Reserved On : 11/02/2026
Pronounced On : 18/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8490 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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F H SHAIKH
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MS PRACHI UPADHYAY FOR MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1
MR SIDDHARTH RAMI, AGP for the Respondent(s) No. 1,2
RULE SERVED for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. Heard Ms.Prachi Upadhyay, learned advocate for the petitioner and Mr.Siddharth Rami, learned AGP appearing for the Respondent-State.

1.1 With the consent of the learned advocates for the respective parties, the present petition is taken up for hearing.

2. The present petition is filed under Article 226 of the Constitution of India, seeking the following reliefs:

> *"(A) quash and set aside the order dated 9.7.2010, Annexure-A to this petition, and*
>
> *(B) quash and set aside the order dated 16.6.1999 Annexure-B to this petition, and*
>
> *(C) quash and set aside the decision of the Government as contained in the notice dated 31.12.1998 Annexure-C to this petition, and*
>
> *(D) pending admission and final disposal of this petition the Honourable Court may be pleased to grant the mandatory injunction against the further implementation and operation of the impugned orders dated 9.7.2010 and 16.6.1999, and/ or*
>
> *(E) pending admission and final disposal of this petition the Honourable Court may be pleased to restrain the respondent authorities from taking into consideration the decision of the Government as contained in the communication dated 31.12.1998 or orders dated 9.7.2010 and 16.6.1999 as an adversity for any purpose, including for the purpose of promotion on the post of Deputy Director and/or Joint Director, and*
>
> *(F) award the exemplary cost of this petition, and"*

SHORT FACTS OF THE CASE:

3. It is the case of the petitioner that the petitioner had initially joined service on 10/05/1982, as a Class-II officer under the administrative control of the Director of Employment and Training, Gujarat State. The appointment of the petitioner was as Principal (Class-II). The next higher post in the said hierarchy is Assistant Director (Training) (Class-I). The said post can be filled in by promotion as well as direct recruitment.

3.1 The Gujarat Public Service Commission had issued an advertisement in the year 1985 inviting applications for direct

recruitment to the said post. The petitioner appears to have applied pursuant to the advertisement and got selected as his name was kept at serial No.1 in the select list.

3.2 The other selected candidates were appointed on 25/02/1987, but the petitioner was not appointed on the said date. Upon inquiry, the reason made known to the petitioner was a proposed inquiry (the subject matter of this petition) to be initiated against the petitioner. At that time, due to the intervention of this Court, the petitioner was appointed to the said post.

3.3 The next promotional post for the cadre of Assistant Director (Training) is Deputy Director (Training). The same was denied to the petitioner on the ground that he was subjected to a departmental inquiry upon the issuance of a charge-sheet on 03/08/1990. Surprisingly, on 12/09/1994, the said charge-sheet came to be withdrawn by the respondent; on even date, the petitioner was served with a fresh charge-sheet containing as many as 16 charges.

3.4 Upon conclusion of the inquiry, the Inquiry Officer vide his report dated 31/10/1998, exonerated the petitioner from all charges. Along with the petitioner, there were three other persons of the department concerned where the petitioner was serving were also charge-sheeted. It appears that all of them were also exonerated from the charges.

3.5 The disciplinary authority had a disagreement with the findings of the Inquiry Officer recorded in relation to Charge

Nos.2, 3, 4 and 15. So, vide its show-cause notice dated 31/12/1998, the respondent called upon the petitioner to submit his reply. After receipt of the reply and without serving another show-cause notice, rejected the petitioner's reply. The petitioner was served with the impugned order of punishment dated 16/06/1999. The respondent has concluded that Charge Nos. 2, 3, 4 and 15 stand proved against the petitioner. Accordingly, an order was passed whereby a penalty of stoppage of one increment with future effect has been imposed upon the petitioner.

3.6 The petitioner appears to have filed an application to review the said decision before the respondent concerned, but the same was turned down by a communication dated 05/01/2000. Thereafter, again on 13/03/2000, the petitioner requested to respondent No.2 to reconsider his penalty.

3.7 The record suggests that the case of the petitioner was placed before the highest authority of the State, i.e., the Chief Minister. It appears from the file noting that the authority concerned, i.e., the Minister of the concerned department and the Chief Minister of the State of Gujarat on 10/08/2001 and 13/08/2001, respectively, opined that the report of the Inquiry Officer be accepted and the petitioner be declared exonerated. Yet, no formal order was passed by the department concerned and as such, their decision remained in the file as it was never communicated to the petitioner.

3.8 Thereafter, due to the directions issued by this Court, the respondent appears to have passed the impugned order dated 09/07/2010 whereby it has maintained the punishment imposed upon the petitioner. Feeling aggrieved by the aforesaid decisions, the petitioner has preferred this petition.

