The accused had completed the period of probation. There was no occasion for any complaint or violation of any of the terms of the bond. At this juncture, we do not think that it just and proper to resort to any other punishment. In our view, the criminal appeal No.430 of 1999 preferred by the complainant against the judgment of the High Court is without any substance and the same is dismissed accordingly."

(20) In view of this matter, since the respondents have already completed the period of probation without violation of terms of the bond, I do not find any ground to put the clock back and direct the trial court to call for the report of the Probation Officer and then to extend the benefit of probation. For the foregoing reasons, this revision petition being devoid of any merit is dismissed.

P.S. Bajwa

Before M. M. Kumar & Ritu Bahri, JJ.

UNION OF INDIA AND OTHERS,—*Petitioners*

versus

DAYANAND PANDORA AND ANOTHER,—*Respondents*

C.W.P. No. 13100-CAT of 2008

18th April, 2011

Constitution of India, Articles 226/227 and 311; Central Civil Services (Conduct) Rules, 1964 - Rl.3(1)(ii), 3(1)(iii), 15(2) & 34(1)(i) - Deals with a situation when the disciplinary Authority prefers to disagree with the findings of the inquiring Officer on articles of charge - Obligatory for Disciplinary Authority to record 'Dissenting note' while disagreeing with the findings recorded in the inquiry report by Enquiry Officer and then record its own findings on charge if evidence on record is 'sufficient' for the purpose - A necessary requirement of the Rules - Petition dismissed.

Held, That sub-rule (2) of Rule 15 deals with a situation when the disciplinary Authority prefers to disagree with the findings of the inquiring Officer on articles of charge. In such situation, the disciplinary Authority is under obligation to record its reason for such disagreement and then records its own findings on such charge if the evidence on record is 'sufficient' for the purpose. The disciplinary authority in case of disagreement with the finding of the inquiring Authority was required to record its reasons for the disagreement and then it was obligatory to record its finding on such charge in case the evidence on record is sufficient for the purpose. The obligation casts on the disciplinary Authority is more heavier because the evidence on record has to be 'sufficient' to sustain the finding on any such disagreement, which the disciplinary authority may proceed to record. Ordinarily sufficiency and in-sufficiency of evidence to sustain the charge would be a question which would not be required to be gone into but the rule imposes an obligation on the disciplinary authority to record a finding on a charge where it expresses disagreement only if the evidence on record is 'sufficient' for that purpose. It may be for the reason that once inquiring authority has concluded one way or the other then to reverse those findings sufficient evidence would be necessary. Therefore, findings cannot be reversed on flimsy evidence. There is virtually no evidence discussed to sustain the charges nor any reasoning has been adopted to reach the conclusion that the applicant-respondent No.1 is guilty of those charges.

(Paras 12 and 13)

Constitution of India, Articles 14, 226/227 and 311; Central Civil Services (Conduct) Rules, 1964, Rules 14 and 16 - Departmental Enquiry - Discrimination - Fraud played in 15 Post Offices - 25-30 officials issued charge-sheets under Rule 16 having same allegations whereas applicant (respondent) charge-sheeted under Rule 14 - No material showing any distinction between the charges levelled against the applicant (respondent) and other employees - Tribunal's conclusion that applicant (respondent) deserved similar treatment upheld.

Held, that the Tribunal in the absence of any specific reply by the petitioners on this issue of discrimination has drawn an adverse inference against them. Even before this Court, the petitioners have not been able

to place on record any material showing any distinction between the charges levelled against the applicant-respondent No. 1 and the other charged employees. Accordingly, we find that the Tribunal has come to the right conclusion that the applicant respondent No. 1 also deserved similar treatment. Thus, the argument of the petitioners that there was no discrimination suffered by the applicant-respondent No. 1 does not hold ground.

