

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 639/2009
with C.As. No.283/2009, 123/2015, 208/2015 and 232/2015.

Pandurang S/o Karuji Titarmare,
Aged about 51 years,
R/o Alipur, Tah. Hinganghat,
Distt. Wardha.
Nagpur. Presently residing at Plot No. 63,
Old Nandanwan Layout in the house
of Shri Kamble, Nagpur.

-----**Applicant.**

Versus

1. The Secretary to the Govt. of Maharashtra, Agriculture Deptt., Mantralaya, Mumbai.
2. The Commissioner of Agriculture, Govt. of Maharashtra, Central Building, Pune.
3. The Joint Director of Agriculture, Ramdaspath, Nagpur.
4. The District Superintending Agriculture Officer, Shastri Chowk, Wardha.
5. The Sub-Divisional Officer, Agriculture Department, At Post Hinganghat, Tah. Hinganghat, Distt. Wardha.
6. The Taluka Agriculture Officer, Shivaji Market Yard, At Post Hinganghat,

Tah. Hinganghat, Distt. Wardha.

7. District Inquiry Officer,
Departmental Enquiry, Collector Office,
Wardha.

----- Respondents.

-
1. Shri V.V. Tekade, Advocate for the applicant.
 2. Smt. M.A. Barabde, Presenting Officer for the Respondents.

**CORAM : B. Majumdar : Vice Chairman
and**

S.S. Hingne : Member (J)

DATE : 28th April, 2016

ORDER

PER VICE-CHAIRMAN

(a) C.As.283/2009, 123/2015, 208/2015 and 232/2015

The applicant has filed the O.A. challenging the order vide which he has been terminated from service with the recovery of Rs.2,28,240/- . In the C.As. the applicant has sought various directions which are as follow :-

- i)“ ***to direct the non-applicant No. 3 to produce the documents before this Hon’ble Court and supply the copies of the documents to the applicant as per the list vide Annexure-A dated 6/1/2006.***

- ii) ***to direct the Respondent No. 7 to give details of inward No. and date regarding the document of 23/5/2006.***
- iii) ***Comply and implement Apex Court Order dated 13/9/2013 documents as per list dated 6/1/2006.***
- iv) ***Set aside impugned Tribunal order dated 19/1/2015.***
- v) ***Set aside Termination Order dated 7/12/2006***
- vi) ***To quash and set aside order dated 6/8/2008.***
- vii) ***Orders to pay balance amount of Rs.1,36,64,000/- with interest @ Rs.18% from the date of appointment till to date."***
- viii) ***Decide C.A. No.123/15, 208/15 immediately.***
- ix) ***Reinstatement in service as enquiry conducted is bad in law."***

2. From the perusal of the directions sought as above, we find that some of them are devoid of any

substance, while others are a repetition of various prayers the applicant has made in the O.A. Hence, all the C.As. stand rejected and we proceed to decide the O.A.

(b) O.A. No.639/2009

3. The brief facts of the case are as follow :-

The applicant was promoted as Agricultural Supervisor on 13/12/2002. On 17/3/2003 he joined as Circle Agriculture Officer under the Taluka Agriculture Officer, Hinganghat (R/6). On 1/4/2003, he was given the additional charge of Circle Agriculture Officer, Allipur. On 3/6/2004 he was issued a show cause notice alleging that he had misappropriated grain coupons valued at Rs.71,330 and unless he deposited the amount before 10/6/2004 with Respondent No. 6, he will be subjected to disciplinary action. On 22/11/2004, he was placed under suspension. On 13/4/2005 a charge sheet under Rule 8 of the Discipline and Appeals Rules was served on him. The charges were as follow :-

a) **Charge No. 1** :- During 2003-04, he had drawn an advance of Rs. 1,56,910/- for distribution of wages under the Integrated Rural Employment Scheme. He did not submit the accounts of these advance and thus he has misappropriated Rs.1,56,910/-.

