

GAHC010006742015



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/27/2015

DIPEN HAZARIKA

S/O LT. LILA KANTA HAZARIKA, R/O VIJAY NAGAR, RUPAI SIDING,
DOOMDOOMA, DIST- TINSUKIA, ASSAM

VERSUS

STATE BANK OF INDIA and 8 ORS

REP. BY THE CHAIRMAN and MANAGING DIRECTOR, STATE BANK
BHAVAN, MADAME CAMA ROAD, NARIMAN POINT, MUMBAI,
MAHARASHTRA-21

2:THE CHAIRMAN AND MANAGING DIRECTOR

SBI

STATE BANK BHAWAN
MADAME CAMA ROAD
NARIMAN POINT
MUMBAI21

3:THE CHIEF GENERAL MANAGER

SBI

NORTH EAST CIRCLE
GUWAHATI
DIST- KAMRUP METRO
ASSAM

4:THE REGIONAL MANAGER

SBI

DIBRUGARH
CHOWKIDINGEE
P.S. DIBRUGARH

5:THE DY. GENERAL MANAGER AND CIRCLE DEVELOPMENT OFFICER

HUMAN RESOURCE DEPTT.
N.E. CIRCLE
G.S. ROAD
GHY-6

6:THE DY. GENERAL MANAGER BandO
JORHAT NORTH
S.B.I. ADM. UNIT
JORHAT

7:THE ASSTT. GENERAL MANAGER ADMIN
SBI
ADMINISTRATIVE OFFICER
JORHAT

8:THE ASSTT. GENERAL MANAGER
SBI
REGIONAL DISTRICT OFFICER
DIBRUGARH

9:CHIEF MANAGER CUM INQUIRY AUTHORITY
SBI
RURAL CENTRAL PROCESSING CENTRE
DIBRUGAR

Advocate for the Petitioner : MR.A J RAJKHOWA, MR.S BORTHAKUR,MR.U S BORA,MR. P K BORAH

Advocate for the Respondent : MS.M DASR-1, MR.B DAS(R-1),MS.N DAS(R-1),MR.L TALUKDAR(R-1)

Linked Case : I.A.(Civil)/518/2024

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Advocate for : MR.A J RAJKHOWA
Advocate for : appearing for STATE BANK OF INDIA and 8 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of Hearing : 30.04.2025, 06.05.2025

Date of Judgment: 04.06.2025

Judgment & Order (CAV)

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. L. Talukdar, learned counsel appearing for all the respondents.

2. The challenge in the present proceeding is to an order dated 12.09.2013, issued by the disciplinary authority imposing the penalty of dismissal from service upon the petitioner on conclusion of a departmental proceeding instituted against him. The petitioner has also challenged the enquiry report dated 06.08.2013, as well as the order of appellate authority dated 26.05.2014.

3. Before proceeding further, it would be appropriate to briefly encapsulate the relevant facts so as to have a proper perspective of the case.

4. The petitioner herein was initially appointed as a Cashier-cum-Clerk-cum-Typist in the State Bank of India (hereinafter referred to as 'the Bank') and posted at its Hayuliang Branch, Arunachal Pradesh. The petitioner joined his services on 10.09.1987. The petitioner, while working as a Senior Assistant at the Doomdoma Branch of the Bank, was vide a communication dated 30.10.2009 placed under

suspension basing on allegations of commission of irregularities/lapses and contemplation of disciplinary action against him. The said order of suspension came to be revoked vide Memorandum dated 25.10.2011. On revocation of the order of suspension of the petitioner, he was vide communication dated 05.11.2011, transferred and posted to the Changlang Branch of Arunachal Pradesh of the respondent bank as Senior Assistant. The petitioner accordingly undertook the posting.