(Para 16)

Constitution of India, Articles 226/227 and 311; Central Civil Services (Conduct) Rules, 1964, Rules 14, 16, 34(1)(i), 3(1)(ii) and 3(1)(iii) - In the absence of any allegation of monetary loss or misappropriation in charge-sheet - Punishment imposing recovery is unsustainable in the eyes of law.

Held, that in the present case when there was neither any allegation of monetary loss in the charge-sheet nor was there any finding by the disciplinary authority that the applicant respondent No. 1 had misappropriated, then the punishment imposing recovery is unsustainable in the eyes of law. Relied upon the judgment held in the case of M.V.Bijlani Vs. Union of India (2006(5)SCC 88).

(Paras 17 and 18)

Constitution of India, Articles 226/227 and 311; Central Civil Services (Conduct) Rules, 1964, Rules 34(1)(i), 3(1)(ii) and 3(1)(iii) - Two penalties imposed upon applicant (respondent) - Amounts to bundle of punishments - Bad in law.

Held, that vide order dated 23.2.2004 (A-10) one penalty of reduction by one stage from Rs.5,875/- to Rs.5,750/- in the time scale of pay of Rs.4500-125-7000 for a period of three months from the date of increment has been imposed. He was barred from earning increments of pay during period of reduction and in the same order another penalty of recovery of 1/4th of the basic pay for a period of ten months has been ordered. In other words, two penalties have been imposed upon the applicant-respondent No. 1, which in our considered opinion amounts to bundle of punishments. Therefore, the action taken by the petitioners of

imposing bundle of punishments upon the applicant-respondent No. 1 is bad in law. Relied upon para 12 of the judgment held in the case Union of India Vs. S. C. Parashar (2006) 3 SCC 167.

(Para 19)

Namit Kumar, Advocate, *for the petitioners.*

R.K. Sharma, Advocate, for respondent No. 1.

M.M. KUMAR, J.

(1) Union of India and its officers have filed the instant petition under Article 226 of the Constitution challenging order dated 11.3.2008 (P-4) rendered by the Chandigarh Bench of the Central Administrative Tribunal (for brevity, 'the Tribunal') allowing the original application of the applicant-respondent No. 1 by setting aside the orders dated 23.2.2004 (A-10) and 9.3.2005 (A-13). The Tribunal has further directed the petitioners to pass orders restoring the benefits in favour of the applicant-respondent No. 1 including the benefits concerning his suspension period treating it as period spend on duty for all intents and purposes.

(2) The undisputed facts are that the applicant-respondent No. 1 was working as a Sub Post Master and posted at NH-2 Faridabad Post Office. On 27.3.1998, a charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity, 'the Rules') was served upon him. In short the charges levelled against him were that on 18.3.1997 he allowed opening of three RD Accounts in the names of Ritu Kapoor, Karan Kapoor and R.K. Singh, which were shown as transferred RD Accounts from Sector 16, Faridabad with balance amount of '64,000/- in each account, as against the actual balance of ' 4,000/- in each account. Furthermore, without following the proper procedure, he permitted withdrawal of ' 20,000/- from each account. The second charge against the applicant-respondent No. 1 was that on 31.3.1997 he allowed closure of the said RD accounts with payments i.e. within one year of opening of said accounts, which is in contravention of the relevant rules. It was, thus, alleged that the applicant-respondent No. 1 did not maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of Government servant contravening the provisions of Rule 34(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964 (A-2).

