:80:3287 dated 29th September, 1980 of the Appellate Authority, rejecting his appeal and confirming the penalty of removal from service.
>
> I have also considered the Enquiry Proceedings and the relevant records.
>
> I do not find any reason to interfere with the order of the Appellate Authority and the Competent Authority. The Memorial is rejected."

He filed a writ petition before the High Court of Punjab and Haryana against the said orders which was marked as Civil Writ Petition No. 3232 of 1981. The writ petition filed by the appellant was

allowed by the High Court directing the respondent to reinstate him in service with continuity of service and full back wages including the benefit of seniority and promotion. The High Court in support of its judgment relied upon the judgment of the civil court. However, the first respondent filed a Letters Patent Appeal thereagainst before the said High Court which was marked as LPA No. 344 of 1991. By an order dated 16.3.94 the said appeal was dismissed. A Special Leave Petition filed thereagainst by the first respondent was marked as SLP

(c) No. 11383/94 and by a judgment and order dated 29.7.94 this Court remitted the matter back to the learned Single Judge of the High Court opining that:

> "From the above facts it becomes evident that the departmental proceedings against the respondent had concluded in his removal from service. That conclusion was passed on the evidence placed before the Enquiry Officer which was evaluated by the Disciplinary Authority as well as the Departmental Appellate Authority. In a collateral suit filed by the consignor for damages for loss of goods by fire the defence was that the cover was antedated. While examining that defence was that the cover was antedated. While examining that defence the civil court came to the conclusion that the same was not proved. That, however, cannot dislodge the decision earlier taken in the departmental inquiry based on the material and evidence placed at the said enquiry. The correctness or otherwise of the conclusion reached by the departmental authorities would depend on the enquiry recorded and the ultimate conclusion reached by the authorities can be shaken only on an evaluation of that record. Even if a suit had been filed for setting aside the removal order, the civil court could not have acted as an appellate authority. Therefore, the finding recorded in the suit cannot dislodge the finding recorded, in the enquiry concluded earlier in point of time. Otherwise the decision of the civil court would appear to be one by an appellate authority against the departmental enquiry on a record that was not before the Disciplinary Authority."

A learned Single Judge of the High Court after remittance of the matter by this Court allowed the said writ petition by an order dated 11.1.2002. However, on a Letters Patent Appeal filed by the respondent No.1 herein, by an order dated 13.3.2002 the Division Bench of the High Court remanded the matter again to the learned Single Judge directing him not to be influenced by the finding of the Civil Court on issue No. 2 and 3 in the suit filed by the said firm. The writ petition filed by the appellant herein was dismissed by an order dated 22.5.2002. The Letters Patent Appeal filed by the appellant herein has been dismissed by the impugned judgment.

Mr. Puneet Bali, learned counsel appearing on behalf of the appellant in support of the appeal inter alia submitted:

> (1) keeping in view the fact that the subject matter of dispute in the civil suit as also that of the disciplinary proceedings was the same, and same evidences have been adduced, the judgment and decree passed by the Civil Court was binding upon the first respondent. (2) the High Court in the first round of the litigation not only

considered voluminous records of the disciplinary as also the civil court proceedings and noticed the findings of fact arrived at, which were relevant for disposal of the writ petition filed by the appellant; but while passing the impugned judgment, it refused to do so as a result whereof the appellant had gravely been prejudiced. (3) A bare perusal of the report of the Enquiry Officer would show that the findings recorded therein were based on no evidence. (4) The order of the appellate authority being a non-speaking one the same was liable to be set aside.

(5) While disposing of the Memorial, the Chairman-cum-Managing Director was bound to take into consideration the relevant fact namely the judgment and decree passed by the civil court.

Mr. Sudhir Kumar Gupta, learned counsel appearing on behalf of the respondent, on the other hand, would submit that in view of the fact that the civil Court could not have acted as an appellate authority over the order passed by the disciplinary authority, the High Court's opinion is unassailable.

