

Naln Singh Vs. Uoi and anr.

Naln Singh Vs. Uoi and anr.

SooperKanoon Citation : sooperkanoon.com/1102228

Court : Delhi

Decided On : Jan-06-2014

Judge : Pradeep Nandrajog

Appellant : Naln Singh

Respondent : Uoi and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: December 09, 2013 Judgment Delivered on: January 06, 2014 + W.P.(C) 1215/2011 NAIN SINGH Represented by:Petitioner Ms.Nisha Priya Bhatia, Advocate with Mr.Sher Afgon, Advocate versus UOI & ANR. Represented by: Respondents Dr.Kumar Jwala, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR.JUSTICE V.KAMESWAR RAO PRADEEP NANDRAJOG, J.

1. The factual backdrop necessary to be noted for disposal of above captioned petition is that in the year 2007 the petitioner who was working on the post of AFO (CRF) was posted at the Headquarters of Cabinet Secretariat, Government of India.

2. On July 23, 2007, Mr.Davinder Kumar, an official working in Counter-Intelligence Service (hereinafter referred to as the CIS), prepared a report pertaining to an incident of the same day i.e. July 23, 2007, recording

pilferage/sale of items of CSD Canteen of Government of India. The report reads as under:

On 23.7.2007, at about 1145 hrs, CIS personnel observed one CRF truck No.HR55D7547 at Kanya Vidyalaya, Jungpura. The truck was unloading CSD items into a three wheeler Tempo No.DL-1LC-6236. The tempo was followed and it stopped at HPL Railway Crossing at Jangpura. The shop owner and his father, whom these items were to be delivered, also came at this point. All these persons were asked by us about the whole incident. The shop owner, Mr.Ajay Singhal, confessed that these Canteen items belong to CGO office. 24 packets containing items as per the list were seized and are being handed over to I/C Canteen.

3. On July 25, 2007, Davinder Kumar prepared another report concerning the aforesaid incident. The relevant portion whereof reads as under:

02. After getting feelers that CSD Canteen items from our Canteen were being taken out and sold in the open market, as per instructions, a watch on Shri Nain Singh, AFO (CRF) was being kept. On 23.7.2007, at about 1030 hrs, our team observed Shri Nain Singh loading CSD Canteen items on a CRF truck No.HR55D7547. At about 1125 hrs, Shri Nain Singh came out of CRF Gate on his Motorcycle No.DL-3S-AE-0578. He was followed by the same truck loaded with CSD Canteen items. Shri Nain Singh signaled the driver of this CRF truck and went ahead. The truck entered Jungpura extension area and stopped near Kanya Vidyalaya, Jangpura. Shri Nain Singh also reached at this point and talked with the persons already waiting there, alongwith a three wheeler Tempo No.DL-1LC6236. After giving instructions to these persons, Shri Nain Singh disappeared from the site.

03. The truck was carrying CSD Canteen items. About one fourth of these items were unloaded into the three wheeler tempo mentioned above. After unloading these items, the CRF truck went to some other place. Our team followed the three wheeler tempo. The tempo kept on changing places within the Jungpura and Bhogal area and ultimately stopped at HPL Railway Crossing at Jungpura. The driver of this tempo was having a hot discussion with the other person sitting in the tempo. One of our team members heard that he was saying that he would throw

all the items and go away.

04. The place was deserted and other than the tempo, only our team members were present at this spot. The driver approached one of our team members and misunderstood us to be the persons of the shop owner. He told us that he could not roam here and there with these items and he needs to go for some other work.

05. The driver told us that the items belong to Ajay Singhal who has a grocery shop in Church Lane, Bhogal. But, the driver was not aware why he was being asked to roam uselessly in the whole area. The other person in the tempo was Mr.Shukla, who was talking continuously on a mobile phone. Suddenly, two persons came on a scooter and stopped at this point. When we enquired, it came to our notice that they were the shop owners of Singhal & Sons, a grocery shop at Bhogal.

06. The shop owner, Mr.Ajay Singhal, confessed the following things:i) He has a grocery shop by the name Singhal & Sons at 29, Church Lane, Bhogal, New Delhi-14. Phone No.9818460236. ii) He knew Shri Nain Singh for the last one and half years who is working in a office of CGO. Shri Nain Singh used to supply him CSD items on his motorcycle in the above period. iii) Shri Nain Singh used a Government truck to supply CSD items for the last two times in the same month of July. iv) The shop owner further confessed that Shri Nain Singh supplies the CSD items first and comes to settle the money later, with the list of all the items supplied. He also told that Shri Singh also uses to supply these CSD items to few other shop owners also, who were not known to him.

07. All these items were seized and a list was prepared. As per your kind instructions, the seized items were handed over to Shri S.Malladi, OSD (Admn) as per the list enclosed herewith. COMMENTS: Following points may be concluded from the above report:i) Shri Nain Singh, AFO (CRF) is involved in selling CSD Canteen items to Shri Ajay Singhal and other shop owners. ii) It is to be noted that Shri Nain Singh, AFO (CRF) has nothing to do with CSD Canteen. iii) There is a great possibility that Shri Nain Singh must be getting support from few other CSD Canteen personnel in order to do the above illegal activities, which could be verified on further enquiry. iv) During the above period, one of our team members

observed that Shri Nain Singh came to meet Shri S.Malladi, OSD (Admn) at about 1200 hrs in his room. He was seen discussing about something for twenty five minutes and both of them were standing throughout this time, suggesting that Shri Nain Singh had informed him about some significant development. v) At the time of handing over the CSD items to Shri S.Malladi, he immediately uttered Accha! Nain Singh wala saaman and received the items without any hesitation (FlagD). It is not sure how Shri Malladi came to know about the seizure of items. Hence, it could be concluded that Shri Nain Singh was discussing the whole incident with him, as mentioned in above para.

(Emphasis Supplied) 4. In view of fact that the second report dated July 25, 2007 indicted the petitioner to be involved in pilferage/sale of items of CSD Canteen in the open market, the petitioner was suspended with effect from July 25, 2007.

5. Thereafter, Joint Secretary (Pers), the Disciplinary Authority of petitioner, ordered a Preliminary/One-man inquiry by Commodore (Retd.) K.M.Nair into the circumstances leading to the pilferage of CSD Canteen items on July 23, 2007. The preliminary/one-man inquiry report dated August 24, 2007 prepared by Commodore K.M.Nair indicted the petitioner to be involved in pilferage of CSD canteen items.

6. On August 24, 2007, the Disciplinary Authority issued a charge ARTICLE OF CHARGE-I That Shri Nain Singh, AFO (CRF) (I.D. No.03811-V) has engaged himself to deliver/sell CSD items illegally in Motor Cycle/Government Heavy Vehicle to M/s Singhal & Sons owned by Shri Ajay Singhal, S/o Shri J.R.Singhal, 29, Church Lane, Bhogal, New Delhi - 110014 on many occasions. The said Shri Nain Singh has visited later with a list of items delivered, for settlement and taking money after accounting, towards costs of goods delivered to M/s Singhal & Sons. The said Shri Nain Singh has delivered the Canteen items to few others, for pecuniary gain for himself. By his aforesaid acts of omission and commission, the said Shri Nain Singh, AFO (CRF) has exhibited lack of absolute integrity and has conducted himself in a manner highly unbecoming of a Government Servant and has, thereby contravened Rule-3(1)(i)&(iii) of CCS (Conduct) Rules-1964. ARTICLE OF CHARGE-II That Shri Nain Singh, AFO (CRF) (I.D. No.03811-V) on

23.07.2007 took away illegally some CSD items through Government Truck No.HR-55 D-7547 and the items were transferred to Three Wheeler Tempo No.DL-1 LC-6236 by Shri Rajdev, who was the Driver of Vehicle No.DL-1 LC-6236 for transportation to M/s Singhal Sons, owned by Shri Ajay Singhal, S/o Shri J.R.Singhal, 29, Church Lane, Bhogal, New Delhi - 110014. Shri Nain Singh thus, misused his official position for personal gain. By his aforesaid acts of omission and commission, the said Shri Nain Singh, AFO (CRF) has exhibited lack of absolute integrity and has conducted himself in a manner highly unbecoming of a Government Servant and has, thereby contravened Rule-3(1)(i)&(iii) of CCS (Conduct) Rules-1964.

7. The list of documents/witnesses by which the department proposed to establish the charges framed against the petitioner, annexed along with the charge memo, were as under:- LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGES FRAMED AGAINST SHRI NAIN SINGH, AFO (CRF) (I.D. No.03811-V) OF CABINET SECRETARIAT IS PROPOSED TO BE SUSTAINED1 Written Statement of S/Shri Ajay Singhal & J.R.Singhal dated 23.07.2007.

2. Written Statement of Shri Rajdev, Driver of Vehicle No.DL-IL C-6236.

3. Any other document relevant to the case. LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGE FRAMED AGAINST SHRI NAIN SINGH, AFO (CRF) (I.D. No.03811-V) OF CABINET SECRETARIAT IS PROPOSED TO BE SUSTAINED1 Shri S.Malladi, OSD (Admn), CSD Cabinet Secretariat, Government of India, New Delhi.

2. Shri Sattu, Casual Driver (of Office Truck No.HR-55 D7547 on the date & time of incident) 3. Shri Ajay Singhal, M/s Singhal Sons, 29, Church Lane, Bhogal, New Delhi-110014.

4. Shri J.R.Singhal, M/s Singhal Sons, 29, Church Lane, Bhogal, New Delhi-110014.

5. Shri Rajdev, Driver, Tempo Stand, Saman Bazar, near Dharamasala, Bhogal, New Delhi.

6.

8. Any other witness found relevant to the case.

Vide order dated November 16, 2007, the Disciplinary Authority withdrew the charge sheet dated August 24, 2007, recording the reason : it was noticed that said charge sheet is incomplete and needs some additions and corrections as some of the facts were not incorporated and left inadvertently.