(3) A regular departmental inquiry was initiated against the applicant-respondent No. 1. On 14.7.2000, the Enquiry Officer submitted his report concluding that the charges levelled against him were not proved (A-3). However, the Senior Superintendent of Post Offices, Faridabad Division-disciplinary authority disagreed with the inquiry report and recorded a 'dissenting note' dated 17.1.2002 (A-4). The applicant-respondent No. 1 was given an opportunity to make representation against the findings recorded in the 'dissenting note'. On 1.2.2002, the applicant-respondent No. 1 submitted a detailed explanation (A-5). On 15.3.2002, the disciplinary authority passed an order against the applicant respondent No. 1 inflicting the punishment of stoppage of one increment for a period of two years with cumulative effect and directing recovery of 1/4th of his basic pay spread over a period of ten months to offset loss of 'misappropriated amount' (A-6). The appeal preferred by the applicant-respondent No. 1 against the order dated 15.3.2002 was rejected by the Director, Postal Services, Haryana Circle, vide order dated 20.12.2002. Against this order the applicant-respondent No. 1 submitted a revision petition to the Chief Postmaster General, Haryana Circle, which was allowed vide order dated 25.7.2003, setting aside orders dated 15.3.2002 and 20.12.2002. The case was remitted back to the disciplinary authority for de novo proceedings from the stage of recording of reasons of disagreement and tentative findings etc. (A-7).

(4) On 6.1.2004, the applicant-respondent No. 1 was again served a fresh 'dissenting note' by the disciplinary authority without disclosing any reason for disagreement. On 20.1.2004, the applicant-respondent No. 1 submitted a detailed reply to the said 'dissenting note' (A-9). However, vide order dated 23.2.2004 (A-10), the applicant-respondent No. 1 was visited with penalty of reduction of pay by one stage from ' 5,875/- to '5,750/- in the time scale of pay of ' 4500-7000 for a period of three months from the date of next increment. He was not to earn increment of pay during the period of reduction and on expiry of period reduction of pay was not to have effect of postponing the future increments; 1/4th of basic pay was to be recovered for 10 months to setoff the loss involved in the case.

(5) The applicant-respondent No. 1 was then served with a show cause notice dated 28.12.2004 (A-11) as to why his suspension allowance be not recovered from him. On 26.2.2005, he submitted a reply to the said

show cause notice (A-12). Thereafter, on 9.3.2005 the disciplinary authority passed an order treating his suspension from 17.10.1997 to 14.5.1998 as 'non-duty' period and no pay and allowances for the said period were payable to him (A-13).

(6) Having served a legal notice dated 23.4.2005 and reminder dated 16.5.2005 (A-14 & A-15) for withdrawal of penalty orders dated 23.2.2004 and 9.3.2005, the applicant-respondent No. 1 approached the Tribunal by filing OA No. 913-HR-2005, inter alia, raising four pleas – (i) no reasons have been recorded in the 'dissenting note' by the disciplinary authority while disagreeing with the findings recorded by the Enquiry Officer in the inquiry report; (ii) he has been discriminated, inasmuch as, other 25-30 persons, who have been proceeded against departmentally, were issued charge sheets under Rule 16 of the Rules whereas in his case it was issued under Rule 14 of the Rules; (iii) no monetary loss has been caused to the department; and (iv) the disciplinary authority has illegally awarded a bundle of punishments, which is totally unwarranted.

(7) The Tribunal returned its findings in favour of the applicant-respondent No. 1 and allowed the original application vide order dated 11.3.2008 (P-4). The Tribunal found that the 'disagreement note' recorded by the disciplinary authority was lacking the mandatory requirements. Though the disciplinary authority has recorded five reasons of disagreement but it failed to take into account the defence taken by the applicant-respondent No. 1 and did not discuss the same at all. The Tribunal further found that the order dated 20.12.2002, passed by the Appellate Authority was in violation of Rule 27(4) of the Rules. According to the Tribunal the de novo proceedings were also not justified because the same were to start from the stage of recording of reasons of disagreement. The reply submitted by the applicant respondent No. 1 was not considered. The Disciplinary Authority has simply used the expression 'considered'. Again reasons ought to have been assigned for not agreeing with the defence taken by the delinquent employee. The Tribunal has categorically noticed that the second 'dissenting note' was, in fact, copy of the previous dissenting note dated 14.7.2000. In that regard, the Tribunal has placed reliance on instructions dated 13.7.1981 issued by the Government of India, which stipulates passing of self-contained, speaking and reasoned orders. The Tribunal also drew support from various