The Enquiry Officer in his report dated 5.5.79 recorded the allegations made as against the appellant in the disciplinary proceedings in the following terms:

"The brief facts of the case appear to be that Sh. N.M. Arya issued a cover note No. 09643 dated 21.10.76 covering a consignment of cotton bales valued for Rs. One lac in transit from Hansi to Phulwari Shariff by Truck No. HRR 7297 covering the risk of Marine Insurance T.P.N.D. and water damage charging a premium of Rs. 165/- plus Rs. 1/- as stamp duty totalling Rs. 166/-. This consignment while awaiting transhipment at the U.P. border near Ghaziabad caught fire on 22.10.76 resulting into heavy damage to the stock of cotton bales. It is alleged that the cover note No. 09643 was issued on or after 22.10.76 after the fire had broken out antedating the date of issue on 21.10.76. This is only one charge and that is that the cover note No. 09643 was issued after the fire damage to the consignment had taken place and cover note was antedated to 21.10.76."

Before the Enquiry Officer three witnesses were examined on behalf of the first respondent being S/Shri A.R.Sethi, D.D. Jain and K.L. Manchanda whereas the appellant herein besides examining himself examined the S/Shri Ferozilal Jain, B.B. Jain and N.M. Arya. The Enquiry Officer noticed that there was no direct oral or documentary evidence or eye witness to prove the charge. MW-1 stated that although 23.10.1976 was the date put on the said envelop as having been received on that date, he allegedly saw them lying on his table when he returned to his office on 25.10.76. He further accepted that a telegram Ext. M-3 dated 24.10.76 was received from the said firm claiming loss "by fire for goods under the cover note in question". MW-3 Shri K.L. Manchanda was an assistant in the Sirsa branch. He alleged that he did not receive the cover note in question on 23.10.1976. Mr. D.D. Jain was an Inspector of the company. He alleged that a representative of the firm had approached him on 22.10.1976 to take a transit insurance cover of cotton bales from Hansi to Phulwari Shariff by road transport w.e.f. 21.10.1976 which he refused. He was, however, offered a sum of Rs.

15,000/- to Rs. 20,000/- as temptation to cover the risk of the cotton bales already damaged. He not only declined the offer, but he intimated thereabout to Shri S.P. Malhotra, the Branch Manager at Hisar. The Enquiry Officer noticed:

> "Apart from these two witnesses the charge sheeted employee himself had examined as a witness. I observe from the statement of the Management witness that none of them are able to give direct account as to the conduct of the charge sheeted employee with regard to the alleged mis- conduct."

It was further noticed that in the register the date of the cover note was originally written as 22.10.1976. For the afore-mentioned purpose, the Enquiry Officer took help of magnifying glass and on the basis of doubt created in his mind as to the veracity of the contention of the appellant, came to the conclusion that the same was despatched only on 23.10.1976. In the said report it has been accepted that the appellant emphatically denied any over writing in the said despatch register. The Enquiry Officer proceeded on a hypothesis as regard the delay in conveying the information to the company by 48 hours by the said Firm.

Ordinarily, we would not have referred to the findings of the Enquiry Officer. He was entitled to draw his own inference and so long as the inference drawn by him is supported by some materials on record, it is well settled that a Court of judicial review would not interfere therewith. We have further noticed hereinbefore marked features of this case which make this case stand apart from other cases.

The self-same issue fall for consideration before a competent Civil Court. In the Civil Court a hand writing expert was examined who was of the opinion that instead and place of altering the despatch register from 23rd to 22nd it was really the other way round, namely, it was originally 22nd but the same had been altered to 23rd. Before the Civil Court also both Mr. A.R. Sethi and Mr. D.D. Jain were examined. Some of the witnesses on behalf of the respondent were also examined. The Civil Court held :

> "If the original entry had been 23/10, then the figure `3' would have been written as written in the next serial number and it only shows that the original figure was 22. An effort has been made to convert it into 23. So, it is just possible that defendant No.1 after taking into possession the despatch register might have tried to convert it into 23 just to create confusion."

As regard the purported forgery committed by the appellant herein the Civil Court observed that respondent No.1 miserably failed to prove the same. It was held:

> "In view of my discussion above, I hold that a valid contract of insurance was entered into between the plaintiff and defendant No.1 through defendant No.2 through cover note No.09643 dated 21.10.76 Ex P-10 and it had not been obtained by plaintiff firm in collusion with defendant No.2 after the destruction of the goods through fire. Accordingly, both these issues decided in favour of the plaintiff and against the

contesting defendants."

The first appellate court also went into the said question in great details and came to the following conclusion :

> "It is further to mention that on the same day, three more cover notes Ex.P.7 to Ex.P.9 with regard to three other consignments were issued by defendant No.2 in favour of the plaintiff firm, the correctness of which was not challenged at any stage. It is also fruitful to note that defendant no.1 got encashed the cheque pertaining to all the cover-notes. A resume of the above facts would show that the plaintiff successfully proved that a valid contract of insurance had come into existence and it was rightly held so by the learned trial court under issue no.2."

It is not in dispute that the second appeal preferred by the respondent against the said judgment was dismissed. The said decree has also been acted upon. It attained finality.

On an earlier round of litigation, i.e. in the writ proceedings the appellant succeeded both before the learned Single Judge as also the Division Bench. The High Court proceeded on the basis that the findings of the Civil Court would prevail over the findings of the Enquiry Officer. However, this Court did not agree with the said findings on the ground that the scope of the jurisdiction of the Civil Court in a matter arising of the departmental proceedings in a suit filed by a third party impleading both the parties herein as defendants and the principle of res judicata will have no application as even if a suit was filed for setting aside the order of removal, the civil court could not have acted as an appellate authority. This Court, however, had no occasion to consider as to what extent the judgment and decree passed by the civil court would have been relevant in the subsequent departmental proceeding. It was also not suggested that the civil court would have no jurisdiction to interfere with the order of penalty even if the same was found to be based on no evidence.

It is, however, beyond any controversy that when a crucial finding like forgery was arrived at on an evidence which is non est in the eyes of law, the civil court would have jurisdiction to interfere in the matter.

This Court remitted the matter back to the learned Single Judge of the High Court for disposal on other points raised by the appellant in the writ petition.

The learned Single Judge as noticed hereinbefore directed the appointment of a fresh enquiry officer on the premise that the judgment of the Civil Court is a relevant piece of evidence.

The Division bench, however, set aside the said judgment stating that in view of the unequivocal observations made by this Court as regard the findings recorded in the civil suit by the firm cannot dislodge the findings recorded by the enquiry officer and in that view of the matter the learned Single Judge was not justified in quashing the punishment. The Division Bench observed that the judgment of the Single Judge suffers from mutually destructive findings.

In its judgment, after remand, the learned Single Judge quoted almost the entire order of the Enquiry Officer and without discussing the issues raised therein held:

> "(1) When these types of acts are committed by an employee to the disadvantage of the employer, these are committed in secrecy and in conspiracy with the person affected by the accident (2) It is a settled principle of law that High Court cannot sit as a court of appeal over the findings of the appellate authority and that is the reason the Hon'ble Supreme Court in various judgments said that while dealing with such like cases, we have to make a distinction whether it is a case of "some evidence" or of "no evidence"...
>
> (3) The sufficiency of proof like a criminal charge is not required in the departmental proceedings nor the strict provisions of Indian Evidence Act are applicable. The moment it is established to the conscious of the Court that the opinion formulated by the inquiry officer could be reasonably formulated by an ordinary prudent man, then in such eventuality such decision of the Inquiry Officer should not be interfered with ."

By reason of the impugned judgment the Division Bench dismissed the intra-court appeal filed by the appellant summarily.

In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam & Anr. V. Mahendra Kumar Das & Ors.[(1970) 1 SCC 709 : AIR 1970 SC 1255] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand V. Union of India & Ors., AIR 1958 SC 300 and State of Uttar Pradesh v. Om Prakash Gupta, (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L. Tripathi V. State of Bank of India & Ors. [(1984) 1 SCC 43 : AIR 1984 SC 273]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See Sawai Singh V. State of Rajasthan [AIR 1986 SC 995] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection Council of India & Ors. Vs. Kalyan Kumar Mitra & Ors. [1987 (2) CLJ 344]. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. V. Prakash Chand Jain, AIR 1969 SC 983, Kuldeep Singh v. Commissioner of Police and Others, (1999) 2 SCC 10].

We may notice that this Court in Ramendra Kishore Biswas V. State of Tripura & Ors. [1999 (1) SCC 472] was clearly of the opinion that a civil suit challenging the legality of a disciplinary proceeding and consequent order of punishment is maintainable. Even this Court in its order dated 29.7.1994 said so. It is interesting to note that in the celebrated judgment of this Court in State of U.P. v. Mohammad Nooh [AIR 1958 SC 86] this Court opined:

> "On the authorities referred to above it appears to us that there may conceivably be cases and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent & loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court of tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so also the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice."

(Emphasis supplied) Yet again in Sher Bahadur V. Union of India & Ors. [2002 (7) SCC 142] this Court observed:

> "It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view

> of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

It is also of some interest to note that the first respondent itself, in the civil suit filed by the firm relied upon a copy of the report of the Enquiry Officer. The first respondent, therefore, itself invited comments as regard the existence of sufficiency of evidence/acceptability thereof and, thus, it may not now be open to them to contend that the report of the Enquiry Officer was sacrosanct.

We have referred to the fact of the matter in some details as also the scope of judicial review only for the purpose of pointing out that neither the learned Single Judge nor the Division Bench of the High court considered the question on merit at all. They referred to certain principles of law but failed to explain as to how they apply in the instant case in the light of the contentions raised before it. Other contentions raised in the writ petition also were not considered by the High Court.

We may for the aforementioned purpose take note of the extant rules operating in the field. Requirements of consideration in an appeal from an order of the disciplinary authority by the appellate authority is contained in Rule 37 whereas the provisions as regards filing of a memorial are contained in Rule 40 thereof, which read as under:

> "37. Consideration of Appeals- (1) In case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.
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> (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the appellate authority shall consider:
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> (a) Whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;
>
> (b) Whether the findings are justified; and
>
> (c) Whether the penalty imposed is excessive, adequate or inadequate, and pass orders:
>
> I. setting aside, reducing, confirming or enhancing the penalty; or II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

> "40 Memorial An employee whose appeal under these Rules has been rejected by the Chairman/Chairman-cum-Managing Director or in whose case such appellate authority has enhanced the penalty either on appeal under Rule 24 or on review under Rule 39 (2) may address a memorial to the Chairman/Chairman-cum-Managing Director in respect of that matter within a period of a 6 months from the date the appellant received a copy of the order of such appellate authority."

The appellate authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule 2 of Rule 37 of the Rules. The judgment of the civil court being inter parties was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably came to a different conclusion having regard to the findings of the civil court. But, it did apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts He could not have without expressing his mind simply ignored the same.

An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

In Apparel Export Promotion Council V. A.K. Chopra [1999(1) SCC 759] which has heavily been relied upon by Mr. Gupta, this Court stated:

> "The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities."

(Emphasis supplied) The appellate authority, therefore, could not ignore to exercise the said power.

