



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil First Appeal No. 490/2011

Shanti Lal Jain s/o late Shri Sobhagh Mal Vaid aged 55 years,
R/o 111-A, Surya Nagar, Gopal Pura Bye Pass, Jaipur

----Appellant-Plaintiff

Versus

1. Rajasthan State Bharat Scout & Guide, through its Pradhan,
Rajasthan Head Quarters, Jawahar Lal Nehru Marg, Bajaj Nagar,
Jaipur.

2. State Chief Commissioner, Rajasthan State Bharat Scout &
Guide, Rajasthan Head Quarters, Jawahar Lal Nehru Marg, Bajaj
Nagar, Jaipur.

----Respondents-Defendants

For Appellant(s) : Mr. Rajendra Vaish
For Respondent(s) : Mr. Arun Sharma for
Mr. Subodh Shah

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

JUDGMENT RESERVED ON: : 30/09/2022

JUDGMENT PRONOUNCED ON: : November 2nd, 2022

BY THE COURT:
REPORTABLE

1. In the instant first appeal, filed under Section 96 of the Code of Civil Procedure, appellant-plaintiff had been a delinquent employee of the Rajasthan State Bharat Scout & Guide (R.S.B.S.G), who was served with a charge-sheet dated 01.12.2008 and after conducting inquiry under the Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter "CCA Rules"), he was removed from service vide Order dated 14.07.2009, which was challenged by the employee before the Appellate Authority but his departmental



appeal too was dismissed vide Order dated 12.11.2009, thereafter, he instituted the present civil suit challenging both orders and for seeking his reinstatement in service with all consequential benefits of back wages, seniority and continuity in service. His Civil suit No.06/2010 has been dismissed by the Additional District Judge (Fast Track) No.5, Jaipur City, Jaipur, vide judgment and decree dated 11.05.2011 and thereagainst he has preferred the instant first appeal.

2. Facts of the present case as culled out from record and which are necessary for decision of the instant first appeal, are as under:-

2.1 The civil suit was instituted on 18.12.2009, alleging *inter alia* that plaintiff was appointed as Assistant Organization Commissioner (AOC) on 03.12.1980 and had served for more than two decades, and his entire service career remained clean and unblemished without any adverse Annual Confidential Report (ACR) or any charge-sheet, except the one under consideration. He was served with a charge-sheet dated 01.12.2008 levelling eight charges against him. He submitted detailed reply to each charge. Before filing reply, he demanded documents time and again, but no documents were supplied to him and in absence of such documents, appellant was without any defence and his right to defence was marred. It was pleaded that before the Inquiry Officer, the plaintiff requested to call for documents for his defence but no documents were called. The admission denial of documents were not made and without any evidence or witness, documents submitted by the department were held proved against plaintiff.



2.2 It was alleged that inquiry was conducted in complete violation to Rule 16 of CCA Rules and the punishment order for removal from service has been passed arbitrarily, illegally and maliciously. It was averred that thereafter, the plaintiff was provided documents under the Right to Information Act and he challenged the dismissal order dated 14.07.2009, by way of filing an appeal before the Appellate Authority along with entire documents in support of his defence, but the Appellate Authority dismissed the appeal vide order dated 12.11.2009, without considering documents and without giving complete and proper hearing, therefore, the rejection order of appeal passed by the Appellate Authority too is violative to Rule 30(2) of the CCA Rules.

2.3 Plaintiff averred that the dismissal order dated 14.7.2009 and the appeal rejection order dated 12.11.2009, are against the principles of natural justice and the same are malicious and violative to the mandatory procedure of Rules 16 & 30 of the CCA Rules, as such liable to be set aside. Plaintiff also pleaded that charges, levelled against him, are old, stale and belated. The GF & AR Rules were not applicable prior to December 1998, still charges were held proved, for not following the GF & AR Rules and without evidence. It was averred that plaintiff has arbitrarily and illegally been removed from service, therefore, he be reinstated immediately and granted all consequential benefits including back wages, seniority and all benefits treating him to be continued in service.

2.4 On issuing notice, defendants filed written statement raising preliminary objection that the suit was not maintainable before the Civil Court as the plaintiff has not claimed any of his civil rights,



and orders passed after conducting departmental inquiry can be challenged only before the Rajasthan Civil Services Appellate Tribunal. It was stated that plaintiff was not working on the post of Assistant Organization Commissioner till 14-7-2009, as during pendency of departmental inquiry, he was under suspension vide order dated 3-10-2007 and his posting was at Head Quarter Jaipur. Passing of impugned orders dated 14-7-2009 and 12-11-2009 was admitted. It was stated that plaintiff was provided sufficient opportunity of hearing during pendency of inquiry. When the plaintiff expressed inability to attend before the Appellate Authority, then his appeal was decided. Prayer was made for dismissal of the suit.

2.5 As per rival pleadings of both parties, learned trial court framed following issues:

(I) Whether plaintiff according to contents of paras No.1&2 of the plaint was on the post of Assistant Organization Commissioner till 14-7-2009, when vide order No.4243 dated 14-7-2009 he was removed from service vide impugned order?

(II) Whether according to contents of para No.3 of the plaint the impugned appellate order No.9780 dated 12-11-2009 affirming the dismissal order is illegal, cursory and against the principles of natural justice?

(III) Whether according to contents of paras No.1&2 of written statement the suit is not maintainable being beyond jurisdiction?

(IV) Relief?



2.6 In evidence, plaintiff- Shanti Lal Jain produced himself as PW-1 and exhibited documents (Ex-1 to Ex-54). From the side of defendants, witness-Vinod Kumar Sharma appeared as DW-1 and exhibited documents (Ex-A1 to Ex-A6).