9. On the same date i.e. November 16, 2007, the Disciplinary Authority issued a fresh charge sheet to the petitioner listing three articles of charge, which read as under:

ARTICLE OF CHARGE-I That Shri Nain Singh, AFO (CRF) (I.D. No.03811-V) while attached and working in CRF Unit of Cabinet Secretariat, New Delhi is reported to have been indulging himself in illegal sale of some CSD items to private persons/shop owners. On 23.7.2007, on a surprise check by CIS staff, he was found selling and delivering CSD items (18 items seized) to one Shri Ajay Singhal S/o Shri J.R.Singhal, Shop owner of M/s Singhal & Sons, 29, Church Lane, Bhogal, New Delhi. From the statements of S/Shri Ajay Singhal and J.R.Singhal, it was evident that Shri Nain Singh, for pecuniary gain for himself have been selling/delivering CSD items to them and others illegally earlier also on many occasions. This act on the part of Shri Nain Singh clearly shows that his attitude of dishonesty and untrustworthiness and a question mark on his integrity. By his aforesaid acts of omission and commission, the said Shri Nain Singh, AFO (CRF) has exhibited lack of absolute integrity and has conducted himself in a manner highly unbecoming of a Government Servant and has, thereby contravened Rule-3(1)(i)&(iii) of CCS (Conduct) Rules-1964. ARTICLE OF CHARGE-II That on 23.07.2007 Shri Nain Singh, AFO (CRF) (I.D. No.03811-V) with the permission of the Canteen Officer i.e. Shri S.Malladi, OSD (Admn) purchased some CSD items in bulk on the plea of some function of one his relatives. He carried these items probably in connivance with others in the govt. truck No.HR557547 driven by Shri Sattu, temporary driver illegally out of the office premises probably without any gate pass and without checking by the guard on duty and even without permission to Bhogal instead of his residence at Okhla

village. He himself followed the govt. truck in his motor cycle No.DL3 AE0578 The items were offloaded to a Three Wheeler Tempo No.DL-1LC-6236 transportation to M/s Singhal & Singhal, S/o Shri J.R Singhal, 29, Delhi-110014. Shri Nain Singh position for personal gain. driven by Shri Rajdev, for Sons, owned by Shri Ajay Church Lane, Bhogal, New thus, misused his official By his aforesaid acts of omission and commission, the said Shri Nain Singh, AFO (CRF) has exhibited lack of absolute integrity and has conducted himself in a manner highly unbecoming of a Government Servant and has, thereby contravened Rule-3(1)(i)&(iii) of CCS (Conduct) Rules-1964. ARTICLE OF CHARGE-III That on 23.07.2007 Shri Nain Singh, AFO (CRF) (I.D. No.03811-V) left office without any permission/leave from his Controlling Officer and was found indulged in illegal sale of CSD items to private persons/shop owners in Bhogal at around 1145 hours. By his aforesaid acts of omission and commission, the said Shri Nain Singh, AFO (CRF) has exhibited lack of absolute integrity and has conducted himself in a manner highly unbecoming of a Government Servant and has, thereby contravened Rule3(1)(i)&(iii) of CCS (Conduct) Rules-1964.

(Emphasis Supplied) 10. The list of documents/witnesses by which the department proposed to establish the (fresh) charges framed against the petitioner, annexed along with the charge memo, read as under:

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGES FRAMED AGAINST SHRI NAIN SINGH, AFO (CRF) (I.D. No.03811-V) OF CABINET SECRETARIAT IS PROPOSED TO SUSTAINED1 Written Statement of S/Shri Ajay Singhal & J.R.Singhal dated 23.07.2007.

2. Written Statement of Shri Rajdev, Driver of Vehicle No.DL-IL C-6236.

3. No.CIS/OPS/E-2007-394 dtd. 25.7.2007. (2nd report prepared by Davinder Kumar) 4. No.CIS/OPS/E-2007-392 dtd. 23.7.2007 along with list of items seized. (1st report prepared by Davinder Kumar) 5. No.1/6-2000-CSD-4722 dtd. 25.7.2007. (This is a note dated July 25, 2007 prepared by S.Malladi regarding pilferage/sale of items of CSD items by the petitioner) 6. Application of Shri Nain Singh for CSD items.

7. Any other document relevant to the case. LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGE FRAMED AGAINST SHRI NAIN SINGH, AFO (CRF) (I.D. No.03811-V) OF CABINET SECRETARIAT IS PROPOSED TO BE SUSTAINED¹ Shri S.Malladi, OSD (Admn), CSD Cabinet Secretariat, Government of India, New Delhi.

2. Shri Sattu, Casual Driver (of Office Truck No.HR-55 D7547 on the date & time of incident) 3. Shri Ajay Singhal, M/s Singhal Sons, 29, Church Lane, Bhogal, New Delhi-110014.

4. Shri J.R.Singhal, M/s Singhal Sons, 29, Church Lane, Bhogal, New Delhi-110014.

5. Shri Rajdev, Driver, Tempo Stand, Saman Bazar, near Dharamasala, Bhogal, New Delhi. 11.

6. Shri Devender Kumar, SFO (CIS) 7. Any other witness found relevant to the case.

The petitioner denied the charges framed against him, and thus commenced the examination of witnesses of department.

12. S.Malladi SW-1, OSD (Admn.) deposed that he was working as CSD Canteen Officer at the relevant time i.e. July 23, 2007. That the petitioner had submitted an application dated July 21, 2007 to him to purchase some items from CSD Canteen stating that there is a function at the house of his relative. (A photocopy of said application dated July 21, 2007 is listed at Serial No.6 of the list of documents). He proved photocopy of an invoice recording : Nain Singh having Card No.10000 purchased certain items from CSD Canteen at 16:37:21 on 23.07.2007. Being relevant, we note the following portion of the statement of SW-1 :

EXAMINATION OF THE PRESENTING OFFICER WITNESS BY THE¹
Observation/question posed by the PO to the State Witness: The PO asked the State Witness as to the authenticity of the document (S-6) - an application allegedly written by the charged official addressed to the Canteen Incharge (The State Witness-1) seeking permission to purchase CSD Goods in bulk?.

Answer/Clarification given by the State Witness: The charged officer did make the request through the application aforesaid and also informally sought the requisite permission.

2. Observation/question posed by the PO to the State Witness: Was there any provision for acceding to the request of a personnel (customers) for purchase of CSD items in bulk when this alleged incident took place?. Answer/Clarification given by the State Witness: Yes, there was a provision to this effect then in vogue.

4. Observation/questioned posed by the PO to the State Witness: Whether the request made by the charged officer to transport his goods purchased in bulk from the canteen to a nearby place of his residence through departments vehicle vide sub para c of Para-3 of his Note dated 1/6/2000-CSD-4722 dated 25/7/2007 (S-5) in writing?. Answer/Clarification given by the State Witness: The request was made orally.

5. Observation/question posed by the PO to the State Witness: Was the aforesaid request of transporting the goods purchased by a customer through CSD funded vehicle an exceptional one or such request used to be made by the customers and acceded to by the Canteen Incharge as a matter of course?. Was there any provision of transporting the goods purchased in bulk to their residences through CSD vehicle?. Answer/Clarification given by the State Witness: Yes, such a practice was in existence for all customers in general provided the distance is short and not long (8-9 kms.). I had full discretionary power in this regard.

EXAMINATION OF THE PRESENTING OFFICER WITNESS BY THE2
Observation/question posed by the PO to the State Witness: Was the charged officer been posted in CSD Canteen at any point of time and if so, in what capacity?. Answer/Clarification given by the State Witness: No, he was never posted in CSD Canteen.

3. Observation/question posed by the PO to the State Witness?. Had the charged officer made such a request for bulk purchase earlier also i.e. before 23rd July 2007?. If so, the details thereof. Answer/Clarification given by the State Witness: Yes, the charged officer had made similar request in the past on three or four occasions, which had been acceded to me by ensuring that the items had been

available in abundance, not at the cost of the requirement of other officers. Further, I would like to mention that I had been receiving such demands from other personnel also right upto the level of Secretary. EXAMINATION OF THE WITNESS PRESENTING OFFICER- 02-05-08 BY THE1 Observation/question posed by the PO to the State Witness: Is there any provision in the CSD Canteen Scheme to purchase canteen goods in bulk for the purpose of marriage of his or her relatives?. Answer/Clarification given by the State Witness: Yes, there is a provision in respect of R&AW, CRF (CSD Canteen) to this effect.

2. Observation/question posed by the PO to the State Witness Can you specify whether the Charged Officer had attached any marriage card along with request dated nil and taken on record as SW-6 while making request for supply of CSD items in bulk or not?. If not, reason therefor?. Answer/Clarification given by the State Witness: No.He did not attach any marriage card as such. I accepted his request as there was no suspicion as to the genuineness of his demand.

5. Observation/question posed by the PO to the State Witness Was the money paid by the C.O. towards the cost of the CSD items, in question, purchased by him, refunded to him upon their seizure and taken on record of the CSD Canteen?. If not, what is the status of that amount of money?. Answer/Clarification given by the State Witness: No, the money was not paid back to the C.O. as per the directions of Commodore K.M.Nair, Director (GMI) & Secretary (CSD). I am not aware of the present status of that money as such.

6. Observation/question posed by the PO to the State Witness With reference to my question at Sl. No.3 in the hearing on 22.4.08 I would like to know whether the request made by the C.O. on previous three or four occasions for purchase of goods in bulk were on the same ground/purpose, the details thereof?. Answer/Clarification given by the State Witness: I did not keep such records with me in my custody.

8. Observation/question posed by the PO to the State Witness Are the CSD items mentioned in the list vide S-4 were the items purchased by the CO?. Answer/Clarification given by the State Witness: The factual position can be got verified from the requisition submitted by the C.O. to the Incharge (Canteen) Shri

Bhudat, AFO (CRF).

9. Observation/question posed by the PO to the State Witness What was the total amount of money towards the cost of items purchased by the C.O. on 23.7.07 and whether the record thereof (computerized bill) is available in the records of CSD (Canteen)?. Answer/Clarification given by the State Witness: Now I am not aware of the amount towards the cost of the purchase. As for the records will be available in the CSD (Canteen) (Bill register & sales register) 11. Observation/question posed by the PO to the State Witness Was there any circular issued for the information and guidance of the personnel of the department as to the purchase of CSD goods in bulk prior to 23.7.07?. If so, details whereof. Answer/Clarification given by the State Witness: Yes a circular to this effect was displayed on the notice board of the CSD Canteen as well as in the notice board of the Foyer. It was issued with the approval of Secretary (CSD Canteen). Its availability may be checked and verified from the record of the CSD Canteen.

12. Observation/question posed by the PO to the State Witness Did the C.O. write the request to you in your presence or did he bring the request already written by him vide (S-6) meant for Canteen Officer?. Answer/Clarification given by the State Witness: The C.O. brought the written request along with the Canteen In-charge to me on 21.7.07. CROSS-EXAMINATION BY THE DEFENCE ASSISTANT ON 25.08 2. Observation/question posed by the DA to the State Witness: The document (S-6) which has been produced by the Presenting Officer through you is not genuine and that it is a tampered document. Can you produce the original application allegedly written by the C.O. (undated)?. Answer/Clarification given by the State Witness: The original application was forwarded by me to JS (Pers.) along with my report (SW-5). CROSS-EXAMINATION BY THE DEFENCE ASSISTANT ON 13.08 1. Observation/question posed by the DA to the State Witness: As per your statement the charged officer was permitted to purchase CSD goods in bulk and this transaction was reportedly made in the forenoon of 23.7.2007. What is the status of transaction - the computerized bill (s) raised in his name and the amount thereof?. Answer/Clarification given by the State Witness: The requisite details can be ascertained from Canteens Sales Records.