5. Vide a communication dated 13.01.2012, the petitioner was required to submit his explanation with regard to the irregularities as highlighted therein, alleged to have been committed by him during the period of his service at the Doomdooma Branch of the Bank. The petitioner, on receipt of the said communication dated 13.01.2012, submitted his reply in response thereto, on 13.01.2012 and therein, while denying the allegation so leveled against him also set out his explanation thereto. The Disciplinary authority thereafter, issued a show-cause notice to the petitioner on 18.07.2012, leveling against him 5(five) allegations. It is to be noted that allegation No. I, II, III, IV, pertains to specific irregularities as committed by the petitioner while allegation No. V, pertains to the loss suffered by the bank on account of the irregularities as committed by the petitioner, as well as the loss of confidence of the people on the bank on account of the irregularities committed by the petitioner.

6. The petitioner, in response to the said show-cause notice dated 18.07.2012, proceeded to submit his reply on 10.08.2012 and therein, denied the allegations leveled against him. The petitioner raised a plea in the said reply dated 10.08.2012, that the irregular transactions now alleged to have been committed by the petitioner, in the show-cause-notice, was not done by him and was so done by other staff of the said branch of the bank and he has been made a scapegoat in the matter. The reply submitted by the petitioner not being satisfactory, the

disciplinary authority vide communication dated 17.09.2012, intimated the petitioner about holding of a departmental enquiry into the allegations so leveled against him in the said show-cause notice.

7. At this stage, it is to be noted that an amended show-cause notice came to be issued by the disciplinary authority to the petitioner herein, on 18.07.2012, however, the said amended show-cause notice was so issued for correction of a date in respect of allegation No. I and the date of transaction which was involved in the allegation No. I was changed from '16.10.2008' to '16.10.2009'. There was no other alteration made in the contents of the original show cause notice.

8. It is projected by the petitioner that the enquiry so initiated against him, came to be closed by the Enquiring Officer on 29.01.2013. Thereafter, the disciplinary authority issued a communication dated 06.05.2013 to the petitioner herein, and therein, informed the petitioner that it was decided that a further enquiry would be conducted in the matter by the same very Enquiry Officer, who was appointed earlier, to cover up certain aspects which were left out in the enquiry till date. Accordingly, the further enquiry in the matter was initiated and the petitioner participated therein. On conclusion of the enquiry, the Enquiry Officer, submitted his report in the matter on 06.08.2013 and therein, held the allegations No. I & II to be proved while the allegations No. III & IV, were held to be not proved against the petitioner. Further with regard to the allegation No. V, the Enquiry Officer had held the same to be partly proved against the petitioner.

9. The disciplinary authority, vide communication dated 14.08.2013, forwarded the Enquiry Officer's report cum finding dated 06.05.2013 along with his disagreement note with regard to the findings of the Enquiry Officer pertaining to allegations No. IV & V so leveled against the petitioner, vide the show-cause notices dated 18.07.2012, as amended vide the show-cause notice dated 07.11.2012. The petitioner, thereafter, on 03.09.2013, submitted his representation

against the enquiry report as well the disagreement note so furnished to him by the disciplinary authority.

10. On receipt of the said representation of the petitioner dated 03.09.2013, so preferred against the enquiry report, the disciplinary authority vide memorandum dated 12.09.2013, proposed to inflict upon the petitioner the penalty of dismissal from service without notice in terms of Clause (6)(a) of the "Memorandum of Settlement on Disciplinary Action Procedures for Workmen" dated 10.04.2002. The petitioner was afforded an opportunity to appear-in-person before the disciplinary authority on 19.09.2013, for a personal hearing and to show cause as to why the proposed punishment should not be inflicted upon him. The date for appearance of the petitioner was thereafter, on his request, postponed and fixed on 26.09.2013. It is projected that the petitioner had appeared before the disciplinary authority on the date fixed and thereafter, the disciplinary authority proceeded to impose upon the petitioner, the following penalty:-

"Be dismissed without notice." As per provision made in Clause 6 (a) of Memorandum of Settlement of Disciplinary Proceedings for Award Staff dated 10.04.2002 to meet the end of justice. The Gratuity amount payable to the employee be forfeited as per section 4(6)(a) of Gratuity Act, 1972. The suspension period be treated as "Not on Duty". However, the subsistence allowance paid to the CSE need not be recovered."