judgments rendered in the cases of **Managing Director, ECIL, Hyderabad *versus* B. Karunakar (1); MMRDA Officers Assosciation *versus* MMRDA (2); S.N. Mukherjee *versus* Union of India (3); Union of India *versus* E.G. Nambudiri (4); Balwinder Singh *versus* State of Punjab (5); Hari Singh *versus* State of Punjab (6); K.B. Rai *versus* State of Punjab (7)** and **Pritam Singh *versus* HSEB (8).** The findings on other issues are discernible from paras 8 to 10 of the order passed by the Tribunal and the relevant extract reads as under:-

> "8. .....In absence of any specific reply, this Court is not precluded from drawing an adverse inference against the respondents and in favour of the applicant that there appears to have been a discriminatory attitude towards the applicant and if on the same set of charges other officials have been given only minor penalty, then applicant also deserved similar treatment. As to why respondents became prejudiced against the applicant has been explained by the applicant inasmuch as that money was demanded from him to take a lenient view and that he was forced and tortured to give in writing as desired by Shri N.R. Bhardwaj, Enquiry Officer and 5 Inspectors etc. Perhaps such allegations may have played a vital role in respondents becoming prejudiced towards the disciplinary authority has proceeded on the premises that applicant had admitted certain facts during enquiry. However, even on the basis of such alleged admission, the enquiry officer had exonerated the applicant. In view of this, the disciplinary authority was required to independently assess the evidence to record a finding against the applicant.
>
> 9. Neither there is any allegation of monetary loss in the charge sheet nor there any finding by the disciplinary authority that the

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(1) 1993 (4) SCC 727
(2) 2005 (2) RSJ 362 (SC)
(3) 1990 (2) RSJ 808
(4) 1991 (2) SLR 675
(5) 1998 (4) RSJ 148
(6) 2004 (2) RSJ 693
(7) 1996 (1) SLR 353
(8) 1995 (4) RSJ 289

applicant has caused any financial loss but still recovery has been ordered to be made from the applicant. From the language of the order, it appears that the suspension period of the applicant has been treated as non duty just because a major penalty was imposed upon him as is apparent from notice dated 28.12.2004, Annexure A-11. If any minor penalty been imposed upon, perhaps, respondents would have been forced to regularise the period of suspension as having spent on duty. It is undisputed that for treating the suspension period of the applicant, it was incumbent upon the authority to consider as to whether the suspension was justified or unjustified. However, the authority has taken a view that since a major penalty has been imposed upon him and as such the suspension period in question is not to be treated as non duty. This clearly shows total non application of mind on the part of the authority and as such the impugned order on that account deserves to be quashed.

10. ……The order impugned in this case definitely contains bundle of punishment including one in respect of which applicant was never charged with which is not permissible and as such impugned order, Annexure A-10 stands vitiated."

(8) Mr. Namit Kumar, learned counsel for the petitioners has argued that the Tribunal has committed a grave error in law while holding that the action of the department was discriminatory qua the applicant-respondent No. 1 as charge sheets were issued to employees concerned keeping in view the role and gravity of the charge in the fraud case and subsequently punishment of dismissal was awarded to Shri Mukesh Kumar Sachdeva vide order dated 28.5.2003 (P-5). Learned counsel has further argued that no discrimination can be claimed in the matter of punishments. In support of his submission reliance has been placed on various judgments rendered in the cases of **Balbir Chand *versus* The Food Corporation of India Ltd. (9); Surat Singh *versus* The Presiding Officer, Labour Court, Rohtak (10)** and **Ajit Singh *versus* State of Punjab (11).** According to the learned counsel the opinion of the Tribunal that neither there was any

