Union Of India And 2 Ors. vs Devendra Kumar Chaudhary And 2 Ors. on 30 April, 2018

Bench: Sudhir Agarwal, Neeraj Tiwari

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 34

Case :- WRIT - A No. - 7881 of 2015

Petitioner :- Union of India and others

Respondent :- Devendra Kumar Chaudhary and others

Counsel for Petitioner :- K.C. Sinha, A.S.G.I.

Counsel for Respondent :- Ashish Srivastava, Anil Kumar Srivastava

Hon'ble Sudhir Agarwal, J.

Hon'ble Neeraj Tiwari, J.

1. Heard Sri K.C. Sinha, Advocate, for petitioners; and Sri Anil Kumar Srivastava, Advocate, for respondents.

2. This writ petition under Article 226 has been filed by Union of India through Secretary, Ministry of Finance and two others being aggrieved by judgment and order dated 15.10.2014 passed by Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as "Tribunal") in Original Application (hereinafter referred to as "OA") No. 330/00257 of 2014 whereby Tribunal has allowed OA filed by applicant-respondent, Devendra Kumar Chaudhary, and set aside order dated 16.07.2010 whereby penalty of 'Removal' was imposed upon applicant-respondent and orders dated 08.01.2013 and 16.12.2013 passed by appellate and revisional authorities rejecting appeal and

revision of applicant-respondent.

3. Facts in brief, giving rise to present dispute, are as under.

4. Recruitment test to the post of Income Tax Inspector (hereinafter referred to as "IT Inspector") was conducted by Staff Selection Commission (hereinafter referred to as "SSC") holding "Inspector Grade Examination-1994". The recruitment process included written examination and interview. Applicant-respondent applied for the post of IT Inspector. SSC allotted him Roll No. 2413814. Written examination consisting of objective type question paper was held on 27.11.1994. Applicant-respondent was declared successful in written examination and thereafter called for interview on 09.10.1995. Applicant-respondent was ultimately selected and recommended for appointment to the post of I.T. Inspector. Appointing Authority issued letter of appointment to Applicant-respondent appointing him on the the post of I.T. Inspector. Applicant-respondent joined the post of I.T. Inspector on 27.16.1996 under Commissioner of Income Tax, Allahabad (hereinafter referred to as "CIT").

5. It appears that SSC received complaint that Applicant-respondent had passed written examination by impersonation, i.e. making someone else to appear in written examination and thus guilty of getting Government job by using unfair means. Matter was examined at Head Quarter of SSC at New Delhi and on its request Income Tax Officer, Allahabad (hereinafter referred to as "ITO, All") issued a letter dated 09.02.1999 directing Applicant-respondent to appear before Secretary, SSC at New Delhi. Applicant-respondent appeared before Secretary, SSC at New Delhi and tendered specimen hand writing and signatures in Hindi and English, both, to the said authority. The documents consisting of OMR answer-sheet, admit card and specimen handwriting and signatures provided by Applicant-respondent were forwarded to Sri T. Joshi, Deputy Government Examiner of Questioned Documents, Police Research and Development Bureau, Shimla under Ministry of Home Affairs, (hereinafter referred to as "Forensic Expert") for his opinion. Forensic Expert submitted report dated 18.03.1999 as under:

> "The document of this case have been carefully and thoroughly examined.
>
> 2. The person who wrote the red enclosed writings and signatures stamped and marked S1 to S12, A1 to A5 did not write the red enclosed writings and signatures similarly stamped and marked Q1 and Q2/1.
>
> 3. The person who wrote the red enclosed writings and signatures stamped and marked S1 to S12, A1 to A5 also wrote the red enclosed writings and signatures similarly stamped and marked Q2."

6. Forensic Expert's report dated 18.03.1999 was forwarded by Government Examiner vide letter dated 15.04.1999 to Head Quarter of SSC. Thereafter SCC issued a letter dated 20.05.1999 informing CIT that Applicant-respondent has entered Government job by fraudulent means, therefore, his services should be terminated after following due procedure including issue of show cause notice to him. SSC vide letter dated 28.05.1999 also cancelled candidature of

Applicant-respondent for examination held on 27.11.1994 and withdrew his nomination from dossier of examination of recruitment of I.T. Inspector. However, copy of the said letter dated 27.11.1994 was not communicated to CIT.

7. A show-cause notice dated 09.02.2004 was issued by CIT, Allahabad to Applicant-respondent requiring him to show cause why he should not be chargesheeted for awarding major penalty of dismissal from service since he has managed Government job by using unfair means, as per letter dated 20.05.1999 received from SSC. Copy of Forensic Export's report dated 18.03.1999 and other documents were also appended to the said show cause notice.

8. Applicant-respondent submitted reply dated 23.02.2004 stating that he signed answer-sheet and attendance-sheet in presence of Invigilator on the date of written examination who also verified Applicant-respondent with the photograph affixed to the form and no complaint was made, hence allegation of impersonation is false and baseless.

9. No communication was received by applicant-respondent thereafter. However, it appears SSC sent a letter dated 29.09.2004 to Chief Commissioner of Income Tax, Lucknow (hereinafter referred to as "CCIT") informing him that SSC had already cancelled candidature of applicant-respondent and withdrew his nomination, therefore, it is surprising as to how such person is still being allowed to continue in the Department and no action has been taken for his termination. Thereafter, another show-cause notice proposing termination was issued by CIT, Allahabad on 08.11.2004 in reference to letter dated 29.09.2004 received from Regional Director, SSC, Allahabad.

10. Applicant-respondent filed OA No. 1619 of 2004 before Tribunal challenging cancellation of his candidature and withdrawal of his nomination vide letter dated 29.09.2004 and show cause notice dated 08.11.2004. When the matter was pending before Tribunal, petitioners filed an affidavit on 13.10.2006 informing Tribunal that a charge-sheet was issued to applicant-respondent on 12.09.2006 which was replied by applicant-respondent on 25.09.2006 and thereafter CIT, Allahabad, Disciplinary Authority, has passed order on 26.09.2006 appointing Inquiry Officer and Presenting Officer to conduct disciplinary inquiry against applicant-respondent. It is in this backdrop, Tribunal vide judgment dated 06.07.2007 decided OA observing that since disciplinary inquiry has been initiated against Applicant-respondent, let the same be completed expeditiously and as per result of inquiry, appropriate order will be passed by respondents. With the aforesaid observations, OA was dismissed.

11. After completion of disciplinary inquiry, Sri Vipul Sinha, Income Tax Officer, Range-II(3), Allahabad submitted inquiry report dated 28.03.2007 holding that charge against Applicant-respondent is not proved. Observations made in concluding paragraphs of inquiry report reads as under:

> "No cogent and convincing evidence (original OMR and admit cards of other candidates) is available at present on record to prove the charge conclusively and beyond doubt against the charged official. Such a vexed issue as in the instant case, in the absence of required evidence can not be decided merely on the basis of

presumption, guess work and surmises. Accordingly, considering the objection of the charged official against the memorandum of charge dated 12.09.2006 available on file, pleadings and written brief submitted during the course of proceedings, I hold that the charge against the charged official can not be said to be proved beyond doubt at this point of time. "

12. Disciplinary Authority, i.e., CIT, Allahabad disagreed with the findings of Inquiry Officer on the ground that report of Forensic Expert, SSC's letter dated 20.05.2000 whereby candidature was cancelled ought to have been accepted and charge should have been treated proved by those documents and Inquiry Officer having not relied on those documents has erred in law in recording a finding otherwise.

13. CIT, Allahabad (Disciplinary Authority) issued a show-cause notice recording his findings of disagreement vide letter dated 11.04.2007. The reasons mentioned by CIT, Allahabad, i.e., Disciplinary Authority, in the aforesaid notice read as under:

"4. In this case, the Government Examiner of Questioned Documents has confirmed impersonation. This substantiated the allegation that Sri Chaudhary had entered the Govt. Service by using fraudulent means. Accordingly, by its letter dated 20.05.2004, the Staff Selection Commission cancelled his candidature.

5. Therefore, the Inquiry Officer ought to have accepted the report of the Government Examiner of Questioned Documents, and the letter dt. 20.05.2000 of the SSC, by which they had cancelled the candidatures of Sri Chaudhary. This letter and its enclosures, which included the report of the Government Examiner of Questioned Documents 15.04.1999, were the documents on the basis of which the charges were to be proved. But the I.O. has not arrived at his findings on the basis of these documents. He tried to examine the documents which had already been examined by the GEQD and as some of them could not be produced in original before him, so he has doubted the report of GEQD itself.

