


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S. B. Civil Writ Petition No. 9608/2002

A.K. Tandon s/o Late Shri Saligram Tandon, aged 50 years,
resident of 563/25, Govind Nagar, Ramganj, Ajmer.

----Petitioner

Versus

Central Bank of India, a body corporate under the Banking
Companies (Acquisition and Transfer of Undertaking) Act, 1970,
through its head office situated at Chandramukhi, Nariman Point,
Mumbai-400 021.

----Respondent

For Petitioner : Mr. Kersi J. Mehta Advocate.
For Respondent : Mr. Rupin K. Kala Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

Date of conclusion of arguments	::	08.01.2026
Date on which judgment was reserved	::	08.01.2026
Whether the full judgment or only the operative part is pronounced	::	Full Judgment
Date of pronouncement	::	16.01.2026

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India assailing the order of penalty of dismissal from service imposed upon the petitioner vide order dated 12.02.2002 pursuant to a departmental enquiry. The petitioner has also assailed order dated 06.06.2002 passed by the appellate authority whereby appeal filed by the petitioner against the penalty order has been dismissed. The petitioner contends that the punishment awarded by the disciplinary authority is excessive, harsh, and disproportionate to the alleged misconduct

and, therefore, warrants interference by this Court in exercise of its writ jurisdiction.

2. The undisputed factual matrix reveals that the petitioner was subjected to a regular departmental enquiry under Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (hereinafter to be referred as 'the Regulations of 1976') on charges of misconduct. Memorandum dated 19.12.1996 was duly served, the petitioner was afforded full opportunity to submit a reply, to participate in the enquiry proceedings, to cross-examine witnesses, and to lead defence evidence. Upon conclusion of the enquiry, the Enquiry Officer returned findings holding the charges proved. The disciplinary authority, after considering the enquiry report and the petitioner's reply, imposed the impugned penalty. The appellate authority thereafter affirmed the said decision.

3. Learned counsel for the petitioner submitted that the impugned penalty order is liable to be set aside as it is vitiated by arbitrariness, non-application of mind and violation of the principles of proportionality, inasmuch as the disciplinary authority has imposed a harsh and excessive punishment wholly disproportionate to the nature and gravity of the alleged misconduct. The findings recorded in the enquiry are perverse and based on selective consideration of evidence, while material exculpatory evidence and the petitioner's defence have been ignored without assigning cogent reasons. The enquiry proceedings suffer from procedural infirmities, resulting in serious prejudice to the petitioner and the punishment imposed shocks the conscience of this Court. The appellate authority has

mechanically affirmed the penalty without independent consideration, thereby rendering the decision-making process flawed and amenable to judicial review under Articles 226 of the Constitution.

4. Learned counsel for the petitioner further submitted that neither the enquiry officer, nor the disciplinary authority, nor appellate authority has considered the fact that on account of continuous ailing health, the petitioner repeatedly requested the enquiry officer to grant adjournment in the departmental proceedings and the said request was supported by number of medical certificates issued by the competent authority, yet the enquiry officer proceeded ex-parte in the departmental proceedings and thereby, opportunity of hearing as well as putting forward defence, for which the petitioner-delinquent was entitled to under the Regulations of 1976, has not been afforded to the petitioner which has resulted in violation of principles of natural justice. In support of his arguments, learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court rendered in the cases of **S. R. Tewari Vs. Union of India & Another (2013) 6 SCC 602; State of Tamil Nadu Rep. by Secretary to Govt. (Home) Vs. Promod Kumar IPS & Anr. (Civil Appeal No. 8427-8428 of 2018 decided on 21.08.2018)** and **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr. (Civil Appeal No. 1912 of 2015 decided on 16.02.2015)**.