(9) 1997 (2) SCT 467
(10) 1997 (4) SCT 437
(11) 1997 (3) SCT 424

allegation of monetary loss in the charge sheet nor there was any finding by the disciplinary authority to that effect was totally incorrect because a bare perusal of the chargesheet would show that a specific allegation against the applicant respondent No. 1 was that he facilitated the fraud and the department suffered a loss of ' 1,95,573/- due to negligence in performance of his duties. It has also been argued by the learned counsel that punishment has been awarded to the applicant respondent No. 1 in accordance with the provisions of the rules and treating the period of suspension as non-duty period cannot be considered as award of multiple punishments. Placing reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **Commissioner of Rural Development *versus* A.S. Jagannathan (12),** it has been argued that the disciplinary authority while imposing penalty of stoppage of increments can also order recovery of loss caused by the charged employee. It can also order treating his suspension as service period without pay. It has been submitted that the Courts could not interfere with the punishment order on the ground that the disciplinary authority has imposed multiple punishments because the order of the disciplinary authority has to be read as a whole and it was permissible under the rules applicable to recover loss caused by the employee.

(9) Mr. R.K. Sharma on the other hand has contended that the applicant-respondent No. 1 was charged only for violation of rules in opening and allowing withdrawal as well as closure of accounts and, therefore, cannot be placed on equal footing to the other two main accused who were the actual culprits in the fraud case. Hence, he has been discriminated against similarly situated officials charged with negligence. Learned counsel has further argued that the allegation of misappropriation has never been levelled against the applicant-respondent No. 1. It has also been argued that order dated 23.2.2004 (A-10) contains multiple punishments including one in respect of which the applicant respondent No. 1 was never charged with.

(10) Having heard learned counsel for the parties and perusing the material on record with their able assistance, we are of the view that for the sake of convenience the whole controversy may be discussed under the following four issues:

(1) Whether the disciplinary authority has recorded reasons in the 'dissenting note' while disagreeing with the findings recorded in the inquiry report by the Enquiry Officer?

(12) (1999) 2 SCC 313

(2) Whether there has been discrimination qua the applicant-respondent No. 1?

(3) Whether in the absence of a specific allegation of misappropriation or monetary loss in the charge sheet, punishment can be imposed for recovery of monetary loss?

(4) Whether the penalty imposed contains bundle of punishment?

ISSUE NO. (1)

(11) In the present case the disciplinary authority has recorded the 'dissenting note' on two occasions firstly on 17.1.2002 (A-4) and thereafter on 6.1.2004 (A-8) when the earlier punishment order dated 15.3.2002 (A-6) and appellate order dated 20.12.2002 were set aside by the Chief Postmaster General, Haryana Circle, Ambala, vide order dated 25.7.2003 (A-7). The disciplinary authority was directed to initiate de novo proceedings from the stage of recording of reasons of disagreement and tentative findings after giving opportunity of hearing to the applicant respondent No. 1. It would, therefore, be relevant to see whether the disciplinary authority has recorded any reasons of disagreement or not. Accordingly, both the 'dissenting notes' dated 17.1.2002 and 6.1.2004 are extracted in juxtapose as under:

Dissenting Note dated 17.1.2002	**Dissenting Note dated 17.1.2002**
" Shri Daya Nand APM Faridabad NIT H.O. was proceeded against under Rule-14 of CCS (CCA) Rule-1965 vide this office memo No. F-IV/ 1/97-98/Disc.II dated 27.3.98 and Shri P.C. Pratihari was appointed as I.O. to inquire into the charges against the said Shri Daya Nand. Shri Pratihari conducted the Inquiries in accordance with procedure laid down in Rule-14 ibid and submitted his inquiry report dated 14.7.2000 received by hand on 20.9.2001. I have gone through the inquiry report carefully and dispassionately and in depth studies made into the inquiry report reveals	" Shri Daya Nand APM Faridabad NIT H.O. (now PA Sector-7 PO Faridabad) was proceeded against under Rule-14 of CCS (CCA) Rule-1965 vide this office memo No. F-IV/ 1/97- 98/Disc.II dated 27.3.98 and Shri P.C. Pratihari was appointed as I.O. to inquire into the charges against the said Shri Daya Nand. Shri Pratihari conducted the Inquiry in accordance with procedure laid down in Rule-14 ibid and submitted his inquiry report dated 14.7.2000 received by hand on 20.9.2001. I have gone through the inquiry report carefully and