b) **Charge No. 2** :- He had drawn food grain coupons of Rs.71,330/- for distribution to the labourers but instead of distributing these coupons, he has misappropriated the said amount by misleading the Govt.

c) **Charge No. 3** :- He has submitted bogus accounts of distribution of Rs. 1,56,910/- without proper technical scrutiny and without submitting therewith the Muster Rolls (M.R.) and the counterfoils of grain coupons.

d) **Charge No. 4** :- After the cases of misappropriation had taken place as per charges 1 to 3 above, the applicant kept the cash book , measurement book, M.Rs and other Govt. records with himself without depositing them with the office.

e) **Charge No. 5**:- He had remained

unauthorizedly absent from 15/6/2003. He was placed under suspension on 22/11/2004 but he managed to avoid receiving the relevant order. He falsified the records to show that he was present in his areas of work. By thus remaining unauthorizedly absent for almost 2 years, he has made it clear that he has no interest in Govt. service.

4. He filed O.A. No. 154/2005 which was disposed of vide order dtd. 5/7/2005 by directing the respondents to complete the D.E. within 3 months. On 19/9/2005 the applicant asked for supply of 28 documents from the Enquiry Officer. On 27/9/2005, 14 documents were supplied by the Presenting Officer to the applicant. On the same date i.e. on 27/9/2005, the Presenting Officer informed the applicant that 5 of the M.Rs., copies of which were demanded by the applicant were submitted by the Circle Agriculture Officer to the Respondent No. 6 and as the accounts of these 5 M.Rs. had been settled, the applicant is required to explain for the balance M.Rs. amounting to Rs.96,317/-. He also informed the applicant that as he was absconding from 15/6/2003 and as in the

annexure 4 of the charge sheet, M.Rs., account books, measurement books etc. are not included, copies of these records cannot be supplied to him. On 30/5/2006, the Enquiry Officer (R/7) submitted his report in which it is shown that all the charges against the applicant are proved. The applicant filed O.A. No.460/2006 challenging the E.O's report. On 20/7/2006 a copy of the E.O's report was sent to the applicant. On 4/9/2006, the Tribunal dismissed the above O.A. as premature since the disciplinary authority was yet to take a final decision on the impugned enquiry report. Liberty was granted to the applicant to approach the Tribunal after a final order is passed by the Disciplinary Authority. On 5/9/2006, the applicant submitted his detailed reply to the E.O's report. On 7/12/2006, the Joint Director of agriculture, Nagpur (R/3) issued the impugned order of punishment to the applicant. Vide this order the applicant's services were terminated and a recovery of Rs.2,28,240 was ordered against him. On 2/5/2008 the applicant filed an appeal under Rule 17 of the Discipline and Appeal Rules before the

Commissioner of Agriculture (R/2). The appeal was rejected on 6/8/2008. The applicant has also challenged this order of rejection in the O.A. The applicant filed W.P. No.1826/2011 which was dismissed on 4/7/2012. The applicant thereafter filed an SLP before hon'ble the Supreme Court. On 13/9/2013 the Supreme Court dismissed the SLP by stating that the order shall not prevent the petitioner from approaching the appellate authority seized of the appeal against the termination of his services for summoning such records as may be relevant for the disposal of the appeal.

5. The applicant's submissions are as follow :-

a) In the show cause notice dtd. 3/6/2004 based on which the D.E. was initiated against him, the Respondent No. 3 had stated that from the muster rolls it is seen that the applicant had distributed cash wages of Rs.1,56,910/-. It is then mentioned that he had disbursed grain coupons of Rs.1,25,985/- out of Rs.1,97,315/- that he had drawn for this purpose. Thus, he did not disburse food grain coupons of

Rs.71,330/-. Hence the respondents have accepted that he had disbursed the entire amount of cash wages.