2. Observation/question posed by the DA to the State Witness: You in your answer to the question raised in the proceedings by the presenting officer held on 22.4.2008 stated that the charged officer had made similar requests (purchase of CSD goods in bulk) in the past on three or four occasions which had been acceded to by you. I would like to know the details thereof as in the case of 23.7.2007. How did he make the requests - orally or in writing?. Answer/Clarification given by the State Witness: The Charged Officer had made his request in writing listing out the details of the goods required by him and I had permitted him ensuring that the items are available in abundance. As to the availability of such formal requests, it is to be ascertained from the records of the CSD Canteen.

5. Observation/question posed by the DA to the State Witness: From Sub-para (b) of para 3 of your report dated 25.7.2007 it is evident that the monitoring system to ensure that the charged officer did not exceed his monthly quota was duly followed. In other words his CSD Card must have the entry regarding the purchase made by him during the month of July 2007. Given the statement of yours, I would request you to confirm the factual position in this regard. Answer/Clarification given by the State Witness: To monitor the monthly quota of any individual is being done by the computer software through server. However, for the convenience of the customers, the entries are made in CSD Canteen Cards. As in the case of COs records, the monthly quota could be checked through computer server.

6. Observation/question posed by the DA to the State Witness: The charged officer had been issued the CSD Canteen Card bearing No.2940 on 25.4.2007 and it duly contains the three entries of 1.5.2007, 5.6.2007 and 7.6.2007 against Bills Nos.0486, 1086 & 2081 for amounts `1757/-, `3011/- and `1965/- respectively. There is no entry as to purchase of items of goods either in small quantity or in bulk beyond 7.6.2007. (DA presented a photocopy of the Card and its relevant pages on which entries were made). Did you give any specific instructions to the concerned Billing Clerk not to make entry in the card of the charged officer after 7.6.2007 to 23.7.2007?. Answer/Clarification given by the State Witness: How can I pass such instructions direct to the Billing Clerk?.

7. Observation/question posed by the DA to the State Witness: With reference to your answer to the question No.3 raised by the PO during the hearing held on 22.4.2008, I would like to know from you whether there is any request available in your records similar to that of Shri Nain Singh regarding bulk purchase of items and permission accorded to him by you. Answer/Clarification given by the State Witness: The factual position can be verified from the records of the CSD Canteen. CROSS-EXAMINATION BY THE DEFENCE ASSISTANT OF SW-1 PURSUANT TO HIS RE-EXAMINATION BY THE PO - 19.5.2008 9. Observation/question posed by the DA to the State Witness: According to you, the charged officer was to accompany the truck to take his goods on destined place and to bring truck to CSD Canteen on 23.7.2007 but the Charged Officer did not accompany the truck. How come Sattu, the casual driver, could take the truck without any canteen staff or the charged officer on his own?. Answer/Clarification given by the State Witness: As per the orders, CO was supposed to accompany the truck which was loaded with his bulk items, however, it came to my notice that the charged officer did not accompany the vehicle and only the casual driver Shri Sattu took the vehicle. These facts were brought to the notice of JS (Pers) as well as Secretary (CSD Canteen) subsequently in writing. Regarding instructions given to the Driver could be verified from the individual (Sattu) himself.

(Emphasis Supplied) 13. Sattu SW-2, a casual driver employed in CSD Canteen, deposed that on July 23, 2007, between 11.00 - 12.00 P.M. Sh.S.Malladi, Canteen Officer, asked him to deliver some goods loaded in CRF truck. He i.e. S.Malladi told him that one person will meet him at out gate who would take him to the destination where goods are to be delivered. On reaching the out gate, he saw a motor-cyclist present there. He cannot identify said motor-cyclist since he was wearing a helmet. He followed said motor-cyclist and reached Jangpura. 10-15 minutes after reaching Jangpura a laborer came to him and told him to leave from there whereupon he returned to CSD Canteen.

14. Rajdev SW-5, deposed that on July 23, 2007, at about 10.30 A.M. a motor-cyclist approached him and asked him to transport some goods from Jangpura to a nearby place. He followed the motor-cyclist to Jangpura where after pointing towards a person on the road, along with some goods the motor-cyclist went

away. He cannot identify said person since he was wearing a helmet. The person standing on the road along with goods loaded the goods in tempo and sat in the tempo. While he was driving the tempo after loading the goods, he noted that two motor-cyclists were following him. After sometime the two motor-cyclists following him directed him to take his tempo near CRF building where 10-15 persons were present who took photographs of his tempo and made him sign on a blank paper. He denied having given any confessional statement on July 23, 2007.

15. Davinder Kumar, SFO (CIS) SW-6, reiterated the contents of report dated July 25, 2007 prepared by him in his statement before the Enquiry Officer. Being relevant, we note the following portion of the statement of SW-6 :

CROSS-EXAMINATION BY THE DEFENCE ASSISTANT⁵ Observation/question posed by the DA to the State Witness: What was the significance/relevance of the photographs adduced by the SW while deposing statement on 21.1.2008. He further observed that the accused official did not figure anywhere in these photographs showing his complicity in taking out the CSD items illegally from the office premises and their delivery to the private party. Answer/Clarification given by the State Witness: His team had spotted the accused official leading the Government truck carrying the CSD items on his motor bike leaving the office premises. The team followed them. The Government truck stopped at Kanya Vidyalaya, Jungpura when the accused official was by the side of the truck at some distance. Then a private tempo bearing No.DL-1L-C-6236 was already waiting there. At the spot two persons were also standing there at around 1135 hours. The Charged Officer gave some instructions to the aforesaid two persons and left the place. The laborers travelling in the Government vehicle unloaded the goods from the vehicle with the help of two other persons accompanying the private vehicle (Tempo). The team could not take the photographs of the charged officer as it concentrated on taking the photographs of unloading the CSD items from the Government Truck and loading them in the private tempo and that it could not take the photograph of the charged officer as the charged officer disappeared after giving the instructions to the aforesaid two private parties.

6. Observation/question posed by the DA to the State Witness: Why did the SW did not instruct his team members to take the photograph of the charged officer when he was allegedly present at the spot giving instructions to the aforesaid two private parties. Answer/Clarification given by the State Witness: The charged officer made some signals and did not give any instructions verbally as such and disappeared thereafter. He (SW) himself was not present on the spot and that he was monitoring the surveillance from somewhere else giving directions to his team members. His team could not take the photograph (s) of the charged officer because he was not static and was in motion.

10. Observation/question posed by the DA to the State Witness: Why could SW not give instructions to his team members to take photograph of the charged officer showing his complicity in this case?. Answer/Clarification given by the State Witness: He had already instructed his team members to take photographs of all the events to the extent possible and that the team members had made all efforts to cover the happenings on that day. The team could not have taken photographs of the charged officer as the CO was not static and was in motion. CROSS-EXAMINATION BY THE DEFENCE ASSISTANT8 Observation/question posed by the DA to the State Witness If the CO was reportedly present giving instructions to Sh. Ajay Singhal and loading/unloading of the goods, why was his photograph, covering him in the episode, not taken?. Answer/Clarification given by the State Witness: The team of CIS unit made all efforts to take photographs of the entire incident but due to movement of the persons and vehicles on the road, the camera being used by the team could not cover the CO. The entire incident involving his presence lasted for barely two minutes.

9. Observation/question posed by the DA to the State Witness Was any FIR got registered with the Police Station for this illegal activity allegedly committed by the charged officer?. Answer/Clarification given by the State Witness: No.RE-EXAMINATION BY THE DEFENCE ASSISTANT - 26.2.08 1. Observation/question posed by the PO to the State Witness: As per the points at Sl. i & ii under the title comments of your report bearing No.CIS/OPS/E/2007-394 dt. 25.7.07 you have stated that while the accused officer was involved in selling CSD canteen items to Shri Ajay Singhal and other shop owners, the accused

officer has nothing to do with the CSD canteen. These two points are self contradictory, please clarify the position?. Answer/Clarification given by the State Witness: Despite the fact that the accused officer had nothing to do with the CSD Canteen functioning he was found present in the CSD Canteen quite often, which often suspicion. Consequently the CIS team conducted a raid on 23.7.07 when the charged officer was found involved in selling CSD Canteen items to Shri Ajay Singhal and other shop owners. In the statement given by Shri Ajay Singhal he mentioned that the charged officer was selling CSD items to other shop owners also.

5. Observation/question posed by the PO to the State Witness: To a question No.10 raised by the Defence Assistant during the cross examination on 19.2.08 you in your answer stated that the items of goods which had been impounded were handed over to Shri S. Maladi, OSD (Admn.) under receipt the same day i.e. 23.7.07. Can you adduce the document to this effect?. If so a copy thereof may be made available to the Inquiry Officer to be taken on record. Answer/Clarification given by the State Witness: Yes, I hereby submit the requisite document.

CROSS-EXAMINATION OF THE DEFENCE ASSISTANT PURSUANT TO HIS RE-EXAMINATION BY PO- 26.2.08 4. Observation/question posed by the DA to the State Witness: As to the document adduced by the State Witness pursuant to the question No.5 posed by the PO to the State witness during his re-examination it has been noticed that it does not tally with the document (SW-4) in that the latter (SW-4) does not bear the acknowledgement certificate given by Shri S. Maladi, OSD (Admn.) as to the receipt of the items on 23.7.07- The former contains this certification. Why this is so?. Answer/Clarification given by the State Witness: I took the acknowledgment receipt of Shri S. Maladi, OSD (Admn.) I/C CSD Canteen on my own office copy of the note bearing No.CIS/OPS/E/2007 dated 23.7.07. I have no further comments to offer in this regard.

5. Observation/question posed by the DA to the State Witness The enclosure (list of items seized to the note of the State Witness bearing No.CIS/OPS/E/2007-391-393 dt. 23.7.07, as adduced by you also does not tally with the enclosure to SW-4. Answer/Clarification given by the State Witness: I hereby stand by the list of items as stated in the enclosure to my note adduced today by me before the Inquiry

Officer.

16. Two departmental witnesses mentioned in the list of witnesses viz. Ajay Singhal and J.R.Singhal, were dropped by the Enquiry Officer since they did not respond to the notices sent by the Enquiry Officer.