6. In the circumstances, the IO ought to have accepted the report of the GEQD and SSC letter dt. 20.05.2000 by which the SSC had cancelled the candidature of the CO. The I.O. should have considered the evidentiary value of SSC's letter dt 20.05.2000 along with enclosures, which included the report of GEQD dt. 14.04.99 and held the charge as proved. Instead, the I.O. attempted to examine the documents which had already been examined by the GEQD, an expert, whose opinion is admissible as evidence in court. Further, the PO could not furnish the documents examined by the GEQD since as per the procedure laid down they are shown only to the court, that too in camera. The PO's inability to produce such documents made the IO to doubt the report of GEQD itself. This is an error. The evidence is conclusive in establishing the charge.

> 7. In the light of the foregoing, I am of the considered view that the finding of the I.O. is not based on correct appreciation of facts as well as documents on the basis of which the charge was to be proved. Accordingly, as Disciplinary Authority, I disagree with the findings and the report of the I.O.
>
> 8. You are, therefore, required to submit a written representation on the reasons of disagreement from the report of the Inquiry Officer within fifteen days of service of this notice under Rule 15(2) on you.
>
> 9. It may please be noted that failure to comply with the notice shall be construed that you have no objection to my disagreement with the I.O.'s report and an order shall be passed accordingly." (emphasis added)

14. Applicant-respondent then submitted reply dated 24.04.2007 to the aforesaid show-cause notice dated 11.04.2007. Additional Commissioner of Income Tax (V and T), Lucknow in the Office of CIT, Lucknow sent letter dated 04.10.2007 directing CIT, Allahabad (Disciplinary Authority) to take further action in the matter after receiving advice of Chief Vigilance Commissioner, Delhi (hereinafter referred to as "CVC").

15. Thereafter, vide letter dated 10.10.2007 CIT, Allahabad sought a clarification from Forensic Expert as under:

> "In your opinion No. C.X-36/99-166 dated 18.3.99 forwarded on 15.4.1999 your have stated that the person who wrote the red enclosed writing and signatures stamped and marked as S1 to S12, A1 to A5 did not write the red enclosed writings and signatures similarly stamped and marked Q1 and Q2/1.
>
> Kind attention is invited to the documents marked as Q1. This document contains 7 columns. I request you to kindly clarify whether the person who wrote S1 to S12 and A1 to A5 did not write only what has been written against Col. 5 or he has not written all columns viz Col. No. 1 to 7. This doubt has arisen as you have marked Q1 above col.5 and Sri D.K. Chaudhary, has taken a stand that he had not filled up Col. 5 and has filled up other columns.
>
> As the matter is very urgent, I request you to kindly send the reply as early as possible." (emphasis added)

16. The reply was given by Forensic Expert vide letter dated 17.10.2007. A letter was issued to applicant-respondent on 23.10.2007 by CIT, Allahabad supplying him copy of letter dated 10.10.2007 sent to Forensic Export and reply dated 17.10.2007 received from Forensic Expert and comments of Applicant-respondent were sought. Applicant-respondent again submitted reply dated 28.12.2007. After going through reply of applicant-respondent, CIT, Allahabad sent a letter dated 09.01.2008 to Regional Director, SCC, Allahabad informing that non production of original OMR Sheet and non examination of Forensic Expert would weaken the case of department, therefore, SCC

was requested to produce original OMR Sheet and if agreed, Disciplinary Authority will fix a date for hearing before him. The operative part of letter dated 9.01.2008 reads as under:

> "4. As I have pass a final order in this case, I would like to pass an order which would be sustained by the courts, as definitely, Sri Choudhary would be filing an appeal against the punishment meted out by us. I am of the view that non production of original answer sheet and refusal of the IA for cross examination of the GEQD would vitally affect the case of the department. In these circumstances, you may kindly reconsider your predecessor's decision about the production of original answer sheet. In case you decide to produce the original answer sheet, I would fix up a date of hearing so that on that date your authorized officer may produce the original answer sheet before me so that it can be shown to Sri Choudhary and if it is possible we may summon the GEQD, Shimla also on that date, so that Sri Choudhary, if he desires so, can cross examine the GEQD." (emphasis added)

17. Regional Director, SSC, however, declined to produce original OMR Sheet and said, if authorities of Income Tax Department so desire, they may inspect OMR in the office of SSC.

18. It also appears that in the meantime, matter was also referred to CVC, who vide letter/Office Memorandum dated 18.08.2008 informed Central Board of Direct Taxes (hereinafter referred to as "CBDT") that it is in agreement with the advice of Chief Vigilance Officer of CBDT to impose punishment of 'Removal' upon Applicant-respondent.

19. Ultimately, CIT, Allahabad (Disciplinary Authority) passed order dated 30.09.2008 imposing punishment of 'Removal' upon Applicant-respondent. Thereagainst appeal was preferred to CCIT, Allahabad vide memo of appeal dated 15.10.2008. Appeal was allowed by order dated 25.01.2010. It would be useful to reproduce relevant extract of appellate order dated 25.01.2010 as under:

> "I have considered this issue in detail. In my view, even through the GEQD was not cited as a witness either by the department or by the appellant, it cannot be overlooked that the report of GEQD has been made the sole basis for proving the appellant as guilty of impersonation which subsequently resulted into his removal from the government service by an order under rule 15(4) of the CCS(CCA) Rules, 1965, passed by the Commissioner of Income-Tax, Allahabad, the Disciplinary Authority. In the circumstances, the appellant should have been provided an opportunity to examine the GEQD as well as to produce his own expert witness, if he so desired, to test the authenticity of the GEQD's report in the interest of the natural justice which the Disciplinary Authority failed to do.
>
> In view of the above facts, it clearly emerges that the fifth ground of appeal as taken in Para 11(E) of the appeal petition, as referred to above, carries merit. Accordingly, in the interest of the justice, I restore back the matter on this issue also to the file of the Commissioner of Income Tax, Allahabad, the Disciplinary Authority, with the direction to provide an opportunity to the appellant to examine the GEQD as well as

to produce his own expert witness, if he so desires, to test the authenticity of the GEQD's report.

In the result, the case is remitted back to the file of the Commissioner of Income-Tax, Allahabad, the Disciplinary Authority, in terms of Rule 27(2) (ii) of the CCS(CCA) Rules, 1965 with the direction to consider and re-adjudicate afresh the issues raised in the grounds of appeal taken in Paras 11(A), 11(B) and 11(E) of the appeal petition dated 15.10.2008, as discussed supra, after conducting necessary enquires from the SSC and the GEQD to ascertain the role of the Invigilator in this matter including the genuineness/ authenticity of the Invigilator's signatures on the Admit Card, Attendance Sheet as well as on the OMR i.e. Answer sheet and to record his specific findings which should be strictly based on the material on record. The appellant shall be given adequate opportunity to examine the GEQD as well as to produce his own expert witness, if he so desires, to test the authenticity of the GEQD's report. The Commissioner of Income- Tax, Allahabad, the Disciplinary Authority, shall conduct the necessary inquiries and investigation as directed above at his level and he shall not remit the matter further to any other authority including the Inquiry Officer. He shall complete this inquiry and pass fresh speaking order under Rule 15(4) of the CCS(CCA) Rules, 1965 within three months from the date of this order. In the meantime, the status quo which existed prior to the date of the impugned order dated 30.09.2008 shall continue till the date of passing of fresh order with the exception that the official shall be treated under suspension from 01.10.2008 to the date of passing of the fresh order and that he shall not be entitled to any salary, allowances including subsistence allowance or any other benefit attached to the post of the Inspector of Income-tax during this period.

Ordered accordingly." (emphasis added)

20. After remand, CIT sent a letter dated 17.03.2010 to Regional Director, SSC requesting to supply following documents:

"i) Name & latest complete address of the concerned Invigilator alongwith his contact details i.e. Mobile/Landline/House No. Nos. etc.

ii) All documents like Admit Card, Attendance Sheet, the OMR Answer Sheet containing the signature of the Appellant countersigned by the concerned Invigilator, which can be shown to the undersigned."

21. SCC replied vide letter dated 08.04.2010 that it is an old matter and, therefore, whereabouts of documents are difficult to trace out. However, it supplied certified copy of Admit-card, OMR sheet, handwriting of Applicant-respondent and opinion of Forensic Expert.

22. CIT, Allahabad then sent a letter dated 09.04.2010 to Forensic Expert requesting it to attend Office of Disciplinary Authority on 20.04.2010 or to send any subordinate official who is well known

to the matter. CIT, Allahabad informed Forensic Expert that against punishment order, applicant-respondent submitted appeal which has been allowed by Appellate Authority and matter has been remanded with clear direction that Forensic Expert shall be allowed to be examined by applicant-respondent and he will also be allowed to produce his own Expert witness. That is why presence of Forensic Expert was necessary.

23. Vide another letter dated 09.04.2010, CIT, Allahabad informed Applicant-respondent to attend his Office on 20.04.2010 in connection with examining Forensic Expert as also to produce his own Expert witness, if he so desired.

24. Forensic Expert vide letter dated 19.04.2010 informed Disciplinary Authority that it is not possible to attend disciplinary proceedings on 20.04.2010 and it may be adjourned to some other date. Consequently, proceedings on 20.04.2010 could not take place.

25. On 21.04.2010 a letter was sent by CIT, Allahabad to SSC requesting to furnish certain documents and clarify position in respect of documents stated in the said letter, which reads as under:

> "1. All original documents relevant to the case.
>
> 2. Authenticated copy of the attendance sheet of the examination concerned.
>
> 3. Name, address, contact no. of Shri V.S. Mishra, Invigilator
>
> 4. Please state whether Shri V.S. Mishra, Invigilator, has filed any complaint on the stated impersonation and unfair means adopted by Shri D.K. Chaudhary, during the course of the said examination either with the Police Authorities or with the Staff Selection commission, and, if so, the details along-with evidence, therefore.
>
> 5. Copy of complaint stated to be filed by some complainant as communicated by the SSC to the Department on 20.05.1999.
>
> 6. It has been alleged by Shri D.K. Chaudhary during the course of revised proceedings u/s 15(4) of CCS/(CCA) Rules 1965 on 20.04.2010 that the report of SSC on the alleged impersonation and use of unfair means during the course of the competitive examination, held by SSC was an after-thought to malign his reputation, since he was made an Inspecting Officer in flying squad for an Examination conducted by SSC, subsequent to 11.10.1998 and since Shri Devendra Kumar Chaudhary reported the use of unfair means by the examinees in collusion with certain officers/officials of SSC, the SSC subsequently came up with a concocted story of Shri D.K. Chaudhary using unfair means to secure his selection, conducted by SSC on 27.11.1994 for recruitment for the post of Inspector of Central Excise/Income Tax etc. Kindly furnish your comments, on the above allegation." (emphasis added)

26. By another letter of the same date, i.e., 21.04.2010, CIT, Allahabad informed Forensic Expert that next date in disciplinary proceedings is 27.04.2010 and he may attend proceedings on that day.

27. By letter dated 22.04.2010 Forensic Expert informed CIT, Allahabad that it is not possible to attend disciplinary proceedings before 10.06.2010. CIT, Allahabad, thereafter fixed the matter on 15.06.2010.

28. In the meantime, Applicant-respondent also obtained Handwriting Expert's opinion from one Radha Krishna Gupta, who submitted opinion dated 24.04.2010 which was addressed to CIT, Allahabad in favour of applicant-respondent.

29. CIT, Allahabad, consequently, vide letter dated 28.04.2010 forwarded opinion dated 24.04.2010 received from Sri Radha Krishna Gupta, Handwriting Expert to Forensic Expert of Government requesting him to submit his comments on the said report.

30. SSC replied vide letter dated 29.04.2010 that documents at Item No. 3 and 4 are not available. Copies of documents mentioned at Item No. 1 and 2 were supplied and in respect to Item No. 5, it is said that entire action was taken accepting opinion of Forensic Expert received by SSC.

31. Forensic Expert also replied CIT, Allahabad's letter dated 28.04.2010, vide letter dated 05.05.2010, stating that it has submitted opinion based on scientific examination of writing and signatures and that Government Experts make no comment on opinions expressed by private Experts.

32. Forensic Expert, thereafter, sent another letter dated 14.06.2010 expressing his incapability to attend disciplinary proceedings on the ground that he was not well.

33. Applicant-respondent, then submitted a letter dated 15.06.2010 to Disciplinary Authority stating that Forensic Expert having not appeared to prove his report, therefore, same can not be accepted or believed and proceedings against Applicant-respondent, therefore, must be closed.

34. Disciplinary Authority made further attempt to get original OMR Sheet from SSC and sent a letter dated 18.06.2010 but SSC vide letter dated 24.06.2010 refused to supply the same and stated that, at the best, any Officer of CIT, Allahabad may inspect original OMR Sheet in the Office of SSC, New Delhi.

35. Disciplinary Authority, in the circumstances, closed proceedings and passed order dated 16.07.2010 under Rule 15(4) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "Rules, 1965") imposing punishment of 'Removal' with effect from 16.07.2010 (afternoon). CIT treated report of Forensic Expert, conclusive and binding, and observed that presence of Forensic Expert would not have made much difference. For this purpose, it relied on Forensic Expert's letter dated 05.05.2010 and in para 24.4 of punishment order, Disciplinary Authority said as under:

> "24.4 Moreover, GEQD vide its letter dated May 5, 2010 have also categorically stated that opinion expressed by their laboratory is an outcome of a through and scientific examination and analysis of each exhibit i.e. questioned and standard writings and signatures and that opinion expressed by them is a well considered opinion based on axioms of handwriting examination and identification and duly signed by both the experts, after independently examining the documents on multiple sittings and arriving at the same conclusions that the desired reasons for basing the opinion are self-explanatory; that it is axiomatic to stress upon that inferences cannot be drawn from inferences but from actual facts; that the Govt. Experts express their views, comments and expositions of the scientific opinion furnished by them on the documents submitted for examination and that they do not comment on the opinions expressed by other organizations/private exerts. Therefore, it is clear that even the presence of GEQD would not have made much difference in the inquiry proceedings as his opinion is final in the matter so far as Departmental Enquiry is concerned." (emphasis added)

36. Disciplinary Authority also adversely commented against attitude of SSC of not providing details of Invigilator but, thereafter, held that it would not have made much difference and said in para 24.5 and 24.6 of its order as under:

> "24.5 However, the Staff Selection Commission's stand of not providing any details of the Invigilator is not understood as it has not made serious and earnest efforts to trace the Invigilator. But even the presence of Invigilator would not have made much difference in the enquiry proceedings as the facts of the case of impersonation is established both by way of OMR Answer Sheet and Admit Card and no further stretching of enquiry is considered necessary. Moreover, when a certified photocopy of the Answer Sheet was provided by the SSC, the genuineness of the same cannot be suspected.
>
> 23.6 The aforesaid facts clearly goes to prove that Shri Devendra Kumar Chaudhary resorted to impersonation in the written examination held on 27.11.1994 by the S.S.C. for recruitment as Central Excise/Income Tax Inspector and that he entered into Govt. Service by using unfair means thus exhibiting conduct unbecoming of a Government Servant."

(emphasis added)

37. Since directions of Appellate Authority contained in order dated 25.01.2010 were not complied with as neither any opportunity to Applicant-respondent was afforded to examine Forensic Expert nor Invigilator's signatures were examined in the matter and Expert's opinion submitted by Applicant-respondent, in defence, was also kept aside on the ground that report and opinion of Government Document Examiner was final, raising these issues, Applicant-respondent submitted appeal to CCIT vide memo of appeal dated 27.07.2010.

38. Appellate Authority, vide letter dated 20.10.2010, required Disciplinary Authority to re-examine the matter on certain facts in the light of directions contained in earlier appellate order dated 25.01.2010.

39. Thereupon CIT, Allahabad sent a letter dated 22.11.2010 seeking information and documents from SSC on the following aspects:

> "1. Whether a First Information Report (FIR) has been lodged with the police by the Staff Selection Commission in the matter of the alleged impersonation by the charged officer. If an FIR had been lodged, what has been the action of the police on it and what has been the final outcome.
>
> 2. Please furnish complete address of the Invigilator and if possible produce them before the undersigned.
>
> 3. Please adduce positive evidence to support the contention that some other person indeed appeared in the examination on behalf of the charged officer. This is important in the scenario where the charged officer has himself denied having placed the second signature on the admit card. The charged officer stated that the second signature on the admit card was neither necessary to be placed nor had been made by him. He submitted that some of the officials of the SSC had attempted to implicate him. Further the SSC was in possession of the admit card and that nothing adverse was ever reported by the invigilator.
>
> 4. The GEQD vide letter dated 05.05.2010 had stated that its role was limited to giving an opinion on the basis of examination of documents and that it was not open for cross examination. The GEQD is your witness and in order to establish a case of impersonation against the charged officer, it is necessary to produce GEQD for cross examination before the Disciplinary Authority i.e. the Commissioner of Income Tax, Allahabad. This is important as the private examiner of questions documents, the witness of the charged officer has given opinion in favour of the charged officer. This finding of the private examiner of the questioned documents has not been rebutted by the GEQD, who is your witness."