2.7 Learned trial court decided issue No.3 relating to jurisdiction of the Civil Court as preliminary issue and held that in respect of challenge to the dismissal order and appeal rejection order being violative to the CCA Rules, jurisdiction lies before the Rajasthan Civil Services Appellate Tribunal, nevertheless, in respect of challenge to the impugned orders on the ground of maliciousness and violative to the principle of natural justice, Civil Court may exercise its jurisdiction. Issues No.1 & 2 were not considered on merits but were considered and decided within the limited scope of examining maliciousness and the violation of the principle of natural justice. Finally, both issues have been decided against plaintiff and the suit has been dismissed vide judgment and decree dated 11.05.2011.

3. Heard learned counsel for both parties, perused the impugned judgment and record.

4. At the outset, it may be observed that the first appeal is always treated as continuation of civil suit and virtually first appeal is a re-hearing of the civil suit and the whole case is opened for re-consideration.

In case of **Santosh Hazari Vs. Purushotam Tiwari [(2001) 3 SCC 179]** in Para 15, Hon'ble the Supreme Court expounded the scope of first appeal and jurisdiction of first appellate court in following words:



"15....The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law. the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate court had discharged the duty expected of it.



In another case of **H.K.N. Swami Vs. Irshad Basith [(2005) 10 SCC 243]**, Hon'ble the Supreme Court again reiterated principles in respect of jurisdiction of the first appellate court in Para 3 as under:

"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

सत्यमेव जयते

Hon'ble the Supreme Court, in case of **B.V. Nagesh Vs. H. V. Sreenivasa Murthy [(2010)13 SCC 530]** and further in case of **A.M. Sangappa Vs. Sangondeppa [(2013) 14 SCALE 384]**, has reiterated the aforesaid principles.

5. This Court keeping in mind the scope of jurisdiction of first appeal as mentioned hereinabove, now dealing with the present appeal issue-wise as under:

Issue No.3 :-



6. This issue pertains to jurisdiction of the Civil Court to hear, trial and decide the present civil suit challenging the dismissal order and appeal rejection order. Learned trial court, though has decided this issue in favour plaintiff, yet has confined the jurisdiction of Civil Court to examine impugned orders only if the same are malicious or suffer from violation of the principle of natural justice. In respect of challenge to impugned orders being passed without adhering to the mandatory provisions of the CCA Rules, the trial court has concluded that in respect to the impugned orders, in violation of the CCA Rules, the Rajasthan Civil Services Appellate Tribunal has the jurisdiction and Civil Court does not.

7. Learned trial court has erred in reaching to the conclusion that for the purpose of challenging the impugned orders being in violation of the CCA Rules, plaintiff could have/should have approached the Rajasthan Civil Services Appellate Tribunal. As a matter of fact plaintiff was an employee of the R.S.B.S.G and defendant (R.S.B.S.G) is neither a State nor its instrumental authority and does not fall within category of State under Article 12 of the Constitution of India. In fact, R.S.B.S.G is not government body, but a society registered under the Societies Act and so also the plaintiff is not a government servant. Learned counsel appearing for respondents, during course of arguments, has not disputed the status of Rajasthan State Bharat Scout & Guide and admits that it is not a state.

In case of ***Shrawan Kumar Sharma Vs. State of Rajasthan [(2005) 1 WLC (Raj.) 349]***, the Single Bench of the Rajasthan High Court has already held that the Rajasthan State



Bharat Scout & Guide is neither a State nor an authority under Article 12 of the Constitution of India, and writ petition against such body is not maintainable.

8. Rajasthan Civil Services Appellate Tribunal has been established under the Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 and only government servants can approach the Appellate Tribunal. The Appellate Tribunal hears the case of civil servants only. In case at hand, neither plaintiff is a government servant nor defendant is State or its authority, therefore, plaintiff has only the remedy before the Civil Court and findings of learned trial court, in respect of not exercising its jurisdiction to challenge the impugned orders being violative to the CCA Rules, are erroneous and unsustainable.

9. Hon'ble the Supreme Court in case of **Ramendra Kishore Biswas Vs. The State of Tripura [(1999) 1 SCT 295]** has held that the Civil Court has jurisdiction to decide cases under the CCA Rules.

10. Therefore, this Court decides the issue No.3 absolutely in favour of plaintiff and against defendants holding that the present civil suit challenging impugned orders of dismissal of service and appellate order, is maintainable before the Civil Court and the Civil Court can also examine as to whether the impugned orders have been passed in violation to the CCA Rules, simultaneously, while considering the maliciousness and in violation to the principles of natural justice. Findings of issue no.3 stand modified accordingly.

Issues No.1 & 2:-

11. Both these issues fundamentally involve two points for determination:



(i) The impugned order of dismissal of plaintiff from service dated 14.07.2009 and appellate order dated 12.11.2009 are sustainable in law or not?

(ii) Whether at the time of passing the order of removal from service dated 14.7.2009, plaintiff be treated on the post of Assistant Organization Commissioner in the Rajasthan State Bharat Scout & Guide or not?

12. As far as point No.1 is concerned, before dealing with each and every charge levelled against plaintiff, this Court is taking into consideration grounds, on the basis of which plaintiff has alleged that impugned orders have been passed in complete violation of the CCA Rules.

13. It is not in dispute that the charge-sheet, inquiry and punishment to plaintiff had been conducted under the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter called as CCA Rules). Vide order dated 14.7.2009, plaintiff has been removed from service, which is a major penalty. The procedure for imposing major penalty is envisaged under Rule 16 of the CCA Rules.

Sub-Rule (1) envisages no order that imposing penalties as specified in clauses (iv) to (vii) of rule 14 shall be passed except after an inquiry held in the manner as provided under Rule 16. Sub-Rule (2) envisages that the disciplinary authority shall frame definite charges on the basis of allegations, on which the inquiry is proposed to be held. Such charges together with statement of allegations shall be communicated in writing to the employee, and the employee shall be required to submit a written statement, indicating whether he admits charges, or if not then what is his explanation or defence and whether employee desires to be heard



in person. Sub-Rule (3) states that the employee, for the purpose of preparing his defence, shall be permitted to inspect and take extracts from such official record which is relevant. Sub-Rule (4) talks about the appointment of Inquiring Authority, if employee does not admit the charges and submits his written statement of defence. Sub-Rule (4A) talks about the situation where the employee does not admit the article of charge or has not submitted any written statement of defence. Sub-Rule (5) envisages nomination of any person by disciplinary authority to present the case in support of charges before the Inquiring Authority. Sub-Rule (6)(a) states that where the employee has pleaded not guilty to the charges, the Inquiring Authority shall ask the Presenting Officer to submit the list of witnesses and documents within ten days, who shall also simultaneously send a copy to the employee. The delinquent employee, within ten days of receipt of the list of prosecution witnesses and documents, shall submit list of documents required by him for his defence. The Inquiring Authority shall then summon documents of both sides and asks parties to admit and deny the documents. Thereafter, the Inquiring Officer shall summon such evidence as is necessary, giving opportunity to both parties. The Inquiring Authority shall give opportunity of examination in chief and cross-examination/re-examination to the parties. In case of refusal to summon any witnesses and documents, the Inquiring Authority shall record reasons in writing. The opportunity for hearing the arguments shall be given to both parties. A specific "Note" is appended to this Rule which envisaged that if the government servant applied orally or in writing for supply of copies of the statements of





witnesses and mentioned in the list referred to in Sub Rule (6)(a), the Inquiring Authority shall furnish him with such copies as early as possible and in any case not later than three days before commencement of the examination of the witnesses on behalf of the Disciplinary Authority. This Sub-Rule also provided that the Inquiring Authority shall, on receipt of notice by the delinquent employee for the discovery or production documents, forward the same or copies thereof to the Authority in whose custody or possession the documents are kept, with a requisition for the production of the document. The Inquiring Authority, for reasons to be recorded in writing, may refuse to requisite the irrelevant documents. It is also provided that on receipt of requisition, every authority having the custody of documents shall produce the same before the Inquiry Authority. Sub-Rule (6)(A) explains the jurisdiction of Inquiring Authority to allow the Presenting Officer to produce evidence not included in the list or to call for the new evidence but simultaneously opportunity shall also be given to the delinquent employee, though new evidence shall not be permitted or called for to fill up any gap in evidence. Sub-Rule (6)(B) speaks about powers of authorities to impose penalties as specified in Rule 14. Sub-Rule (7) speaks that the Inquiring Authority shall prepare the report of inquiry after recording its findings on each of the charges together with reasons therefore. Sub-Rule (8) is about the record of Inquiry. Sub-Rule (10) states that the disciplinary authority shall forward copy of the report of inquiry to the delinquent employee, who shall be required to submit if he so desires. Sub-Rule (10A) states that the disciplinary authority, if disagrees with findings of Inquiring Authority of any





article of charge, shall record its own reasons for such disagreement and same shall be forwarded to the employee for his representation. Sub-Rule (10B) states that the disciplinary authority shall consider the representation, if nay submitted by the delinquent employee before proceeding further under Sub-Rules (11) and (11A), thereafter, Sub-Rules (11) and (11A) are about the imposition of penalty by the disciplinary authority and Sub-Rule (12) is with regard to the communication of orders passed by the disciplinary authority to the delinquent employee/government servant.

14. In case at hand, charge-sheet, levelling eight charges, was served upon plaintiff. The Inquiry Officer had found six charges proved and seventh & eighth charges not proved. Even in respect of six charges, only two witnesses, in relation to charge No.6 only were produced by the employer and no witness or evidence in respect of charges No.1 to 5 were produced before the Inquiry Officer. Learned counsel for appellant vehemently argued that inquiry proceedings, inquiry report and also dismissal order are against the law and also in violation of the CCA Rules. It has been submitted that, on receipt of charge-sheet, plaintiff was not provided the required documents despite demand. Plaintiff filed application dated 08.12.2008 with list of required documents, again reminders were submitted on 15.12.2008, 16.12.2008, 24.12.2008 and 02.01.2009. Detailed reminder dated 07.01.2009 and 16.01.2009, were also submitted before the Inquiry Officer, but no documents were supplied to appellant and in absence of documents, appellant could not submit his defence effectively. Applications demanding documents have been placed on record



from Exhibit-2 to Exhibit-11. In cross-examination from plaintiff (PW-1), no question was asked on submissions of such applications. Defendants' witness (DW-1) in his evidence admits that applications (Ex-2 to Ex-11), were submitted by plaintiff which were received in the department. He could not counter this evidence to show that documents required by plaintiff were provided to him for his defence. Non-supply of documents to the delinquent employee, despite demand, is a clear violation of the Rule 16(3) of the CCA Rules.

In case of ***S K Dutt Sharma Vs. State of Rajasthan [(1990) 1 RLR 1]***, the Division Bench of the Rajasthan High Court, has held that compliance of the Rule 16 is mandatory and non-supply of documents is fatal and vitiates the whole inquiry.

In case of ***State of Uttar Pradesh Vs. Saroj Kumar Sinha [(2010) 1 SCC (L&S) 675]***, the Hon'ble Supreme Court held that denial of copies of documents which formed the foundation of charge-sheet against the delinquent employee, is a denial of natural justice and in such a situation, the inquiry stands vitiated. It was held that by virtue of Article 311(2) of the Constitution of India, a departmental inquiry had to be conducted in accordance with rules of natural justice. It is the basic requirement of the rules of natural justice that an employee be given reasonable opportunity of being heard in any proceedings which may culminate in punishment, if imposed on the employee. It has also been held in this case that non-examination of witnesses in respect of charges, vitiates the whole inquiry.

In case of ***Babulal Vs. State of Rajasthan [(2002) 1 WLN 475]***, the Divisional Bench of the Rajasthan High Court,



held that the delinquent officer apart from being entitled to receive copies of the statements and documents relied on by the prosecution authority, is also entitled to demand copies of such documents which he considers relevant for preparing his defence and which are in possession of the prosecution authority and it has been further held that the disciplinary authority is duty-bound to supply documents, when demanded by the delinquent officer for his defence. Non-supply of documents would be denying the delinquent officer a fair opportunity to prepare and raise his defence against allegations levelled against him. The Division Bench placed reliance on the judgment of Hon'ble the Supreme Court delivered in case of ***Khem Chand Vs. Union of India*** [AIR (1958) SC 300].

15. This Court is of considered opinion that the inquiry proceedings, which culminate into the dismissal order of the plaintiff, are violative to the relevant provisions of the CCA Rules which are mandatory in nature for compliance.

16. Learned counsel for appellant has also emphasized that the Inquiry Officer was duty-bound to get on the documents admission and denial, by both parties but this mandatory requirement of the CCA Rules has not been followed. This Court has noticed from perusal of the Inquiry Report (Exhibit-14) that it nowhere reflects that the requirement of rule of law for admission and denial on the documents produced by the prosecution, was complied with and therefore, on this count also, the inquiry proceedings and the dismissal order against the plaintiff, stand vitiated and are against the CCA Rules.



17. Learned counsel for appellant has also argued that mere submission of documents before the Inquiry Officer, is not sufficient but documents are required to be proved by the evidence of witnesses, and are also required to be marked exhibit and then only, the Inquiry Officer can consider these documents.

It has also been submitted that GF & AR Rules were not applicable but still charges for not following GF & Ar Rules had been held proved.

18. Learned counsel for appellant has vehemently urged that where the dismissal order of plaintiff dated 14.07.2009 (Exhibit-14) is violative to Rule 16 of the CCA Rules, the Appellate Authority has also not followed Rule 30 of the CCA Rules, while deciding his appeal and appeal rejection order dated 12.11.2009, too is in violation to the Rule 30(2) of the CCA Rules, as such unsustainable in law. The memo of appeal (Ex-15 & Ex-16) along with 54 documents have been placed on record. It has been alleged that after conclusion of inquiry, documents were provided to the plaintiff under the R.T.I. Act, which were produced before the Appellate Authority but not a single point, document or legal submission made by the appellant was considered by the Appellate Authority and appeal was dismissed in slipshod manner, by non-speaking and cryptic order.

19. This Court deems it just and proper to reproduce Rule 30 of the CCA Rules, 1958, as under:

30. Consideration of appeals: (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provision of rule 13 and having regard to the circumstances of the case the order of suspension is



justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 14, the appellate authority shall consider:

(a) whether the procedure prescribed in these rules has been complied with and if not, whether such non-compliance has resulted in violation of any provisions of Constitution or in failure of Justice;.....

20. This Court has gone through the appeal rejection order dated 12.11.2009 (Exhibit-54). The Appellate Authority, more or less reiterated the same findings on each charge as passed by the Inquiry Authority, and there is no discussion of any point or document, raised/produced by the appellant. In the appeal rejection order, only a reference has been made that appellant raised several issues in his appeal that he was not shown relevant documents and that the charges were proved without producing evidence but while dealing with such grounds of challenge, the Appellate Authority has simply said that the Inquiry Report indicates that appellant was given copy of every document and charges were found proved by documentary evidence, therefore, no oral evidence from the side of prosecuting officer was required to prove charges. The Appellate Authority has not adverted any of documents, submitted by appellant to his defence in respect of charges No.1 to 6. Plaintiff (PW-1), in his evidence, has clearly produced all these documents in evidence and defendants' witness (DW-1) also has admitted all these documents. This Court will too, consider the relevancy of documents to the charges, in later part of judgment, but it is suffice to observe here that the Appellate Authority has decided the appeal in slipshod manner, without





discussing the grounds and documents, produced by the appellant. The appeal rejection order dated 12.11.2009, apparently appears to be passed in violation to Rule 30 of the CCA Rules.

In case of ***Siya Ram Vs. State of Rajasthan [(1992) 1 WLC (Raj.) 352]***, it was held that the order of Appellate Authority is illegal because it has not been passed in accordance with Rule 30(2) of the CCA Rules. The Single Bench of Rajasthan High Court while laying down this ratio has placed reliance on previous judgment of the High court delivered in cases of ***Phool Chand Vs. State of Rajasthan [(1980) WLN (UC) 311]*** and ***Ramchandra Vs. Union of India [AIR (1986) SC 1173]***. This Court also has its concurrence with such proposition of law.

In case of ***Vasudeo K. Hardasani Vs. State of Rajasthan [(1989) 1 RLR 99]***, the Division Bench of the Rajasthan High Court, held that where the Appellate Authority has not followed the mandate of Rule 30(2) of the CCA Rules, the order of Appellate Authority stands vitiated and was quashed. The Division Bench also observed that Rule 30(2) of the CCA Rules provided that Appellate Authority shall consider whether the procedure prescribed in the CCA Rules has been complied with and if not whether such non-compliance has resulted in violation of any provision of the Constitution of India or in failure of justice. The Division Bench followed the dictum of Hon'ble the Supreme Court in case of *Ramchandra (Supra)*, where it was specifically stated that the Appellate Authority should pass a reasoned order dealing with contentions raised before it in the appeal. The mechanical reproduction of phraseology of the rule, will not be sufficient. The





Appellate Authority should marshal the evidence on record with view to decide about the sustainability of the findings recorded by the disciplinary authority and the order passed should show that the appellate authority has applied its mind and considered the objection raised in the appeal.

21. In case at hand, this Court finds that inquiry proceedings itself vitiated as the procedure envisaged under Rule 16 of the CCA Rules, was not followed and further the Appellate Authority too dismissed the appeal by a cryptic and non-speaking order, which itself is in violation to the Rule 30(2) of the CCA Rules.

22. In order to appreciate the challenge to impugned order of dismissal from service dated 14.07.2009 and the appeal rejection order dated 12.11.2009, as to whether the charges No.1 to 6 have been held proved against appellant maliciously and without any evidence and whether the reply, explanation and representation of appellant was considered or not, opportunity for defence was awarded to the appellant or not, whether principles of natural justice has been followed or not? This Court is examining the nature of charges, its reply and evidence as well as the conclusion of the Inquiry Officer and then by the findings of Appellate Authority. It has already been observed that the trial court did not enter into this arena under a wrong misconception of law that Civil Court has no jurisdiction to see the violation of the CCA Rules in considering the enquiry and passing the impugned orders. Since entire evidence was adduced before the trial court and is available on record, therefore, this Court deems it just and proper to consider the evidence on record, instead of remanding the suit to the trial court, as the same would prolong the litigation, which has



already suffered for more than twelve years and in the meanwhile, delinquent employee might have attained the age of superannuation. Therefore, remanding the suit, would not subserve the interest of justice.

23. The memorandum of charges dated 01.12.2008 is exhibited as Exhibit-A1.

23.1 First Charge, levelled against the plaintiff was that he did not forward the Annual Confidential Report (ACR) of subordinate employees from year 1996 to 1999, despite several reminders.

No witness was examined before the Inquiry Officer to prove this charge and only documents (Ex-P1 to Ex-P13) were submitted. Plaintiff, in his reply/explanation dated 17.04.2009 (Ex.A2), submitted that such charges are baseless and he had forwarded ACRs vide different letters. Plaintiff has produced such letters as Exhibit 17 to Exhibit 20 dated 17.06.1997 & 11.07.1997, and also submitted details of each session i.e. 1996-1997, 1997-1998 and 1998-1999 wherein such letters were sent. Plaintiff in his evidence clearly stated to forward ACRs, but he was not cross-examined on such oral and documentary evidence by the defendants. Defendants' witness DW-1, in his cross-examination admits that through letters (Ex-17 to Ex-19), plaintiff had forwarded ACRs of his subordinating officers in the Office. In respect of Exhibit-20, DW-1 denied but the same has been issued under R.T.I., Act by the department itself. He also admitted that details of such letters are also mentioned in the reply/explanation (Ex-A2) as also representation (Ex-13). Perusal of Inquiry Report (Ex-12) clearly shows that though documents Ex-P1 to Ex-P13, were neither produced nor exhibited by any witness, but these



documents were taken into consideration and recorded against appellant and merely on the basis of these documents, the charge No.1 has been held proved. The objection of plaintiff that documents were neither supplied nor documents sought to be summoned, were called for, has not been dealt with. The Appellate Authority, in the rejection order dated 12.11.2009, has also not pondered over documents (Ex-17 to Ex-20).

23.2 Second charge, levelled against plaintiff was that he committed irregularities in the year 1998, in purchase of material on the occasion of 786th URS Fair, Ajmer, of Rs.1,20,000/- without following GF & AR Rules.

In respect of this charge, it was replied that this is a ten years old matter which cannot be opened after such a long delay and that charge was denied. Plaintiff in his evidence has produced documents, Exhibit-21 to Exhibit-31, to show that purchases of the material were as per approved list by the Committee and subsequently approved by the Head of the Department and finally no objection was found in the audit as well. Perusal of inquiry report shows that no witness appeared to prove this charge and documents, Exhibit-15 to Exhibit-54, were marked by its own. The Inquiry Officer on the basis of Exhibit-51 observed that the delinquent employee has partially confessed some irregularities in purchase of various items. The Appellate Authority, too affirmed such charges without discussing documents, Exhibit-21 to Exhibit-31. PW-1 has clearly deposed that through documents (Ex-21 to Ex-31), it stands clear that purchases were approved by the Committee. DW-1 clearly admits that Ex-21 to Ex-31, are part of the government record. DW-1 admitted that expenditure of 786th



URS Fair has already been audited and no objection in the audit was found. He admitted that Exhibits 22 and 23, are the approval list of the department on the basis of which material was purchased. DW-1 also admitted that Exhibits 25 to 31, are lists of purchased material in the 786th URS Fair, which is signed by three persons and rates mentioned therein are approved by the department. Thus, it stands clear that plaintiff has given his full defence/explanation to such charge. Otherwise such charge is highly belated and once it has come on record that expenditure was audited, where no fault found, the department-prosecution is estopped to level and open such charge. There is no discussion about explanation and documents referred by plaintiff in the Inquiry Report and it is clear that the plaintiff was neither provided copies of documents nor documents prayed to be called for, were summoned, though same are part of record of the department. Plaintiff also submitted that GF & Ar Rules were not applicable in the year 1998 and as per document, Ex-24, order dated 08.12.1998, GF & AR were made applicable, therefore, prior to 08.12.1998, no GF & AR Rules were applicable. No heed was paid on such defence and charge No.2 has been wrongly held proved.