that the Inquiry Authority absolved the charged official of the allegations without appreciating the evidence adduced during the course of inquiry. I, therefore disagree with the findings of inquiry officer due to the following reasons.

The charged official in his statement dated 17.10.97 Ex. S- 14 recorded in the presence of Shri Lehna Singh SW-1 and Shri G.D. Gupta SW-9 has admitted following.

I. That these pass books in question were dealt by hand on 18.3.97 as official record of its receipts/ transfer were not found in his office.

II. Also entry of its transfer was only made in specimen signature book and not in RD journal as per rule.

III. The Charged Official also admitted that the payment was made to Shri Mukesh Kumar Sachdeva (Main Offender) and not to the depositor on 18.3.97 and 31.3.97.

IV. The Charged Official transferred the case of Rs. 60,000/- and 1,35573/- on 18.3.97 and 31.3.97 respectively to Shri Mahavir PA without taking its receipt.

V. The Charged Official further admitted that closing sanction

dispassionately and in depth studies made into the inquiry report reveals that the Inquiry Authority absolved the charged official of the allegations without appreciating the evidence adduced during the course of inquiry. The undersigned had given to the charged official a note vide this office letter no. F-IV/1/97- 98/Disc-II dated 19.11.2003 that I propose to disagree with the findings of I.O. To this the charged official responded vide his letter dated 13.12.2003, I have carefully considered Shri Daya Nand's representation. However, I disagree with the findings of inquiry officer and my dissent note is as follows:-

"The charged official in his statement dated 17.10.97 Ex. S- 14 recorded in the presence of Shri Lehna Singh (SW-1) and Shri G.D. Gupta (SW-9) has admitted following.

(i) That these pass books in question were dealt by hand on 18.3.97 as official record of its receipts/ transfer were not found in his office.

(ii) Also entry of its transfer was only made in specimen signature book and not in RD journal as per rule.

(iii) The Charged Official also admitted that the payment was made to Shri Mukesh Kumar Sachdeva (Main Offender) and not to the depositor on 18.3.97 and 31.3.97.

of the pass books in question was received by hand through Mukesh Kumar Sachdeva PA (Main Offender) instead of receiving through official channel through SO slip on 31.3.97.

All the above points indicate and show connivance of charged official with the main offender & also lead to show lack of integrity & violation of rule 3(1)(i), 3(I)(II), 1(I)(III) of CCS (Conduct) Rule-1964 on the part of charged official. I, therefore, hold the article of charges framed against the C.O. as fully proved instead of not proved as held by the Inquiry Authority.

Shri Daya Nand SPM NH-2 now PA Faridabad NIT H.O. is hereby given an opportunity to make a representation, if any against the above findings as well as the findings of the inquiry authority in his inquiry report within 15 days. In case no representation is received within stipulated period, the case will be decided without waiting for the representation of the charged official.

(iv) The Charged Official transferred the case of Rs. 60,000/- and 1,35573/- on 18.3.97 and 31.3.97 respectively to Shri Mahavir PA without taking its receipt.

(v) The Charged Official further admitted that closing sanction of the pass books in question was received by hand through Mukesh Kumar Sachdeva PA (Main Offender) instead of receiving through official channel through SO slip on 31.3.97.