11. Being aggrieved by the penalty so imposed upon him by the disciplinary authority, vide the order dated 09.10.2013; the petitioner preferred an appeal before the appellate authority on 10.12.2013. The said appeal was considered by the appellate authority and vide order dated 26.05.2014, the same came to be rejected. The petitioner, thereafter, filed a review before the Chief General Manager of the Bank, praying for amendment of the penalty of dismissal from service so imposed upon him, to a lesser punishment in the nature of a minor penalty.

Being aggrieved by the imposition of the said penalty upon him, as well as rejection of his appeal, the petitioner had instituted the present proceeding.

12. Mr. Borthakur, learned counsel for the petitioner, has taken this Court to the materials available on record pertaining to the departmental enquiry conducted against the petitioner as well as the enquiry report and the orders passed by the disciplinary authority and the appellate authority. Mr. Borthakur, learned counsel has at the outset, submitted that the departmental proceeding as instituted against him stands vitiated on account of the fact that the petitioner was not furnished with the documents so sought for by him, vide his communication dated 18.04.2012. Mr. Borthakur, learned counsel has submitted that in absence of the said documents, the petitioner was handicapped in preferring an effective reply in the matter and accordingly, his defense came to be compromised. It was further submitted by Mr. Borthakur, learned counsel that in the show-cause notices so issued to the petitioner, there was no reference to the documents which the Bank would rely upon for establishing the allegations so leveled against the petitioner; and further, there was no disclosure with regard to the witnesses, who would be deposing in the matter on behalf of the Bank towards establishing the allegations against the petitioner. Accordingly, Mr. Borthakur, learned counsel has submitted that the defense of the petitioner was prejudiced and accordingly, on account of the same, the enquiry so held against the petitioner being vitiated, the same could not have been relied upon for imposing any penalty on the petitioner.

13. Mr. Borthakur, learned counsel has further submitted that the documents which were subsequently relied upon by the Bank, in the enquiry held against him, including complaints made in the matter by the customers in whose accounts transactions were alleged to have been made unauthorizedly by the petitioner herein, were not furnished to him and accordingly, his defense came to be prejudiced.

14. Mr. Borthakur, learned counsel for the petitioner has further, by referring to the communication dated 06.05.2013, submitted that the enquiry having been concluded by the Enquiry Officer on 29.01.2013, the disciplinary authority proceeded to direct for holding of a further enquiry, which was contended to be impermissible. Mr. Borthakur, learned counsel has submitted that the communication dated 06.05.2013, while directing for holding of a further enquiry to cover up some aspects, which were left in the enquiry held till that date, has not specified the aspects on which such further enquiry was directed to be held by the disciplinary authority. It is contended that the enquiry report submitted in the matter being not palatable to the disciplinary authority, he had in the guise of directing for holding a further enquiry, directed for a re-enquiry in the matter, which is impermissible.

15. Mr. Borthakur, has further reiterated that while it is permissible for a disciplinary authority to direct for a further enquiry, however, such direction cannot be in a general nature and there has to be a specification made with regard to the areas, which the enquiry officer is required to so consider while carrying out a further enquiry in the matter. Mr. Borthakur, has submitted that no reasons were also assigned in the said communication dated 06.05.2013, as to the necessity that had arisen for holding a further enquiry in the matter.

16. In support of his submissions, Mr. Borthakur, learned counsel for the petitioner has relied upon the following decisions of the Hon'ble Supreme Court:-

- 1. (2002) 10 SCC 471 (*Union of India Vs K. D. Pandey and Another*)-Paragraph 5.**
- 2. 2012 SCC Online Gau 331 (*Kujendra Doley Vs State of Assam & Ors*)-
Paragraph 3 to 5.**
- 3. 1971 (2) SCC 102 (*K. R. Deb Vs The Collector of Central Excise, Shillong*)-
Paragraph 11 & 12.**

**4. (1998) 7 SCC 84 (Punjab National Bank and Others Vs Kunj Behari Misra)-
Paragraph 14 & 15.**

5. (2007) 11 SCC 517 (Kanailal Bera Vs Union of India and Others)-Paragraph 6.