b) On 30/6/2003 he had submitted the accounts to the Taluka Agriculture Officer along with 8 M.Rs. and remaining 5 M.Rs were with Shri S.S. Sutey and Shri B.D. Yesankar , Agriculture Assistants. Thus, it is wrong to state that he had not submitted the accounts.

c) On 18/7/2003 he had submitted a report to Respondent No. 6 with full particulars of M.Rs, measurement books and other details totaling disbursement of Rs.1,56,910/-.

d) The disbursement of 40% of the wages as food grain coupons is done through the M.Rs. Thus, the M.Rs submitted by him contained all the details of disbursement of the grain coupons.

e) The disbursement of wages and grain coupons was done through the Agriculture Assistants who retained some of the M.Rs as stated above and all the counterfoils of the grain coupons.

f) The Enquiry Officer did not call for production of 13 M.Rs. although these are an important part of the evidence. The applicant's request for supply of the M.Rs. was not responded to.

g) As the coupons were redeemed at the local ration shops for drawing grains the Enquiry Officer should have examined the owners of these shops to verify if the coupons had been cashed.

h) None of the labourers engaged in the EGS work has been examined.

i) In absence of documents he had demanded he could not cross examine the prosecution witnesses.

6. The respondents in their reply submit as follow :-

Para 3: " -----while applicant was working as Agriculture Supervisor, at Hinganghat; he was given additional charge of the post of Agriculture Officer, Alipur in addition to his own duties. During handling of Additional charge by the applicant he was given grain coupons to the tune of Rs.71,330/- and given Advance in

cash Rs.156910/- by the Taluka Agriculture Officer, Hinganghat to disburse amount of E.G.S. on works. (Workers) entrusted to him. However, the applicant did not disburse amount of grain coupons to E.G.S. workers. When the applicant was asked by the Taluka Agriculture Officer Hinganghat to submit the account of Rs.71,330/- from time to time . He did not respond for the same. After going through records, applicant has defalcated Govt. Money of Rs.71,330/-.

Para 4: *“That, the Taluka Agriculture Officer, Hinganghat had properly directed the Applicant to comply the amount of Rs.71,330/- which was lifted by way of grain coupons, under Employment Guarantee Scheme as well as the applicant was asked to submit the account of Rs.15690/- (sic) which was received in cash towards advance. However, he failed to do so.”*

7. The respondents further submit that the applicant was given many opportunities to face enquiry in the D.E. but

he failed to do so. The E.O. (R/7) has prepared the enquiry report on the basis of adduced evidence and documents placed on record. Due to the applicant's absence the enquiry was completed ex-parte. The respondents further submit as follow : -

Para 12 *“ That, the charges leveled against the applicant that, he has misappropriated amount of Rs.1,56,910/- by not disbursing wages to the E.G.S. workers and in addition to this he has misappropriated amount of Rs.71,330/- by not disbursing gain coupons in lieu of wages in cash to the E.G.S. worker has been proved on the basis of adduced evidence and not handed over relevant records and counter foil of coupons to Respondents Department. That the explanation dated 5/9/2006 to the show cause notice dated 10/7/2007 given by the applicant was not satisfactory. The Muster Rolls bearing Numbers 5181, 5186, 5185, 5220, 5214, 5216, 5217, 5183, 5219, 5184, 5199 and 5192 were not tallied with the disbursement amount.”*

8. Shri V.V. Tekade, the Id. Counsel for the applicant in his presentation mainly reiterated the submissions made by the applicant in the O.A. According to him, the E.O. had completed the DE based exclusively on the statements of the Govt. witnesses. 13 M.Rs., copies of which were demanded by the applicant, were the key evidence and charges were framed on the basis of these documents. However, these documents were not supplied to the applicant. Thus it is a case of no evidence.

9. Smt. Mrunal A. Barabde, the Id. P.O. reiterated the submissions made by the respondents in their reply. The EO had concluded that the charges against the applicant were proved based on the statement of the prosecution witnesses and the Presenting Officer. The applicant was granted opportunities to cross examine the witnesses and also to produce defence witnesses but he did not do so by remaining absent. Thus, it cannot be said that the enquiry report suffered from any bias or mala fides or it was a case of no evidence.