(emphasis added)

40. SSC submitted reply dated 23.12.2010 stating, pointwise, as under:

> "1. No FIR was lodged as he was already in service and suitable action was required to be taken by the employer.
>
> 2. Not available being a very old case. It has already been intimated vide this office letter dt. 29.04.2010.

3. Sufficient reply and evidence has already been provided vide this office earlier letters referred above.

4. Role of SSC was limited to providing of information relating to the alleged misconduct to the Department under whose employment the concerned person was working. Subsequent course of action, whatsoever has been taken by you (the Department) as Disciplinary Authority. Prosecution witness, if any, are for Departments' side. It would, therefore, not be appropriate to say, as said in your letter, that GEQD is SSC's witness. Govt. Examiner of Questioned Documents. Directorate of Forensic Science, Ministry of Home Affairs, Govt. of India is an independent organization and disinterested party which has been authorized by the Central Govt. for Examination of Questioned Documents.

This is for your information."

41. Thereafter CIT, Allahabad submitted its comments vide letter dated 23.03.2011 and its conclusion contained in para 9.2, 9.3, 9.4 and 9.5 reads as under:

"9.2 After examining the entire facts of the case and the outcome discussed above, I am of the view that the findings of DA/CIT is based only on the recommendation of SSC, which is not based on a finding but merely on an opinion of GEQD. The said opinion of GEQD stands contradicted by PEQD. Hence the opinion of GEQD can not be held as conclusive. The unexamined/ non cross examined opinion (of GEQD) is the only basis of charge against the official. When there are two contradictory opinions on record on the core issue forming the base of allegation, giving precedence to one opinion over the other in absence of any credible evidence against the official is not only erroneous but it would amount arbitrary and biased. The decision based on this opinion is not only premature and uncalled for but also against natural justice, equity and fairness. The DA/CIT jumped on the conclusion of impersonation grossly ignoring the material facts on record. The candidate's request for providing 10 preceding and succeeding certified copies of OMR sheet of other candidates was rejected and thereby he was denied the opportunity of natural justice. Column no. 5 of OMR may be a case of some omission on the part of the candidate. There is no positive or conclusive evidence of any impersonation during the course of examination and it is improbable to change any document or any entry in a document which is exclusively in the possession of SSC. Besides the second part of the examination i.e. success in the interview is not in question. The competence level and performance in the department was found satisfactory which is incongruous with the allegation against the official. The very basis of doctrine of natural justice, "Audi Alteram Partem & nemo debet esse judex in propria cause" has not been observed strictly in this case.

9.3 The direction of Chief Commissioner of Income Tax (CCA) vide order dated 25/01/2010 has not been followed by DA/Commissioner of Income Tax, while

finalizing order dated 17.07.2010, as is verifiable from Annexure 'A' containing summary of directions and its compliance.

Hon'ble Chief Commissioner of Income Tax (CCA) vide order dated 18/06/2010 r.w. Order dated 25/01/2010 granted subsistence allowance from the date of suspension i.e. 01/10/2008 till passing of fresh order. Which was passed on 17/10/2010.

As pointed out in this report the order dated 17/10/2010 is not in consonance with views and directions of Chief Commissioner of Income Tax (CCA) dated 25/01/2010 and Chief Commissioner of Income Tax, Allahabad dated 20/10/2010 and it suffers from inbuilt infirmities, contractions which are in no way against the official except the final verdict.

9.4 The order of removal from service dated 30/09/2008 was passed with the approval of Ld. CCIT, Allahabad which was referred back to CIT Allahabad who again passed an order of removal dated 17-07-2010.

The very basis of above decisions of DA/CIT is accepting the charge of Impersonation by Sri DK Chaudhary and not on the charge of procurement of impersonation by him. In my view Impersonation for self is not possible.

Therefore the finding of DA/CIT on the charge of Impersonation by Sri D.K. Chaudary is void ab initio and misleading and suffers from errors, omissions and inbuilt contradictions.

9.5 Therefore, I am of the considered view that the charge of impersonation against the official has not been proved at any stage of inquiry and the decision of removal from service is premature and was uncalled for.

Considering the facts and circumstances of the case, findings and conclusions discussed in this report (particularly in the light of directions of Ld. CCIT, Allahabad); I am of the view that the order of removal of Sri D.K. Chowdhary, dt 16.07.2010 from service w.e.f. 17.07.2010 is not justified and deserves to be cancelled.

Your kind approval and further direction in the matter is solicited. (emphasis added)

42. The above reproduction of conclusion of CIT, Allahabad clearly shows that he took the view that finding of impersonation against applicant-respondent is misleading, void and not possible, and, therefore, punishment of 'Removal' was not justified and deserves to be cancelled.

43. It appears that some further inquiry was made by Appellate Authority from Disciplinary Authority which was replied by CIT, Allahabad vide letter dated 19.09.2011. Before Appellate Authority could take a decision, CBDT was informed that some decision needs be taken contrary to advice earlier rendered by CVC. Thereupon CBDT sought opinion of CVC. Sri B.S. Negi, Director,

CVC, vide letter dated 18.06.2012, informed Director General, Income Tax (Vigilance), in the Office of CBDT, that Appellate Authority has to decide appeal cases but if it decides to deviate from advice given by CVC, and against order of Disciplinary Authority, Chief Vigilance Officer will report it to CVC to take a view whether deviation is serious enough or not to be included in its Annual Report. It also informed that earlier instructions contained in Para-19, Chapter-XVII of Vigilance Manual have been superseded by CVC's Circular dated 10.02.2003. Hence Appellate Authority should deal with the matter accordingly.

44. Thereafter, Appellate Authority opted a safe option and proceeded to pass order dated 08.01.2013 on appeal and rejected the same. It affirmed order of punishment passed by Disciplinary Authority.

45. In the appellate order, in para-(viii), Appellate Authority has reproduced relevant extract from CVC's Circular dated 10.02.2003 which was brought to the notice of Appellant Authority vide Office Memorandum dated 18.06.2012, and the said extract reads as under:

> "The Appellate Authority is expected to keep the advice tendered by the Commission and decide on the appeal. In case, the Appellate Authority decides to deviate from the advice given by the Commission on appeal, the CVO will report this to the Commission which will take an appropriate view whether the deviation is serious enough to be included in its Annual Report.
>
> 2. The Commission further wishes to stress that reconsideration of advice will be only in exceptional cases at the specific request of the DA, before a decision is taken by it to impose the punishment or otherwise. After a decision has been taken by DA, the Commission will not entertain any reconsideration proposal. Such cases will be treated only as 'deviation' from and non-acceptance of Commission's advice."

(emphasis added)

46. Applicant-respondent, then preferred a Revision to CCIT, Allahabad but he was informed vide letter dated 16.12.2013 that no Revision is maintainable in view of second proviso to Rule 29 of Rules, 1965,.

47. Thereafter Applicant-respondent filed OA No. 257 of 2014 challenging 'Removal' order dated 16.07.2010 and Appellate order dated 08.01.2013 as also letter dated 16.12.2013 whereby it was held that no Revision is maintainable. Petitioners filed counter affidavit. Tribunal vide judgment dated 15.10.2014 has allowed OA, set aside orders, impugned therein, and has directed petitioners to reinstate Applicant-respondent with all consequential benefits. However, it has given liberty to petitioners to conduct disciplinary proceedings in accordance with law. It appears that there was some mistake in description of application in the certified copy of judgment which was corrected by order dated 17.10.2014.

48. Sri K.C. Sinha, learned counsel appearing for petitioners, vehemently argued that non production of Forensic Expert and original copy of OMR sheet could not have vitiated disciplinary proceedings as no prejudice was caused to applicant-respondent since certified copy of OMR sheet was produced and opinion of Forensic Expert was also part of record. He submits that Forensic Expert's report is a "public document" in terms of Section 74 of Indian Evidence Act, 1872 (hereinafter referred to as "Act, 1872"), and, therefore, it was admissible in evidence. Merely for the reason that author of document was not examined, Tribunal was not justified in taking an otherwise view in the matter. He further submitted that Disciplinary Authority as well as Appellate Authority, both, have taken their independent view in the matter with regard to factum, whether there was any impersonation or not and, therefore, it cannot be said that their findings are founded on Forensic Expert's opinion.

49. Referring to the authority of Apex Court in Fakhruddin Vs. State of M.P. AIR 1967 SC 1326, he submitted that Expert evidence is only in the nature of opinion. Authorities concerned, if have examined the matter, independently, and themselves got satisfied that handwriting did not tally, such findings of authorities concerned could not have been vitiated for the reason that Expert's opinion was not admissible since Expert was not examined or allowed to be cross-examined by affected party, particularly, when Tribunal also did not examine this aspect on its own though it could have. He submits that in a serious case of impersonation, Tribunal has considered matter in a very casual fashion and, therefore, impugned judgment is liable to be set aside. Sri Sinha placed reliance on a large number of authorities i.e. State Bank of India and others Vs. Ramesh Dinkar Punde (2006) 7 SCC 212, General Manager (P), Punjab and Sind Bank and others Vs. Daya Singh (2010) 11 SCC 233, State of Punjab and another Vs. Hari Singh (2008) 11 SCC 85, Jaswant Singh Vs. Gurdev Singh and others (2012) 1 SCC 425, Lalit Popli Vs. Canara Bank and others (2003) 3 SCC 583, Union of India and others Vs. Alok Kumar (2010) 5 SCC 349, State Bank of India and others Vs. Bidyut Kumar Mitra and others (2011) 2 SCC 316, Union of India Vs. Y.S. Sadhu, Ex-Inspector (2008) 12 SCC 30, Chairman, Life Insurance Corporation of India and others Vs. A. Masilamani (2013) 6 SCC 530 and B.C. Chaturvedi Vs. Union of India and others (1995) 6 SCC 749.

50. Per contra, learned counsel appearing for applicant-respondent submitted that Inquiry Officer found charges not proved. Disciplinary Authority disagreed with the said finding of Inquiry Officer only on the basis of action taken by SSC and Forensic Expert Report and thereafter imposed punishment upon applicant-respondent. This punishment order dated 30.09.2008 was set aside by Appellate Authority vide order dated 25.01.2010 wherein a categorical direction was issued to Disciplinary Authority to give opportunity of examination of Forensic Expert by Applicant-respondent and also to examine original OMR Sheet as also Invigilator to find out when he signed attendance-sheet, whether Applicant-respondent was present and signed attendance sheet and if signatures did not tally, with that of Applicant-respondent, why he signed attendance sheet. This order of Appellate Authority attained finality.

51. The aforesaid directions were not complied with for the reason that neither Forensic Expert appeared nor SSC cooperated with Disciplinary Authority by producing original OMR sheet and giving details of Invigilator, yet under the pressure of CVC, Disciplinary Authority reiterated its penalty without complying with the directions of Appellate Authority contained in appellate order

dated 25.01.2010 and passed fresh order of punishment on 16.07.2010 but this time punishment was changed from 'dismissal' to 'removal'.

52. Appellate Authority, second time, while examining appeal, found numerous defects in the proceedings conducted by Disciplinary Authority after remand. It, therefore, required clarification from Disciplinary Authority, who submitted a detailed report dated 23.03.2011 in which it recorded its opinion that charge is not proved, opportunity was not given and punishment order of 'Removal' is not justified.

53. Thereafter, Appellant Authority intended to take a different view in the matter so as to reverse the decision of Disciplinary Authority but again it is CBDT who intervened in the matter and informed Appellate Authority that if it reverses the decision of Disciplinary Authority, contrary to advice of CVC, it will have to be reported to Commission and likely to be taken strictly.

54. It is in these facts and circumstances, Appellate Authority, reproduced CVC's Circular dated 10.02.2003, and did not dare to pass any other order except of confirmation of punishment order and rejecting appeal.

55. Hence, apparently, Appellate Authority did not apply its mind independently and was compelled to act under duress, undue influence, and coercion of CVC and CBDT.

56. These aspects have been examined in detail by Tribunal and noticing that applicant-respondent has been punished on evidence which is inadmissible even in departmental proceedings, and procedure followed by petitioners has also resulted in gross violation of principles of natural justice, therefore punishment and appellate orders are liable to be set aside. In our view, this judgment of Tribunal does not require any interference.

57. Before examining other submissions, we may examine whether punishment has been imposed upon applicant-respondent holding him guilty, broadly, relying on Forensic Expert's report dated 18.03.1999. It is also worthy to see that Applicant-respondent submitted Handwriting Expert's opinion in his defence but we do not find any discussion with regard to its report as to why said report was not found worth consideration. In fact, order of Appellate Authority shows that it being in the grip of constant monitoring by CVC, even predecessor in Office of Appellate Authority prepared a draft appellate order on 11.11.2011 differently, seeking reconsideration by CVC but when it was turned down by CVC and communicated by CBDT's Office Memorandum dated 18.06.2012, informing Appellate Authority that it is expected to keep advice tendered by Commission and decide appeal and in case of deviation, matter has to be again reported to Commission for appropriate view and that reconsideration is an exception and once a decision was taken by Disciplinary Authority, then Commission will not entertain any reconsideration proposal, therefore on safer side the Appellate Authority lost its independence and adhered to the view as taken by Disciplinary Authority consistent with advice of CVC. These facts are evident from para-5 of appellate order which we may reproduce as under:

"5.0 I have carefully gone through the records of disciplinary proceedings also, from which it is apparent that:-

(i) The complaint alleging that the appellant has indulged in impersonation and has entered into government job using unfair means, was being monitored by the Central Vigilance Commission (CVC), as mentioned in the CCIT (CCA), Lucknow's confidential letter No. Con./Comp/Viz/6/8/Alld/07-08/5798 dated 18.09.2007 addressed to the CIT, Allahabad (i.e. Disciplinary Authority).

(ii) The CVC was required to be consulted at every stage including the stage of passing final order in this case, as mentioned in the Memo. No. DIT (V)/E-Kol-76/2007-08/814 dated 26.09.2007 of the Director of Income Tax (Vigilance), East, Kolkata, which was addressed to the Director General of Income Tax (Vigilance), New Delhi and a copy thereof was endorsed to the Chief Commissioner of Income Tax (CCA), Lucknow.

(iii) The Director of Income Tax (Vig.), East, Kolkata had clearly mentioned in his letter No. DIT (Viz.) East/Misc. Vig/07-08/1354 dated 04/13-02-2008, addressed to the D.A. that the case was taken up for investigation under CVC's Act, 2003 and as per Section 17 of CVC's Act, 2003, the report of any inquiry made on a reference by the Commission shall be required to forward to the Commission for advice of further course of action.

(iv) The D.A., therefore, submitted his draft penalty order under Rule 15(4) of CCS(CCA) Rules for advice of the CVC, vide his letter No. SSC/DKC/IT/Alld/07-08 dated 29.02.2008; which was forwarded to the CVC, New Delhi by the then CCIT, Allahabad vide his letter No. CCIT/Alld/P-5/2007-08/303 dated 03.03.2008 mentioning therein that he agreed with the recommendation of the D.A.

(v) In turn, the CVC replied to the CBDT vide its O.M. No. 006/ITX/003-18685 dated 18.08.2008 that considering facts and circumstances of the case, the Commission would in agreement with the CVO, CBDT, advice imposition of major penalty of removal from service against Shri D.K. Chaudhary (the Appellant). Accordingly, the penalty order under Rule 15(4) of the CCS(CCA) Rules was originally passed by the D.A. on 30.09.2008 for removal of the appellant from service w.e.f. 30.09.2008 (AN).

(vi) As pointed out above, this case was being monitored by the CVC and as per the earlier correspondence borne on record, the CVC was required to be consulted at every stage including the stage of passing final order. Moreover, para 19 (captioned as "Consultation with the Central Vigilance Commission") contained in Chapter XVII (i.e. Appeal, Revision, Review Petitions and Memorials) of the CVC's Vigilance Manual stipulated that in such cases where the UPSC is not to be consulted, the cases at appeal/revision stage should be referred to the CVC where the appellate/ revising

authorities propose to modify or set aside the penalty imposed in a case in which the CVC was earlier consulted and the Commission should also be informed of the final outcome of all appellate/revision/ review proceedings, if as a result of such proceedings, the penalties imposed on the earlier advice of the Commission are set aside or modified.

(vii) My predecessor in office, therefore, sent [through the Director General of Income Tax (Viz.), New Delhi], his draft appellate order dated 11.11.2011 in this case for reconsideration of the CVC, however, that has been returned back by the CVC, vide their O.M. No. 006/ITX/003/178166 dated 18.06.2012 to the DGIT (Vig.), New Delhi, with the following observations:-

"2. The proposal of the CBDT has been examined and observed that as per Commission's Circular No. 000/DSP/1 dated 10.02.2003, Appellate Authority has to decide the appeal cases. In case, Appellate Authority decides to deviate from the advice given by the Commission in appeal cases and against the order of Disciplinary Authority, CVO will report this to the Commission to take a view whether deviation is serious enough to be included in its Annual Report.

3. Since, the instructions contained at para-19 Chapter XVII of Vigilance Manual stand superseded by the Commission's Circular dated 10.02.2003, the case may thus be dealt with accordingly. Therefore, the case is referred back."

(viii) The relevant portion of CVC's Circular No. 000/DSP/1 dated 10th February, 2003 brought to notice through their said O.M. dated 18.05.2012, reads as under:

"The Appellate Authority is expected to keep the advice tendered by the Commission and decide on the appeal. In case, the Appellate Authority decides to deviate from the advice given by the Commission on appeal, the CVO will report this to the Commission which will take an appropriate view whether the deviation is serious enough to be included in its Annual Report.

2. The Commission further wishes to stress that reconsideration of advice will be only in exceptional cases at the specific request of the DA, before a decision is taken by it to impose the punishment or otherwise. After a decision has been taken by DA, the Commission will not entertain any reconsideration proposal. Such cases will be treated only as 'deviation' from and non-acceptance of Commission's advice."

58. Appellate order also shows that Disciplinary Authority was also compelled to complete proceedings expeditiously inasmuch earlier it was supposed to complete proceedings after remand within three months and thereafter on its request, this period was extended. Appellate order also specifically mentions that Disciplinary Authority passed order on 16.07.2010 without complying with any direction contained in the earlier appellate order dated 25.01.2010. This fact is also evident from Para 3.1 of appellate order dated 08.01.2013, which reads as under:

> "3.1 After going through the D.A.'s fresh order dated 16.07.2010 and the appeal made there against by the appellant, my predecessor (CCIT, Allahabad) was of the view that the order appealed against, was passed without meeting the explicit directions contained in para 5 of the CCIT(CCA), Lucknow's order u/r 27(2) dated 25-01-2010."

59. The appellate order also shows that serious flaws were found by Predecessor in Interest of Appellate Authority and he sent letter dated 20.10.2010 to Disciplinary Authority pointing out the same as under:

> "(i) FIR: Whether any FIR was lodged with the police by the SSC in the matter of alleged impersonation by the appellant? If so, what was the final outcome of the action taken, if any, by the police?
>
> (ii) Role of the Invigilator: The SSC has not only failed to produce the invigilator, but has also not furnished his address. An examination of the invigilator would have settled many issues since it was he, who had countersigned the signatures of the candidate on the 'Admit Card' and 'Answer Sheet'. As such, only he could verify as to which signature was actually placed in his presence, whether he noted any discrepancy in the signature (Q-1, Q-2, Q-2/1) and whether he had verified that the person in the examination hall was the same as in the photo on the admit card?
>
> (iii) Report of the GEQD: The GEQD (to whom the matter of examination of questioned signature was referred by the SSC) neither appeared before the D.A. for cross examination by the appellant/re-examination by the D.A. nor rebutted the opinion of the PEQD (i.e. the appellant's witness), which was in favour of the appellant. Further, in its report the GEQD has mentioned that the 2nd signature on the admit card (Q-2/1), which has allegedly not been countersigned by the invigilator, is the same as that on the answer sheet (Q-1). In case such an opinion is not forthcoming from the GEQD that the signatures Q-1 and Q-2/1 both are not made by one and the same person, which would imply that there is involvement of two different persons-one for writing the answer sheet (Q-1) and the other one for placing the signature on the admit card (Q-2). Through this would create an incongruous situation that one person put the 2nd signature on admit card (Q-2/1) and another person wrote the answer sheet, but to rule out this absurd probability and to prove beyond doubt that it was a person other than the appellant who wrote the written examination, it was the duty of the SSC to adduce positive evidence and to prove this conclusively."

60. Despite noticing such discrepancies going to the root of the matter, still petitioner-authorities proceeded to pass order of dismissal and appeal was rejected (ultimately which orders have been set aside by Tribunal) and all this show that said authorities, in fact, were compelled to do so, not their own, independently, but under the compulsion of apprehension from CVC that in case an otherwise view is taken, Disciplinary Authority and Appellate Authority themselves will be in trouble since it will be treated to be a difference to the view taken by CVC and would be reported for further action.

61. In our view, when order of punishment passed by Disciplinary Authority on 30.09.2008 was set aside by Appellate Authority vide order dated 25.01.2010 with direction to Disciplinary Authority to examine certain aspects of the matter in a particular manner and thereafter proceed with the matter, and that order attained finality, it was not open to Disciplinary Authority to defy aforesaid order of Appellate Authority passed on 25.01.2010. It could not have passed order afresh, without complying with the directions contained in appellate order dated 25.01.2010.

62. Learned counsel for petitioners could not dispute that appellate order dated 25.01.2010 attained finality having not been reviewed or revised by any superior authority under the available provisions of Rules, 1965 and that being so, Disciplinary Authority was under a statutory obligation to comply with the directions of Appellate Authority and only thereafter pass fresh order. Disciplinary Authority, it appears, made an attempt to comply with the said direction but SSC did not cooperate. Even Forensic Expert did not cooperate.

63. The next question would be, "whether report of Forensic Expert could have been treated to be a conclusive evidence to hold applicant-respondent guilty of impersonation justifying punishment of removal."

64. The authority of SSC to seek opinion from Forensic Expert in respect of handwriting and competence of Forensic Expert to submit its report or opinion cannot be doubted, but when aforesaid opinion or material is relied on as an evidence in a disciplinary proceeding against a Government servant, he is entitled to cross examine Author of said opinion since it is only a piece of evidence expressing opinion of such Expert in a process where Government servant was not a party and, therefore, he is entitled to examine Author of such opinion, otherwise ex-parte report submitted by Forensic Expert cannot be a valid piece of evidence to be relied in a departmental inquiry.

65. When a document is relied, may be an opinion of an Expert, it only means that such an Expert has given such opinion but about correctness of the opinion, unless Author is allowed to be examined by person against whom such opinion has been expressed, and thereafter such person is permitted to lead his own evidence in defence to contradict the opinion of Forensic Expert, it cannot be said that a valid piece of evidence has been considered in departmental inquiry. In a departmental inquiry mere production of a document cannot be treated to be a conclusive evidence to prove the fact mentioned in the said document by treating the facts stated therein, true, unless Author of such document owns it in a quasi judicial inquiry proceedings and allowed to be cross examined by affected party. We are fortified in taking this view by Apex Court's judgment in M/s Bareilly Electricity Supply Co. Ltd., Vs. The Workmen and others, AIR 1972 SC 330 where Court in para 14 of judgment has observed:

> "But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a

> Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt." (para-14) (emphasis added)

66. Similar view has also been taken in Union of India Vs. Sardar Bahadur, 1972(4) SCC 618; Rajesh Prasad Mishra Vs. The Commissioner Jhansi Division, Jhansi and others, 2011(1) ADJ 135 and State of U.P. Vs. Aditya Prasad Srivastava and another (Service Bench No. 585 of 2011), decided on 17.01.2017.

67. Appellate Authority, therefore, has rightly held that alleged opinion of Forensic Expert was an ex-parte opinion expressed by him and unless such Expert is allowed to be cross examined by delinquent employee, it could not have been a valid piece of evidence, and, that too, to hold a serious charge of impersonation proved. It is true that Evidence Act is not per se applicable in departmental proceedings, but when an Expert's opinion is obtained for the purpose of departmental inquiry also, then it will be necessary to examine the correctness and value of Expert's opinion since such Expert's opinion cannot be given the status of a conclusive evidence without production of Expert in inquiry proceedings. Per se, it cannot be treated a self proven document so as to justify an action against delinquent employee. If that argument is accepted, it will mean that in every departmental inquiry, whenever an opinion of Handwriting Expert is obtained and it goes against delinquent employee, then no further inquiry would be of any use since this document can be treated to be a conclusive evidence and sufficient to record a finding against that person. This would be travesty of justice and in the teeth of basic principles of law which says that no evidence can be relied unless it is examined with the participation of the person against whom such evidence is to be relied.