All the above points indicate lack of integrity and violation of Rule 3(1)(i), Rule 3(I)(ii) & Rule- 3(I)(iii) of CCS (Conduct) Rule-1964, on the part of charged official. I, therefore, hold the article of charges framed against the Charged Official as fully proved instead of 'not proved' as held by the Inquiry Authority. Inquiry Report has already been given to the charged official vide this office letter of even no. dated 17.01.2002.

Shri Daya Nand SPM NH-2 now PA Sector-7P.O. Faridabad, is hereby given an opportunity to make a representation, if any against the above findings as well as the findings of the inquiry authority in his inquiry report, within 15 days. In case no representation is received within stipulated period, the case will be decided without waiting for the representation of the charged official.

(12) A bare perusal of the above 'dissenting notes' reveals that the same are verbatim same. In fact, the disciplinary authority while drawing the 'dissenting note' second time even did not bother to record any reasons to differ with the findings recorded by the Enquiry Officer. The law on this issue is well settled. Rule 15 of the Rules contemplates the action to be taken on the inquiry report in case the disciplinary authority is not itself an Inquiring Authority. According to sub-rule (1) of Rule 15, the disciplinary Authority for reasons to be recorded in writing could remit the case to the inquiring Authority for further Inquiry and the inquiring Authority is obliged to proceed to hold further inquiry according to the provisions of Rule 14. However, sub-rule (2) of Rule 15 deals with a situation when the disciplinary Authority prefers to disagree with the findings of the inquiring Officer on articles of charge. In such situation, the disciplinary Authority is under obligation to record its reason for such disagreement and then records its own findings on such charge if the evidence on record is 'sufficient' for the purpose. Rule 15 of the Rules reads thus:

> "15. Action on the inquiry report
>
> (1) The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as for as may be.
>
> (1-A) The disciplinary authority shall forward or cause to the forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.
>
> (1-B) The disciplinary authority shall consider the representation, if any, submitted by the Government servant before proceeding further in the manner specified in sub-rules (2) to (4).)

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence record is sufficient for the purpose. (emphasis added)

xx xx xx xx xx

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to given the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

(13) On a bare perusal of the 'dissenting note' dated 6.1.2004 (A-8) it becomes patent that the necessary requirement of sub-rule (2) of Rule 15 of the Rules has not been complied with. The disciplinary authority in case of disagreement with the finding of the inquiring Authority was required to record its reasons for the disagreement and then it was obligatory to record its finding on such charge in case the evidence on record is sufficient for the purpose. The obligation casts on the disciplinary Authority is more heavier because the evidence on record has to be 'sufficient' to sustain the finding on any such disagreement, which the disciplinary authority may proceed to record. Ordinarily sufficiency and in-sufficiency of evidence to sustain the charge would be a question which would not be required to be gone into but the rule imposes an obligation on the disciplinary authority to record a finding on a charge where it expresses disagreement only if the evidence on record is 'sufficient' for that purpose. It may be for the reason that once inquiring authority has concluded one way or the other then to reverse those findings sufficient evidence would be necessary. Therefore,

findings cannot be reversed on flimsy evidence. There is not an iota of evidence which has been made part of discussion in order to reach a conclusion that there is sufficient evidence to sustain the charge in support of disagreement. The instant case presents a gloomy picture of complete non-application of mind by the disciplinary authority. There is virtually no evidence discussed to sustain the charges nor any reasoning has been adopted to reach the conclusion that the applicant-respondent No. 1 is guilty of those charges.

(14) The question which has been raised before us, has also been considered by Hon'ble the Supreme Court in the case of **Punjab National Bank *versus* Kunj Behari Misra (13).** The specific question formulated by their Lordships' is as under:-

> "When the enquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the delinquent officer."

(15) The aforesaid view has also been followed and applied in the case of **SBI *versus* Arvind K. Shukla (14).** Therefore, on statutory rule, principle and precedent no doubt is left that the disciplinary authority should have recorded reasons after looking into sufficiency of evidence to sustain the charges before it could disagree with the findings of the inquiry officer. The dissenting note recorded by the disciplinary authority on 6.1.2004 (A-8) is a far cry from fulfilling the necessary requirement of the Rules. Therefore, the dissenting note as well as the subsequent proceedings based thereon are liable to be set aside.