10. Having heard the arguments on both sides and after going through the voluminous documents placed before us, we find that the main charge against the applicant, as stated in charges No. 1, 2 and 3 of the charge sheet, is of misappropriation of Govt. money involving disbursement of Rs.1,56,910/- through M.Rs. and grain coupons valued at Rs. 71,330/-. The alleged misappropriation was based on his failure to submit relevant accounts and proof of disbursement of the wages and coupons to the EGS labourers.

11. The E.O., after examining 9 prosecution witnesses and recording the submissions of the Presenting Officer (R/7) came to the conclusion that the 5 charges leveled against the applicant have been proved. On that basis the impugned order of punishment was issued.

12. We have perused the report of the E.O. (Annexure-A-1). It mainly comprises statements of 9 witnesses and that of the Presenting Officer. The applicant

as Agricultural Supervisor was responsible for disbursement of wages on EGS work for 2 blocks of Allipur, namely; Kanholi and Yerangaon. We reproduce below a summary of the statements of various witnesses as recorded by the E.O.

a) **Prosecution witness (P.W.) No. 1**, Shri Mangesh Appa Vavdhane, Sub-Divisional Agricultural Officer, stated that he had conducted site inspection on 23/6/2003 when he found the applicant absent although he was aware of his visit. The concerned Agricultural Assistant on being asked about disbursement of the wages and grain coupons, orally submitted that the cash wages have been disbursed but grain coupons of Rs.71,330/- were yet to be received from the applicant. Shri Vavdhane had called the concerned employees to his office on 16/7/2003 for getting a clarification on the above matter along with all records and he also obtained the replies of the employees to a questionnaire containing 10 questions. The applicant remained present on 23/7/2003 before him and he was granted 24 hours' time to

return the above questionnaire, but he did not do so. Hence he submitted a preliminary enquiry report and draft charge sheet to Respondent No. 4.

b) **P.W. No. 2** : Shri A.S. Sontakke, Circle Agricultural Officer in his statement submitted that the applicant did not submit accounts for the amount as mentioned in the charge sheet. He mainly submitted a letter dtd. 18/7/2003 on 18/8/2003 without attaching the supporting documents. He also submitted an unsigned letter dtd. 13/6/2003 in the office and left. Under these circumstances and also as he was absconding from duty during the period from 15/6/2003 to 19/7/2003 his charge was given to Shri K.K. Mokashi and the cupboard sealed by the applicant was required to be broken open, but it was found that it did not contain the current cash books, M.Rs and the coupons.

c) **P.W. No. 3** : Shri S.M. Pendam, Accounts Officer, made a similar statement .

d) **P.W. No.5** : Shri K.K. Mokashi, Agricultural

Asstt., Bhadrawati submitted that the applicant took charge of the Allipur area from him on 22/4/2003. He too stated about breaking open of the applicant's cupboard.

e) P.W. No. 6 : Shri Babrao D. Yesankar, Agricultural Asstt., In-charge of the Kanholi area stated that he had prepared the M.Rs as per the measurement book, based on which the applicant had obtained the cash advance and grain coupons . The applicant disbursed the wages for the Kanholi shet tale (farm tank) in his presence. The applicant, however, did not distribute the grain coupons although as per rules these coupons should have been disbursed along with the cash wages.


f) P.W. No. 7 : Shri S.S. Sutey, Agricultural Asstt., In-charge of Yerangaon, stated that the applicant, on 30/5/2003 distributed full cash wages and only some of the grain coupons. The applicant said that he will disburse the remaining coupons after signing on them in 2-3 days. However, he did not distribute the grain coupons from 31/5/2003 and also did not come back . On 22/6/2003 when

the Sub-Divisional Agriculture Officer, Hinganghat came on tour to see the above work, the labourers informed him that even after 1 month, they did not get the grain coupons. When Shri Mokashi was transferred on promotion and his charge was given to Shri Thakre, these coupons were disbursed by Shri Thakre and Shri Yesankar.