SUBMISSIONS OF THE PETITIONER:

4. Ms.Upadhyay, learned advocate for the petitioner has assiduously argued and made the following submissions:

4.1 It is a clear case of victimization as the petitioner was wrongly held guilty for the charges which were never proved during the course of the inquiry. In fact, he was served with the chargesheet on 03/08/1990 only with a view to see that he should not get promotion to the next higher post, i.e., Deputy Director (Training). Having found that it was defective in nature, after more than four years from the issuance of such charge-sheet, it came to be withdrawn on 12/09/1994.

4.2 A fresh charge-sheet was served upon the petitioner on 12/09/1994, but there was no progress in the inquiry and due to the intervention of this Court vide its order dated 16/09/1998 passed in Special Civil Application No.5612 of 1998, the final inquiry was completed as the Inquiry Officer had issued his report on 31/10/1998. None of the charges leveled against the petitioner have been proved in the inquiry as categorically recorded by the Inquiry Officer in his report. Nonetheless, all throughout, the petitioner was deprived to get next higher promotion.

4.3 It is a settled position of law that when the Inquiry Officer has recorded a specific finding that charges are not proved against the delinquent (the petitioner herein), while issuing a show-cause notice and disagreeing with the findings of the Inquiry Officer on any of the charges leveled against the delinquent, the disciplinary authority must assign its reasons for disagreement. In the present case, no such reasons were assigned by the disciplinary authority when it issued the show-cause notice to the petitioner on 31/12/1998.

4.4 The petitioner has submitted his response/reply to the said show-cause notice. Once the disciplinary authority was not accepting the reply of the petitioner and maintained its disagreement, before imposing any penalty, it was required to issue a second show-cause notice to the petitioner, which was not issued in the present case.

4.5 The impugned order of penalty dated 16/06/1999 is a non-speaking order, inasmuch as no reasons were assigned by the disciplinary authority regarding its disagreement with the findings of the Inquiry Officer and also not dealt with the reply of the petitioner to the show-cause notice. As per the settled position of law, any order passed by a disciplinary authority-administrative officer must be a speaking order.

4.6 The impugned order of review dated 09/07/2010 passed by the respondent authority while exercising its power under Rule 24 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as “**the Rules, 1971"),**

could not have discarded the file noting and approval granted by the higher officials of the State. The reason for discarding it is also not attributed to any act of the petitioner, inasmuch as it is not so far proved that any manipulation in the office note was done by the petitioner. Once the Hon'ble Minister and Hon'ble Chief Minister, respectively, had taken a decision to declare the petitioner be exonerated of the charges by accepting the report of the Inquiry Officer, it was not open for their successors to take any contrary decision.

4.7 The charges leveled against the petitioner, being Charge Nos.2 to 4 were never proved by the Presenting Officer, inasmuch as though the purchases of different items were of Rs.35,224/- etc., but the same were not only at the instance of the petitioner but it was a collective decision of the Purchase Committee to purchase the items. As per the Government Resolution dated 30/09/1982 of the Industries and Mines Department of the State of Gujarat, to purchase item up to Rs.5,000/-, there was no need to float a public tender. It is undisputed on record that all items purchased were for less than Rs.5,000/-. Accordingly, charge Nos. 2 to 4 have not been proved. So far as charge No. 15 is concerned, apart from the said resolution, the purchase of the fan was not at a higher cost than the market cost which was suggested by the disciplinary authority in the charge, as the rate suggested was without the addition of taxes, whereas the purchase price includes taxes. Accordingly, none of the charges leveled against the petitioner stand proved in the inquiry.

4.8 It is not in dispute that other members of the Purchase Committee (3 in number), though charge-sheeted, were exonerated by the Inquiry Officer and their exoneration was accepted by the respondent. This shows clear discrimination and different treatment being meted out to the petitioner by the respondent; rather, the petitioner was made a scapegoat.

4.9 The charges leveled against the petitioner are of alleged misconduct for a period between April, 1982 and October, 1985, whereas the first charge-sheet was issued in the year 1990 and after its withdrawal, the second one was issued on 12/09/1994. There was a gross delay on the part of the respondent authority to initiate the inquiry against the petitioner and due to the long pendency of the inquiry and as such final decision taken not to disturb the order of penalty in the year 2010, this Court should exercise its extraordinary jurisdiction by holding that there is a delay in initiation and completion of the inquiry and on such ground also, it may be quashed.

4.10 The impugned order of penalty dated 16/6/1999 has also travelled beyond the charges leveled against the petitioner, inasmuch as there was no charge of financial irregularity mentioned in the charge sheet served upon the petitioner. Whereas, while passing the impugned order, the disciplinary authority arrived at a conclusion that by purchasing item beyond its power, the petitioner has committed a serious financial irregularity. Such a finding is perverse and erroneous and requires to be quashed and set aside.

4.11 To buttress her argument, Ms.Upadhyay, learned advocate for the petitioner has relied upon the following judgments:

(i) Judgment dated 26/06/2024 passed by Division Bench of this Court in case of Ea Singh (Edwin Annett Singh) and others vs. State of Gujarat, being Letters Patent Appeal No.934 of 2015.

(ii) Union of India and others vs. P. Gunasekaran – 2015 (2) SCC 610.

(iii) Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others – 2010 (9) SCC 496.

(iv) Bongaigaon Refinery & Petrochemicals Ltd. vs. Girish Chandra Sarma – (2007) 7 SCC 206.

(v) State Of Andhra Pradesh vs. N. Radhakishan – 1998 (4) SCC 154.

4.12 Making the above submissions, Ms.Upadhyay, learned advocate for the petitioner would pray to this Court to allow the present petition.

SUBMISSIONS OF THE RESPONDENT:

5. *Per Contra*, Mr. Rami, learned AGP, has vehemently opposed the submissions made by the learned advocate for the petitioner, as well as prayers made in this petition, by making the following submissions:

5.1 The service record of the petitioner is not blot-less, as he has tried to portray before this Court. Prior to the initiation of the inquiry or thereafter, the petitioner was subjected to other disciplinary proceedings which are enumerated and their

details given in para 4 of the affidavit-in-reply filed by the State.

5.2 The Charge Nos.2, 3, 4 and 15 were as such proved against the petitioner; the Inquiry Officer has committed an error by wrongly placing reliance upon the Resolution dated 30/09/1982 and erroneously observed that as the purchase of each item was less than Rs.5,000/-, the charges are not proved against the petitioner. The Inquiry Officer has completely misconstrued himself by equating the “item” with “the number of pieces”. For instance, in charge No.2, there was a purchase of eight workbenches by the petitioner totaling Rs.35,000/- and the cost of each workbench was Rs.4,375/-. The item in this case would be the ‘workbench’ and not ‘8 workbenches’, as tried to be canvassed by the petitioner.

5.3 The petitioner was the superior officer having full control, then merely because it was decided by the Purchase Committee to purchase the different items by not following the due process, the petitioner cannot be exonerated from his misconduct by citing instances of not imposing any penalty upon other committee members.

5.4 The reasons for disagreement were also annexed to the show-cause notice dated 31/12/1998, issued by the respondent. The case of the petitioner was considered threadbare by the disciplinary authority; not being satisfied with his explanation, it passed the impugned order of penalty,

as the petitioner was found guilty of misconduct in respect of charge Nos.2, 3, 4 and 15. The petitioner cannot be allowed to place reliance upon the file notings, or any decision taken by the Minister/Chief Minister, as the case may be, as the same never saw the light of day. It is a settled position of law that unless a decision is passed and communicated to the person concerned by the State, as per Article 166(2) of the Constitution of India, no right accrues in favour of the petitioner merely because a decision remains on the file.

5.5 The record indicates deliberate tampering with the file notings, where certain words have been obliterated by using whitener. In fact, considering the seriousness of the issue, at the relevant point of time, the matter was also referred to CID Crime to investigate such manipulations. After taking cognizance of the entire set of facts, the competent authority vides its impugned order dated 09/07/2010, rejected the request of the petitioner to again review its decision. Even prior thereto, the decision of the State was also communicated to the petitioner by communication dated 05/01/2000 and then after, there was no reason for the petitioner to again request the said authority to review its decision by making a written representation dated 13/03/2000.

5.6 The allegations of delay and laches in the initiation and conclusion of the inquiry are unsustainable. At the relevant point of time, the petitioner ought to have raised such issues, but it appears that he was satisfied with the directions issued

by this Court vide its order dated 16/09/1998 passed in Special Civil Application No.5612 of 1998, whereby this Court directed the disciplinary authority to complete the inquiry on or before 31/10/1998. The report of the Inquiry Officer was also prepared on 30/10/1998 and within a reasonable time, the order of penalty was also imposed by the respondent vide its order dated 16/06/1999. The scope of judicial review to interfere in the order of disciplinary proceedings or punishment, as the case may be, by this Court is very limited. Considering the totality of the facts and circumstances, no case is made out by the petitioner for interference by this Court.