17. Mr. Borthakur, learned counsel by relying on the above mentioned decisions of the Hon'ble Supreme Court has submitted that the further enquiry as directed in the matter by the disciplinary authority vide the communication dated 06.05.2013, being in the form of a de-novo enquiry, the same would not be permissible and accordingly, he submits that the consequential steps as taken by the disciplinary authority in the matter, including the imposition of the said penalty upon the petitioner cannot be sustained. Mr. Borthakur, learned counsel has further submitted that the penalty as imposed upon the petitioner is clearly disproportionate to the allegations as alleged and proved against him in the enquiry. Accordingly, he submits that the penalty imposed upon the petitioner, on an appreciation of the findings recorded by the Enquiry Officer in the matter with regard to the allegations so leveled against him, the same being clearly disproportionate, it would mandate an interference from this Court.

18. In the above premises, Mr. Borthakur, learned counsel has submitted that this Court would be pleased to set aside the penalty as imposed upon the petitioner by the disciplinary authority, along with all consequential actions so taken in pursuance thereof, by the respondent authorities, including the order passed by the appellate authority. Alternatively, Mr. Borthakur, learned counsel has submitted that considering the allegations proved against the petitioner in the enquiry held in the matter, this Court would be pleased to interfere with the penalty of dismissal from service so imposed upon him with further direction to the respondent authorities to impose any other penalty, which would have the effect of the petitioner continuing in his services.

19. Per contra, Mr. L. Talukdar, learned counsel for the respondents has

submitted that in the first enquiry, the Enquiry Officer had not taken into account the materials that were available on record and proceeded to conclude the enquiry without examining witnesses as well as documents placed before him. Accordingly, when the matter was placed before the disciplinary authority, the disciplinary authority proceeded to issue a communication dated 29.04.2013 to the Enquiring Officer and therein, had required the Enquiring Officer to take into account certain aspects of the matter, which was not so considered in the enquiry held. The disciplinary authority, vide the said communication dated 29.04.2013, by highlighting the factual aspects not considered had required the Enquiring Officer to incorporate all such factual aspects as pointed out in the further enquiry. After having issued the said communication dated 29.04.2013, the disciplinary authority had issued the communication dated 06.05.2013, to the petitioner herein, informing him about the decision arrived at for holding a further enquiry in the matter, to cover up some aspects which were left out in the enquiry held till that date.

20. Mr. Talukdar, has further submitted that the aspects which the Enquiring Officer was required to consider in the further enquiry was already informed to the Enquiry Officer by the disciplinary authority vide order dated 29.04.2013 and accordingly, submits that the contention of the petitioner that the aspects which were required to be considered by the Enquiry Officer in the further enquiry not being specified, is clearly unacceptable. Mr. Talukdar, learned counsel has, with regard to the contention of the petitioner that he was not furnished with the documents so sought by him vide the communication dated 18.04.2012, has submitted that on perusal of the records of the enquiry proceeding so held in the matter against the petitioner after the issuance of the communication dated 06.05.2013, would go to reveal that copies of the documents relied upon by the Bank in the enquiry were furnished to the defense representative of the petitioner. Mr. Talukdar, learned counsel has further submitted that neither in the reply filed

by the petitioner to the show-cause notices issued to him, nor in the proceedings so held, the petitioner had raised any allegation of his defense being prejudiced on account of not being furnished with documents relied upon by the bank. Accordingly, it is submitted that the said contention now raised in the present proceeding would not merit an acceptance by this Court.

21. Mr. Talukdar, learned counsel has further submitted that the allegations so leveled against the petitioner in the proceedings so initiated against him, being serious in nature, and the petitioner being a Bank employee, was expected to have an impeccable honesty and integrity and the petitioner herein, having been found to be a man with suspected financial integrity and honesty, he was rightly imposed with the penalty of dismissal from service after holding a free and fair enquiry by complying with the principles of natural justice. Mr. Talukdar, learned counsel has further submitted that the report of the enquiry officer when so forwarded to the petitioner, the disagreement note of the disciplinary authority with regard to the findings recorded by the Enquiry Officer in his report pertaining to allegation No. IV & V were also forwarded to the petitioner and he was directed to submit his representation against the Enquiry Officer also by taking into account the disagreement note so recorded by the disciplinary authority.