5. Per contra, the Respondents opposed the writ petition and argued that the contentions raised by the petitioner are wholly untenable, as the disciplinary proceedings were conducted

strictly in accordance with the prescribed regulations and in full compliance with the principles of natural justice, affording the petitioner adequate opportunity at every stage. The findings of guilt are based on cogent evidence on record and cannot be characterized as perverse or arbitrary. The disciplinary authority has exercised its discretion judiciously, taking into account the gravity of the proved misconduct and the service record of the petitioner, and the penalty imposed is neither shockingly disproportionate nor violative of any statutory or constitutional mandate. The appellate authority has independently examined the matter and passed a reasoned order. In the absence of any illegality, procedural impropriety, or perversity, no interference is warranted in the limited scope of judicial review under Articles 226 of the Constitution.

6. Learned counsel for the respondents further submitted that a bare perusal of enquiry report would reveal that all the medical certificates have been duly examined by the enquiry officer and it has also been taken note that the petitioner was also provided the facility of being represented through defence assistant (Assisting Officer to CSO) and his defence assistant was all through available before the enquiry officer during departmental proceedings. Learned counsel further argued that the enquiry officer has recorded a categorical finding that adjournments were sought by the petitioner unnecessarily, however, the petitioner was accommodated on number of occasions by the enquiry officer, but the conduct of the petitioner was such that he wanted to avoid the enquiry proceedings and quite intentionally, he did not participate in departmental

proceedings. In support of aforesaid submissions, learned counsel for the respondents has referred to the enquiry report and submitted that the enquiry officer has elaborately dealt with the aforesaid aspects. Learned counsel for the respondents has further submitted that although so many medical certificates were submitted by the petitioner, yet, despite specific direction, the petitioner did not appear before the Medical Board for ascertaining/verifying his illness. Hence, it was clear that quite intentionally, the petitioner was avoiding enquiry proceedings. Therefore, there was no option left with the enquiry officer except to proceed further with the enquiry proceedings. Still the enquiry officer has examined each and every document and evidence on record and after meticulous examination and analysis of the same, a categorical finding has been recorded that the petitioner was guilty of the charges which were quite grave in nature and relating to embezzlement and bribery. Further, the disciplinary authority agreed with the findings recorded by the enquiry officer and after dealing with the entire record, penalty of dismissal from service has been imposed upon the petitioner. Appeal filed by the petitioner was also duly examined by the appellate authority and speaking order, after recording reasons on each and every ground raised by the petitioner, has been passed in order to dismiss the appeal filed by the petitioner. In support of his arguments, learned counsel for the respondents has placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Noharlal Verma Vs. District Cooperative Central Bank Limited, Jagdalpur (2008) 14 SCC 445, Canara Bank Vs. V.K. Awasthy (2005) 6 SCC 321; Municipal Committee, Bahadurgarh vs. Krishnan**

Behari & Others, FLR 1996 (73) Page No. 1429 SC and decision of this Court in the case of **Jhuntha Ram Vs. Bank of Baroda & Others (S.B. Civil Writ Petition No. 6013/1999 decided on 30.01.2001).**

7. The core issue that arises for consideration is whether this Court, in exercise of its limited power of judicial review, can interfere with the penalty imposed by the disciplinary authority.

8. At the outset, it is necessary to reiterate the settled position of law that disciplinary proceedings are conducted by the employer in exercise of its administrative authority to maintain discipline, integrity, and efficiency in service. The scope of judicial review under Articles 226 is confined to examining the decision-making process and not the decision itself. Courts exercising writ jurisdiction do not sit as appellate authorities over departmental enquiries and cannot re-appreciate evidence or substitute their own conclusions for those of the disciplinary authority.

9. It is significant to note that Hon'ble Supreme Court in **Union of India & Others v. P. Gunasekaran, (2015) 2 SCC 610**, after relying upon its earlier judgments in the cases of **B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749; Union of India & Another v. G. Ganayutham, (1997) 7 SCC 463, Om Kumar & Others v. Union of India, (2001) 2 SCC 386; Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. & Another, (2007) 4 SCC 669, and Chairman-cum-Managing Director, Coal India Limited & Another. v. Mukul Kumar Choudhuri & Others, (2009) 15 SCC 620**, has authoritatively delineated the contours of judicial review in

disciplinary matters. It has been categorically held that High Courts cannot re-appreciate evidence, cannot interfere with findings of fact if they are based on some evidence and cannot interfere with the quantum of punishment unless the same is shockingly disproportionate or vitiated by perversity, illegality, or procedural impropriety. The Hon'ble Apex Court emphasised that adequacy or sufficiency of evidence is beyond the scope of judicial review. Para 12 and 13 of the above judgment are relevant as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence."*

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

10. Similarly, in so many judgments, the Hon'ble Supreme Court has reiterated that the question of what punishment should be imposed upon a delinquent employee is primarily within the domain of the disciplinary authority. Courts must exercise restraint and refrain from interfering with the quantum of punishment unless it is grossly disproportionate to the gravity of the misconduct proved. In **Union of India & Others v. Constable Sunil Kumar (2023) 3 SCC 622**, while following the earlier judgments in the cases of **Union of India & Others v. Ex. Constable Ram Karan, (2022) 1 SCC 373**, **Commandant 22nd Battalion, Central Reserve Police Force Srinagar, c/o 56/APO & Others v. Surinder Kumar, (2011) 10 SCC 244** and **Union of India & Others v. R.K. Sharma, (2001) 9 SCC 592**, the Hon'ble Supreme Court explicitly clarified that interference with punishment is permissible only when the penalty is "strikingly disproportionate" to the misconduct. Even in such cases, the proper course for the Court is to remit the matter to the disciplinary authority for reconsideration, rather than substituting its own opinion or imposing a lesser penalty. This principle preserves the administrative autonomy of the employer in service matters. Para 11 to 13 of the above judgment have significance on this point and are being reproduced as under:

"11. Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In Surinder

Kumar [CRPF v. Surinder Kumar, (2011) 10 SCC 244 : (2012) 1 SCC (L&S) 398] while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in Union of India v. R.K. Sharma [Union of India v. R.K. Sharma, (2001) 9 SCC 592 : 2002 SCC (Cri) 767] that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution.

12. *Applying the law laid down by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent.*

13. *At this stage, it is required to be observed that even while holding that the punishment/penalty of dismissal disproportionate to the gravity of the wrong, thereafter, no further punishment/penalty is imposed by the Division Bench of the High Court except denial of back wages. As per the settled position of law, even in a case where the punishment is found to be disproportionate to the misconduct committed and proved, the matter is to be remitted to the disciplinary authority for imposing appropriate punishment/penalty which as such is the prerogative of the disciplinary authority. On this ground also, the impugned judgment and order [Sunil Kumar v. Union of India, 2017 SCC OnLine Raj 3970] passed by the Division Bench of the High Court is unsustainable."*

11. Similarly, in a recent judgment delivered by the Hon'ble Supreme Court in **Union of India & Others vs Pranab Kumar Nath 2025 SCC OnLine SC 2893**, it has been observed, as under:

"8. None of the parties to this lis are alleging that the enquiry and subsequent proceedings till the High Court have transgressed the law or its duly laid down procedure. We need not, therefore, look into that aspect. The crux of this appeal lies in appreciating the contours of the power of the High Court vis-a-vis disciplinary proceedings. It has long been held that under Article 226 jurisdiction, the court is not akin to an appellate Court, its powers are limited to the

extent of judicial review. They cannot set aside punishment or impose a different punishment unless they find that there is substantial non-compliance of the rules....."

12. Applying the aforesaid principles to the facts of the present case, this Court finds that the departmental enquiry was conducted in accordance with the prescribed procedure and in compliance with the principles of natural justice. The petitioner was afforded adequate opportunity at every stage. The findings recorded by the Enquiry Officer are supported by evidence on record and cannot be characterized as perverse or based on no evidence. The petitioner's attempt to invite this Court to reassess the evidence or to arrive at a different factual conclusion is wholly impermissible in writ jurisdiction.