g) **P.W. No. 8** : Smt. S. N. Karhad, Inward/ Outward Clerk in the office of Respondent No. 6 in her statement submitted that on 18/8/2003 the applicant came to her and produced a forwarding letter (पृष्ठांकन पत्र) with no supporting documents like M.Rs and counterfoils of the coupons. She then informed Shri Sontakke , Tq. Agricultural Officer, Hinganghat that the applicant has only submitted a letter without any accounts.

h) **P.W. No. 9** : Shri L.B. Durge, Agricultural Asstt., Seloo (Murpad) stated that he had gone to the applicant's home along with Shri Darane, Clerk with a xerox copy of the order of his suspension, but he refused to accept it and hence the copy was pasted on the wall of the applicant's home.

13. Shri A.K. Madavi , Presenting Officer (R/7) stated that till today the applicant has not submitted the accounts of Rs.1,56,910/- towards payment of wages and Rs.71,330/-, being the value of grain coupons that the applicant had drawn for disbursement. He has not handed over the relevant and important records like cash book, M.Rs. and measurement books. The applicant continuously remained absent without authority from 15/6/2003 . He had failed in his duty to disburse the cash wages and grain coupons to the labourers on EGS work in presence of the concerned Agricultural Asstts. by visiting the areas where work was going on. He had totally failed to exercise supervisory control on the work which he was In-charge of . He failed to explain the irregularities in his work. He adopted unfair means and misled the Govt. to prove that he was not absent from head quarters. His official cupboard was required to be broken open to retrieve the records of payment to the labourers. This was necessary due to his unauthorized absence and failure to submit accounts. The



applicant had refused to accept the order of his suspension. The Presenting Officer then stated that he had submitted the preliminary enquiry report with regard to the charges levelled against the applicant.

14. The report thereafter concludes as follows :-

“महत्वाचे शासकीय अभिलेख जसे रोकडपुस्तिका मापनपुस्तिका पगारपत्रक हे स्वतः नियमबाह्य पद्धतीने दिर्घकाळापर्यंत बाळगून संबंधित कार्यालयास हस्तांतरीत केलेला नाही. कार्यालयांत उपस्थित राहाण्यासंबंधी कळविले असतांना उपस्थित न राहता पोस्टाने पत्रव्यवहार करणे अशाप्रकारे गैरमार्ग अवलंबून शासकीय कार्याची व प्रशासनाची सतत फसवणूक करून दिशाभूल करण्याचाच प्रयत्न केलेला आहे. त्यामुळे अपचारी श्री. पी. के. तितरमारे कृषी पर्यवेक्षक हयांचेवर लावलेले दोषारोप बाब क्र. १ ते ५ पूर्णतः सिद्ध होतात.”

15. From the Enquiry Officer's report as above, it is seen that though he has concluded that 5 charges levelled against the applicant are proved on the basis of examination of documents and statements of the prosecution witnesses as well as the Presenting Officer, he has not

indicated anywhere whether he had examined any of the documents contained in Annexure-A-4 of the charge sheet or even the documents relied on by the witnesses and the Presenting Officer. The respondents in their reply have stated that the E.O. has prepared his report based on the adduced and corroborative evidence as well as documents placed on record. We however, found no evidence that the Enquiry Officer called for and examined any document. He appears to have relied entirely on the statements of the prosecution witnesses and the Presenting Officer.

16. The applicant has submitted that among the documents that he had demanded from the Enquiry Officer vide his communication dtd. 19/9/2005 (Annexure-A-21) there were 13 muster rolls through which the disbursement of wages of Rs.1,56,910/- was made to the labourers. Copies of these M.Rs. were not supplied to him, a fact which is not disputed by the respondents. It is their stand that these M.Rs were in custody of the applicant and he failed to produce them



before the Tq. Agricultural Officer (R/6) or any of his superiors.