22. Mr. Talukdar, learned counsel has further submitted that the findings of the Enquiring Officer, as well as that of the disciplinary authority with regard to the allegations leveled against the petitioner, would reveal that the same was so recorded basing on the materials coming on record in the enquiry held against the petitioner in the matter, and accordingly, there exists no infirmity with regard to the penalty so imposed upon the petitioner.

23. I have heard the learned counsels appearing for the parties and also perused the materials placed on record.

24. The allegations leveled against the petitioner vide the show-cause notice

dated 18.07.2012, the same being relevant is extracted herein below: -

“STAFF: AWARD

DISCIPLINARY PROCEEDINGS

SHOW CAUSE NOTICE

It has been alleged that while you were working as a Senior Assistant at our Doomdooma Branch from 16/04/1992 till 02/11/2011, you committed certain serious irregularities, with total disregard to the Bank's laid down instructions, systems and procedures:

ALLEGATION-I

That on 16.10.2008, you without any valid mandate of the depositor made unauthorized debits of Rs.600,000.00 (Rupees six lacs only) by way of 12 (twelve) entries of Rs.50,000.00 each using your ID no 3191265, in account No.3026285064 of Doomdooma CHC(NHRC).

ALLEGATION-II

That on 30.06.2009, you without any valid mandate of the depositor, had made unauthorized debits of Rs.1,30,000.00(Rupees One lakh thirty thousand only) by way of 3(Three) entries of Rs.50,000.00, Rs.40,000.00 and Rs.40,000.00 respectfully, using your ID No.3191265, in account No.11288670725 of Shri Phanidhar Gogoi.

ALLEGATION-III

That on 24.03.2009, you without any valid mandate of the depositor had made unauthorized debits of Rs. 100,000.00 by way of 2(Two) entries of Rs.50,000.00 each using your ID No.3191265 in the account No.11288665433 of Shri Maichandra Jomera.

ALLEGATION-IV

That on 24.10.2008, you without any valid mandate of the depositor, made unauthorized debits of Rs.2,00,000.00 (Rupees Two lakhs only) by way of 4(four) entries of Rs.50,000.00 each using your ID No.3191265 in the account no.30212214471 of Shri SukramJangli.

ALLEGATION-V

The above four allegations are only illustrative and not exhaustive. By your above act of

commission the confidence and trust of the people which they had with the Bank has been badly shaken and you are directly responsible for loss Rs.42,26,500/- which the bank will incur."

25. It is to be noted here that the said show-cause notice was amended vide issuance of a memorandum dated 07.11.2012. However, the amendment to the show-cause notice dated 18.07.2012; by the amended show-cause notice dated 07.11.2012 was only with regard to the date '16.10.2008' as '16.10.2009', figuring in allegation No. 1 leveled against the petitioner. There is no change with the material particulars involved with regard to the allegation so leveled against the petitioner in both the said show-cause notices. The petitioner, on receipt of the said show-cause notice dated 18.07.2012, submitted his reply thereto, on 10.08.2012.

26. A perusal of the said reply would go to show that the petitioner had raised a contention therein that his ID was utilized by certain other employees of the Branch in pursuance to a conspiracy so hatched by them against him and accordingly, the irregular transactions, now alleged against the petitioner, vide the show-cause notice dated 18.07.2012, were actually carried out by other employees of the Branch. Accordingly, the petitioner had pleaded that the proceeding as drawn up against him would be required to be dropped and a enquiry initiated by the bank to ascertain as persons actually carrying out the irregular transactions, now alleged against him.

27. The disciplinary authority not being satisfied with the reply so submitted by the petitioner in the matter, proceeded to appoint an Enquiring Officer and a Presenting Officer also came to be appointed vide communication dated 07.09.2012. The Enquiring Officer, thereafter, initiated the enquiry against the petitioner on 04.01.2013. It is seen that the said enquiry was closed against the petitioner on 29.01.2013. The disciplinary authority thereafter, vide communication

dated 06.05.2013, informed the petitioner about the decision arrived at for holding a further enquiry in the matter to cover some aspects which were left out in the enquiry till that day.