13. As regards the arguments raised by the petitioner with regard to violation of principle of natural justice by way of non-grant of adjournments on medical grounds, this Court has carefully examined the enquiry report submitted by the enquiry officer which reveals that the aforesaid aspect has been specifically and elaborately dealt with by the enquiry officer by referring to various medical certificates submitted by the petitioner and categorical findings thereon have also been recorded by the enquiry officer. It would be apposite to quote pertinent findings recorded by the enquiry officer on the aforesaid aspect in its enquiry report which read thus:

"Medical Certificates

At the stage of start of the regular hearing, the CSO submitted the medical certificates, He did not attend the DE on 6.10.97, 15.10.97, 27.10.97. and 6.11.97 Since CSO continued to submit medical certificats, which were suspected by P.O. (See EPP 20, 23, 26, and 31). PO further stated on EPP 31 that it does not appear that any medicine is prescrebed to him (CSO), but he (CSO) is only on rest. which he (CSO) can take at Chandipur also, He (PO) further suspected that Shri A.K. Tandan is in the habit of submitting medical certificate only after knowing the next date of DE to cover the date of DE through medical certificates.

I hereunder give an account of the medical certificates sent by CSO.

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The Following observations are made from the medical certificates :-

1. On 6.10.97 CSO physically presented himself and informed of his sickness and adjournment was requested.
2. On 15.10.97 a telegram is received from CSO stating of sickness and the adjournment was allowed.
3. On 27.10.97, the adjournment was granted without request of CSO, as there was no information (see EPP 26)
4. On 6.11.97 again adjournment was allowed without request of CSO, on the grounds of illness vide his letter addressed to B/o. Chandipur dated 29.10.97 wherein no request was made by CSO for adjournment.

On all the above four sittings, P.O. suspected the medical certificates submitted by CSO (see EPP 20, EPP 24, EPP 26, and EPP 31). All the times his suspicion was not given cognizance and adjournment were allowed looking to the natural justice, I.A. thereafter did not fix any date as CSO continued to submit the medical certificates.

I refer MEX 188 issued by Disciplinary Authority/Regional Manager Kota, instructing him(CSO) to get himself examined by Medical Board Ajmer, and submit a certificate issued by them indicating the nature of illness, period of rest required etc. within a week from the receipt of MEX. 188 (RO/PRS/DAD/97-98/362 dated 10.12.97).

I also refer MEX 189 issued by the Disciplinary Authority/Regional Manager Kota again advising him(CSO) to get himself examined by Medical Board Jhalawar, and submit a certificate issued by the Medical Board Jhalawar within a week of receipt of MEX 189 (RO/PRS/DAD/97-98/395 dated 29.12.97)

It was also made clear to Shri A.K. Tandan CSO through MEX 189 that if he failed to submit the required certificate within a stipulated period it will be construed that Shri Tandan is wilfully abstaining himself from the enquiry and the enquiry proceeding against him shall be held exparte and such orders as may be passed thereon shall be binding on him.

In reply to MEX 189 CSO submitted vide letter dated 5.1.98 that he approached the authorities at Govt. Hospital & College, Ajmer and has made himself a subject of mockery for them (The authorities of Govt. Hospital). They straightway told that a person does not constitute a Medical Board against himself but the authority not believing the medical certificates issued by Govt Hospital may ask the concerned authorities of the said Govt. Hospital to constitute a Medical Board against the person and submit a report to that effect.

Shri Tandan did not support his above statement by any written document or oral witness (1) request to the hospital authorities (2) reply from the hospital authorities (3) document regarding procedure of appointing Medical Board as

to from whom the request should come. Actually it is also not on record whether he approached the Hospital authorities or not. Shri Tandan did not mention any date on which he approached the hospital authorities and to whom, which gives suspicion to above fact.

Shri Tandan was asked to appear at Medical Borad Jhalawar vide MEX 189 but in reply dated 5.1.98 he answered that he can be asked to be examined at Govt. Hospital/College authorities at Ajmer only because he is not fit to travel and can not go to Jhalawar for the purpose.

Shri Tandan in his letter dated 5.1.98 mentioned that no sooner he is declared fit to travel by the Doctor, He shall definitely attend the inquiry proceedings. CSO was not sick on 5.1.98. He submitted Medical certificate for the period 16.12.97 to 30.12.97 and thereafter 6.1.98 to 20.1.98 (MEX 164). No medical certificate is given by CSO for 31.12.97 to 5.1.98.

The certificate dated 6.1.98 is actually a fitness certificate, which appears to be changed into sickness certificate without any authentication, The hand writing shows that it is not written by Doctor and appears to have been written after the certificate is issued. Further the perscription slip dated 6.1.98. (MEX 165) mentions advising rest for seven days by the same doctor but certificate (MEX 164) mention rest for fifteen days. Both the documents (MEX 165 & MEX 164) are having the same patient registration number and date. This gives a reasonable ground to suspect that MEX 164 is actually fitness certificate changed into sickness certificate without authority.

On 5.1.98 the CSO was not sick. There is no proof in the form of medical certificate, If it is to be belived that Shri A.K. Tandan is unable to move, there is no medical certificate in between period of 31.12.97 to 5.1.98. Even than CSO gave a false statement dated 5.1.98. With the above all I find that the story mentioned in the letter dated 5.1.98 about (1) presenting himself to Hospital Authorities (2) refusal by doctors to get him medically examine (3) Doctor's advise not to travel is totally unbelievable and framed to take excuse saving himself to appear befor the Medical Board Ajmer.

Again, On 26.2.98, Vide Regional Office Kota letter No. RO/PRS/DAD/97-98/492 (MEX 194) CSO was advised to present himself before the Chief Medical Officer Jhalawar on 5.3.98 in the morning for medical checkup by the Medical Board constituted for the purpose. The letter received by CSO on 2.3.98 (MEX 195) Shri A.K. Tandan in reply to the MEX 194 informed Regional Manager Kota on 1.3.98. (MEX 196) that he is under medical tretment of doctor at Govt. Homeo Hospital Ajmer, and has been restricted his (CSO) movement advising to take complete rest. He refered medical certificate for the period 28.02.98 to 7.3.98 (MEX 175). He furthur shown his inability to leave the place of treatment i.e. Ajmer.

I have gone through the medical certificate refered by CSO in MEX 196 i.e. MEX 175 which shows that Shri A.K. Tandan was suffering from MOOTRA ROG i.e. Urinal Disease. No where in the certificate is mentioned that the movement of Shri A.K. Tandan from Ajmer is restricted. It is also evident from the certificate that Shri A.K. Tandan was under treatment as an outdoor patient and was not hospitalised. In view of this the

version of CSO restricting his movement from Ajmer is totally false and an excuse just to save himself appearing before the Medical Board at Jhalawar. It is surprising how CSO could forecast that he will be unable to move on 4.3.98 to go to Jhalawar to appear on 5.3.98 before the Medical Board at Jhalawar.

In the same context, I refer a letter received from CSO dated 20.06.98 wherein he has questioned whether the Medical Board was constituted by the management or by I.A.. He further mentioned that no Medical Board was constituted by any of the concerned parties and information in this regard was only a paper formality. Had the Medical Board been constituted that CSO would have received the letter from the incharge of the Medical Board, thus constituted, informing the venue, date, and the names of the doctors to whom CSO should contact in the matter.

CSO has raised such doubt at a very later stage. CSO was in hand the letter of Regional Manager Kota. dated 26.2.98 (MEX 194) prior to fixed date of medical checkup by Medical Board at Jhalawar on 5.3.98. He did not raise such doubt on 01.03.98 (MEX 196) but at that time CSO took altogether a different stand and escaped from appearing before the Medical Board at Jhalawar whereas, On 20.06.98 he suspected baselessly about the constitution of the Medical Board. Dose CSO mean to say that the letter dated 26.2.98 written by Regional Manager Kota. (MEX 194) was a false one. and if such was the case Why CSO did not objected to then and there. When there was no suspicion about the constituting the Medical Board on 1.3.98 than why thereafter?

I have on record that the Chief Medical and Health Officer (CMHO) vide letter No. STHA/98/270 dated 24.2.98 asking the PMO Jhalawar to constitute the Medical Board for medical examination of the CSO. and the board was constituted by PMO On 23.2.98 comprising Dr. Sushma Pandey Chairperson. Dr. K.M. Jain member, and Dr. Rajesh Jain member, The information thereto was given by RM Kota vide MEX 194.

Shri A.K. Tandan did not appear before the Medical Board at Jhalawar on 5.3.98 and thereafter having known the facts about the absence of CSO and with all reasonable opportunities allowed to CSO for appearing in the DE at different stages and after considering the entire correspondence exchanged by CSO, IA decided to hold the enquiry ex parte.

The following observations are found during the course of inquiry with regard to the Medical Certificates, submitted by CSO.

(A) CSO took treatment through hospitalisation for 8.10.97 to 11.10.97 and thereafter he was treated for the sickness as an outdoor patient.

(B) CSO was advised to give full information/Account of illness with supportive evidence whether he is in position to take medicines for his illness and simultaneously attend the DE also. (EPP 28 of 27.10.97, EPP 33 dated 6.11.97, EPP 39/40 dated 6.3.98).

(C) CSO has been submitting the medical certificates wherein the doctors have advised that this much period has been recommended to remain absent from his official duties. In fact CSO never explained to the doctors that he (CSO) is under suspension and certificate for recommending to remain absent from official duties have no relevancy as CSO was already not attending the official duties. Attending departmental enquiry is altogether different nature of work than attending official duties. In a departmental enquiry CSO is required to be present along with his AO for a day or two in a month (see EPP 40). The Doctors would not have issued the Medical Certificate recommending absence from duties if they were informed of the facts that CSO is under suspension.

(D) CSO did not submit the certificate in original either to the B/o Chandipur or to Regional Office Kota. or to IA. (EPP140) PO has submitted that the photocopies which are not attested by any competent officer, may differ from the originals.

(E) It further gives footings about the ill motives of the CSO why he did not part with the original certificates issued by the doctors.

(F) It has been mentioned by PO On EPP 154 that CSO is claiming to be sick since October 97 and as such prolonged illness normally requires proper medical investigations in the form of medical checkup and laboratory based medical tests. CSO never submitted any such medical investigation reports even though it is repeatedly conveyed to him that medical certificates are not being believed. Normally an employee immediately sends the supportive documentary evidence and test reports to make the authority believe that he is really sick.

(G) PO has further mentioned that it is impossible to believe that a person can remain sick for eight months at a stretch and does not put himself for a medical test. Particularly when he claims not being in a position to move from bed and also not fit to travel.

(H) Medical Certificates i.e. MEX 171, MEX 185, MEX 187 and certificate dated 13.5.98 bear additions in the certificates in the handwriting of CSO adding ROORN VISHRAM (Complete bed rest) which prove the intention of CSO. CSO has, even gone to the extent of misusing the doctor's certificates in his favour by manipulating them by adding "Complete bed rest". This gives support to the objection taken by PO for not parting with the original Medical Certificate as mentioned in (D) above.

I agree with the above views of the PO.

Evidence of Medical experts

When a doctor issues a certificate which is produced by an employee before the management or during inquiry proceedings, It should be remembered that medical certificate is merely an opinion of a doctor. It only shows that a particular Doctor made such a statement at a particular time. Mere fact that such a statement was made does not amount to a proof that the statement was correct and therefore mere

filing of a certificate of a Doctor can not be accepted as an evidence.

When the correctness of a Medical Certificate is denied than it is necessary to led evidence to prove the contents of the Medical Certificate because under section 67 of the Indian Evidence Act proof of a document which is denied is necessary. (Ram Das Nand Ram Vs. Bombay dyeing and Mfg. Co. Ltd. 1966 ICR 677 IC (Mah. Gaz. Dated 6.10.66.P.3207), Though the evidence act is not applicable in a departmental inquiry, it is based on justice and common sence and if it is ignored than a man can produce a writing purporting to be a certificate on a letter head paper with some signatures in order to go on extending leave indefinately. (Prabhu Nath Jay Mangal Vs. Jam Mfg. Co. Ltd. Mah Govt Gaz dated 1.6.67 page 2429 IC).

The Medical Certificate is mere opinion evidence of a person who purports to have issued it. The Medical Certificate is not a conclusive evidence and the management is not bound to accept the Medical Certificate issued by a doctor. (Buckingham and Carnatic Co. Ltd. Vs. Venkatiya 1963 LLJ 638 SC DCM Slik mills Vs. Prem chand (DC) GAZ dated 17.9.70 P 549).

Adjournments

1. CSO has been sumbitting the Medical Certificates address to Branch Manager Branch Office Chandipur advising him for doing the needful action (See MEX 153, 154, 156, 158, 160, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184,186,204, & 206). All these MEX's do not speak any other word/pharase except "for doing the needfull action".

2. This "NEEDFUL ACTION" is never narrated by the CSO as to what action he wanted to be done by the Branch Manager B/O Chandipur. It is pertinent to write that the Branch Manager of B/O Chandipur did not ask I.A. for any action to be taken during the course of enquiry.

3 Copies of all MEX's mentioned in para 1 above are sent to Disciplinary Authority and Inquiry Authority both.

4. The CSO never requested IA to seek adjournments on the grounds of sickness. Please refer to EPP 398 where in it has been pointed out by IA that this "for doing the needful" does not clear what CSO wanted to say. These forwarding letters of Medical Certificates (MEX's listed above) do not speak anything about the attendance of the CSO in the DE. Probably the CSO assumed that sending photocopies of the Medical Certificates alonghwith copies of the forwarding letters addressed to B/O Chandipur autometically may be treated his leave in the DE even not specifically requested for. Does CSO mean that adjournment of the DE should be requested by Branch Manager B/O Chandipur, who is not a party to the inquiry.

5. Adjournment can be granted in a DE only by I.A. and for valid and acceptable reasons provided such request for adjournment is specifically made. In the case of present DE it is not so.

6. I have mentioned on EPP 36 that I have granted four adjournments i.e. on 6.10.97, 15.10.97, 27.10.97, and 6.11.97 without any request from CSO for such adjournments. Even thereafter I have gone to the extent of not deciding the date till CSO was asked to be present before the Medical Board and he absented thereto.

7. I have taken cognizance of the News item appeared in the News paper, having but the Ajmer City, where CSO usually reside (with or without due permission of the management) and adjournment was allowed in the interest of natural justice on 21.2.98 treating that CSO may not be able to come out of his residence due to imposition of curfew in the area. This was also done without the CSO's request for such an adjournment."

14. As regards the contention that the punishment is disproportionate, this Court is unable to accept the same. The nature of the misconduct proved against the petitioner, viewed in the context of the duties and responsibilities attached to the post held, cannot be said to be trivial or inconsequential. The disciplinary authority has exercised its discretion after due consideration of the gravity of the charges, the service record of the petitioner, and the impact of the misconduct on the discipline of the organization. The penalty imposed does not shock the conscience of this Court nor can it be termed outrageously disproportionate.

15. It is well settled that mere harshness of punishment is not a ground for judicial interference. Unless the penalty is such that no reasonable employer would have imposed it in the given facts, the Court must refrain from substituting its own sense of proportionality. To do otherwise would amount to converting judicial review into an appellate exercise, which is expressly proscribed by law.

16. This Court also finds no procedural impropriety, violation of statutory rules, or breach of natural justice in the

conduct of the enquiry or in the decision-making process of the disciplinary authority. The impugned orders, therefore, do not suffer from illegality, irrationality, or perversity so as to warrant interference under Articles 226 and 227 of the Constitution.

17. So far as the judgments of the Hon'ble Supreme Court relied upon by learned counsel for the petitioner, are concerned, there is no quarrel about the proposition of law laid down by the Hon'ble Supreme Court, however, in view of the facts and circumstances of the present case, the above referred decisions are of no help to the petitioner.

18. In view of the foregoing discussion, this Court is of the considered opinion that the writ petition is devoid of merit. The disciplinary authority has acted within the bounds of its jurisdiction, and the punishment imposed falls squarely within the permissible range of administrative discretion.

19. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

(ANAND SHARMA),J