ISSUE NO. (2)

(16) It was the case of the applicant-respondent No. 1 before the Tribunal that fraud was played in 15 Post Offices and 25-30 officials were issued charge-sheets under Rule 16 of the Rules having the same allegations, whereas he was charge-sheeted under Rule 14 of the Rules. The Tribunal

(13) 1998 (7) SCC 84
(14) 2004 (13) SCC 797

in the absence of any specific reply by the petitioners on this issue of discrimination has drawn an adverse inference against them, as has already been noticed in para 7 above. Even before this Court, the petitioners have not been able to place on record any material showing any distinction between the charges levelled against the applicant-respondent No. 1 and the other charged employees. Accordingly, we find that the Tribunal has come to the right conclusion that the applicant respondent No. 1 also deserved similar treatment. Thus, the argument of the petitioners that there was no discrimination suffered by the applicant-respondent No. 1 does not hold ground.

ISSUE NO. (3)

(17) Reliance has been placed by the learned counsel for the applicant-respondent No. 1 on the judgment of Hon'ble the Supreme Court rendered in the case of **M.V. Bijlani *versus* Union of India (15),** wherein it has been held that allegations in respect of which the delinquent officer had not been charged with, no punishment could be imposed on such an allegation. In para 23 of the judgment, Hon'ble the Supreme Court has observed thus:

> "Evidently, the evidence recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges."

(18) Therefore, in the present case when there was neither any allegation of monetary loss in the charge-sheet nor was there any finding by the disciplinary authority that the applicantrespondent No. 1 had misappropriated, then the punishment imposing recovery is unsustainable in the eyes of law.

ISSUE NO. (4)

(19) As far as fourth issue is concerned it would be pertinent to mention here that vide order dated 23.2.2004 (A-10) one penalty of reduction by one stage from ' 5,875/- to ' 5,750/- in the time scale of pay

(15) JT 2006 (4) SC 469

of '4500-125-7000 for a period of three months from the date of increment has been imposed. He was barred from earning increments of pay during period of reduction and in the same order another penalty of recovery of 1/4th of the basic pay for a period of ten months has been ordered. In other words, two penalties have been imposed upon the applicant-respondent No. 1, which in our considered opinion amounts to bundle of punishments. In that regard reliance may be placed on the following observations made in para 12 of the judgment of Hon'ble the Supreme Court rendered in the case of **Union of India *versus* S.C. Parashar (16) :**

> "The disciplinary authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both the minor and major penalties by the same order. Such a course of action could not have been taken in law." Therefore, the action taken by the petitioners of imposing bundle of punishments upon the applicant-respondent No. 1 is bad in law.

(20) We would have remanded the case back to the disciplinary authority for the purposes of proceeding afresh from the stage of recording a dissenting note. However, for various reasons the aforesaid course has not been adopted. The charges pertain to the year 1997 and charge sheet was issued about thirteen years back. Already huge time has been consumed. Moreover, the revisional authority has itself remanded the matter back to disciplinary authority for de novo proceeding on 25.7.2003 which also was about eight years ago. Therefore, no useful purpose would be served by remitting the matter back to the authorities. The learned counsel for the petitioners has not been able to show from the report of the inquiry officer that there is any incriminating evidence sufficient to indict the applicant-respondent No. 1, which may constitute the basis for recording a finding against him. Therefore, it would be in fitness of things if the matter is given finality at this stage itself.

(21) As a sequel to the above discussion, we find no legal infirmity in the view taken by the Tribunal warranting interference by this Court. The instant petition lacks merit and the same is accordingly dismissed. No order as to costs.

V. Suri

(16) JT 2000 (3) SC 162