68. Now going back to the question, what is the status of an Expert's opinion and its evidentiary value, it is appropriate to observe that evidence of an Expert is only an opinion. The caution, Court

must exercise while considering opinion rendered by an expert is expressed in Murarilal Vs. State of M.P. AIR 1980 SC 531, where Court held:

> "But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses-the quality of credibility or incredibility being one which an expert shares with all other witnesses-, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence'." (Para 4) "Reasons for the opinion must be carefully probed and examined. ... In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. ..." (Para 11)

69. In State Vs. Kanhu Charan Barik 1983 Cr.L.J. 133, a Division Bench of Orissa High Court held :

> "Evidence of experts after all is opinion evidence. The opinion is to be supported by reasons. The Court has to evaluate the same like any other evidence. The reasons in support of the opinion, if convincing, make the opinion acceptable. There is no place for ipse dixit of the expert. It is for the court to judge whether the opinion has been correctly reached on the data available and for the reasons stated."

70. In Forest Range Officer & others Vs. P. Mohammed Ali & others AIR 1994 SC 120, it was observed :

> "The expert opinion is only an opinion evidence on either side and does not aid us in interpretation."

71. It would be prudent to quote the following passage from Taylor's Law of Evidence, page 1344, para 1877 about the admissibility of evidence of experts :

> "Still as experts usually come with a bias on their minds to support the cause in which they are embarked, little weight will in general be attached to the evidence which they give, unless it be obviously based on sensible reasoning."

72. In Mt. Titli Vs. Alfred Robert Jones AIR 1934 All. 273, it was observed:

> "The opinion of an expert by itself may be relevant but would carry little weight with a Court unless it is supported by a clear statement of what he noticed and on what he based his opinion. The expert should, if he expects his opinion to be accepted, put before the Court all the materials which induced him to come to his conclusion, so that the Court, although not expert, may form its own judgment on those materials. ... The mere mention that certain kind of tests knows as Binet and Simon tests were applied and certain results were obtained, might be relevant as piece of evidence but would not be conclusive."

73. In Palaniswamy Vaiyapuri Vs. State AIR 1968 Bombay 127, a Division Bench of Bombay High Court in para 11 of the judgment said :

> "The opinion of an expert must be supported by reasons and it is the reasons and not ipse dixit which is of importance in assessing the merit of the opinion."

74. In Sita Nath Basak Vs. Mohini Mohan Singh AIR 1924 Cal. 595, a Division Bench of Calcutta High Court observed that in the matter of infringement of copyright, Court should be reluctant to sit as an expert to decide the question of infringement of copyright and the proper course, in ordinary circumstances, is to get the opinion of experts. This was explained in Government of West Bengal Vs. Nitya Gopal Basak & others 1985 CRI.L.J. 202 by a learned Single Judge of Calcutta High Court that the above view was expressed primarily on the ground that Court would have to take great pains and would have to waste its valuable time to ascertain how far the piracy extended and it was desirable therefore to seek opinion of expert to compare the works and to ascertain the details to avoid excessive expenditure of time and labour. It was also pointed out that such a course was also necessary as the Court might not be conversant with the alphabets of the book.

75. In the context of opinion of Handwriting Expert, in Fakhruddin (supra), Court held that the opinion of Handwriting Expert though is relevant in view of Section 45 of Evidence Act, but that too is not conclusive. Reliance was placed on earlier decisions in Ram Chandra Vs. State of Uttar Pradesh AIR 1957 SC 381 (at page 388) and Ishwari Prasad Misra Vs. Mohammad Isa AIR 1963 SC 1728 where it was observed that expert evidence as to handwriting is an opinion evidence and it can rarely, if ever, take the place of substantive evidence. It cannot be conclusive because it is after all opinion evidence. In para 11 of the judgment in Fakhruddin (supra), Court further observed, where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that Court must play the role of an expert but to say that Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

76. In re B. Venkata Row (1913) 36 Mad. 159 a quotation from Dr. Lawson's work on the "Law of Expert and Opinion Evidence" was quoted, which reads as under :

> "The evidence of the genuineness of the signature based upon the comparison of handwriting and of the opinion of experts is entitled to proper consideration and

> weight. It must be confessed however that it is of the lowest order of evidence or of the most unsatisfactory character. We believe that in this opinion experienced laymen unite with the members of the legal profession. Of all kinds of evidence admitted in a Court this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence."

77. This was followed in Indar Datt Vs. Emperor AIR 1931 Lahore 408. A Similar observation was made by a Division Bench of this Court in Srikant Vs. King Emperor (1905) 2 ALJ 444 and Kali Charan Mukerji Vs. Emperor (1909) 9 Cr.L.J. 498.

78. In Sudhindra Nath Vs. The King AIR (39) 1952 Cal. 422, it was observed :

> "We are now left with the evidence of identification by the hand-writing Expert. With regard to this class of evidence, it is a rule of law that it is extremely unsafe to base a conviction upon the opinion of hand-writing experts, without substantial corroboration; because it is well known that a comparison of hand-writing as a mode of proof is always hazardous & inconclusive, unless it is corroborated by other evidence."

79. In the context of a post mortem report, in State of Haryana Vs. Ram Singh (2002) 2 SCC 426, Court said that the post mortem report though by itself is not a substantive piece of evidence, but can by no means be ascribed to be insignificant provided it is corroborated by other evidence.

80. In Perumal Mudaliar Vs. South Indian Railway Company Ltd. AIR 1937 Mad. 407 the manner of recording opinion of expert was considered and a Single Judge (Hon'ble Beasley, C.J.) said :

> "The evidence of experts must be given in the ordinary way. Subject to certain exceptions- those exceptions being amongst others, the certificates of the Imperial Serologist touching the matter of bloodstains and of the Chemical Examiner, which are made admissible in evidence by themselves-it is quite obvious that the opinion of an expert must be given orally and that a report merely or certificate by him cannot possible be evidence. Unless he goes into the witness box and gives oral evidence, there can be no cross examination of the expert at all."

81. Similarly, another Single Judge in Coral Indira Gonsalves Vs. Joseph Prabhakar Iswariah AIR 1953 Mad. 858 said :

> "Certificates, like these, do not prove themselves. They must be 'strictly proved' by the doctor who issues them. He has to state what tests he carried out to arrive at his conclusion and must stand cross-examination and convince the Court that his conclusion about the potency is correct."

82. In reference to an Excise Inspector as to whether he may be considered as 'Expert' within the meaning of Section 45 of Evidence Act, Court in Sri Chand Batra Vs. State of U.P. AIR 1974 SC 639

said :

> "Another question before us is whether the Excise Inspector, whose evidence was under consideration, had sufficient knowledge to be deemed to be an expert within the meaning of Section 45 of the Evidence Act so that the tests adopted by him, together with all the attendant circumstances, could establish beyond doubt that the appellant was in possession of illicit liquor. We think that these are also essentially questions of fact."
>
> "We find that the Excise Inspector who had deposed, at the very outset of his evidence, that he had put in 21 years service as Excise Inspector and had tested lacs of samples of liquor and illicit liquor. As already pointed out, the competence of C.D. Misra to test the composition and strength of the liquid under consideration was not questioned at all. We, therefore, think that this particular Excise Inspector could be treated as an expert within the meaning of Section 45 of the Evidence Act."

83. In Haji Mohammad Ekramul Haq Vs. The State of West Bengal, AIR 1959 SC 488 Court held that an opinion of expert unsupported by any reason, is not to be relied on.

84. In The Forest Range Officer and others Vs. P. Mohammed Ali and others, AIR 1994 SC 120 Court said:

> "The expert opinion is only an opinion evidence on either side and does not aid us in interpretation." (para 8)

85. Who an expert witness would be, has been considered in State of Himachal Pradesh Vs. Jai Lal and others, AIR 1999 SC 3318 and it says:

> "An expert witness, is one who has made the subject upon which he speaks a matter of particular study, practice; or observations; and the must have a special knowledge of the subject." (para 13) "Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject." (para 17) "18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions."

"19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination."

86. Considering all these aspects of the matter with respect to evidence of Experts, a Special Bench of this Court in Sunni Central Board of Waqfs Vs. Sri Gopal Singh Visharad and others 2010 ADJ Page 1 (SFB)(LB), in the judgment of one of us (Hon'ble Sudhir Agarwal, J.) in paras 3586 to 3596 said as under:

"3586. Expert evidence thus is only a piece of evidence and external evidence. It has to be considered along with other pieces of evidence. Which would be the main evidence and which is the corroborative one depends upon the facts of each case. An expert's opinion is admissible to furnish the Court a scientific opinion which is likely to be outside the experience and knowledge of a Judge. This kind of testimony, however, has been considered to be of very weak nature and expert is usually required to speak, not to facts, but to opinions. It is quite often surprising to see with what facility, and to what extent, their views would be made to correspond with the wishes and interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think, but their judgment becomes so warped by regarding the subject in one point of view, that, when conscientiously deposed, they are incapable of expressing a candid opinion.

3587. In Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. & Ors. JT 2009 (12) SC 377 Apex Court considered the issue pertaining to expert opinion in a bit detail. In para 11, the Court has said:

"The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requrement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and ecperience of the lay person. ... The scientific question involved is assumed to be not with the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

i. that the expert must be within a recognized field of expertise ii. that the evidence must be based on reliable principles, and iii. That the expert must be qualified in that discipline."

3588. The Court has also said that in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study on the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge on the subject. Referring to this Court's decision in Titli Vs. Jones (Supra) the Court said that it is not the province of the expert to act as Judge or Jury. The real function of the expert is to put before the Court all the materials, together with reasons which induce to come to the conclusion, so that the court, although not an

expert, may form its own judgment by its own observation of those materials. Again in para 15 of the judgment in Ramesh Chandra Agrawal (Supra), the Court said:

> "An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Ors.) Criminal Appeal Nos. 1191-1194 of 2005 alongwith Civil Appeal No. 1727 of 2007, decided on 7.8.2009."

3589. It also referred to an earlier decision in The State (Delhi Administration) Vs. Pali Ram AIR 1979 SC 14 where the Court said "No expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials as put before him and the nature of question put to him" and further in para 17 of the judgment in Ramesh Chandra Agrawal (supra) the Apex Court said:

> "In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rest on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference: Mere assertion without mentioning the data or basis is not evidence, even if it comes form expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."

3590. Musheer Khan @ Badshah Khan & Anr. Vs. State of Madhya Pradesh AIR 2010 SC 762 is a very recent judgment where the Apex Court has said "under the Evidence Act the word 'admissibility' has very rarely been used. The emphasis is on relevant facts. In a way relevancy and admissibility have been virtually equated under the Indian Evidence Act." Further referring to the opinion of finger print expert in that matter it says that it is well known that the evidence of finger print expert falls under the category of expert evidence under Section 45 but it is also clear that this evidence of finger print expert is not substantive evidence. Such evidence can only be used to corroborate some items of substantive evidence which are otherwise on record.

3591. Lord Campbell in Tracy Perrage Case (1843) 10 CI & F 154 said that, being zealous partisans, their belief becomes synonymous with faith as defined by the Apostle, and it too often is but "the substance of things hoped for, the evidence of things not seen". He also said that, skilled witnesses come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight may be given to their evidence.

3592. Miller J in Middllings P Co. Vs. Christian, 4 Dillon 448 said, "By own experienced both in the local courts and in the Supreme Court of the United States is, that whenever the matter in contest involves an immense sum in value, and when the question turns mainly upon opinions of experts, there is no difficulty in introducing any amount of them on either side."

3593. This is what we have found here also. Both sides have produced well qualified and highly trained Historians and others giving diametrically opposite opinion. It would be useful to quote from Sarkar's Law of Evidence, 16th Edition, 2007 Vol. 1, page 1052:

> "The infirmity of expert evidence consists in this that it is mostly matters of opinion and is based on facts detailed by others or assumed facts or opinion against opinion and experts are selected by parties by ascertaining previously that they will give an opinion favourable to the party calling them. Expert evidence is however, of value in cases where the courts have to deal with matters beyond the range of common knowledge and they could not get along without it, eg in matters of scientific knowledge or when the facts have come within the personal observation of experts."

3594. The learned author on page 1053 (supra) also said "An expert is fallible like all other witnesses and the real value of his evidence consists in the logical inferences which he draws from what he has himself observed, not from what he merely surmises or has been told by others. Therefore in cross-examining him, it is advisable to get at the grounds on which he bases his opinion. There is special difficulty in dealing with the evidence of expert witnesses. Such evidence must always be received with caution; they are two often partisans- that is, they are reluctant to speak quite the whole truth, if the whole truth will tell against the party who had paid them to give evidence. At the same time such witnesses are in a position of advantage; for they have had that special training and experience which the judge and jury are without; and the absence of which renders necessary the presence of such witness. Expert witnesses are far too prone to take upon themselves the duty of deciding the questions in issue in the action, instead of confining themselves to stating fairly and clearly their real opinion on the matter.

3595. In Gulzar Ali Vs. Sate of Himachal Pradesh 1998 (2) SCC 192 the Apex Court observed that the observation of the High Court that there is a natural tendency on the part of an expert witness to support the view of the party who called him, could not be downgraded. Many so-called experts have been shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them.

3596. In Hari Singh Vs. Lachmi, 59 IC 220 the Court observed that the evidence of skilled witness, howsoever eminent, as to what he thinks may, or may not have taken place under a particular

combination of circumstances, howsoever confidently he may speak, is ordinarily a matter of mere opinion. Human judgment is fallible. Human knowledge is limited and imperfect. An expert witness howsoever impartial he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him. The mere fact of opposition on the part of the other side is apt to create a spirit of partisanship and rivalry, so that an expert witness is unconsciously impelled to support the view taken by his own side. Besides it must be remembered that an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests."

87. Having said so, the Full Bench in para 3597 further said that Expert's opinion will have to be weighed to find out the most creditworthy and reliable opinion and has not to be accepted on its face value as it is.

88. In Murari Lal Vs. State of Madhya Pradesh (Supra), it was held that Court itself can compare writings since it is so enabled vide Section 73 of Evidence Act. Expert's opinion only act as an aid to Court and not binding on it. In absence of reliable Expert's opinion or no opinion, Court can seek guidance from authoritative text books, own experience and knowledge.

89. Thus Export's report is only an opinion of an Expert but there may be other Experts who were also entitled to submit their opinion and that has to be examined appropriately by the authorities concerned. However, such opinion cannot be treated to be a conclusive document and in order to be an admissible evidence, Expert must appear before inquiring authority so that affected person or the persons, against whom expert opinion has been given, may have an opportunity of cross examine. In the case in hand, having not been done so, the Expert's opinion, in our view, could not have been treated to be a conclusive evidence to hold applicant-respondent guilty of the charge.

90. The next aspect is that applicant-respondent specifically pleaded that he actually appeared for written examination and signed attendances-sheet in presence of Invigilator. He also requested for examination of Invigilator. It was a valid plea taken by him and we find no reason why SSC adopted an attitude of defiance and non transparency by neither disclosing name of Invigilator nor giving due particulars to Disciplinary Authority so as to summon the aforesaid Invigilator for examination in the inquiry. This attitude, in our view, must have been treated to be a valid justification to draw an inference against Department and in favour of applicant-respondent.

91. We also find it strange how CVC could prevail upon the statutory authorities, like Disciplinary Authority and Appellate Authority to record a particular finding or opinion and not to take an otherwise view against the opinion of CVC under Rules, 1965. Learned counsel for petitioner could not show any provision which is referable to CVC and permits a Disciplinary or Appellate Authority to get impressed to the extent of surrender, to act in accordance with opinion of CVC, and, not otherwise.

92. Learned counsel for petitioners contended that Disciplinary Authority in its order has himself examined handwriting on the documents but could not explain that in absence of original document available before him and non appearance of the Invigilator etc., how a finding could have been recorded by Disciplinary Authority in respect of handwriting when he himself was not an Expert in

this field and had already sought opinion of Forensic Expert in the matter. Disciplinary Authority in these matters, cannot be equated with Courts, who are treated to be Experts of Experts.

93. Moreover, if Disciplinary Authority himself has acted as examiner of handwriting, then it was incumbent upon it to point out all those facts which were against delinquent employee, to him, in disciplinary proceedings, so as to give him an opportunity to explain those aspects which appeared to Disciplinary Authority against delinquent employee though not pointed out to claimant-respondent, since these facts have been examined by Disciplinary Authority on its own and not by Inquiry Officer, who has clearly held charge not proved.

94. Looking to the entire facts and circumstances, we also find that all the authorities cited by learned counsels for parties, though lay down law on the scope of judicial review in departmental inquiry etc. and the same are unexceptional, but the law laid down therein has no application with the point in issue in the present case, and, in fact, large number of judgments have been cited without taking care as to whether they have application to the point in issue or not. None of the judgments, we find, is relevant on the question which is up for consideration in this case. Therefore, the same do not help the petitioners at all.

95. In the result, we find no manifest error in the judgment of Tribunal warranting interference.

96. The writ petition lacks merits. Dismissed with cost of Rs. 50,000/-.

Dt. 30.04.2018 PS