28. A perusal of the said communication dated 06.05.2013, would go to reveal that the initial enquiry being carried out against the petitioner, the enquiry report thereof, was not forwarded to the petitioner by the disciplinary authority and on noticing certain lacuna in the initial enquiry so held, had directed for holding of a further enquiry in the matter by the same very Enquiring Officer. It is seen that the petitioner participated in the further enquiry, without any objection being raised in the matter and on conclusion of the said enquiry, the Enquiring Officer submitted his report holding the allegations No. I & II to be proved; while allegations No. III & IV were held to be not proved. With regard to the allegation No. V leveled against the petitioner, it was held to be partly proved. The disciplinary authority thereafter, vide a communication dated 14.08.2013, forwarded the enquiry report to the petitioner herein, along with his disagreement note with regard to the findings of the Enquiring Officer pertaining to allegations No. VI & V. The petitioner has submitted his representation against the enquiry report as well as against the disagreement note so recorded against the petitioner in the matter by the disciplinary authority. It is for the first time that in his said representation, the petitioner had raised an objection with regard to the further enquiry conducted in the matter against him vide the communication dated 06.05.2013.

29. As noticed herein above, the disciplinary authority thereafter, imposed upon the petitioner, the penalty of dismissal of service along with forfeiture of the gratuity amount payable to the petitioner by invoking the provisions of Section 4 (6) (A) of the Gratuity Act, 1972. The period of suspension of the petitioner was directed to be treated as not on duty. The appellate authority had also thereafter, rejected the appeal so preferred in the matter by the petitioner, vide an order

dated 26.05.2014.

30. At the outset, this Court would consider the contention raised by the learned counsel for the petitioner that the further enquiry as ordered by the disciplinary authority in the matter, vide the communication dated 06.05.2013, to be not sustainable and accordingly, the enquiry report submitted after such further enquiry to be not in accordance with law.

31. A perusal of the order dated 06.05.2013, would go to reveal that the disciplinary authority, on perusal of the proceedings of the enquiry as carried out by the enquiring authority in the matter had found certain lacunae therein, and accordingly had decided to hold a further enquiry and the same was required to be so conducted by the same very enquiring authority, for the purpose of covering some aspects which are left out in the enquiry till that date. A perusal of the communication dated 06.05.2013 does not reveal as to the aspects which were required to be so considered by the enquiring authority in further enquiry directed to be held. However, a perusal of the communication dated 29.04.2013, issued by the disciplinary authority to the enquiring authority brings on record, the areas which were required to be taken into account in the further enquiry directed to be held against the petitioner.

32. A copy of the said communication dated 29.04.2013, was placed before this Court by Mr. L. Talukdar, learned counsel and a copy thereof, was also given to the learned counsel for the petitioner.

33. The learned counsel for the petitioner had made his submissions in the matter after having perused the said communication dated 29.04.2013. The contentions as made by the disciplinary authority in the said communication dated 29.04.2013, being relevant, the same is extracted herein below:-

“On going through the enquiry proceedings I am of the view that the following aspects were not taken into account in the proceedings such as:-

- 1) *It is evident that all the payments as mentioned in the show cause were made by the CSE through his ID no. 3191625.*
- 2) *The payment made earlier from the accounts were by cheques only but in this case, no cheque leave was mentioned in the accounts statement generated by system while debiting the accounts or in the payment screen which indicates that account was debited without cheque/instrument or vouchers were not found with VVR without the mandate of the account holders.*
- 3) *Several cash payments were made in a single day in one account within the power of the CSE instead of one withdrawal. The single payment of large payment required passing officer authorization. Besides, cash payment made by withdrawal slip instead of cheques and that did not routed through Cheque Returned and Referred Register.*
- 4) *Complaint letters from the account holder were not produced in the hearing.*
- 5) *Records of refund of fund to the complainants were not placed in the hearing."*

34. While it is not disputed that in a given case, it is only one enquiry that would be permissible to be held and holding of repeated enquiries has been frowned upon by the Courts, the said position has to be examined on a case-to-case basis. It may be possible in a particular case that there has been no proper enquiry on account of certain defects creeping in or important witnesses/documents not being examined on account being available at the relevant point of time or, for some reasons. Under such circumstances, the power of the disciplinary authority to order for further enquiry after highlighting such lacunae cannot be said to be non-existent. In the event, the power of the disciplinary authority to direct for a further enquiry in such matter, is held to be non-existent, the same would not result in advancement of justice rather it would result in miscarriage thereof.