17. It needs to be noted that during the enquiry, vide a letter dated May 19, 2008, the Presenting Officer made a request to the Enquiry Officer to examine one Smt.Suman Bisarya, Section Officer, as witness of the department, which request was allowed on June 10, 2008. The order dated June 10, 2008 passed by the Enquiry Officer reads as under:DAILY

ORDER

SHEET - 10.06.2008

(1) The Charged Officer Shri Nain Singh, AFO (CRF) along with his Defence Assistant Shri D.R.Sharma appeared before the Inquiry Officer when the Presenting Officer Shri G.N. Sharma, Section Officer and Lt.Cdr. B.P.Singh, OSD (Admn.II) & Canteen Officer were also present.

(2) During examination/cross-examination/re-examination of State Witness (No.1) Shri S.Malladi referred to the document/information available in the records of CSD Canteen. Accordingly, the IO sought the requisite documents/information through his letter No.DS(Admn.B)-IO(NS)/2007-3376 dated May 26, 2008. Cmde. K.M.Nair, Secretary (Canteen) & Director (GMI) has provided the requisite documents/factual information as available in the records of the CSD Canteen through his letter No.159/Dir(GMI)/2008-CSD dated 28.5.2008 presented by his representative Lt.Cdr. B.P.Singh, OSD (Admn.II) & Canteen Officer before the Inquiry Officer in the hearing held on 10.6.2008 when the Presenting Officer, the Defence Assistant and the accused officer were present.

(3) As to the request made by the Presenting Officer through his letter No.NS(DE)/2007 dated 19.5.2008 seeking permission from the IO to produce Smt.Suman Bisarya, Section Officer (Pers.4) as an additional witness in the matter for substantiating the Article No.-III of the Charge against the CO, the IO, through

his note No.DS(Admn.B)/IO(NS)/2008-3739 dated May 27, 2008, apprised the Disciplinary Authority of the serious omissions and commissions committed in drawing the statement of imputations without any corroborative evidence respecting Article-III of the Charge. Notwithstanding the aforesaid omissions and commissions, the IO, with a view to giving a fair opportunity to the State allowed the request of the PO. Inquiry Officer posted the next hearing for making deposition by her on 13.6.2008 at 1100 Hours at the same venue. (Emphasis Supplied)

18. Being relevant, we note that before order dated June 10, 2008 was passed a letter dated May 28, 2008 was sent by Lt.Cdr. B.P.Singh to the Enquiry Officer pertaining to his examination/cross-examination. Inter alia, the following was recorded in the letter: S. No. Reference Clarification (i) Answer to Q. No.1 and 11 during Examination of the SW-1 by the PO on 2.5.2008 The CRF Canteen Rules - 2004 is the binding regulation for smooth functioning of the Canteen. As per the Canteen Rules, there are no instructions on purchase of goods for the purpose of marriage, functions etc. No such circular instructions were displayed to this effect on the notice boards. (ii) Answer to Q No.5 during As an enquiry has been going on, I Examination of the SW-1 directed the then Canteen Officer by the PO on 2.5.2008 (Shri S.Malladi) that the money received from Shri Nain Singh on account of purchase of goods on 23.7.2007 and subsequently seized by CIS was not to be returned to him. The original copy of the note No.DIR(GMI)/2007-dated 14.8.2007 to this effect is enclosed (Encl-I). (iii) Answer to Q No.6 during Details of request made by Shri Examination of the SW-1 Nain Singh, prior to 23.7.2007 not by the PO on 2.5.08, para 4 available. of the deposition statement dated 2.5.2008 of the state witness and the request made by the DA pursuant to the answer to Q. No.18 during his crossexamination on 6.5.2008. (iv) Answer to Q No.8 & 9 during Examination of the SW-1 by the PO on 2.5.2008, answer to Q.5, 9 & 10 during crossexamination of the SW-1 by the DA on 6.5.2008 and Answer to Q.1 during cross-examination by the SW-1 by the DA on 13.5.2008. (vii) Answer to Q. No.2 & 7 No such requests are available in during cross-examination of the records of CSD Canteen. the SW-1 by the DA on 13.5.2008. (viii) Answer to Q No.5 during cross-examination of the SW-1 by the DA on 13.5.2008. W.P.(C) No.1215/2011 No requisition (List of goods) from Shri Nain Singh, AFO (CRF) under suspension

is available in the records of CSD Canteen. However, a photocopy of computerized Bill No.100137 dated 23.7.2007 in the name of Shri Nain Singh, AFO (CRF) is enclosed. As for the original, efforts were made to retrieve the requisite document from the computer hard disc with the help of computer cell but in vain. Computer Section has been approached to retrieve the requisite information from the hard disc of the Computer of the Canteen, but in vain. Page 24 of 57 (xii)

19. Answer to Q No.9 during cross-examination of the SW-1 by the DA on 19.5.2008 pursuant to the re-examination by the PO. Except the note No.1/6/2000CSD-4722 dated 25.7.2007 of Shri Malladi addressed to JS (Pers.). No other note of Shri Malladi on the subject matter is available. Suman Bisarya, Section Officer deposed that her branch is dealing with CRF Cadre. On receipt of report dated July 23, 2007 prepared Davinder Kumar her branch made enquiries from the Controlling Officers of the petitioner regarding the permission given to petitioner to leave the office along with seized items to which they replied that they had no knowledge about the same. Due to his absence in the office without obtaining prior permission from his Controlling Officer, Article-III of Charge was framed against the petitioner. It would be relevant to note the following portion of the statement of said witness:

EXAMINATION BY THE PO (1) Observation/question posed by the PO to the State Witness: How does your deposition statement dated 13.6.2008 help in proving the Article-iii of Charge - the charged officer left office without any permission/leave from his controlling officer on 23.7.2007?. Answer/Clarification given by the State Witness: On receipt of the Report of SFO (CIS) Shri Davinder Kumar addressed to JS (S) by me in my Branch (then Pers.11 now Pers.4), I enquired of Shri V. Shekhar, US (CRF) as to who was the Controlling Officer of Shri Nain Singh, AFO (CRF). He told me that Shri Nain Singh was under Shri S.Malladi, OSD (Admn.). Then I contacted Shri S.Malladi, OSD (Admn.) on phone who told me that he was not aware of the whereabouts of Shri Nain Singh on 23.7.2007. This showed that Shri Nain Singh was not present in the office on 23.7.2007. CROSS-EXAMINATION OF THE STATE WITNESS (ADDITIONAL) MS. SUMAN BISARYA, SO (PERS.4) - 0107-2008 5. Observation/question posed

by the DA to the State Witness: Having been informed by Shri V.Shekhar, US (CRF) & Shri S.Maladi, OSD (Admn.) that they were not aware of the factual position as to this alleged absence of the charged officer from the office on 23.7.2007?. Did you call for any explanation from the charged officer or asked his controlling officer to do so about his alleged absence from the office on 23.7.2007?. Answer/Clarification given by the State Witness: No such action was taken/initiated by me.

8. Observation/question posed by the DA to the State Witness: How did you draw the inference that the charged officer had absented himself from duty without unauthorizedly on 23.7.2007 i.e. without the permission of his controlling officer particularly when there is no confirmatory report to this effect orally or in writing either from his Controlling Officer, Shri V. Shekar, US (CRF) or OSD (ADMN.) Shri S. Maladi (SW-1)?. Answer/Clarification given by the State Witness: My inference/conclusion was based on the report (S-3) of Shri Davender Kumar, SFO (CIS-Ops). RE-EXAMINATION BY THE PRESENTING OFFICER1
Observation/question posed by the PO to the State Witness: With reference to your Q No.5 posed by the DA during your cross-examination on 1.7.2008 I would like you to explain as to why no action was taken by you after getting the requisite information from the Controlling Officer of the Charged Officer and Shri S. Maladi, OSD (Admn.) (S-1)?. Answer/Clarification given by the State Witness: I did not initiate any further action in the matter as I was not his immediate Controlling Officer of the Charged Officer.

(Emphasis Supplied) 20. At the fag end of enquiry, the Disciplinary Authority appointed a new Enquiry Officer viz. J.K.Ojha, due to pre-mature retirement of the earlier Enquiry Officer.

21. On September 18, 2008, the Presenting Officer made a request to the Enquiry Officer to examine another officer, Commodore K.M.Nair as the witness of the department, which request was allowed on the same date i.e. September 18, 2008. The relevant portion of the order dated September 18, 2008 passed by the Enquiry Officer reads as under:

2. State witnesses viz. Shri Ajay Singhal (SW-3) and Shri J.R.Singhal (SW-4) once again failed to turn up for today's proceedings (18.09.2008). Inquiry Officer (I.O.) sought comments of P.O. on this issue.

3. P.O. conveyed that both the witnesses have several personal problems and hence they are not able to attend the enquiry. P.O. once again requested sometime to persuade these witnesses to attend the hearing once their personal problems were over. I.O. made it clear that in view of poor record of these two witnesses, I.O. had categorically conveyed to P.O. during the last hearing that in the event of failure of SW-3 and SW-4 to attend today's (18.9.2008) proceedings, I.O. would have no option but to drop these two witnesses.

4. I.O. also sought views of D.A. on the issue and D.A. had no objection to the above mentioned two witnesses being dropped from the case. I.O. ruled that SW-3 and SW-4 stood dropped from the case.

5. P.O. submitted that in the event of the two witnesses SW3 and SW-4 being dropped, he would produce a fresh witness, Commodore K.M.Nair, who had conducted a separate enquiry into the same embezzlement of funds at CSD. I.O. permitted P.O. to produce this additional witness as enquiry report as document. D.A. submitted a letter requesting to produce Shri V. Sekar, US (CRF) and Shri Nain Singh, C.O. himself as witness. I.O. permitted to entertain both the witnesses on condition that no other witness or document shall be admitted either from P.O. or D.A. in future.

7. In consultation with the C.O., D.A. and P.O., the I.O. posted the next date of hearing at 1500 hours on 22.09.2008 at the same venue.

22. What happened on September 22, 2008 is recorded in the order sheet of said date prepared by the Enquiry Officer, which reads as under:

DAILY

ORDER

SHEET - 22.09.2008 Charged Official (CO) Shri Nain Singh, AFO (CRF) - Under suspension, Defence Assistant (DA) Shri D.R. Sharma and Presenting Officer

(PO) Shri G.N. Sharma and Commodore K.M.Nair, additional State Witness, attended the proceedings.

2. Commodore K.M.Nair, the additional S.W., offered his deposition before I.O. today (22.09.2008). He submitted a written statement enclosing copy of a report that he had submitted to JS (PERS) on 24th August 2007 after conducting a preliminary enquiry on circumstances leading to pilferage of canteen items from CSD Canteen on 23rd July 2007. He also submitted a copy of handwritten statement that was submitted to him by the CO Shri Nain Singh in the course of that enquiry. He also read out a contents from the enquiry report that he conducted.

3. PO requested that entire document may be taken on record. I.O. ruled that only one written statement made by CO before the new SW, in course of the enquiry conducted by latter, was relevant for the purposes of this enquiry. Hence only a copy of statement in question (made by CO) was taken on record and it was labeled as S-8. A Certified True Copy of the document S-8 was handed over to CO, DA and PO. Original copy of the document S-8 was left in the custody of additional SW Commodore KM Nair, Director, Cabinet Secretariat, until further orders.

4. IO enquired from CO whether the statement in question (S-8) was made by CO and whether CO was brought under pressure to make such a statement. CO admitted that he had submitted a handwritten statement to additional SW in course of an enquiry conducted by the latter. CO also stated that he was not brought under any pressure or duress to make the above statement.

5. Examination and cross examination of additional SW Commodore K.M.Nair shall take place on the next date of hearing.

6. D.A. made a written submission requesting for a copy of the preliminary enquiry report conducted by additional SW Commodore K.M.Nair.

7. I.O. ruled that entire enquiry preliminary report submitted by additional SW to Disciplinary Authority was not relevant for the purposes of this enquiry.

Nevertheless, D.A., C.O. and P.O. may peruse and take an extract from such a copy of preliminary enquiry report submitted by additional SW to Disciplinary Authority in presence of I.O. to present their cases.

8. P.O. also submitted a written objection to entertaining witnesses from defence side at this stage on the ground that a list in this respect had not been provided in advance in terms of Rule 14 (11) of CCS (CCA) Rules, 1965. However, I.O. overruled objection of P.O. on the ground that principles of equity and fair-play warranted that such procedural lacunae on part of defence has been overlooked. I.O. also reiterated that no fresh list of witnesses would be entertained from either side henceforth.

9. In consultation with C.O., D.A. and P.O. the next hearing was fixed for September 24, 2008 at the same venue at 1100 hrs. Notices have been served to all concerned.

(Emphasis Supplied) 23. We note here that gist of deposition of Commodore K.M.Nair was that he was detailed to conduct a One-Man enquiry into the circumstances leading to pilferage of items from CSD Canteen on July 23, 2007 and that he prepared a report dated September 24, 2007 of the enquiry conducted by him.

24. It needs to be highlighted that the order sheet dated September 22, 2008 records request of Defence Assistant for supply of report of one-man enquiry conducted by Commodore K.M.Nair which was declined. He further note that the petitioner also sought a copy of report dated August 24, 2007 prepared by Commodore K.M.Nair under the Right to Information Act, 2005 but the same was denied to him on the ground that Right to Information Act, 2005 does not apply to the organization of the petitioner in terms of provisions of Section 24(1) of the Right to Information Act, 2005.

25. What transpired thereafter is recorded in the order dated September 24, 2008 passed by the Enquiry Officer, which reads as under:

DAILY

ORDER

SHEET-24.09.2008 Charged Official (CO) Shri Nain Singh, AFO (CRF) Under suspension, Defence Assistant (DA) Shri D.R. Sharma and Presenting Officer (PO) Shri G.N. Sharma and Commodore K.M.Nair, additional State Witness, attended the proceedings today (24.09.2008) in the forenoon.

2. Examination of Additional State Witness (SW) Commodore K.M.Nair, Director was concluded by the PO. A copy of deposition statement of Additional SW was handed over to DA and CO. DA refused to cross-examine the Additional SW Commodore K.M.Nair, Director. Therefore, IO ruled that the examination of SW Commodore Nair stood concluded.

3. IO offered a copy of the preliminary Inquiry Report conducted on 24.09.2008 by Additional State Witness (SW) Commodore K.M.Nair, Director & Secretary CSD Canteen, to DA with permission to take extracts in presence of IO. DA insisted on a Certified True Copy of entire report in question and refused to go through document and take extracts.

4. In pursuance of notice issued to Shri V. Sekar, Under Secretary (CRF), Defence Witness (DW-1) also attended the proceedings in the second half of today (24.09.2008) and deposed before the IO. CO, DA and PO were present. The deposition statement of DW-1 was recorded and a copy thereof was provided to CO, DA and PO. The DA refused to examine the DW-1 on the plea that only one witness could be examined on one day. Another Defence Witness-2 (DW-2) Shri Nain Singh, AFO (CRF) - CO himself, who was present during the proceedings refused to offer deposition.

5. IO repeatedly enquired from CO and DA whether CO and DA had anything to say in his defence. CO and DA declined to make any submission or statement.

6. Both PO and DA did not desire to be heard orally.

7. IO ruled that hearings in the Inquiry proceedings stood concluded. IO also directed PO to submit prosecution brief latest by September 29, 2008. IO also ruled that a copy of the prosecution brief would be arranged to be immediately

provided to CO. CO would be required to submit his brief within seven days from the date of receipt of the prosecution brief from IO.

8. IO shall endeavor to submit findings to Disciplinary Authority at the earliest after receiving the brief from the DA/CO.

9. On conclusion of today's (24.09.2008) proceedings, DA Shri D.R. Sharma forwarded a request through CO to be relieved of the responsibility of DA. IO has recorded observation that since hearings have already been completed, CO may arrange to submit his brief either himself or through any DA at the appropriate time.

(Emphasis Supplied) 26. As is apparent from the afore-noted order dated 24.09.2008, the departmental witness Commodore K.M.Nair and defence witness V. Sekar were examined by the Enquiry Officer on September 24, 2008. The relevant portion of the examination of Commodore K.M.Nair reads as under:

EXAMINATION OF COMMODORE K.M.NAIR (SW), BY P.O. - 24.09.2008 (1) Observation/question posed by the P.O. to the State Witness: Kindly see the Inquiry Report dated 24.08.2007 submitted by you to the I.O. on 22.09.2008 while deposing before him. Can you explain the gist of preliminary inquiry and its conclusion?. Answer/clarification given by the State Witness: Based on the examination of personnel involved in the incident of pilferage of canteen items on 23.07.2007 and statements of concerned personnel, my findings have been recorded at para 24 of the report. My recommendations are contained in para 25 of the report. (3) Observation/question posed by the P.O. to the State Witness: Can you explain during the aforesaid preliminary inquiry conducted by you Shri Nain Singh, AFO (CRF) - under suspension, C.O., and the document taken on record as S-8, whether the said S-8 document was reduced in writing by you or by the C.O. himself?. Answer/Clarification given by the State Witness: Shri Nain Singh deposed before me. The statement in question (S-8) has been written by him in his own handwriting and signed by Shri Nain Singh in my presence.

27. The statement of V. Sekar DW-1, Under Secretary (CRF) reads as under:

2. My statement is as follows: Article of Charge I - No comments can be offered since I am not aware of the facts. Article of Charge II - No comments can be offered since I am not aware of the facts. Article of Charge III - I couldnt recollect the event which took place a year ago. Hence no comments offered.

28. On September 29, 2008, the petitioner submitted a representation to the Disciplinary Authority stating therein that Enquiry Officer J.K.Ojha is biased against him and thus a new Enquiry Officer be appointed. It is significant to note here that petitioner stated in said representation that during the enquiry proceedings on September 22, 2008, the Enquiry Officer telephonically informed Commodore K.M.Nair that he is required to appear as departmental witness in the present case whereupon Commodore K.M.Nair immediately came to the venue of enquiry and deposed.

29. In the meantime, the presenting officer submitted his Prosecution Brief to the Enquiry Officer on September 25, 2008. It be noted here that petitioner did not submit his defence brief to the Enquiry Officer.

30. On October 15, 2008 the Enquiry Officer submitted his report concluding that all three charges leveled against the petitioner stand proved. In coming to said conclusion, it was opined by the Enquiry Officer that:(i) the handwritten statement given by the petitioner to Commodore K.M.Nair during course of the one-man inquiry by him wherein petitioner confessed that he had arranged to sell CSD items in open market; he was involved in selling the CSD items to M/s Singhal & Sons on July 23, 2007 and that he has been selling CSD items to Mr.Ajay Singhal and J.R.Singhal on a regular basis for quite some time in the past established the first two charges leveled against the petitioner; (ii) the deposition of Commodore K.M.Nair that the petitioner had made confessional statement to him voluntarily and without there being any pressure or duress upon him coupled with the fact that the petitioner had neither offered any remark nor questioned genuineness of said confessional statement when it was showed to him during recording of deposition and examination of Commodore K.M.Nair on September 22 and 24, 2008, establishes that the aforesaid confessional statement was given/written by the petitioner voluntarily; (iii) there is no reason to question genuineness of the CIS

operation that unraveled the entire episode of how the truck No.HR-55-D-7547 was taken from CRF premises on July 23, 2007 and effort was made to deliver the CSD items to the shop Singhal & Sons owned by Ajay Singhal and J.R.Singhal; (iv) the handwritten statement given by shopkeeper Ajay Singhal to CIS team on July 23, 2007 to the effect that the petitioner had been selling CSD items to him and J.R.Singhal for the last one and half year coupled with failure of Ajay Singhal and J.R.Singhal to appear before the Enquiry Officer establishes that Ajay Singhal and J.R.Singhal were accomplices of the petitioner in the act of selling CSD items from CSD (CRF) Canteen in the open market; (v) the very fact that CSD items in question were confiscated and the same were returned to CSD (CRF) Canteen coupled with the depositions of Sattu SW-2 and Rajdev SW-5, establish that the CSD items were taken out in CSD (CRF) Canteen on July 23, 2007 and were being sought to be sold in the open market suggested involvement of an employee and the same reinforce credibility of the CIS team headed by Davinder Singh; (vi) deposition of Davinder Kumar SW-6, is corroborated by the deposition of S. Maladi SW-1, that petitioner had made a bulk purchase of CSD items on July 23, 2007 by giving a false pretext and (vii) the fact that there is no evidence to prove that the petitioner was present in his office or anywhere else other than the place of incident at the relevant time on July 23, 2007 establishes the third charge leveled against the petitioner.

31. We highlight the following extract of the report of the Enquiry Officer:

Commodore K.M.Nair, the additional State Witness, in course of his deposition before (22.09.08) submitted a written statement enclosing copy of a report that he had submitted to JS (PERS) on 24th August 2007 after conducting a preliminary enquiry on circumstances leading to pilferage of canteen items from CSD Canteen on 23rd July 2007. He also submitted a copy of handwritten statement that was submitted to him by the CO Shri Nain Singh in the course of that enquiry. He also read out the contents from the enquiry report that he had conducted. DA and CO were offered to go through this document and even take notes (as stipulated in CCS (CCA) Rules). xxx It is pertinent to note here that D.A. or C.O. did not cross examine Additional S.W. Commodore K.M.Nair, despite an extremely sensitive and clinching documentary evidence produced by this witness which appeared to

establish the role of C.O. Shri Nain Singh in illegal sale of C.S.D. items to open market well beyond doubt. P.O. submitted Prosecution Brief to I.O. on 25.09.08 (placed annexure X), which was arranged to be delivered through a special messenger to C.O. Shri Nain Singh on 25.09.08 (an acknowledgment available on record) itself with a direction to file Defence Brief within seven days of receipt of the prosecution brief. However, on 03.10.2008, a written request was received from C.O. Shri Nain Singh requesting for a Hindi version of the Prosecution Brief. Subsequently, on 06.10.2008, a Hindi translation of Prosecution Brief was arranged to be delivered to C.O. Shri Nain Singh on 6.10.2008, itself with a directive to file defence brief by 8.10.2008. To facilitate timely submission of defence brief, arrangements were also made to convey to the competent authority to allow C.O. to visit the Hqrs Building in person. However, until the forenoon of Oct 13, 2008, no communication was received from C.O. I.O. one again wrote a letter in Hindi in forenoon of October 13, directing C.O. once again to file Defence Brief immediately. IO waited for a reply from CO until after noon of 14.10.2008. Meanwhile, in afternoon of October 13, 2008 a letter was received from C.O. conveying his refusal to submit defence brief citing some legal and procedural technicalities. xxx There is no denial that there are several gaps in the Prosecution Brief and even several of the corroborating material evidences have either been unavailable or not produced by the Prosecution. The two prime witnesses in the case, Shri Ajay Singhal (SW-3) and Shri J.R.Singhal (SW-4) too did not turn up to offer depositions. Similarly, depositions offered by witnesses SW-2 Shri Sattu and SW-5 Shri Raj Dev does not establish identity of CO Shri Nain Singh as the person who carried the CSD articles in truck No.HR-55-D-7547. Simultaneously, original copy of the letter that was purported to be written by C.O. Shri Nain Singh to OSD (Admn.) seeking bulk purchase of CSD items on 23.07.2007 is not available. Further, original copy of the receipt vide which C.O. Shri Nain Singh is believed to have purchased C.S.D. items on 23.07.2008 is again not available. However, photocopies of both the documents are there and D.A. has questioned genuineness of many of such documents. However, the Article of Charge-II in the Inquiry concedes that C.O. had probably taken the articles out in connivance with others. It is quite possible that attempts have been made to destroy several of the evidences in this case. Nevertheless, notwithstanding all the above shortcomings,

there are several convincing and compelling evidences which establish role of C.O. Shri Nain Singh in taking the CSD items from CRF gate to Jungpura and Bhogal area for selling the same to Singhal & Sons. However, CO Shri Nain Singh had probably made this handwritten statement to earn complete pardon and escape any DE for his acts of misconduct. CONCLUSION: Further, while upholding the charges against the C.O., the undersigned believes that such a well organized and efficient racket of pilfering items from CSD (CRF) Canteen for selling in the open market could not have been run by C.O. Shri Nain Singh alone, without active assistance and involvement of others in the CSD (CRF) Canteen. There are several indicators suggesting connivance of O.S.D. Shri S.Malladi in the entire episode and confessional statement of C.O. Shri Nain Singh (S8) made before Commodore K.M.Nair throws useful light in this respect. Simultaneously, Inquiry Report submitted by Commodore K.M.Nair also has several important observations, which deserves thorough probe. However, involvement and connivance of others, in the act of selling the CSD items in question in open market for pecuniary gains, in no way undermines the role of CO Shri Nain Singh in the aforesaid acts of misconducts as contained in the Articles of Charges framed against him. Hence, Articles of charges I, II and III vide JS (PERS) NO.4/3/94/PERS.11-VOL.II-12341 dated 16.11.2007 against Shri Nain Singh, AFO (CRF) - under suspension are upheld. (Emphasis Supplied) 32. Vide order November 27, 2008, the Disciplinary Authority accepted the findings of the Enquiry Officer and imposed the penalty of dismissal from service upon the petitioner. It would be relevant to note the following extract of the order dated November 27, 2008:

WHEREAS, the new I.O. started the inquiry proceedings from the stage it was left by the previous I.O. and completed the proceedings/hearings including examination/cross examination of remaining state witnesses and defence witnesses by 24.9.2008. Thereafter, written prosecution brief as well as defence brief were sought for from P.O. and C.O. respectively as per procedure. The I.O. submitted his inquiry report on 15.10.2008 with his findings that the Articles of Charges I, II & III against the C.O. are upheld. Hence, all the three Articles of Charges framed against Shri Nain Singh, AFO (CRF) (under suspension) & C.O., have been fully substantiated beyond doubt. WHEREAS, as stipulated in the rules,

a copy of the Inquiry Report along with its Hindi version was forwarded to the C.O. for his representation if any, against the findings of the I.O. in his inquiry report, at his residential address by Registered Post on 21.10.2008. In the meantime, the undersigned received a representation from the C.O. dtd. 10.10.2008 requesting therein to change the IO. WHEREAS, since the I.O. had already submitted the Inquiry Report, the request of the C.O. had no meaning at all at this stage when the inquiry has been over and the I.O. submitted his report. Hence, his representation was not entertained/considered and was treated as disposed off. The C.O. vide his representation dtd. 6.11.2008 stated that he has not received the copy of inquiry report along with the memo. His request was duly considered. It is a question of surprise as to how the C.O. received the envelope without the materials inside when a high amount of postage had been affixed on it at the Post Office. Moreover, when the C.O. found that the Regd. Post envelope was empty and without the materials inside, he could have refused to receive the empty cover from the Postal Authorities or could have enquired from them about the materials and the cause of its emptiness. Another point of suspicion is that the C.O. received the empty cover and represented against it mentioning that he has not received the inquiry report nor the memo. It is surprising to note that when the C.O. had not received any materials inside the cover then how come he came to know that the Regd. Post cover was carrying the Inquiry Report and the memo. However, his request was duly considered and he was granted another opportunity. On 7.11.2008 a copy of the inquiry report along with its Hindi version was provided to the C.O. with further direction to submit his representation if any, against the findings of the I.O. in the inquiry report within 15 days; WHEREAS, despite a lapse of more than another 15 days, the C.O. has failed to respond against the findings of I.O. in the inquiry report. Neither the C.O. has represented against the inquiry report nor has come forward with any other defence; WHEREAS, upon perusal of entire facts and circumstances/records of the case, the DE proceedings, evidences and statements of witnesses, the undersigned is fully satisfied that the C.O. has been provided with adequate opportunities to defend himself. The inquiry is also seen to have been conducted duly as per Rules and laid down procedure. In the inquiry, all the three charges are fully substantiated against the C.O. Thus, Shri Nain Singh, AFO (CRF) is found guilty of gross misconduct. It is pertinent to

mention here that all members of this sensitive Organization are expected to maintain a high degree of integrity and honesty. In the instant case, the undersigned finds that the C.O., being a member of this sensitive Organization lacks these two primary requirements. The misconduct committed by the C.O. deserves no leniency except warranting severe punishment like removal/dismissal from Govt. Service; AND WHEREAS, having regard to the facts and circumstances of the case, the undersigned feels that ends of justice shall be fully met if the penalty of dismissal is imposed upon the C.O.

33. Vide order dated July 21, 2009, the Appellate Authority rejected the appeal/representation filed by the petitioner.

34. Aggrieved by the aforesaid, the petitioner filed an application under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Principal Bench, New Delhi assailing the legality of the orders dated November 27, 2008 and July 21, 2009 passed by the Disciplinary and Appellate Authorities respectively essentially on the grounds that:(i) departmental enquiry was conducted in violation of provisions of CCS (CCA) Rules, 1965 and principles of natural justice, and (ii) findings returned by the Enquiry Officer that the petitioner was involved in pilferage/sale of items of CSD Canteen in open market is perverse, in that no prudent person would have ever reached said conclusion and the departmental authorities have mechanically accepted the findings returned by the Enquiry Officer.

35. In its reply filed, the department essentially contended that the findings returned by the Enquiry Officer that the petitioner was involved in pilferage/sale of items of CSD Canteen in open market cannot be termed as perverse for the reason the petitioner had himself confessed to his guilt in a handwritten statement dated August 23, 2007 submitted by him to Commodore K.M.Nair during course of one-man enquiry conducted by him. Along with its reply, the department produced a copy of aforesaid confessional statement submitted by the petitioner, the gist whereof is that on three-four occasions including July 23, 2007 the petitioner had arranged to sell items of CSD Canteen to shopkeepers Ajay Singhal and J.R.Singhal acting on the directions of his superior S.Malladi.

36. In his rejoinder, the petitioner adverted to aspect of alleged confessional statement made by the petitioner on August 23, 2007 to Commodore K.M.Nair in following terms:

4. That para 4 is absolutely wrong and hence denied. As submitted in fore-going para Commodore K.M.Nair was neither named in the list of witness nor any enquiry was recorded by him nor applicant gave his written statement as alleged in the para under reply. As submitted herein above Commodore K.M.Nair was all of a sudden summoned telephonically by Inquiry Officer Sh.J.K.Ojha, in his office room No.816 and himself of his own recorded that Nain Singh accepted that he had submitted written statement to Commodore K.M.Nair and also stated that he was not brought under pressure or duress to make above statement. As both Inquiry Officer and Cdr. K.M.Nair were senior officers, they both conspired in the official room No.816 of the Enquiry Officer, and not at the venue of the hearing, wrote themselves at the back of the applicant and his Defence Assistant and forced both D.A., as well as applicant to sign the statement recorded, for their own interest. Due to this pressurizing tactics, the D.A. of the applicant resigned and refused to participate there after in the enquiry, as he was in promotion zone. Thus un-due pressure, high handedness, coercion and threats were showered upon applicant and applicant was forced to sign wherever those officers desired, after calling him to the office of E.O.

37. Vide impugned judgment dated November 18, 2010 the Tribunal dismissed the Original Application filed by the petitioner, holding as under:

6. We went through the inquiry report and the case record and find that the inquiry officer has given his findings on the basis of preponderance of evidence appearing at the time of inquiry. The confessional statement of the applicant, which, according to the applicant, was not extracted under pressure, more or less, confirms to the allegations made against him. The IO has concluded that this racket of smuggling CSD items to the open market canteen could not have been possible but for active connivance of others. He has specifically mentioned that connivance of Sh. Malladi could not be ruled out; however, such findings would, in no way condone the nefarious role played by the applicant. It was clarified by the

respondents that Sh. Malladi and others, in-charge of the canteen did not belong to their department. Therefore, the respondents could not say what action had been taken against them. However, the applicants involvement in the racket having been proved, the respondent-Disciplinary Authority acted justifiably to impose the penalty of dismissal on him.

7. We do not consider that there were extenuating circumstances, which would call for a lesser amount of punishment on the applicant. The scope of judicial inquiry being limited in nature, we do not find that there was any violation of principles of natural justice, nor was there any serious infirmity in the manner in which the inquiry was conducted. Therefore, we do not find any justification to interfere with the penalty imposed by the Disciplinary Authority and confirmed by the Secretary of the Department. In the result, the O.A. is dismissed. No costs.

(Emphasis Supplied) 38. Aggrieved by the aforesaid, the petitioner has filed the present petition under Article 226 of the Constitution of India.

39. Having noted the conspectus of facts, we now proceed to examine the present case.

40. On July 23, 2007, Davinder Kumar, an officer of Counter- Intelligence Service, prepared a report regarding an incident of same date i.e. July 23, 2007, of pilferage/sale of items of CSD Canteen of Government of India. The report, contents whereof have been noted by us above, records that on July 23, 2007 at about 11.45 hrs CIS personnel observed one CRF truck No.HR55D7547unloading CSD items into a three-wheeler tempo No.DL-1LC-6236 at Kanya Vidyalaya, Jungpura. After some time the shop owner and his son came there and the shop owner Ajay Singhal confessed that items being unloaded in tempo belonged to CGO. It is significant to note that report dated July 23, 2007 makes no mention of the petitioner. What is even more significant is the fact that as per report dated July 23, 2007 CIS personnel just happened to observe CRF truck No.HR55D7547

41. On July 25, 2007, Davinder Kumar prepared another report regarding the aforesaid incident of pilferage/sale of items of CSD. The report dated July 25, 2007, contents whereof have been noted by us above, records that after receiving feelers that items from CSD Canteen were being taken out and sold in the open

market, a watch was being kept on the petitioner. On July 23, 2007 at about 10.30 hrs, CIS team observed the petitioner loading CSD Canteen items on a CRF truck No.HR55D7547. At about 11:25 hrs the petitioner came out of CRF Gate on his Motorcycle and was being followed by the truck loaded with CSD Canteen items. The truck entered Jungpura extension area and stopped near Kanya Vidyalaya, Jangpura. The petitioner also reached at said point and talked with the persons already waiting there along with a three wheeler Tempo No.DL-1LC-6236. After giving instructions to said persons, the petitioner disappeared from the site. CRF truck unloaded one-fourth of items in the tempo and tempo left from there. After sometime, CIS team made enquiries from the driver of tempo who told them that items loaded in his tempo belong to Ajay Singhal. After sometime CIS team were met by shop owners whose items were loaded in the tempo. Shop owner Ajay Singhal confessed before CIS team that the petitioner has been selling items of CSD Canteen since last one and half years. Significantly, the report also records that petitioner has got nothing to do with CSD Canteen.

42. A comparative analysis of reports dated July 23, 2007 and July 25, 2007 prepared by Davinder Kumar shows that the two reports are at great variance with each other. Whereas the report dated July 23, 2007 records that CIS personnel just happened to observe CRF truck No.HR55D7547 unloading items in tempo No.DL-1LC-6236 the report dated July 25, 2007 records that incident dated July 23, 2007 came to their notice on account of a planned operation of CIS team as team was keeping a watch on the activities of the petitioner. What is even more baffling is that whereas report dated July 23, 2007 does not even make a mention of petitioner the report dated July 25, 2007 is to the effect that as to how the petitioner was found indulging in pilferage of items of CSD Canteen. If indeed the petitioner was found indulging in pilferage of items of CSD Canteen as recorded in the report dated July 25, 2007 why did Davinder Kumar made no mention of the petitioner in the first report dated July 23, 2007 prepared by him about the incident in question. We find that no explanation is forthcoming on the record for omission of name of the petitioner in the first report dated July 23, 2007 prepared by Davinder Kumar and other variances between the reports dated July 23, 2007 and July 25, 2007.

43. On July 25, 2007 S.Malladi, the Controlling Officer of the petitioner, submitted a note regarding the incident in question stating therein that on July 21, 2007 the petitioner had submitted an application to him requesting for bulk purchase of goods from CSD Canteen on account of function at the house of his relative, which request was approved by him.

44. Thereafter Commodore K.M.Nair was detailed to conduct a one-man/preliminary enquiry into the circumstances leading to pilferage of CSD Canteen items on July 23, 2007. The preliminary/one-man inquiry report dated August 24, 2007 prepared by Commodore K.M.Nair also indicted the petitioner to be involved in pilferage of CSD canteen items. A copy of the report dated July 24, 2007 prepared by Commodore K.M.Nair has not been supplied to the petitioner. It has been claimed by Commodore K.M.Nair that on August 23, 2007 the petitioner had handed over a handwritten statement to him wherein he stated to have been involved in pilferage of items of CSD Canteen at the instance of his superior S.Malladi.

45. On the date of submission of report by Commodore K.M.Nair i.e. August 24, 2007 the Disciplinary Authority issued a charge sheet to the petitioner framing two charges against the petitioner. In a nutshell, the charges framed against the petitioner were that: - (i) he has sold items of CSD Canteen to the shop owners of M/s Singhal & Sons on many occasions and (ii) on July 23, 2007 the petitioner was found selling/delivering items of CSD Canteen to the shop owners of M/s Singhal & Sons.

46. It is most significant to note that the best evidence (s) against the petitioner viz. alleged confessional statement dated August 23, 2007 made by the petitioner and Commodore K.M.Nair to whom the petitioner had allegedly handed over his confessional statement were not included in the list of documents/witnesses attached to the charge sheet dated August 24, 2007. Furthermore, the application allegedly made by the petitioner to S.Malladi seeking permission to make bulk purchase from CSD Canteen also not included in the list of documents.

47. Proceeding further, on November 16, 2007 the Disciplinary Authority withdrew the charge sheet dated August 24, 2007 and a fresh charge sheet was issued to

the petitioner. As per the fresh charge sheet, three charges were framed against the petitioner. In a nutshell, the fresh charges framed against the petitioner were that: - (i) he has sold items of CSD Canteen to the shop owners of M/s Singhal & Sons on many occasions; (ii) on July 23, 2007 the petitioner was found selling/delivering items of CSD Canteen to the shop owners of M/s Singhal & Sons; (iii) petitioner has misused his official position by obtaining permission from S.Malladi for making bulk purchase from CSD Canteen and (iv) petitioner has left his office on July 23, 2007 without taking any permission/leave from his Controlling Officer.

48. This time round, the application allegedly made by the petitioner to S.Malladi seeking permission to make bulk purchase from CSD Canteen was included in the list of documents. However, yet again the best evidence (s) viz. alleged confessional statement dated August 23, 2007 made by the petitioner and Commodore K.M.Nair were not included in the list of documents/witnesses.

49. In order to bring home the guilt of the petitioner, the department was required to prove the following facts: S. No. Facts required to be proved by Witness examined department department to prove fact 1. Petitioner had made an S.Malladi application dated July 21, 2007 to S.Malladi seeking permission to make bulk purchase from CSD Canteen 2. Petitioner had purchased items S.Malladi of CSD Canteen which were seized from tempo on July 23, 2007 3. Petitioner was known to shop Ajay Singhal & J.R.Singhal owners of M/s Singhal & Sons 4. Petitioner was selling items Ajay Singhal & J.R.Singhal from CSD Canteen to shop owners of M/s Singal & Sons on W.P.(C) No.1215/2011 regular basis since last one and half years.

5. Petitioner was found Ajay Singhal & J.R.Singhal, selling/delivering items from Sattu, Raj Dev and Davinder CSD Canteen to shop owners of Kumar M/s Singhal & Sons on July 23, 2007 6. Petitioner was absent from his Suman Bisarya office on July 23, 2007.

7. Petitioner had not taken any Suman Bisarya permission/leave from his Controlling Officer for remaining absent from service on July 23, 2007.

50. S.Malladi deposed that the petitioner had submitted an application dated July 21, 2007 to him seeking permission to make bulk purchase from CSD Canteen; there is circular/guidelines regarding bulk purchase to be made from CSD Canteen and transportation of bulk purchases made by an employee to his residence or any other destination which is at a distance of 8-9 kilometers from CSD Canteen; the petitioner was never posted in CSD Canteen at any point of time and on three-four occasions prior to July 21, 2007 the petitioner has sought permission from him for making bulk purchases from CSD Canteen. Additionally, S.Malladi produced photocopy of an invoice recording that Nain Singh having Card No.10000 purchased certain items from CSD Canteen at 16:37:21 on 23.07.2007 51. Significantly, the original of the application dated July 21, 2007 stated to have been made by the petitioner to S.Malladi seeking permission for making bulk purchase from CSD canteen was not found available. No circular/guidelines regarding bulk purchase to be made from CSD Canteen and transportation of bulk purchases made by an employee were found. The applications stated to have been made by the petitioner seeking permission for making bulk purchases on three-four occasions prior to July 21, 2007 were also not found available.

52. Most startlingly, there are tell tale circumstances indicative of the fact that photocopy of the invoice produced by S.Malladi is a fabricated document. The invoice produced by S.Malladi records that card No.of petitioner is 10000 whereas the card No.of petitioner is 2490. The invoice records that certain items were purchased by the petitioner from CSD Canteen at 16:37:21 on July 23, 2007. The incident of seizure in question happened between 10:00 to 11:30 A.M. on July 23, 2007. How could the petitioner purchase the items at 16:37:21 hours which were seized by the CIS team at around 11.00 AM on July 23, 2007?. Lastly, whenever an employee purchases from the CSD Canteen an entry regarding said purchase is made in the card of the employee. In the instant case, no entry was found in the card of the petitioner after July 07, 2007.

53. Such being the position, it would be most unsafe to rely upon the deposition of S.Malladi, more particularly when he had produced a fabricated document.