23.3 Third charge, levelled against plaintiff, was that plaintiff unauthorizedly deputed Mr. Arun Kumar Gupta for Reorientation Course on 03.12.2001, and managed his railway concession.

In respect of this charge, plaintiff has produced documents, Exhibits-32 to 34, which are orders from Head-quarter nominating Mr. Arun Kumar Gupta for Reorientation Course. Plaintiff had submitted reply that he had no power to depute any person for Reorientation Course and this was done by the senior



authority at Head Office. DW-1 has clearly admitted in his cross-examination that Exhibit-32 is the letter of department through which Mr. Arun Kumar Gupta was sent for Reorientation Course. DW-1 also admits that vide Exhibit-34, Mr. Arun Kumar Gupta was sent to *shivir* in the year 2002. He admits that it is the department which complies the procedure for railway concession and in case of Mr. Arun Kumar Gupta, this process was done by the department. Thus, there is clear evidence on record that charges levelled against plaintiff are baseless, yet in the Inquiry Report, this charge has been held proved on the basis of documents (Ex-P55 to Ex-P58). Perusal of Inquiry Report shows that no witness appeared to prove such documents and charge. There is no discussion of the reply/explanation of plaintiff and about documents (Ex-32 to Ex-34), which are admitted by DW-1 himself. Therefore, it stands clear that documents sought to be summoned by plaintiff, were not called for and plaintiff was not given proper opportunity to defend himself.

23.4 Fourth charge, levelled against plaintiff, was that in the year 2001, plaintiff had sent Sh. Bhanwar Lal to National Jamboree instead of Sh. Hajari Lal, against the Head-Office orders, which is deliberate defiance of instructions of the higher authorities.

In defence to such charge, plaintiff has produced documents Exhibits-35 to 40, to show that orders from headquarter were issued for sending Mr. Hajari Lal in orientation and therefore, charge levelled against plaintiff is baseless. PW-1 clearly deposed his evidence that Sh. Bhanwar Lal was sent as per orders of the Head Office. There is no cross-examination from PW-1 on his



evidence and documents (Ex-35 to Ex-40), rather DW-1 in his cross-examination admits that it is correct that in January, 2002, Commissioner, Bikaner, recommended the name of Sh. Bhanwar Lal for Jamboree and Exhibits 35-40, are parts of the government record. Thus, despite clear defence of plaintiff, the Inquiry Officer has found proved this charge against plaintiff on the basis of documents (Ex-P59 to P62). Perusal of Inquiry Report clearly shows that none of witnesses appeared to prove such documents and to exhibit the same. The Appellate Authority has not adverted to the explanation of plaintiff and documents produced by him. It stands proved that plaintiff was neither supplied documents (Ex-59 to Ex-62), nor documents of defence were called for, despite demand. The breach of Rule 16(3) of the CCA Rules is apparent and principle of natural justice has not been followed.

23.5 Fifth charge, levelled against plaintiff, was that in 2002 plaintiff applied for three days casual leave but has signed attendance register without cancellation of leave.

In defence/explanation to such charge, plaintiff has produced evidence that on 12,13 and 14 August, 2002, though he applied for casual leave but leave cancellation application was sent to the Head Office in advance and for these three days he discharged his duties and worked in the office. Documents, Exhibits 41 to 47, have been produced to prove that he had worked in the office during period of these three days and it is wrong that he marked his attendance only. PW-1 has not been cross examined on his evidence and documents (Ex-41 to Ex-47). DW-1 in his cross-examination has admitted that documents (Ex-41 to Ex-47) are part of the record of department and these



documents are duly signed by plaintiff-Shanti Lal Jain. DW-1 has admitted that as per documents (Ex-41 to Ex-47) which are part of the government record, Shanti Lal Jain had worked in the office. Thus, there is clear evidence available on record to show that such charge was wrongly levelled and the explanation furnished by plaintiff was not allowed to be proved. Plaintiff submitted these documents before the Appellate Authority but in the appeal rejection order dated 12.11.2009, there is no discussion about these documents in respect of charge No.5. Therefore, it is apparent that plaintiff was denied opportunity to defend such charge and documents (Ex-41 to Ex-47), which are part of the government record were not called for, despite demand. The Inquiry Officer has arbitrarily proved such charge against plaintiff without considering record of department and without giving opportunity of defence to plaintiff. It is apparent that Inquiry Officer did not advert to the record of department and just relied upon the evidence of department, overlooking the defence of plaintiff. In reply (Exhibits 1 and A2), plaintiff has clearly denied charge No.5 and submitted his defence that on 12, 13 and 14, August, 2002, after submitting application for leave cancellation, he worked in the office and for which the record may be sent. There is no consideration a bit of his defence in the Inquiry Report shows that inquiry proceedings were conducted in violation to Rule 16 of the CCA Rules.

23.6 Sixth charge, levelled against plaintiff, was that he was given Rs.3000/- and Rs. 4000/- from his colleague but did not enter this amount in the Cash Book and thus he embezzled.



In defence to such charge, plaintiff has produced documents (Ex-48 to Ex-51). In Ex-51, there is entry of Rs.20,000/- as contribution by four persons. Exhibit-48 is the receipt issued by the Cashier and Exhibit-49 is the copy of ledger where the entry of account finds place. Plaintiff has not been cross-examined on his evidence and on such documents. On the contrary, DW-1 has admitted that documents (Ex-48 to Ex-51) are part of the government record and in the receipt Exhibit-48, name of Mandu Ram is mentioned. As per Exhibit-49, amount paid by Mandu Ram, is deposited in the office. He admitted that it is correct that Exhibits-50 & 51, are documents related to expenditure of the Mandal Rally. This evidence is sufficient to dispose such charge levelled against plaintiff. The Inquiry Report shows that the Presenting Officer produced two witnesses namely Sh. M R Verma and Sh. Sunil Solanki in support of charge No.6 and produced documents (Ex-67 to Ex-80). Though one more witness Sh. Ramchandra Sharma was also produced but he did not turn up personally and sent his affidavit only, which was taken on record as Exhibit-P85. On the basis of such evidence, it was held that plaintiff Shanti Lal Jain cannot be held responsible for embezzlement of Rs.3000/- but was held guilty for embezzlement of Rs.4000/-, received from Sh. M R Verma. The Inquiry Report nowhere whispers about entries of the amount paid by Mr. M R Verma as available in the office record. No heed was paid to the defence of plaintiff that the amount was paid by individuals directly to the cashier. Plaintiff has claimed that the receipt of cashier was issued, which was available in the record but same was neither summoned nor sent. The appeal rejection order dated



12.11.2009 also nowhere whispers about these receipts and entries in the government record in respect of alleged amount. From perusal of Inquiry Report, statements of Sh. M R Verma are not reliable and Sh. Ramchandra Sharma, whose affidavit was taken on record as Exhibit-P85, did not appear personally yet the Inquiry Officer relied upon their evidence and held guilty the plaintiff for embezzlement of Rs.4000/-. Perusal of document Exhibit-48 which is receipt of Cash amount of Rs.20,000/- dated 29.03.2005 clearly shows that name of Mr. M R Verma is mentioned therein. It appears that plaintiff was not given any opportunity to produce his defence and documents (Ex-48 to Ex-51) which are part of the government record were not summoned. The Inquiry Officer arbitrarily held proved the charge of embezzlement of Rs.4000/- against plaintiff, which seems to be malicious also.

23.7 As far as charges No.7 & 8, are concerned, both charges have been dropped by the Inquiry Officer himself, hence no need to discuss about these charges.

24. On perusal of evidence produced by the plaintiff before the trial court, it appears that plaintiff has given sufficient explanation/defence to each of the charges, levelled against him. In the reply/representation dated 17.04.2009 (Exhibit-1), there is complete details and reference of documents and all such documents have been produced in evidence before the trial court. But in the Inquiry Report, there is no consideration/discussion about the defence of plaintiff. There is reasonable reasons and evidence on record to believe that plaintiff was not supplied documents in support of his defence despite making the demand



and non-supply of documents as also non-consideration of defence furnished by plaintiff is clear violation of the Rules 16(3), 16(10) & 16(10b) of the CCA Rules. It appears that no witness appeared to prove charges No.1 to 5, and only two witnesses appeared to prove charge No.6. Documents produced by department before the Inquiry Officer were also not proved by any evidence. Mere submission of documents before the Inquiry Officer may not be held sufficient unless documents are marked exhibited and proved by any witness.

In case of ***Amritlal Vs. State of Rajasthan [(1981) WLN UC 457]***, the Division Bench of the Rajasthan High Court, has held that mere filing of any document during course of departmental inquiry does not amount to prove such documents, unless these are either admitted by the other side or proved, they do not become evidence in the case. It was clearly held that mere production of the letter, during the inquiry was not sufficient. In the present case, none of documents, produced by the Presenting Officer, have been proved and exhibited by any witness.

In case of ***Roop Singh Negi Vs. Punjab National Bank [(2009) 1 SCC (L&S) 398]***, the Supreme Court held that departmental proceeding is a quasi-judicial proceedings. The Inquiry Officer performs a quasi-judicial function. The charges levelled against the delinquent officer may not be found to have been proved. The Inquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. In that case, since no witnesses were examined and charges were held proved on the basis of surmises and conjectures by the Inquiry Officer and further an inference drawn



by the Inquiry Officer, apparently were not found supported by any evidence, therefore, the Supreme Court allowed the appeal and set aside the High Court order and the appellant was directed to be reinstated with full back wages.

In case of **Union of India Vs. B K Dutta [(1973) RLW 714]**, the order of dismissal was quashed where the Single Bench of the Rajasthan High Court found that the disciplinary authority failed to consider the explanation of the delinquent employee and where there is evidence to substantiate the charges.

In case of **Dr. B K Choudhary Vs. State of Rajasthan [(1993) 1 WLC (Raj.) 47]**, the Single Bench of the Rajasthan High Court, observed that the inquiry report without considering detailed reply submitted by the delinquent employee shows non-application of the mind and requirement of Rule 16(4) of the CCA Rules has been treated as an empty formality by the Inquiry Officer. Finally, proceedings of inquiry were quashed and the delinquent employee was allowed all consequential benefits.

25. It may be also noticed that as per Order dated 08.12.1998 (Ex.24), the GF & AR Rules were made applicable, which clearly shows that prior to 08.12.1998 no GF & AR Rules were applicable still charge No.2 for not following GF & AR Rules, prior to 08.12.1998, has been held proved. This Clearly shows the non-application of mind by the Inquiry Officer and charges have been proved arbitrarily.

26. This Court also finds that this is a case where appellant-plaintiff was not provided documents, demanded to prepare his defence and further the Inquiry Officer did not summon the relevant record from the department despite of application and



reminders by the plaintiff (Ex-2 to Ex-11). The admission and denial of documents were not made by the Inquiry Officer for which he was duty-bound. The Inquiry Report suffers from non-consideration of the reply/representation submitted by plaintiff. On overall consideration of facts and circumstances of the present case, it appears that no opportunity to defend and hearing, was provided to plaintiff and there is a complete violation of the principles of natural justice.

27. In Civil Cases, the principle of preponderance of probability is a well known principle and this Court is of the opinion that when by the document/evidence, produced by plaintiff before this Court, it stands established that plaintiff had sufficient evidence to defend/explain charges, levelled against him, but such documents were not provided to him despite demand, therefore, there is reasonable reason to draw an inference that charges have been held proved arbitrarily. It appears that, plaintiff was not provided the documents, for his defence deliberately and for such reasons the dismissal order of plaintiff can be held malicious also. Further, documents could be obtained by the appellant, after conclusion of inquiry, under R.T.I. Appellant produced the documents before the Appellate Authority but, his appeal has been dismissed without considering these documents. There is no justification as to why the Appellate Authority did not ponder over the documents of defence which were produced along with appeal. A flagrant violation of mandatory provisions of Rule 16 of the CCA Rules as well as Rule 30 of the CCA Rules, is well evident and therefore the entire inquiry proceedings are illegal and stand vitiated, as such impugned orders dated 14.07.2009 and 12.11.2009, are also bad



in law and liable to be held unsustainable in law. Accordingly, point No.1 is decided in favour of appellant.

28. As far as point No. 2 is concerned, it is an admitted fact that the appellant was suspended vide order dated 03.10.2007 from the post of AOC i.e. Assistant Organization Commissioner and thereafter his headquarter remained in Jaipur. Appellant was served with charge-sheet on 01.12.2008 and during pendency of the inquiry, appellant remained suspended and finally removed from service vide Order dated 14.07.2009. Mere suspension may not be treated as termination of service or end of post and therefore, it is held that appellant was holding the post of AOC till 14.07.2009 when he was removed from service. Accordingly, this point No.2 is decided in favour of appellant.

29. Learned trial court decided issues No.1 & 2 against appellant for reasons that the trial court has not examined the impugned orders whether same are violative to the CCA Rules or not and confined its jurisdiction only to see as to whether impugned orders are malicious or not. In fact, perusal of findings of Issues No.1 and 2, recorded by the trial court, shows that trial court has not discussed the evidence and has just recorded cursory findings. Mere reference of evidence in the judgment is not suffice. Even the case law, as referred by the trial court in the impugned judgment, has not been looked into. The factum of maliciousness is interlinked with the violation of the principle of natural justice. This Court finds that respondents have deliberately flouted mandatory provisions of Rules 16 and 30 of the CCA Rules and knowingly has not followed the principles of natural justice, just to prejudice the defence of plaintiff and therefore, impugned orders



of dismissal may be held as malicious too. This Court has reached to such conclusion after discussion of the entire material on record and finds that the trial court has erred in deciding issues No.1 and 2 against plaintiff. Therefore, findings of the trial court in respect of issues No.1 and 2, are hereby reversed and both issues are decided in favour of plaintiff.

30. This Court finds that Inquiry proceedings, Inquiry report, dismissal order dated 14.07.2009, as also the appeal rejection order dated 12.11.2009, are against the law and also in violation to the CCA Rules as well as in violation to the principles of natural justice, therefore, both impugned orders dated 14.07.2009 and 12.11.2009 are liable to be quashed.

31. Now considering the issue of relief in respect of back wages and other consequential benefits, as a result of quashing impugned orders, this Court has noticed that it is not in dispute that appellant had served respondents for more than two decades. During period of his service, his entire career remained unblemished and clear without any complaint or charge-sheet except the charge-sheet in question. The removal order of the appellant dated 14.07.2009 has been found to be violative to the CCA Rules, principles of natural justice as also arbitrary and malicious.

In case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) [(2013) 10 SCC 324]***, Hon'ble the Supreme Court laid down the principles of full payment of back wages, in case of wrongful termination from service of an employee. The relevant portion of principles as enunciated in Para No.38.5, reads as under:



"38.5 The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the Court or Tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always keep in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

In case of **Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed [(2019) 17 SCC 184]**, the Hon'ble Supreme Court reiterated and followed the principles expounded in case of *Deepali Gundu Surwase (Supra)*.

Thus, having considered the entire facts and circumstances, this Court finds that appellant-plaintiff is entitled for his reinstatement along with all consequential benefits including full back wages, treated him in continuity in service.

32. As a result, the instant first appeal is allowed. The impugned judgment and decree dated 11.05.2011 is quashed and set aside. The Civil Suit filed by appellant-plaintiff is decreed and his dismissal order from service dated 14.07.2009 and Order of Appellate Authority dated 12.11.2009 are hereby quashed. Appellant be treated in continuity of service and awarded all consequential benefits. If, appellant has attained the age of



superannuation, he would be paid all consequential benefits including back wages, retiral benefits, treating him in continuity of service, as if he was never removed from service. No order as to costs. The decree be framed accordingly.

33. All pending application(s), if any, also stand(s) disposed of.

34. Record of the court below be sent back forthwith.

Sachin

(SUDESH BANSAL),J



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