35. Support in connection with the said position is drawn from the decision of the Hon'ble Supreme Court in the case of **Union of India and Ors., Vs P. Thayagarajan**, reported in **(1999) 1 SCC 733**. The conclusions drawn by the Hon'ble Supreme Court in the matter being relevant, is extracted herein below: -

“7. What is contemplated in Rule 27(c)(2) is that evidence material to the charge could be either oral or documentary and, if oral, (i) it shall be direct; (ii) it shall be recorded by the officer conducting the enquiry himself or by any officer; and (iii) the accused shall be allowed to cross-examine the witness. When reliance is sought to be placed on oral evidence of witnesses, it will have to be obtained in the manner indicated in the said Rule and the oral statement has to be recorded by the officer himself conducting the enquiry in the presence of the parties and it cannot be done in any other manner. The procedure in taking letters as statements is in violation of Rule 27(c)(2). Therefore, the contention put forth on behalf of the appellant and the reasons set forth in the course of the order setting aside the enquiry is justified. What Shri Tulsi urged with reference to the decision in K.R. Deb is that there is no power in the disciplinary authority to set aside an earlier enquiry and to order a fresh enquiry. We may, in particular, refer to para 12 of the said decision which is as follows: (SCC p. 105)

“12. It seems to us that Rule 15, on the face of it, really provides for one enquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the disciplinary authority may ask the enquiry officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous enquiries on the ground that the report of the enquiring officer or officers does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.”

8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant rules and affects

the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature."

36. Applying the decision of the Hon'ble Supreme Court in the case of **P. Thayagarajan (supra)** to the facts of the present case, it is found that admittedly, the enquiry officer, in the first enquiry had failed to take into consideration, materials available on record and relevant to the charge leveled against the appellant. In such circumstances, in the considered view of this Court, the disciplinary authority had not committed any error in requiring the enquiry officer to carry out a further enquiry into the matter by noticing the circumstances highlighted by it in the communication dated 29.04.2013.

37. It is to be further noted that the initial enquiry report submitted by the enquiry officer was never forwarded to the petitioner herein and the disciplinary authority, upon noticing the deficiency therein had proceeded to issue the communication dated 29.04.2013, requiring the enquiry officer to conduct a further enquiry by noticing the aspects highlighted therein. The said communication was followed by a communication dated 06.05.2013 issued by the disciplinary authority to the petitioner herein, intimating him about the decision arrived at for holding a further enquiry.

38. As noticed herein above, the petitioner had not objected to the further enquiry and had subjected himself to the said process. It is only on conclusion of the said enquiry, wherein, the enquiry officer, after examining all relevant materials had proceeded to record his findings with regard to the charges leveled against the

petitioner that the petitioner had objected to such further enquiry being held.

39. In the facts and circumstances as existing in the present matter, this Court is of the considered view that the disciplinary authority had not erred in requiring the enquiry officer to conduct a further enquiry in the matter and this Court is also of the considered view that the same was with the purpose of having a detailed enquiry into the allegations existing against the petitioner herein and the same in the event is interfered with, would result in miscarriage of justice, which is clearly impermissible.

40. In view of the discussions made herein above, this Court holds that the further enquiry held against the petitioner would not mandate an interference and accordingly, the penalty imposed upon the petitioner by the disciplinary authority vide order dated 12.09.2013 would also not call for any interference. Consequentially, the order dated 26.05.2014, passed by the appellate authority would also not call for any interference.

41. In view of the conclusions reached by this Court, the decision relied upon by the learned counsel for the petitioner, in the considered view of this Court, would not advance the case of the petitioner and accordingly, a discussion thereon, is not made in the present order.

42. In view of the above position, the present writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant