

THE HIGH COURT OF MEGHALAYA

W.P. (C) No.168/2014

Prof. Durgesh Kumar Agrawal,
S/o Late Sh. Bhola Prasad Agrawal,
R/o Faculty Quarter No.8,
Rajiv Gandhi Indian Institute of Management,
Nongthymmai, Shillong-793014,
East Khasi Hills District, Meghalaya. :::: Petitioner

- Vs -

1. Union of India, through its Secretary,
Ministry of Human Resources Development,
Department of Higher Education, 430'C Wing,
Shastri Bhavan, New Delhi-110001.
2. The Director of Rajiv Gandhi Indian Institute of Management,
Mayurbhanj Complex, Nongthymmai, Shillong-793014.
3. Dr. Keya Sengupta,
Professor, Rajiv Gandhi Indian Institute of Management,
Mayurbhanj Complex, Nongthymmai,
Shillong-793014. :::: Respondents

BEFORE THE HON'BLE MR. JUSTICE T NANDAKUMAR SINGH

For the petitioner	:	Mr. N Kaushik, Adv,
For the respondents	:	Mr. AK Bhattacharya, Sr.Adv Mr. N Mozika, Adv
Date of hearing	:	01.12.2014
Date of Judgment	:	04.02.2015

JUDGMENT AND ORDER

By this writ petition, the petitioner is assailing the order of the disciplinary authority dated 21.08.2013 imposing major penalty of dismissal from service and also the order of the appellate authority dated 21.04.2014 for modifying the quantum of punishment by reducing from "dismissal from service" to "removal from service".

2. Heard Mr. N Kaushik, learned counsel for the petitioner and Mr. AK Bhattacharya, learned senior counsel assisted by Mr. N Mozika, learned counsel for the respondents 2 & 3.

3. The fact sufficient for deciding the core questions call for decision in the present writ petition is briefly noted. The petitioner has been a university topper of MBA specialized in Marketing and Ph.D. in the area of cross discipline of Marketing, Supply Chain Management, Strategy and Information Technology from ABV-Indian Institute of Information Technology and Management, Gwalior. After working in the Indian Automobile Industry for 5 (five) years during 1986-91, he has been teaching for last 22 years at PG level Management education. In response to an advertisement of the respondent-institute, the petitioner applied against the post of Professor with the respondent-institute. The petitioner was selected by the respondent-institute for the post of Associate Professor and as such, he resigned from his previous employer i.e. FORE School of Management, Delhi. After joining with the respondent-institute, the recommendations were submitted by the 6th Pay Commission to the Central Govt. which were accepted by the Central Govt. in the year 2009 with the condition that the said recommendation shall be applicable w.e.f. 01.01.2006. After the recommendation of the 6th Pay Commission was implemented at the respondent-institute, the petitioner applied for rectification in his pay fixation made earlier in view of the revision of pay scale as per 6th Pay Commission recommendation by filing an application dated 31.01.2011 to the Director, RGIIM, Shillong (respondent-institute). The said application dated 31.01.2011 was annexed with the original copy of pay fixation letter of FORE School of Management, Delhi (previous employer of the petitioner). It is the clear case of the petitioner that he had enclosed pay fixation letter issued by the previous employer i.e. FORE School of Management, Delhi along with the said application in

original and also that no photo copy of the said pay fixation letter was taken and retained by the petitioner before its submission, as he did not contemplate any such requirement at that point of time. The petitioner in the said application clearly stated that the revised pay as per the 6th Pay Commission was fixed by the previous employer for him as on July, 2007 and the petitioner had submitted the said application dated 31.01.2011 directly to the Director, RGIIM, Shillong (respondent-institute) and the said application was marked by the Director to be put up to the pay fixation committee on the same day i.e. 31.01.2011 and was forwarded to the Chief Administrative Officer (CAO) of the respondent-institute. As no action whatsoever had been taken on the said application of the petitioner dated 31.01.2011, the petitioner sent a reminder to his application for necessary rectification in the pay fixation in the line with other settled cases by filing a reminder application dated 27.07.2011. In that reminder, the petitioner enclosed a copy of the said earlier application dated 31.01.2011 without enclosure i.e. pay fixation letter issued by his previous employer dated 12.01.2011. On receipt of the reminder from the petitioner, the pay fixation committee was reconstituted replacing Prof. D.K. Agrawal by Prof. Keya Sengupta on 28.07.2011 to look into the case of the fixation of pay of the petitioner. After one and half month, once again the pay fixation committee was reconstituted replacing Prof. Keya Sengupta by Shri. R.C. Saxena, CAO, RGIIM, Shillong to look into the case of pay fixation of the petitioner. Meeting of the pay fixation committee was held on 26.09.2011 and in that meeting, it was recorded "as there is a difference in opinion, it was decided that matter may be finally decided by the appointing authority". But as a matter of fact, Shri. M Debnath, Finance Officer of the respondent-institute (invitee) and other members did not have any difference of opinion as per the proceedings of the meeting dated 26.09.2011.

4. On 24.10.2011, under the note of Shri. Alvin Nongtraw, Officer (Administration), RGIIM, Shillong, Shri. R.C. Saxena, CAO proposed to the Director to seek an expert opinion either from MHRD or CAG, Shillong and the Director gave approval for writing to CAG, Shillong. Accordingly, a letter was sent by CAO, RGIIM, Shillong to the Deputy Accountant General (Establishment & Administration) Office of the Principal Accountant General (Audit), Shillong on 08.11.2011. A reply dated 01.12.2011 was received by the respondent-institute from the Deputy Accountant General (Establishment & Administration) Office of the Principal Accountant General (Audit), Shillong stating that the petitioner is entitled to get Rs.45,990/- at the time of his initial appointment in RGIIM, Shillong w.e.f. 16.06.2008 (Annexure-XI to the writ petition) and it reads as follows:-

*“OFFICE OF THE Pr. ACCOUNTANT GENERAL (AUDIT),
MEGHALAYA, SHILLONG-793001.*

No. Admn/Audit/Misc/2011-12/3092 Dated: 1-12-2011

To,

*The Chief Administrative Officer,
Rajiv Gandhi Indian Institute of Management,
Mayurbhanj Complex, Nongthymmai, Shillong,
793014.*

Attention: Shri. R.C. Saxena

Sub: Request for confirmation/modification of the pay fixation.

Sir,

With reference to your letter No.RGIIM/Personal file/2008-09/160 dated 08.11.2011 on the subject cited above regarding pay fixation in respect of Prof. D.K. Agrawal, Associate Professor, I am to state as follows:-

1. Shri. D.K. Agrawal was given the benefit of pay protection, that is, the pay he had received in his earlier employment with Fore School of Management, Delhi at the time of initial appointment by allowing to draw Rs.19,550/- w.e.f. 16.06.2008 in the pay scale of Rs.16,400-450-20,000/-.

2. Subsequently, his earlier employer (Fore School of Management, Delhi) had revised pay structure w.e.f. January, 2006 and his pay was Rs.45,990/- in June, 2008.

3. *Thus, it is clear that Shri. Agrawal is entitled to get Rs.45,990/- at the time of his initial appointment in RGIIM, Shillong w.e.f.16.06.2008.*

This is for your kind information.

*Yours faithfully,
Sd/-
Dy. Accountant General (Admn)."*

5. On the very day of receiving the said reply dated 01.12.2011 from the Deputy Accountant General (Establishment & Administration), Meghalaya Shillong, Shri. R.C. Saxena wrote a letter to the Director of FORE School of Management, Delhi (without approval of the Director) seeking some information about pay fixation of the petitioner. In that letter of Shri. R.C. Saxena, the copy of the pay fixation statement dated 12.01.2011 alleged to have been submitted by the petitioner along with the said application dated 31.01.2011 was annexed. On 14.12.2011, Shri. M Debnath, Finance Officer, RGIIM, Shillong wrote a note (No.14) in the personal file of the petitioner giving his opinion about the reply of the PAG (Audit), Shillong and proposed to implement the decision of the PAG after obtaining an undertaking from the petitioner that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by the petitioner to the Govt. either by adjustment against future payments due to him or otherwise. Mr. M. Debnath, Finance Officer also proposed to refer the case indicating all details to the MHRD, Govt. of India for confirmation. Mr. R.C. Saxena, CAO, RGIIM, Shillong wrote a note (No.15) to the Director, RGIIM, Shillong on 16.12.2011 which is as, "although, PAG, Meghalaya has already conveyed his opinion, the reply from FORE School of Management is still awaited. If approved, we may wait till reply is received" and obtained Director's approval on

19.12.2011. On 22.12.2011, Shri. M. Debnath (SW-1), Finance Officer, RGIIM, Shillong again wrote a note to the CAO (separately not in the personal file) without receiving any reply from FORE School of Management and proposed to place the matter before the Board of Governors (BOG) meeting for taking appropriate decision regarding the fixation of revised pay of the petitioner. On 09.01.2012, Shri. M. Debnath, Finance Officer, RGIIM, Shillong wrote a note (note No.17) in the personal file of the petitioner stating that they had received a reply from the Director, FORE School of Management, Delhi and mentioned that out of three information sought, information with regard to only one was received. Further, he proposed to implement the opinion of the PAG (Audit), Meghalaya about fixation of pay of the petitioner after obtaining an undertaking from the petitioner. Mr. M. Debnath, Finance Officer, RGIIM, Shillong again submitted a draft letter to be sent to MHRD to the Director for approval. On 02.02.2012, an undertaking was obtained from the petitioner by the respondent-institute under CCS (Revised Pay) Rules, 2008. The undertaking dated 02.02.2012 made by the petitioner reads as follows:-

“CCS (REVISED PAY) RULES, 2008

UNDERTAKING

I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

*Signature: Sd/-
Name: D.K. Agarwal
Designation: Professor*

*Dated, Shillong,
The 2nd February, 2012.”*

6. As per the decision of the BOG meeting held on 04.01.2012, a letter dated 02.02.2012 was sent to the Director (Management), MHRD, Govt. of India, New Delhi by the CAO, RGIIM, Shillong on 02.02.2012. The CAO, RGIIM, Shillong (respondent-institute) issued an Order No.RGIIM/Admn/Per.File/Faculty/1/2011-12 and implemented the revised pay for the petitioner based on the opinion of the PAG (Audit), Meghalaya without waiting the response of MHRD as decided in the BOG meeting held on 04.01.2012. The said order dated 09.02.2012 of the respondent-institute reads as follows:-

**“Rajiv Gandhi
Indian Institute of Management
Mayurbhanj Complex, Nongthymmai, Shillong-793014**

No.RGIIM/Admn/Per.File/Faculty/1/2011-12 Date 9th February, 2012.

1. In the light of the decision of Pr.A.G. (Audit), Meghalaya, Shillong vide their letter No.Admn/Audit/Misc/2011-12/3092 dated 1st December, 2011, the pay in respect of Dr. Durgesh Kumar Aggrawal, Associate Professor, who joined this Institute on 16th June, 2008 (FN) from FORE School of Management, Delhi has been fixed as under:-

a) Initial basic pay fixed after implementation of 6 th CPC	= Rs.45,990/- pm
b) Academic Grade Pay	= Rs. 9,500/- pm
Total	= Rs.55,490/-pm(16.06.2008)
c) Date of next increment 01.07.2009.	

2. The fixation of pay of Dr. Durgesh Kumar Agrawal, on promotion as Professor w.e.f. 5th July, 2011 (FN) is appended below:-

a) Initial Basic Pay	= Rs.51,150/-pm
b) Academic Grade Pay	= Rs. 9,500/-pm
Total	= Rs.60,650/-pm
c) 3% Advance increment	= Rs.1,820/- pm
	= Rs.52,970/- pm
d) Initial pay fixed as professor at Rs.52,970/-pm + AGP	
Rs.10,500/-pm	= Rs.63,470/-pm
e) Date of Next increment 01.07.2012.	

Sd/-
9.2.12
(R.C. Saxena)
Chief Administrative Officer.

Copy to:

- 1. PS to Director for information of the Director please.*
- 2. O.(A&HR) for information and retention in Service Book please.*
- 3. A.O. for information and necessary action. (2 copies)*
- 4. Prof. D.K. Agrawal for information please.*
- 5. Guard file.”*

7. On 10.05.2012, the petitioner gave an application to the CAO of the respondent-institute for further correction in the fixation by enclosing photo copy of the said order of the respondent-institute dated 09.02.2012 which has been quoted above in extenso. On 13.07.2012, Professor Keya Sengupta was appointed to look after the duties of the Director, RGIIM, Shillong (under casual vacancy) for a period of six months w.e.f. 17.07.2012 vide Circular No.RGIIM/Admn/Ord/1/2012/653 dated 13.07.2012 on the basis of a letter No. F.No.7/12/2011-TS.V dated 09.07.2012 of MHRD. It is also pleaded in the writ petition that the respondent No.3 Professor Keya Sengupta who was only appointed to look after the duties of the Director of RGIIM, Shillong had personal malafide and bias against the petitioner, as the petitioner had questioned the qualification possessed by Professor Keya Sengupta for being eligible to be a Professor of the respondent-institute and also the petitioner was the potential candidate for appointment to the post of Director. It is also alleged that Professor Keya Sengupta, who had been appointed as Director to look after the duties of the Director, RGIIM, Shillong (respondent-institute) had manipulated all the circumstances against the petitioner. Immediately, after the respondent No.3 Professor Keya Sengupta was appointed as Director in-charge on 17.07.2012, Shri. R.C. Saxena, CAO, RGIIM, Shillong wrote a letter dated 25.07.2012 to the Director, FORE School of Management, Delhi alleging that the petitioner had annexed forged pay fixation statement made by the previous employer dated 12.01.2011 in his application dated 31.01.2011 to the respondent-institute. It is the further

case of the petitioner that the said pay fixation statement of the petitioner dated 12.01.2011 said to have been annexed by the petitioner to his said application dated 31.01.2011 is not the correct copy/photo copy of the original pay fixation statement dated 12.01.2011 annexed by the petitioner to his said application dated 31.01.2011. On 07.08.2012, FORE School of Management, Delhi sent a reply dated 07.08.2012 stating that (i) the effective date of implementation of revised pay scale for the petitioner while he was in service with FORE School of Management, Delhi after 6th CPC was implemented was on 01.04.2009; (ii) a copy of the initial pay fixation by which switch over of pay scale to scales of 6th CPC is attached and; (iii) pay fixation statement dated 12.01.2011 as provided by the petitioner and annexed herewith has not been issued by the FORE School of Management, Delhi at any point of time. Hence, this letter i.e. pay fixation statement dated 12.01.2011 is false and it should not be considered. The said letter of FORE School of Management, Delhi dated 07.08.2012 reads as follows:-

“FORE SCHOOL OF MANAGEMENT, NEW DELHI

7TH AUGUST, 2012

*Mr. R.C. Saxena,
Chief Administrator Officer,
Rajiv Gandhi Indian Institute of Management,
Mayurbhanj Complex, Nongthymmai,
Shillong-793014.*

Sub: Information regarding pay fixation of Dr. D.K. Agarwal.

Dear Sir,

This is reference to your letter No.RGIIM/per's File/2008-09/108 dated 25th July, 2012 received by us on 1st August, 2012. We wish to appraise you the following:

1. Effective date of implementation of Revised Pay Scale for Dr. D.K. Agrawal while he was in service with FORE after 6th Pay Commission were implemented was 1st April, 2009.

2. A copy of initial pay fixation by which switch over of pay scale to scales of 6th Pay Commission is attached.

Further we have already provided to you vide our letter dated 15.12.2011 the Date of Joining & the Date of Leaving of service by Dr. D.K. Agrawal along with details of Pay Scale drawn by him. A copy of the same is attached.

Also would like to bring to your notice that the pay fixation letter as provided by Dr. D.K. Agrawal and annexed herewith has not been issued by FORE School of Management at any point of time. Hence this letter is false and should not be considered. We submit that we do not have knowledge of the same. This is for your kind information and if any clarification required please feel free to talk to the undersigned.

Thanking You

Yours faithfully,

For Fore School of Management

Sd/-

*V. Muralidharan
(Accounts In-Charge)"*

8. On 23.08.2012, Shri. M. Debnath, Finance Officer, RGIIIM, Shillong wrote a letter to the petitioner asking him to furnish the information as sought by the earlier communication as to whether the revised pay scale of the 6th CPC were implemented by FORE School of Management (previous employer) w.e.f. 01.04.2009 or 01.01.2006 with reference to the letter dated 31.07.2012 and failing which, the institute would be constrained to take action as per existing rules. With reference to the said letters dated 31.07.2012 and 23.08.2012 issued by the Finance Officer of the Institute, the petitioner requested the CAO to furnish a copy of the letter dated 15.12.2011 of FORE School of Management, Delhi and a copy of the pay fixation (revised pay) of January 12, 2011 as mentioned in the above said letters of the Finance Officer of the Institute and copies of these will enable the petitioner to understand the position to reply the said letters of the Finance Officer of the Institute. The said letter dated 03.09.2012 reads as follows:-

“Dated: September 03, 2012

*To,
The CAO
RGIIM, Shillong.*

Sub: Regarding Letter No.RGIIM/Per-File/2008-09/136 dated 31st July 2012 and RGIIM/Per-File/2008-09/160 dated 23rd August, 2012 issued by the Finance Officer of the Institute.

Sir,

With reference to above letters, I would request you to kindly furnish a copy of the letter dated December 15, 2012 of FORE School of Management, Delhi and a copy of the pay fixation statement (revised pay) of January 12, 2011 as mentioned in above said letters of the Finance Officer of the Institute.

Copies of these will enable me to understand the position and reply the said letters of the Finance Officer of the Institute.

*Yours faithfully,
Sd/-
(D.K. Agrawal)”*

9. The CAO, RGIIM, Shillong refused to furnish the copy of pay fixation statement dated 12.01.2011 alleged to have been annexed with the said application dated 31.01.2011 stating that the pay fixation statement dated 12.01.2011 was forwarded by the petitioner as an enclosure to his application dated 31.01.2011 vide his letter dated 04.09.2012 which reads as follows:-

*“RAJIV GANDHI
INDIAN INSTITUTE OF MANAGEMENT,
SHILLONG*

RGIIM/Admn/Per.File/Faculty/2012/789 04 September 2012

*To,
Prof D.K. Agrawal,
Professor,
RGIIM, Shillong.*

Sub: Letter No.RGIIM/Per.-File/2008-09/136 dated 31st July 2012 and RGIIM/Per.-File/2008-09/160 dated 23rd August 2012 issued by the Finance Officer of the Institute-regarding.

Sir,

Refer your letter no NIL dated 03rd September 2012.

It appears that you have erroneously referred to FORE School of Management letter dated December 15, 2012.

However, a copy of FORE School of Management letter dated 15th December, 2012 is enclosed.

As regards copy of pay fixation statement of 12th January 2011, a copy of the same was forwarded by you as an enclosure to your letter No. NIL dated 31st January, 2011, while requesting fixation of your pay. As a copy is available with you, you may kindly use that as reference.

Please ensure that your reply to letter from Finance Section dated 23rd August, 2012 is received by due date.

Encl: One

*Yours faithfully,
Sd/-
(Col D Nagarajan)
CAO (Oftg)
RGIIM Shillong*

Copy to:

1. The Finance Officer, RGIIM for information.”

10. The writ petitioner again sent a letter dated 06.09.2012 requesting the CAO (Oftg) RGIIM, Shillong to furnish a copy of the pay fixation letter dated 12.01.2011 alleged to have been annexed to his application dated 31.01.2011 to him as he did not keep a copy of the pay fixation letter of FORE School of Management dated 12.01.2011. But there was no reply from the CAO (Oftg) RGIIM, Shillong. The said letter of the petitioner dated 06.09.2012 reads as follows:-

“Dated: September 06, 2012

*To
The CAO (Oftg)
RGIIM, Shillong.*

Sub: Reference your letter No.RGIIM/Pre-File/2008-09/789 dated 4th September 2012.

Sir,

I am sorry that the letter of FORE School of Management, Delhi was shown as December 15, 2012 instead December 15, 2011 in my earlier letter dated 3rd September, 2012. This typographical error is regretted.

With regard to the Pay Fixation Letter of the FORE School of Management, Delhi that was given to the institute as enclosure to my letter dated January 31, 2011, I did not keep a copy of the same.

I would therefore, request you to kindly to furnish a copy of the Pay Fixation Letter of 12th January 2011.

Thanking You

Yours sincerely

*Sd/-
(D.K. Agrawal)"*

11. From the above correspondences and also from the pleaded case of the parties, it is clear that the copy of pay fixation statement dated 12.01.2011 of the petitioner alleged to have been annexed by him in his application dated 31.01.2011 was not furnished to the petitioner by the respondent-institute on the ground that the copy of the pay fixation statement dated 12.01.2011 is available with the petitioner. A photo copy of the pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) was produced by the respondent-institute alleging that the petitioner had forged the said pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) and basing on the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) (photo copy produced by the respondent-institute) i.e. S7 (i)/C2 (i), the respondent-institute fixed the pay scale of the petitioner vide order of the respondent-institute dated 09.02.2012. It is stated in the writ petition that instead of furnishing a copy of the pay fixation statement dated 12.01.2011 alleged to

have been annexed to the said application of the petitioner dated 31.01.2011 i.e. S7/C2 to the petitioner, the petitioner was placed under suspension vide order of the respondent No.3 Shri. Keya Sengupta, Director in-charge of the respondent-institute dated 10.09.2012, which reads as follows:-

*“Rajiv Gandhi
Indian Institute of Management
RGIIM/Admn/Per.File/Faculty/1/2012/792 10th September 2012*

ORDER

Whereas, it has come to the notice of the undersigned that Dr. Durgesh Kumar Agrawal, Professor of RGIIM Shillong submitted a forged/false Pay Fixation Statement dated 12 January 2011 to the Institute purported to have been issued by his previous employer i.e. Fore School of Management, New Delhi vide his letter dated 31 January 2011. On the basis of the above said Pay Fixation Statement, Dr. Durgesh Kumar Agrawal claimed and availed refixation of his pay in gross violation of the rules and regulations followed by Rajiv Gandhi Institute of Management, Shillong and specifically, Rule 3 of CCS (Conduct Rules) 1964.

Whereas, the Institute is contemplating to institute departmental proceedings against Dr. Durgesh Kumar Agrawal to ascertain the facts.

I, the undersigned, in exercise of my powers as the Director of the Institute, hereby place Dr. Durgesh Kumar Agrawal under suspension with immediate effect.

During the period of suspension, said Dr. Durgesh Kumar Agrawal would cease to function as a Faculty member of the Institute and he will not participate in any of the activities of the Institute.

During the period of suspension, the Headquarters of Dr. Durgesh Kumar Agrawal will be RGIIM Shillong and he will not leave station without written permission of the competent authority.

During the period of suspension, Dr. Durgesh Kumar Agrawal will be entitled to subsistence allowance as admissible under rules.

*Sd/-
(Prof. Keya Sengupta)
Director*

Memo No.RGIIM/Admn/Per.File/Faculty/1/2012/792 dated 10th September 2012

1. Dr. Durgesh Kumar Agrawal, Professor, RGIIM Shillong for information and necessary action.

*Sd/-
Director.”*

12. On 14.09.2012, the respondent-institute served a memorandum being No.RGIIM/Admn/Per.File/Faculty/1/2012/807 dated 14.09.2012 for initiating disciplinary proceedings for two articles of charges that the petitioner had submitted a forged pay fixation statement dated 12.01.2011 for revision of his pay in accordance with 6th CPC implemented by the FORE School of Management, Delhi w.e.f. 01.04.2009 and on the basis of forged pay fixation statement dated 12.01.2011, the petitioner claimed for revision of pay scale. The two articles of charges furnished under the memorandum dated 14.09.2012 read as follows:-

“ANNEXURE-I

*Statement of Article of Charge framed against Dr. Durgesh Kumar Agrawal,
Professor of Rajiv Gandhi Indian Institute of Management.*

Article 1

Dr. Durgesh Kumar Agrawal was employed by RGIIM Shillong on 16th June 2008 as Associate Professor. On 31st January 2011, Dr. Durgesh Kumar Agrawal submitted a note to Director RGIIM, Shillong, enclosing therewith a copy of Pay Fixation Statement dated 12th January 2011, purportedly issued by his previous employer i.e. FORE School of Management, New Delhi and requested for re-fixation of his Basic Pay at Rs. 45,990/- in line with pay fixation done in the above pay fixation statement effective from July 2008 and to be payable wef 16th June 2008. According to this pay fixation statement dated 12 January 2011, the revised scale of pay in accordance with 6th Central Pay Commission was implemented by FORE School of Management wef 01st April 2009.

Vide L.No.RGIIM/Per.File/2008-09/108 dated 25th July 2012, information regarding pay fixation of Dr. Durgesh Kumar Agrawal was sought from FORE School of Management, New Delhi. In their reply, vide letter dated 7th August 2012, FORE School of Management intimated that:

a) Pay Fixation letter as provided by Dr. Durgesh Kumar Agrawal was not issued by them at any point of time. Hence, that letter is false and should not be considered.

b) Effective date of implementation of Revised Pay scale in accordance with 6th Central Pay Commission FORE School of Management was 01st April 2009.

Therefore, by submitting a false/forged letter purportedly issued by FORE School of Management, New Delhi, Dr. Durgesh

Kumar Agrawal has fraudulently claimed enhanced salary not due to him.

Article 2

As a result of decision by Principal account General (Audit), Meghalaya, Shillong letter No.Admn/Audit/Misc/2011-12/3092 dated 01st December 2011, the pay in respect of Dr. Durgesh Kumar Agrawal was fixed in accordance with 6th Central Pay Commission scales as Associate Professor wef 16th June 2008 and as Professor wef 05th July 2011. The decision of AG (Audit) was based on the false letter submitted by Dr. D.K. Agrawal and was erroneous. The enhanced pay was given to Dr. Durgesh Kumar Agrawal wef 01st February 2012. However, the arrears due wef 16th June 2008 have not yet been paid. By submitting a false letter in support of his pay fixation, Dr. Durgesh Kumar Agrawal has fraudulently claimed and already received an amount of Rs.31,982 (Rupees thirty one thousand nine hundred and eighty two only) but the arrears from 16th June 2008 to January 2012 amounting to Rs.1,80,000/- (Rupees one lakh and eighty thousand only) have not been paid to him despite being repeatedly claimed by him.”

13. The documentary evidence to be produced in support of article of charges were also mentioned in Annexure-IV to the said memorandum dated 14.09.2012. In that list of documents, the copy of the said application of the petitioner dated 31.01.2011 filed by the petitioner appeared at Srl.No.7 and it consists of two pages. The relevant portion of the Annexure-IV to the said memorandum dated 14.09.2012 (documentary evidence) to be produced in support of article of charges is quoted hereunder:-

“ANNEXURE-IV
Documentary Evidence To Be Produced in Support of Article of Charges.

Sl. No.	Letter No. & Date Issued By	Issued To	No. of Pages	Subject
**	*****	*****	****	*****
7.	Nil dated 31 st January 2011 by Dr. D.K. Agrawal	Director RGIIM Shillong	2	Rectification of Pay Fixation in the 6 th CPC as FORE School of Management Pay fixation (Table attached dated 12 th January 2011)
**	*****	*****	****	*****

14. On receipt of the article of charges, the petitioner denied all the charges and requested to be heard in person. On 01.10.2012, Shri. L. Roy, IAS Registrar NEHU Shillong was appointed as an Enquiry Officer. The hearing of the enquiry were held on 12.10.2012, 18.10.2012, 12.11.2012, 28.11.2012, 07.01.2013, 14.01.2013, 22.01.2013, 28.01.2013, 30.01.2013, 09.02.2013, 05.03.2013, 06.03.2013, 08.03.2013 and 16.03.2013. The petitioner also filed an application dated 15.10.2012 being No. Inquiry/2012/6 to the Inquiry Officer for permission to him and his defence assistant to inspect the document i.e. Srl.No.7 i.e. application dated 31.01.2011 along with the forged pay fixation statement issued by the FORE School of Management, Delhi in original. It may be required to reiterate that the document mentioned at Srl.No.7 were the application dated 31.01.2011 i.e. S7/C2 and Xerox copy of the pay fixation statement of the petitioner dated 12.01.2011 prepared by the FORE School of Management, Delhi i.e. S7 (i)/C2 (i) alleged to have been annexed by the petitioner in his application dated 31.01.2011 basing on which, the revised pay scale of the petitioner was fixed vide order of the respondent-institute dated 09.02.2012. The Inquiry Officer passed the order dated 18.10.2012 observing that one of the two documents which the Charged Officer wants to inspect was submitted by none other than the Charged Officer himself to the RGIIM and the Charged Officer must be having copy of the application as well as the pay fixation statement purportedly issued by his previous employer FORE School of Management to him and therefore, there is no reason for allowing him to inspect the same. The relevant portions of the order of the Inquiry Officer dated 18.10.2012 is quoted hereunder:-

“ *****

The Presenting Officer, Col. D. Nagarajan, Adviser Campus Development, RGIIM and the Charged Officer Prof. Durgesh

Kumar Agrawal along with his Defence Assistant Shri. K.M. Deb are present.

Considered the petition No. Inquiry/2012/6 dated 15th October 2012 submitted by the Charged Officer for permission for him and his Defence assistant to inspect the following documents:-

1. His (Prof D.K. Agrawal's) application dated 31st January 2011 along with the alleged forged Pay Fixation Statement issued by FORE School of Management (in original).

2. Statements of witnesses to be produced by the Presenting Officer. In this connection, it may kindly be noted that in the Charge Sheet vide No. RGIIM/Admn/Per.File/Faculty/2012/807 dated 14th September 2012 only the name of Shri. Manoranjan Debnath, FO, RGIIM, Shillong was shown as witness.

3. The Agenda Items and the Minutes of the Meeting of the Board of Governors, RGIIM, Shillong in which the alleged forged Pay Fixation Statement was considered.

4. The Agenda Items and the Minutes of the Meeting of the Board of Governors, RGIIM, Shillong in which Prof Keya Sengupta was appointed as Director in-charge.

As regards his petition for permission to inspect his application dated 31.1.2011 along with the alleged forged Pay Fixation Statement by FORE School of Management in original, I observe as follows:-

(a) One of the two documents which the Charged Officer wants to inspect now was submitted by none other than the Charged Officer himself to the RGIIM. On this ground alone, I do not see any reason to allow the Charged Official to inspect his own application signed and submitted by himself.

(b) No doubt the Charged Officer must be having a copy of the application as well as a copy of the Pay Fixation Statement purportedly issued by his previous employer FORE School of Management to him. Therefore, there is no reason for him to inspect the same.

(c) Rule 14 of the CCS (CCA) Rules 1965 does not provide for supply of copies of documents to the Charged Officer. It would, therefore, have been sufficient if the Charged Officer is given access to the documents on which the Presenting Officer proposes to rely to prove the charges.

(d) Obviously these two documents are vitally important to this case and the proof of the charge depends upon the authenticity of these two documents. I observe that RGIIM has even provided the Charged Officer with Photostat (Xerox) copies of both documents listed at No.7 and enclosure in the Annexure IV of the Memorandum No. RGIIM/Admn/Per.File/Faculty/1/2012/807 dated 14.09.2012 as also mentioned in para 9 of Page 63 & 64 of Swamy's Manual on Disciplinary Proceedings 2012 edition.

In view of my observation at (a), (b), (c) and (d) above, I see no convincing reason to allow the C.O. to inspect these documents.

*****”

15. The prosecution in support of the said two article of charges against the petitioner, examined three witnesses i.e. PW 1 Shri. Manoranjan Debnath, Finance Officer, RGIIM, Shillong; PW 2 Shri. V. Muralidharan, Accounts in-charge, FORE School of Management, Delhi and; PW 3 Shri. Alvin Nongtraw, Officer (Administration), RGIIM, Shillong and also produced 22 documentary evidence including the document at Srl.No.7 i.e. original application of the petitioner dated 31.01.2011 i.e. S7/C2 and the photo copy of the pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) prepared by the FORE School of Management, Delhi alleged to have been annexed to the said application of the petitioner dated 31.01.2011. The Inquiry Officer submitted the inquiry report dated 08.05.2012 with the findings that the article of charge No.2 had been proved and for article of charge No.1, the prosecution has not been able to prove the charge that the petitioner had submitted the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) (produced by the prosecution [respondent-institute]), along with his application dated 31.01.2011 i.e. S7/C2. The reasons for coming to his findings by the Inquiry Officer in his report dated 08.05.2013 that the prosecution has failed to prove conclusively that the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) was annexed to the said application of the petitioner dated 31.01.2011 i.e. S7/C2 are as follows:-

“ *****

Point for determination No.3

If yes, is S7(i) the supporting document enclosed by CO along with his application marked as S7?

As I have discussed earlier, the CO not only denies having enclosed S7(i) along with his letter S7, but he also argues that S7(i) is not even the document referred to in the Article of Charge No.1 in as much as S7(i) does not mention the date w.e.f. which 6th CPC Pay Scales are implemented by FORESM while the document referred to is in Article No.1 does mention 01.04.2009 as the date from which such implementation took effect. I will not go into the allegation of the CO that there is a possibility that S7(i) was manufactured. However, it is a fact that initially, the CO was not permitted to inspect S7(i). Subsequently, however, he was given the opportunity when the same document viz S7(i) was introduced as Court document C2(i) and subsequently referred to as S7(i)/C2(i) in these proceedings by all concerned and by the CO himself during his Examination-in-Chief (bottom of page 2 thereof).

I would like to assess the evidence both documentary and oral to see whether it conclusively proves that S7(i) was the supporting document enclosed by the CO along with his application S7. I have also carefully followed the arguments advanced by both sides in support of their respective contention and I observe as follows:-

1. Although as pointed out by PO, Shri. M. Debnath, Finance Officer had stated during his cross-examination (Lines 7, 8 and 9 of page 1 thereof) that S7(i) is an enclosure with S7 submitted by the CO on 31.01.2011 and though he reiterated this by stating that, “I know that S7(i) was submitted by the CO on because it enclosed along with his application dated 31.01.2011 vide S7”, nowhere does Shri. Debnath claim or state that he had been present at that time or that he had seen S7(i)/C2(i) being given by the CO to the Director RGIM.

2. PO had pointed out that Shri. K M Deb, Defence Assistant as the then member of the Pay Fixation Committee had not raised any objection regarding the veracity of S7(i)/C2(i). Moreover, he argued that the documents including S7(i)/C2(i) had been forwarded to Principal Accountant General (Audit) Meghalaya whose decision or advice in favour of the CO was based on S7(i)/C2(i). These facts no doubt indicate that S7(i)/C2(i) was that CO had enclosed with S7/C2, but they do not conclusively prove it.

3. The PO further argues that Shri. Alvin Nongtraw, Officer (Administration & HR) had affirmed as much at pages 4, 6 and 7 of his examination-in-chief. Furthermore, Shri. Alvin Nongtraw had highlighted the fact that the figure under the “new pay basic” corresponding to July 2007 is Rs.45,990/- in S7/C2 and that is the same figure mentioned by CO at page 1 of S7/C2. Presenting Officer further argued that Shri. Alvin Nongtraw had also testified that once received by him (i.e. Shri. A Nongtraw) the documents are in safe custody under lock and key with the key being always in Shri. Nongtraw’s possession even during short spells of leave. According to the PO, therefore, there is no possibility of any document being tampered with once it is in Nongtraw’s custody. Therefore, PO argues, the enclosure with

S7 is nothing but S7(i)/C2(i). Furthermore, PO pointed out that the CO had admitted that the document purportedly enclosed by CO with S7/C2 was dated 12.01.2011 which is the same date as S7(i)/C2(i).

4. On the other hand, I have noted that Shri. Alvin Nongtraw had made a clear statement at lines 4, 5 and 6 from the bottom of page 7 of his examination-in-chief that “S7(i) is the enclosure given by Prof D K Agrawal along with his letter exhibited as S7”. However, during his cross-examination he had admitted that “I was not present at the time when C2 and C2(i) were submitted to the Director, RGIIM” (last three lines of the first page of his cross-examination).

5. Therefore, though there is no reason to doubt the conscientiousness with which Shri. Alvin Nongtraw kept the documents entrusted to his custody, the fact remains that by his own admission, this witness had not physically seen S7(i)/C2(i) being handed over by the CO to the Director, RGIIM.

6. Finally, Presenting Officer also argues that Shri. V. Murlidharan, Accounts-in-charge, FORESM at page 3 of his cross-examination had stated that as far as he (i.e. Shri. V. Murlidharan) is concerned, S7(i) is the letter submitted by the CO to RGIIM and forwarded by RGIIM to FORESM. But I noted that in the very same paragraph, Shri. V. Murlidharan had admitted that, “I was not physically present when S7(i) was submitted to RGIIM. It is a fact that I was not present at that time.”

7. In the original document, marked as S7/C2, there is no indication by way of signature or endorsement by any functionary or official of RGIIM to show that S7(i)/C2(i) has been received officially along with S7/C2. S7/C2 had been marked by the then Director, RGIIM Shillong with the following endorsement – “CAO, please put up to pay fixation committee”. It was signed and dated 31.01.2011. Just below this endorsement, there is another one which reads “N/A pse” signed apparently by the CAO dated 31.01.2011 and addressed to Prof P. Saravanan. However, there is absolutely no endorsement of any kind on the body of S7(i)/C2(i) to show that it has been seen or received from the CO by any functionary as an enclosure to S7/C2.

8. I also noted that the PO did not cite as witnesses or examine the then Director, RGIIM Prof A K Dutta or Shri. R C Saxena, the CAO, RGIIM or even Prof P. Saravanan, as the only three persons whose evidence could reasonably be expected to shed light on whether S7(i)/C2(i) was indeed attached by the CO along with S7/C2.

9. The vital point that emerge is that, no one had seen S7(i)/C2(i) being physically submitted by the CO to the then Director, RGIIM on 31.01.2011.

10. The evidence on this point had to be rigorously examined as on it hinges the sustainability of the charge of forgery which

is a criminal offence. In view of my observations above, I would say that although the evidence especially circumstantial evidence points to the high probability that S7(i)/C2(i) is the document enclosed by CO along with S7/C, I am unable to come to a clear conclusion that S7(i)/C2(i) is indeed the supporting document enclosed by the CO along with his application S7/C2 dated 31.01.2011.

FINDING OF EACH CHARGE

1. Article of Charge No.1 can be briefly summed up as follows:-

“By submitting a false/forged letter purportedly issued by FORESM, New Delhi, Dr. D K Agrawal has fraudulently claimed enhanced salary not due to him”.

From the foregoing discussion of the evidence on record, the PO has not been able to conclusively prove the charge in as much as it could not be conclusively proved that the CO had submitted a false/forged letter purportedly issued by the FORESM.”

***** “

16. The disciplinary authority under his letter dated 08.05.2013 furnished a copy of the inquiry report to the petitioner asking him to make representation or submission and also the disciplinary authority will take suitable action after considering the inquiry report and the representation of the petitioner. The said letter of the disciplinary authority dated 08.05.2013 reads as follows:-

*“Rajiv Gandhi
Indian Institute of Management*

RGIIM/Admn/Per.File/Faculty/1/2013/1220 08th May 2013

*To,
Prof Durgesh Kumar Agrawal
(Under suspension)
RGIIM Shillong.*

Ref: Inquiry initiated vide Memo No. RGIIM/Admn/Per.File/Faculty/1/2012/807 dated 14th September 2012.

A copy of the Inquiry Report enclosed.

If you wish to make any representation or submission, you may do so in writing to the Director, RGIIM Shillong who is the Disciplinary Authority, within 15 days of the receipt of this letter. The Disciplinary Authority will take suitable action after considering the inquiry report and your representation thereon.

Sd/-
Prof Keya Sengupta
Director
RGIIM Shillong”

Encl: The Inquiry report of the Inquiry Officer consisting of 22 (Twenty two pages).

17. The petitioner submitted the detailed representation by giving reasons for not accepting the findings of the Inquiry Officer that the article of charge No.2 had been proved and also that after the article of charge No.1 cannot be proved and established, article of charge No.2 cannot be proved inasmuch as the charge No.2 solely depends on the article of charge No.1. The disciplinary authority, in clear infraction of the procedure prescribed under Rule 15 (2) of the CCS (CCA) Rules, 1965, had disagreed with the findings of the inquiry officer in his report dated 08.05.2013 that the article of charge No.1 cannot be proved conclusively and passed the impugned order dated 21.08.2013 for imposing major penalty of dismissal from service to the petitioner. The disciplinary authority took undue advantage of reading the detailed representation/submission of the petitioner to the report of the inquiry officer dated 08.05.2013 before taking tentative views for disagreement with the findings of the inquiry officer in his report dated 08.05.2013. From this fact, it is clear that the procedure prescribed under Rule 15 (2) of the CCS (CCA) Rules, 1965, had not been followed by the disciplinary authority in issuing the impugned order dated 21.08.2013. For

easy reference, Rule 15 (2) of the CCS (CCA) Rules, 1965 is quoted hereunder:-

“15. Action on the inquiry report

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.”

18. The petitioner being aggrieved by the impugned order dated 21.08.2013, filed an appeal before the appellate authority and the appellate authority by the impugned order dated 21.04.2014 rejected the appeal by modifying the quantum of punishment from “dismissal from service” to “removal from service”. Hence, this present writ petition for quashing the impugned orders.

19. The respondent No.2 filed affidavit-in-opposition and also the respondent No.3 filed separate affidavit-in-opposition. The respondents in their affidavits-in-opposition did not deny that the original copy of pay fixation statement dated 21.01.2011 was not produced in the inquiry nor the writ petitioner was allowed to inspect the original copy of pay fixation statement dated 12.01.2011. The case of the respondents in their affidavits-in-opposition is that the petitioner himself submitted the photo copy of the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) in support of his application dated 31.01.2011 i.e. S7/C2 and the further case of the respondents in their affidavits-in-opposition is that the revised pay of the petitioner was fixed basing on the forged pay fixation statement dated

12.01.2011 i.e. S7 (i)/C2 (i) (produced by the prosecution [respondent-institute]) vide order of the respondent-institute dated 09.02.2012. It is clear from the record as well as from the inquiry report and also the document produced by the prosecution or respondent-institute that the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) was not prepared by the FORE School of Management, Delhi. Now, only the core question to be decided is as to whether the petitioner had submitted the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) along with his application dated 31.01.2011 i.e. S7/C2?.

20. The petitioner had taken amongst other grounds for challenging the impugned orders and also the portions of the inquiry report that the article of charge No.2 had been proved:- (i) There is complete violation of natural justice in holding the departmental inquiry for the said two article of charges inasmuch as, the petitioner had not been allowed to inspect the original copy of the forged pay fixation statement dated 12.01.2011 alleged to have been annexed by the petitioner in his said application dated 31.01.2011 nor the copy of the forged pay fixation statement dated 12.01.2011 was furnished to the petitioner inspite of repeated requests; (ii) a copy of the vital document i.e. forged pay fixation statement dated 12.01.2011 alleged to have been annexed by the petitioner to his application dated 31.01.2011 cannot be denied to the petitioner on the purported ground/reason that the petitioner must be having a copy of the forged pay fixation statement dated 12.01.2011; (iii) the departmental inquiry cannot be proceeded by solely relying on the photo copy of the document i.e. photo copy of the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) alleged to have been annexed by the petitioner to the said application dated 31.01.2011 i.e. S7/C2 inasmuch as, the photo copy of the said document is not admissible under the Indian Evidence Act, 1872; (iv) in the disciplinary proceedings which is

quasi judicial and quasi criminal in nature, burden of proof cannot be shifted by the prosecution to the Charged Officer (CO) inasmuch as, in the present case, when the prosecution had utterly failed to prove that the petitioner had annexed the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) (produced by the prosecution [respondent-institute]) to his application dated 31.01.2011 i.e. S7/C2, onus of proof cannot be shifted to the petitioner that the petitioner has to prove what is the copy of pay fixation statement dated 12.01.2011 prepared by the FORE School of Management, Delhi annexed to his application dated 31.01.2011; (v) the disciplinary authority had clearly violated the procedure prescribed under Rule 15 (2) of the CCS (CCA) Rules, 1965 inasmuch as, the disciplinary authority while furnishing the copy of the inquiry report dated 08.05.2013 did not enclose with its own tentative views/reasons for disagreement with the findings of the inquiry officer in his report dated 08.05.2013 that the article of charge No.1 had not been proved; (vi) the article of charge No.2 solely depends on the finding of the article of charge No.1; (vii) the disciplinary authority cannot take advantage of its own mistake of non-furnishing its own tentative views/reasons for disagreement and also cannot take undue advantage of reading the full comment/representation of the petitioner to the findings of the inquiry report for giving its own tentative opinions for disagreement with the inquiry report in clear violation of the procedure prescribed under Rule 15 (2) of the CCS (CCA) Rules, 1965.

21. Learned counsel appearing for the petitioner in support of the aforesaid grounds for quashing the impugned orders and also the portions of the inquiry report for the article of charge No.2, heavily relied on the decisions of the Apex Court in *(i) Chairman LIC & India & Ors v. A. Masilamani: (2013) 6 SCC 530; (ii) Nirmala J. Jhala v. State of Gujarat & Ors: (2013) 4 SCC 301; (iii) Shri. Anant R. Kulkarni v. Y.P. Education*

Society & Ors: (2013) 6 SCC 515; (iv) State of Orissa & Ors v. Mamata Mohnaty: (2011) 3 SCC 436; (v) State of U.P. & Ors v. Saroj Kumar Sinha: (2010) 2 SCC 772; (vi) Makhan Singh v. Narainpura Co-operative Agricultural Service Society & Ors: (1987) 3 SCC 571 and; (vii) Surath Chandra Chakrabarty v State of West Bengal: (1970) 3 SCC 548. To the contra, learned senior counsel appearing for the respondents heavily relied on the decisions of the Apex Court in *(i) Union of India v. M.C. Goel: AIR 1964 SC 364; (ii) Ram Kishan v. Union of India: (1995) 6 SCC 157; (iii) Punjab National Bank & Ors v. Kunjbehari Mishra: (1998) 7 SCC 84; (iv) High Court of Judicature at Bombay v. Shashikant Patil & Anr: (2000) 1 SCC 416; (v) State Bank of India v. K.P. Narayanakutty: (2003) 2 SCC 449; (vi) State of Madras v. G. Sundaram: AIR 1965 SC 1103; (vii) State of Haryana & Anr v. Ratan Singh: (1977) 2 SCC 491; (viii) Kuldip Singh v. State of Punjab & Ors: (1996) 10 SCC 659; (ix) Roop Singh Negi v. Punjab National Bank & Ors: (2009) 2 SCC 570; (x) State Bank of Patiala & Ors v. S.K. Sharma: (1996) 3 SCC 364; (xi) State of Uttar Pradesh v. Harendra Arora & Anr: (2001) 6 SCC 392; (xii) Orissa Mining Corporation & Anr v. Ananda Chandra Prusty: (1996) 11 SCC 600; (xiii) State of Bihar & Anr v. P.P. Sharma & Anr: 1992 Suppl (1) SCC 222; (xiv) Dinesh Chandra Pandey v. High Court of Madhya Pradesh & Anr: (2010) 11 SCC 500; (xv) Sarwan Singh v. State of Punjab (2003) 1 SCC 240; (xvi) Deputy Inspector General of Police v. K.S. Swaminathan: (1996) 11 SCC 498; (xvii) State of Andhra Pradesh & Ors v. S.C. Ramarao: AIR 1963 SC 1723; (xviii) Chief Constable of North Wales Police v. Evans: (1982) 3 All ER 141; (xix) State Bank of India & Ors v. Samarendra Kishor Endow & Anr: (1994) 2 SCC 537; (xx) Union of India & Ors v. Upendra Singh: (1994) 3 SCC 357; (xxi) B.C. Chaturvedi v. Union of India & Ors: (1995) 6 SCC 749 and; (xxii) Indian Oil Corporation & Anr v. Ashok Kumar Arora: (1997) 3 SCC 72.*

22. This Court is not oblivious of the settled law that judicial review of the findings of the departmental inquiry is limited and circumscribed inasmuch as, the findings of the inquiry officer/findings of the disciplinary authority is not called for interference on the ground of insufficiency of evidence. But the findings of the inquiry officer can certainly be interfered with if it is based of no evidence. Simple point to be considered in a judicial review is for the finding of the departmental inquiry/findings of the inquiry report, was there evidence or was there no evidence; incase there is evidence for the finding of the inquiry officer, no interference is called for and incase finding of the inquiry officer is based of no evidence, it should be interfered with. The High Court is not sitting as an appellate authority against the order of the administrative/disciplinary authority. But interference is permitted, while exercising the jurisdiction under Article 226 of the Constitution if such authority had held proceeding in violation of the principles of natural justice or in violation of the statutory regulations prescribing the mode of such inquiry. Regarding this point i.e. proceedings in violation of the statutory regulations prescribing the mode of inquiry, we may refer to the decision of the Apex Court in **Shashikant S. Patil's** case (*Supra*). Para 16 of the SCC in **Shashikant S. Patil's** case (*Supra*) reads as follows:-

“16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that there is

some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

23. It is also equally well settled legal position that if there is legal evidence on which findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution and also when the disciplinary authority differed from the finding of the enquiry officer, it is imperative to discuss materials in detail and contest the conclusions of the enquiry officer, is quite unsound and contrary to the established principles in administrative law. In the present case, as discussed above, the core question to be decided in the disciplinary proceedings against the petitioner is whether the forged pay fixation statement dated 12.01.2011 (photo copy produced by the prosecution [respondent-institute]) i.e. S7 (i)/C2 (i) is the one annexed to the said application of the petitioner dated 31.01.2011 to the Director, RGIIIM, Shillong. In order to prove that the petitioner had annexed the said forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) to his application dated 31.01.2011, examined three witnesses. The inquiry officer after careful perusal of the statements of PWs had come to the clear findings that none of the witnesses saw the petitioner submitting that forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) (photo copy produced by the prosecution [respondent-institute]) along with the application dated 31.01.2011 and none of the witnesses had direct knowledge that the said forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) was annexed to his application dated 31.01.2011. The Director, RGIIIM, Shillong to whom the said application dated 31.01.2011 submitted by the petitioner did not come forward as a witness and stated that the said photo copy of the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) was

submitted by the petitioner along with his application dated 31.01.2011. Witness Shri. Alvin Nongtraw, Officer (Administration) RGIIM, Shillong stated that no document addressed to the Director reaches to him directly and what he does is that any document which he received is kept in his custody in original. Only a Xerox copy is sent by him to the Branch concerned. The application dated 31.01.2011 (S7) signed by the petitioner (Professor D.K. Agrawal) was addressed to the Director and the Director marked to CAO. The CAO on the same day marked the application to Professor P. Saravanan. However, during his cross examination he admitted that he was not present at the time when the said application dated 31.01.2011 i.e. S7/C2 was submitted to the Director, RGIIM. The portions of the cross examination of witness Shri. Alvin Nongtraw reads as follows:-

“It seems to me that C2 (i) or S7(i) is a Photostat copy. The documents viz C2 (i) or S7 (i) is not authenticated. The statement viz “the revised scale of pay in accordance with 6th CPC was implemented by the FORE School of Management w.e.f. 1-4-2009” does not appear in the exhibit C2 (i) or S7 (i). The exhibits C (2) & C2 (i) were submitted to the Director, RGIIM. I was not present at the time when C2 & C2(i) were submitted to the Director RGIIM.”

24. Prosecution Witness Shri. M Debnath, Finance Officer has no direct knowledge whether the documents i.e. pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) (photo copy produced by the prosecution [respondent-institute]) was annexed to the application of the petitioner dated 31.01.2011 i.e. S7/C2 and he is not the custodian of the original documents or application directly addressed to the Director. He has stated in his cross examination that he only knows that S7 (i)/C2 (i) was submitted by the petitioner because it enclosed along with his application dated 31.01.2011 i.e. S7. But Shri. M Debnath, Finance Officer does not even claim nor state that he was present at the time or he had seen S7 (i)/C2 (i) being given

by the petitioner to the Director, RGIIM. It is clear from the documents produced by the respondent-institute or the prosecution in the disciplinary proceedings that the Director, RGIIM, who received the application of the petitioner dated 31.01.2011 i.e. S7/C2 did not put his initial on the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) alleged to have been annexed to the application of the petitioner dated 31.01.2011 i.e. S7/C2. But the Director, RGIIM put his signature only on the application of the petitioner dated 31.01.2011 i.e. S7/C2 but not on the said forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i). Over and above, the then Director, RGIIM Professor A.K. Dutta or Shri. R.C. Saxena, the CAO, RGIIM or even Professor P. Saravanan, who are only three persons whose statements could reasonably be expected to shed light on whether S7 (i)/C2 (i) was attached by the petitioner along with S7/C2 were not cited as witnesses of prosecution nor examined as witnesses in the disciplinary proceedings. From the foregoing facts and evidences, it is clear that the findings of the enquiry officer that the prosecution/PO has not been able to conclusively prove that the petitioner had submitted false/forged letter i.e. S7 (i)/C2 (i) with his application dated 31.01.2011 i.e. S7/C2 are based on evidence.

