

In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following:

(1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See **State of Assam v. Mahendra Kumar Das** 1970 1 SCC 709.)

(2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See **Khem Chand v. Union of India** 1958 SCR 1080 and **State of U.P v. Om Prakash Gupta** 1969 3 SCC 775.)

(3) Exercise of discretionary power involves two elements—(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See **K.L Tripathi v. SBI** 1984 1 SCC 43.)

(4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See **Sawai Singh v. State Of Rajasthan.** 1986 3 SCC 454.)

(5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See **Export Inspection Council of India v. Kalyan Kumar Mitra** 1987 2 Cal LJ 344.)

(6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See **Central Bank of India Ltd. v. Prakash Chand Jain** 1969 1 SCR 735 and **Kuldeep Singh v. Commr. of Police.**)”

Narinder Mohan Arya v. United India Insurance Co. Ltd. 2006 4 SCC 713 (SCC p. 724, para 26)

It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be lawful to do so.

“41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. See e.g **Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh** 2004 8 SCC 200 and **RBI v. S. Mani** 2005 5 SCC 100. Each case is,

therefore, required to be considered on its own facts.

42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be lawful to do so. In RBI this Court observed: (**SCC p. 116**, para 39)

‘39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.’ ”

Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. 1999 3 SCC 679 to opine: (**Narinder Mohan Arya case, SCC p. 729, paras 41-42**)