The order of the appellate authority demonstrates total non-application of mind. The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression 'consider' is of some significance. In the context of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

In R.P. Bhatt V. Union of India [(1986) 2 SCC 651] this Court opined:

> "The word "consider" in Rule 27(2) implies "due application of mind". It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.
>
> There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non- compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

In paragraph 13 of the memorial the appellant at the first opportunity raised a contention that the order of the appellate authority was not a speaking order at all, besides drawing the attention of the Chairman-cum Managing Director to the subsequent event namely the judgment and decree passed by the civil court. The said authority again did not apply its mind while passing his order dated 31st March, 1981. When such a contention was raised, it was obligatory on the part of the Chairman-cum-Managing Director while exercising its statutory jurisdiction to show that he had applied his mind to the contentions raised. Such application of mind on his part is not apparent from the order. The departmental proceedings are quasi criminal in nature.

Under certain circumstances, a decision of a civil court is also binding upon the criminal court although, converse is not true. [See M/s Karamchand Ganga Pershad & Anr. V. Union of India & Ors. [AIR 1971 SC 1244]. However, it is also true that the standard of proof in a criminal case and civil case is different.

We may notice that in Capt. M. Paul Anthony V. Bharat Gold Mines Ltd. & Anr. [1993 (3) SCC 679] this Court observed:

> "Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental

> proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points point that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate V. Akhil Bharatiya Chah Mazdoor Sangh & Anr. [2004 (8) SCC 200] and Manager, Reserve Bank of India Bangalore V. S. Mani & Ors. [2005 (5) SCC 100]. Each case is, therefore, required to be considered on its own facts.

It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it would be lawful to do so. In Manager, Reserve Bank of India Bangalore (supra) this Court observed:

> "The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out."

In that case also, in view of the admissions made by the Management witness, it was found that tribunal's findings were based on no evidence and, thus, irrational. This Court also noticed that the circumstances relied upon by the tribunal were wholly irrelevant stating:

> "The circumstances relied upon, in our opinion, are wholly irrelevant for the purpose of considering as to whether the respondents have completed 240 days of service or not. A party to the lis may or may not succeed in its defence. A party to the lis may be filing representations or raising demands, but filing of such representations or raising of demands cannot be treated as circumstances to prove their case."

The Judgment and order of the learned Single Judge suffers from several infirmities. He had observed that 'the disadvantages of an employer as such acts are committed in secrecy and in conspiracy with the person affected by the accident'. No such finding has been arrived at even in the disciplinary proceedings nor any charge was made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regard the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The Enquiry Officer cannot base his findings on mere hypothesis. Mere ipso dixit on his part cannot be a substitute of evidence.

The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an Enquiry Officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its

mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of a court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error.

The matter may be considered from another angle. The order of the disciplinary authority, in view of the statutory provisions, merged with the order of the appellate authority as also that of the Chairman-cum-Managing Director as the appellate proceedings are in continuation of the original proceedings and, thus, the doctrine of merger shall apply. [See Kunhayammed & Ors. V. State of Kerala & Anr. [(2000) 6 SCC 359].

A revisional jurisdiction as is well known involves exercise of appellate jurisdiction. [See Shankar Ramchandra Abhyankar V. Krishnaji Dattatraya Bapat, AIR 1970 SC 1 and Nalakath Sainuddin v. Koorikadan Sulaiman, (2002) 6 SCC 1].

Mr. Bali, learned counsel appearing on behalf of the appellant raised a contention that the disciplinary proceedings was vitiated as the authorities acted mala fide and with a biased attitude. We do not find any substance therein.

For the foregoing reasons the impugned judgments cannot be sustained which are set aside accordingly. Although, the consequence of setting aside of the said orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merit, but having regard to the fact that the disciplinary proceedings were initiated against the appellant as far back in 1976, we refrain ourselves from doing so. He indisputably, have suffered a lot. However, the question which arises is what relief should be granted to the appellant. The appellant shall be reinstated in service. We, however, while directing reinstatement of the appellant, keeping in view of the fact that no work had been taken from him, direct that only 50% of the back wages shall be payable. The appeal is allowed with the abovementioned directions.

In the facts and circumstances of the case the parties shall bear their own costs.