54. The depositions of Sattu SW-2 and Raj Dev SW-5, the drivers of truck and tempo respectively involved in the incident in question, merely brings out that items from CSD Canteen was being delivered to the shop of M/s Singhal & Sons on July 23, 2007. Their depositions do not establish that the petitioner was behind said delivery. Most significantly, Sattu had deposed that Sh.S.Malladi, Canteen Officer, asked him to deliver some goods loaded in CRF truck. He i.e. S.Malladi told him that one person will meet him at out gate who would take him to the destination where goods are to be delivered.

55. As already noted herein above, the shop owners of M/s Singhal & Sons Mr.Ajay Singhal and J.R.Singhal did not turn up before the Enquiry Officer.

56. Then came Davinder Kumar who was the head of the CIS team involved in the incident in question. We have already noted in the foregoing paras that the role played by Davinder Kumar in the incident in question is most suspicious in view of the facts that there is great variance between two reports dated July 23, 2007 and July 25, 2007 prepared by him regarding the incident in question and no explanation is forthcoming on record as to why Davinder Kumar omitted to make mention of the petitioner in the first report dated July 23, 2007 of the incident prepared by him. Furthermore, it is significant to note that several photographs regarding the incident in question was taken by the CIS team but the petitioner does not find a place in any of the photographs. In view of the facts that two reports prepared by Davinder Kumar regarding the incident in question are shrouded with suspicion, we deem it safe to discard the deposition of Davinder Kumar as untrustworthy.

57. We now proceed to deal with the deposition of Suman Bisarya SW-6, who was examined by the department to establish that the petitioner was absent from office on July 23, 2007 without having taken any permission/leave from his Controlling Officer. A careful reading of testimony of Suman Bisarya SW-6, shows that said witness has not deposed about the absence of petitioner from office on July 23, 2007 but has merely drawn an inference that the petitioner was absent from office on July 23, 2007 without having taken any permission/leave from his Controlling Officer on the basis of her conversations with the Controlling Officer (s) of the

petitioner.

58. There is another important aspect relating to witness Suman Bisarya SW-6, which needs to be noted.

59. Suman Bisarya SW-6, was not included in the list of witnesses attached to the withdrawn/fresh charge sheet dated August 24, 2007/November 16, 2007.

60. Rule 14(15) of the CCS (CCA) Rules, 1965 empowers the Inquiring Authority to permit the Presenting Officer to produce evidence not included in the list given to the Government servant. The same reads as under:

If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and reexamine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice. NOTE- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(Emphasis Supplied) 61. A perusal of the order sheet dated June 10, 2008 of the enquiry proceedings shows that the Presenting Officer had sought permission to produce/examine Suman Bisarya as the department had led no evidence to establish third charge (charge relating to absence of petitioner from office on July 23, 2007) framed against the petitioner. Note appended to Rule 14(15) of CCS (CCA) Rules, 1965 prescribes that new evidence shall not be permitted or called

for or any witness shall not be recalled to fill up any gap in the evidence. In view of said categorical prescription contained in the note, the Enquiry Officer ought not to have allowed Presenting Officer to produce Suman Bisarya to enable the department to fill up the gap in the evidence led by them.

62. Furthermore, we find that Rule 14(15) prescribes that in case the Inquiring Authority allows the Presenting Officer to produce evidence not included in the list given to the Government servant, the Inquiring Authority should adjourn the inquiry for three clear days before the production of such evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. In the instant case, the Enquiry Officer permitted the Presenting Officer to examine Suman Bisarya on June 10, 2008 and adjourned the enquiry to June 13, 2008 for recording of deposition of Suman Bisarya. Thus, enquiry was not adjourned for three clear days by the Enquiry Officer after permitting the Presenting Officer to examine Suman Bisarya.

63. We now come to the last (albeit most crucial) witness of the department viz. Commodore K.M.Nair.

64. As already noted hereinabove, the best evidence available to department to establish the guilt of the petitioner was alleged confessional statement dated August 23, 2007 given by the petitioner and Commodore K.M.Nair to whom the petitioner had given said confessional statement. But for reasons known to them, the department did not include the alleged confessional statement of petitioner and Commodore K.M.Nair in the list of documents/witnesses attached to the fresh/withdrawn charge sheet(s) dated November 16, 2007 and August 24, 2007 issued to the petitioner.

65. At this stage, we notice that Rule 14(3)(ii) of CCS (CCA) Rules, 1965 prescribes as under:

14. Procedure for imposing major penalties. (3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up(ii) a statement of the imputation of misconduct or misbehavior in support of each article of charge, which shall

contain(a) a statement of all relevant facts including any admission or confession made by the Government servant; (Emphasis Supplied) 66. The enquiry was at its fag end when on September 18, 2008 the Presenting Officer made a request to the Enquiry Officer for permitting him to produce Commodore K.M.Nair. Commodore K.M.Nair should have been the first witness of the department for he claimed that the petitioner had submitted his confessional statement to him. Instead the department did not even include Commodore K.M.Nair in the list of witness and waited till the very end of the enquiry to produce him?. Why so?. We do not know. The stand taken by the petitioner was that the Enquiry Officer had fabricated alleged confessional statement dated August 23, 2007 made by the petitioner in connivance with Commodore K.M.Nair. In view of the fact that alleged confessional statement dated August 23, 2007 of the petitioner had made an appearance in the enquiry proceedings at a very late stage the possibility that the said document is a fabricated document cannot be ruled out. In such circumstances, we do not fit it deem to fit to rely upon the alleged confessional statement made by the petitioner, more particularly in view of settled legal position that the Courts should not ordinarily rely upon confessions to deduce guilt of its maker in the absence of any evidence corroborative of guilt of maker.

67. It further needs to be noted that a One-man enquiry (which was in the nature of a preliminary enquiry) was conducted by Commodore K.M.Nair. In order to effectively cross-examine Commodore K.M.Nair, the petitioner was entitled to know the contents of the enquiry report prepared by Commodore K.M.Nair. The petitioner was not to remain in dark. However, a perusal of the orders sheets dated September 22 and 24, 2008 shows that Enquiry Officer refused to supply copy of enquiry report prepared by Commodore K.M.Nair despite specific request (s) made by the Defence Assistant of the petitioner in said regard. The action of the Enquiry Officer of denying to supply copy of enquiry report prepared by Commodore K.M.Nair has gravely prejudiced the petitioner in cross-examining Commodore K.M.Nair.

68. Rule 14(18) of the CCS (CCA) Rules, 1965 reads as under:-

14. Procedure for imposing major penalties . (18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

69. In the instant case, we find that the Enquiry Officer has violated the mandatory provisions of Rule 14(18) of the CCS (CCA) Rules, in that he did not examine petitioner with reference to the evidence appearing against him in the enquiry.

70. From the aforesaid discussion, the irresistible conclusion which emerges is that:(i) departmental enquiry in the instant case was conducted in violation of provisions of CCS (CCA) Rules, 1965 and principles of natural justice; and (ii) findings returned by the Enquiry Officer that the petitioner was involved in pilferage/sale of items of CSD Canteen in open market is perverse, in that no prudent person would have ever reached said conclusion. (In coming to the conclusion that findings returned by the Enquiry Officer are perverse we have also factored in that the possibility that the petitioner was made a scapegoat in order to shield superior officers of the organization cannot be ruled out. The aforesaid possibility is discernible from the fact that the petitioner had nothing to do with CSD Canteen as recorded in the report dated July 25, 2007 prepared by Davinder Kumar and deposed by S.Malladi; Enquiry Officer has also hinted at involvement of some superior officers of organization such as S.Malladi in the racket of pilferage of items from CSD canteen; S.Malladi had produced a fabricated document against the petitioner and that the petitioner could have been easily implicated as he was a very junior employee in his organization.

71. It was argued by the petitioner that he was not given adequate opportunity to cross-examine Commodore K.M.Nair, leading his defence evidence, submit representation against the findings of the Enquiry Officer; the Enquiry Officer J.K.Ojha was biased against him; the Disciplinary Authority did not deal with his grievance relating to bias of Enquiry Officer and the penalty order dated November 27, 2008 passed by the Disciplinary Authority is not a speaking order. We need not dwell into aforesaid arguments advanced by the petitioner for we have already

held in favour of petitioner.

72. Before concluding, we note that the Tribunal has proceeded in a most casual manner in the instant case. The Tribunal has proceeded on the premise that the petitioner has confessed to his guilt completely ignoring the fact that the petitioner denied having made a confessional statement. Furthermore, the Tribunal has brushed aside the submissions advanced by the petitioner simply on the ground that scope of judicial inquiry while examining the orders passed by the departmental authorities is limited in nature.

73. It is settled law that even at a domestic inquiry, the principles of fair play require and thus cast an obligation on the Inquiry Officer to discuss not only the pros but even the cons emerging from the evidence. The probability emerging have to be taken note of and reasons given as to why a particular probability is accepted. If the Inquiry Officer does so, in judicial review proceedings it would be impermissible to re-evaluate the evidence and conclude that the other probability emerging was the better one. But, as in the instant case where the Inquiry Officer does not even discuss the serious discrepancies and doubts emerging with respect to the evidence led by the prosecution, it would be the duty of the court exercising power of judicial review to do so. To give an illustration, the Inquiry Officer has just not discussed the effect of the fact that the department proved photocopy of an invoice evidencing sale of the seized goods at the CSD canteen; the invoice being in the name of the petitioner but showing the time of drawing up of the invoice at 16:37:21 hours on July 23, 2007 and the alleged seizure of the goods being between 10.00 AM to 11.30 AM on the same date. If the goods are seized in the morning, what would be the evidentiary worth of an invoice drawn up on the late afternoon in the name of a person?. This question goes to the root of the incriminating nature of the invoice and had to be posed and answered; an activity left untouched by the Inquiry Officer. Further, what was the effect of petitioners card number being 2490 and the invoice recording sale to the holder of the card No.10,000?. The same had to be discussed. These are just two illustrative examples to bring home the point.

74. In view of above discussion, the impugned judgment dated November 18, 2010 passed by the Tribunal is set aside. As a necessary corollary thereof, the application filed by the petitioner is allowed and the orders dated November 27, 2008 and July 21, 2009 passed by the Disciplinary and Appellate Authority respectively are set aside. The petitioner would be reinstated in service and would be entitled to all consequential benefits of pay and allowances, increments and continuation in service for purposes of pensionary benefits and reckoning length of service for purposes of promotion. Arrears of salary be paid to the petitioner within 12 weeks from today and if not paid within 12 weeks the same shall carry interest @ 10% per annum reckoned 12 weeks hereinafter till payment is made.

75. Petitioner is held entitled to cost in sum of `25,000/- which shall be paid by the respondents. (PRADEEP NANDRAJOG) JUDGE (V.KAMESWAR RAO) JUDGE
JANUARY06 2014 mamta

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com