17. The applicant has relied on the show cause notice dtd. 3/6/2004 in which the following is stated :-

“ सदर प्रकरणी रोख रक्कम रु. १,५६,९१०/- चे आपण वाटप केलेले आहे असे हजेरी पटावरून दिसून येते परंतु धान्याचे कूपन मजुरांना मजुरीचे मोबदल्यात रु. १,९७,३१५/- चे वाटप करण्याकरिता प्राप्त केले परंतु प्रत्यक्षात रु. १,२५,९८५/-चे वाटप केल्याचे हजेरी पटावरून दिसून येते व रु. ७१,३३०/- चे कूपन मजुरांना वाटप न केल्याचे हजेरीपटावरून मजुरांच्या स्वाक्ष-या नसल्यामुळे मजुरांना कूपन वाटप केलेले नाही असे अभिलेखावरून दिसून येते.”

18. According to him, as the Joint Director of Agriculture (R/3) has admitted that the muster rolls show that he had disbursed Rs.1,56,910/-, he cannot be charged for non-disbursement of the amount as per the charge sheet. The applicant has also stated in the O.A. that the EGS workers are paid 40% wages in cash and 60% wages by way of grain coupons and that there is only one common M.R.



for disbursement of wages in cash and through grain coupons and the acknowledgment by the labourers for having received the grain coupons is recorded in the M.Rs. Thus, according to him, as the Respondent No. 3 has admitted that there is no discrepancy in the account of Rs.1,56,910/- as per the muster rolls, there cannot be any discrepancy with regard to disbursement of grain coupons, unless the relevant M.Rs. are examined .

19. With regard to the controversy whether the respondents did not get any of the 13 muster rolls from the applicant, the applicant has relied on the communication dtd. 27/9/2005 from the Presenting Officer (who is also the Asstt. Administrative Officer in the office of the Respondent No. 4) to the applicant in which he has stated that the accounts of 5 muster rolls, totaling Rs.60,593/- are in the custody of Shri S.S. Sutey (P.W.7) and hence the applicant is required to submit accounts for the balance amount of Rs.96,317/- . The relevant part of this communication is reproduced below :-




“तदनंतर मंकुअ अल्लीपूर यांनी श्री. बी. डी. येसनकर, कृषी सहाय्यक व श्री. एस.एस. सूटे, कृषी सहाय्यक यांचे ताब्यात असलेली उपरोक्त अग्रीमापैकीची रू. ६०,५९३/-ची ५ पगारपत्रके क्रमांक ५२१७, ५२१६, ५१८३, ५२१९ व ५१८४ ही पगारपत्रके दि. ३०.९. २००४ चे पत्रान्वये ता. कृ. अ. हिंणघाट यांना सादर केले. तरीसुद्धा आपणाकडे रू. ९६,३१७/- (रू. १,५६१९१०-रू. ६०,५९३-रू. ९६,३१७/-) इतक्या रकमेचा हिशेब अप्राप्त आहे. त्यामुळे रू. ९६३१७/- इतकी अग्रीमापैकीची रक्कम आपल्याकडून वसुलप्राप्त आहे. उपरोक्त पगारपत्रकांचा जोडपत्र-४ मध्ये समावेश नसल्यामुळे त्याच्या प्रमाणीत प्रती यासोबत पूरविण्यात आलेल्या नाहीत.”

20. As the above communication is made by the Present Officer himself he should have got these 5 M.Rs. examined and relied on them to conclude if they contained detail of disbursement of grain coupons. We therefore find that the Presenting Officer and the Enquiry Officer had seriously erred in not examining these important documentary evidence .

21. From the enquiry report we also find that the P.W. No. 6, Agricultural Asstt. In-charge of the Kanholi works, in

his statement has mentioned that the applicant had disbursed the cash wages in his presence but did not do so in respect of the grain coupons. P.W. No. 7, Agricultural Asstt. In-charge of the works at Yerangaon has stated before the Enquiry Officer that on 30/5/2003, the applicant had made full disbursement of the cash wages and only part disbursement of the coupons. There is nothing in the enquiry report to show that the Enquiry Officer examined this evidence and dismissed them before concluding that the charges 1 and 2 are proved against the applicant.

22. Thus on perusal of the Enquiry Officer's report, we find that it is entirely based on the statements of the prosecution witnesses and that of the Presenting Officer, and he has not examined any of the documents either listed in the charge sheet or supplied to the applicant during enquiry or those that the witnesses have relied on. In this respect we find that the provisions of Rule 8, Sub-rule (16) and Rule 8, Sub-rule (20) of the Discipline and Appeal Rules become relevant.




23. Rule 8 (16) states as follows :-

Rule 8(16) “ On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of, the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be crossed-examined by or on behalf of the Government servant.”

24. Rule 8 (20) states as follows :-


Rule 8(20) “ 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.”




25. Thus, as per provisions of the above Rule, it was obligatory on the part of the Enquiry Officer to call for the documents, that we have referred to earlier, to be produced before him and to get them examined. Even if the applicant had not examined himself, the Enquiry Officer was required to question him with reference to the documentary evidence that are shown to be relevant for proving the charges.

26. From the 'Roznama' of the D.E. (Annexure-A-19) maintained by the Enquiry Officer, we find that the applicant was present on 6 different dates, when the Enquiry Officer or the Presenting Officer could have easily called for and got these documents examined in conformity with the provisions of Rule 8 (16).

27. In State of U.P. vs Saroj Kumar Sinha (A.I.R. 2010 SC 3131), hon'ble the Supreme Court has cited its observations in the case of Kashinath Dikshita vs Union of India (A.I.R. 1986 SC 2118) as follows :-




“When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, crossexamine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question : “ what is the harm in making available the material ? ” and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort



invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

28. We therefore fail to understand as to why the respondents, having made an admission that 5 out of 13 M.Rs. were available with them, could not make them accessible to the applicant or to the E.O or the Presenting Officer to ensure that there is fairness in the enquiry. We are therefore of the view that the Enquiry Officer having failed to get the above documents examined as mentioned above, the D.E. suffers from insufficient evidence and on this ground we hold that it has not been conducted in conformity with the proceedings of Rule 8 of the Discipline and Appeal Rules.



29. We therefore conclude that in the D.E. the charges of misappropriation levelled against the applicant could not be proved. We further hold that the respondents have seriously erred in considering that the charges against the applicant have been proved in the D.E. and hence the impugned order of punishment as well as rejection of the appeal against the order is required to be quashed and set aside. In normal course we would have remanded the matter to the respondents for de-novo enquiry. However the important factors that weighed in our mind are that the present O.A. is seven years old and the impugned order of punishment was issued more than nine years ago. Under these circumstances it may at all not be practical to hold a D.E. afresh as records are quite old and some of the witnesses may have retired. The O.A. therefore stands disposed of in terms of the following directions :-

- (a) The impugned orders dtd. 7/12/2006 and 6/8/2008 are quashed and set aside.



- (b) The respondents are directed to reinstate the applicant in service from the date of his termination. He will not be entitled to pay and allowances for the period he was out of service and the said period will count as continuity in service only for the purpose of pensionary benefits.
- (c) If any recovery is made from the applicant consequent to the impugned order of punishment, it will be refunded to him. The applicant however, will not be entitled to interest on this account.
- (d) The respondents will take action as above within 10 weeks from the date of receipt of this order
- (e) No order as to costs.

sd/-

(S.S. Hingne)
Member (J)

sd/-

(B. Majumdar)
(Vice-Chairman).

Skt.