25. The Apex Court in **Ratan Singh's** case (*Supra*) held that Indian Evidence Act, 1872 (1 of 1872) does not apply and simple point is was there some evidence or was there no evidence – not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. The Apex Court in **Kuldip Singh's** case (*Supra*) held that strict rules of Indian Evidence Act, 1872 does not apply to the departmental enquiries. Para 10 of the SCC in **Kuldip Singh's** case (*Supra*) reads as follows:-

“10. Now coming to the main contention of the learned counsel for the appellant, it is true that a confession or admission of guilt made by a person accused of an offence before, or while

*in the custody of, a police officer is not admissible in a court of law according to Sections 25 and 26 of the Evidence Act, 1872 but it is equally well settled that these rules of evidence do not apply to departmental enquiries – See **State of Mysore v. Shivabasappa Shivappa Makapur: AIR 1963 SC 375: (1964) 1 LLJ 24** and **State of Assam v. Mahendra Kumar Das: (1970) 1 SCC 709: AIR 1970 SC 1255** – wherein the only test is compliance with the principles of natural justice – and, of course, compliance with the rules governing the enquiries, if any. In this context, it is well to remember that in India, evidence recovered or discovered as a result of an illegal search is held relevant departing from the law in the United States. We may refer to the following observations of the Judicial Committee of the Privy Council in **Kurma v. R: 1955 AC 197: (1955) 1 All ER 236: (1955) 2 WLR 223**, quoted approvingly by the Constitution Bench of this Court in **Pooran Mal v. Director of Inspection (Investigation): (1974) 1 SCC 345: 1974 SCC (Tax) 114: (SCC p.365, para 24)***

“The test to be applied, both in civil and criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained.”

26. The Apex Court in **Nirmala J. Jhala's** case (*Supra*) held that the disciplinary proceeding/departmental proceeding is quasi judicial and quasi criminal proceeding and the burden of proof cannot be shifted by the prosecution to the delinquent and the conclusion cannot be reached by shifting the burden of proof of negative circumstances upon the delinquent. In the present case, the disciplinary authority had shifted the burden of proof of negative circumstances on the petitioner that if the forged pay fixation statement dated 12.01.2011 S7 (i)/C2 (i) is not the document annexed by the petitioner to his application dated 31.01.2011 i.e. S7/C2, then what was the document annexed to his application dated 31.01.2011 i.e. S7/C2. The conclusion cannot be reached in quasi judicial and quasi criminal proceeding by shifting the onus to prove a negative circumstance upon the petitioner that what was the forged pay fixation statement dated 12.01.2011 annexed to the application dated 31.01.2011? Para 39 of the SCC in **Nirmala J. Jhala's** case (*Supra*) reads as follows:-

“39. More so, the High Court has reached the conclusion by shifting the burden of proof of negative circumstances upon the appellant. The High Court has erred by holding that in respect of the incident dated 17-8-1993 i.e. demand of amount, it was the duty of the appellant to explain the said circumstance, and that instead of giving any satisfactory explanation in respect of entry of Shri. C.B. Gajjar, she had completely disowned and denied any such occurrence. The onus was always on the Department to prove the said circumstance. The Court should have also taken note of the fact, that the matter was adjourned for 28-8-1993, and being a 4th Saturday, it was a holiday. The Court further committed an error by holding, that the failure to challenge the most crucial element of the evidence, regarding the incident of 17-8-1993, in respect of a demand of bribe of Rs.20,000 fully justified the findings of the enquiry officer. Again, the High Court shifted the onus to prove a negative circumstance on the appellant.”

27. For the foregoing discussions, this Court is of the considered view that the findings of the inquiry officer in his report dated 08.05.2013 based on reason and evidence that the prosecution could not prove that the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) (the photo copy produced by the prosecution [respondent-institute]) is the one annexed by the petitioner in his application dated 31.01.2011 i.e. S7/C2 is not called for interference and also that reasons for disagreement of the disciplinary authority with the said findings, was not even disclosed while furnishing the copy of the enquiry report dated 08.05.2013 to the petitioner in compliance with Rule 15 (2) of the CCS (CCA) Rules, 1965.

28. The disciplinary authority cannot take advantage of its own fault for not furnishing its own tentative reasons for disagreement with the report of the inquiry officer that the prosecution/PO cannot prove that the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) is the one annexed by the petitioner to his application dated 31.01.2011 i.e. S7/C2, while furnishing copy of the inquiry report dated 08.05.2013 to the petitioner in compliance with Rule 15 (2) of the CCS (CCA) Rules, 1965, for taking undue advantage

of reading the representation/comment of the petitioner to the inquiry report dated 08.05.2013 for furnishing tentative views of their disagreement in clear violation of Rule 15 (2) of the CCS (CCA) Rules, 1965. The Apex Court in ***Kusheshwar Prasad Singh v. State of Bihar & Ors: (2007) 11 SCC 447*** held that the authority cannot be allowed to take advantage of their own fault. Para 14 of the SCC in ***Kusheshwar Prasad Singh's*** case (*Supra*) reads as follows:-

*“14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in ***Mrutunjay Pani v. Narmada Bala Sasmal: AIR 1961 SC 1353*** wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).”*

It is well settled law that the Constitutional authority cannot do indirectly what is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the Constitutional provisions. (Ref: ***Dr. D.C. Wadhwa & Ors v. State of Bihar & Ors: AIR 1987 SC 579***).

It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice. (Ref: ***Hukam Chand Shyam Lal v. Union of India & Ors: AIR 1976 SC 789***).

29. This Court also read and reread the cases cited by the respondent-institute. This Court is in complete agreement with the law laid down by the Apex Court in those cases. However, in the given case, the ratio laid down by the Apex Court in those cases, will not help the case of the respondent-institute.

30. For the foregoing reasons, this Court is of the clear view that the disciplinary authority had misunderstood the settled law that the disciplinary proceeding/departmental proceeding is quasi judicial and quasi criminal proceeding and the burden of proof cannot be shifted by the prosecution to the delinquent and the conclusion cannot be reached by shifting the burden of proof of negative circumstances upon the delinquent. In the present case, when the disciplinary authority/PO could not prove that the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) is the one annexed by the petitioner to his application dated 31.01.2011 i.e. S7/C2, the disciplinary authority/PO cannot shift the burden of proof of negative circumstances upon the petitioner that if the forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i) is not the one annexed by the petitioner to his application dated 31.01.2011 i.e. S7/C2, then what was the document annexed to the application dated 31.01.2011 i.e. S7/C2. Over and above, in a quasi judicial and quasi criminal proceeding a fact cannot be proved by a fanciful hypothesis. The departmental proceeding against the petitioner was started solely basing on the alleged forged pay fixation statement dated 12.01.2011 i.e. S7 (i)/C2 (i). After the pivot of the departmental inquiry is not proved, nothing is remained for proving the article of charges No.1 and No.2.

31. In the result, the impugned orders dated 21.08.2013 and 21.04.2014 are hereby quashed and in consequence thereof, petitioner shall

be reinstated in service within a period of one month from the date of receipt of a certified copy of this judgment and order. However, the arrear pay and allowances of the petitioner is left to the wisdom of the disciplinary authority/respondent-institute and the disciplinary authority/respondent-institute as per the said undertaking of the petitioner dated 02.02.2012, will recover any excess payment made to the petitioner from his future payment/future pay.

32. Writ petition is allowed.

33. Parties are to bear their own costs.

JUDGE

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