5.7 Mr.Rami, learned AGP, has relied on the following judgments in support of arguments:

(i) Mahadeo vs. Sovan Devi – 2023 (10) SCC 807.

(ii) Union of India and others vs. P. Gunasekaran – 2015 (2) SCC 610.

(iii) State of U.P. & Anr. v. Man Mohan Nath Sinha & Anr. – 2009 (8) SCC 310.

5.8 By making the above submissions, Mr.Rami, learned AGP would urge this Court to dismiss the present petition.

6. No other and further submissions have been made by learned advocates for the respective parties.

ANALYSIS :

7. Having heard the learned advocates for the respective parties and after going through their pleadings and

documents, the following would emerge:

7.1 The petitioner was serving as a Class-I officer, i.e., Assistant Director (Training), subjected to a charge sheet issued on 3/8/1990 which came to be withdrawn by the respondent on 12/9/1994. Again, he was served with another charge sheet on 12/9/1994 containing total 16 charges. Upon conclusion of the inquiry, the Inquiry Officer, vide its report dated 30/10/1998, exonerated the petitioner from all charges. The disciplinary authority was in disagreement with the findings so far as charges Nos.2, 3, 4 and 15 are concerned. Consequently, vide its show-cause notice dated 31/12/1998, by citing reasons of disagreement, it called upon the petitioner to submit his response. The petitioner appears to have submitted his response vide his reply dated 12/1/1999. Without intimating the petitioner of the non-acceptance of his reply and without recording the reasons for disagreement with the same, the respondent passed the impugned order of penalty dated 16/6/1999, imposing a penalty of stoppage of one increment with future effect. It is not in dispute that such penalty is considered to be a major penalty which would affect the prospects of the petitioner to claim the next promotion to the post of Deputy Director (Training).

7.2 The petitioner appears to have approached respondent No.2 by way of a request to review the impugned decision, which was initially not entertained by the State, as can be seen from the communication dated 5/1/2000. Nonetheless, upon further request of the petitioner to review such decision,

the Minister concerned and the Chief Minister, vide decisions dated 10/7/2001 and 13/8/2001, agreed that the report of the Inquiry Officer be accepted and the petitioner be declared exonerated from the charges. No formal order in this regard was passed by the department, rather vide its impugned order 09/07/2010, the respondent – State concurred with the order of penalty imposed upon the petitioner.

8. It is true that the decision taken by the highest officials of the State never saw the light of day, inasmuch as such decision was not communicated by the department concerned to the petitioner or otherwise. The reason for the non-communication of the said decision by the department concerned at the relevant point of time was that at certain places in the department note, whitener was used to obliterate certain words in the file notings including the area where the Chief Minister had signed. The CID Crime was also involved to investigate such irregularity in the department note, but nothing fruitful came out, neither against the petitioner nor any other person, as the case may be.

8.1 This Court has called upon Ms.Upadhyay, learned advocate for the petitioner, to show the true copy of the Annexure-L, i.e., page Nos.151 and 152 of this petition (relevant file noting). The same was provided for the perusal of this Court by the learned advocate for the petitioner and on verification, the same is found to be the same as available at page No.151 and 152. Apropos to the same, when this Court has called upon Mr.Rami, learned AGP, to provide the original

file noting and approval granted by the State officials (Minister/Chief Minister), the learned AGP has also provided the same. The file noting reveals that whitener was applied over the signature of the then Chief Minister.

8.2 From the above, it can be very well said that when the petitioner was supplied a copy of the file noting containing the signatures of the Minister and Chief Minister under the RTI, thereafter only it is possible that someone has applied whitener. *Prima facie*, no adverse inference can be drawn at least against the petitioner for such a serious act when the decision taken as such was in his favor. Mr. Rami, learned AGP, was not in a position to substantiate the said discrepancy; rather he conveyed to this Court upon instruction that the CID Crime was also unable to find out the real culprit behind such act.

8.3 This Court is perturbed with the aforesaid facts, as it shows how vulnerable an important office file of the department concerned can be. It seems that anyone can manipulate the file noting as per his sweet will. This Court was seriously thinking to issue a direction to the respondent - State to hold an inquiry against the erring officials of the department concerned and, if so advised, register a criminal complaint against the officials in whose possession the file containing the said noting was kept. Mr.Rami, learned AGP, has requested this Court not to pass such a direction as the concerned official has already retired from service. At the same time, Mr. Rami has assured this Court that the feelings

of this Court regarding the aforesaid act would be conveyed to the competent authority of the respondent – State that henceforth, it may take due care to safeguard and secure such type of file. Hence, at this stage, I would not like to go further deep into the matter.

8.4 Be that as it may, as per the settled position of law, unless the decision of the State turns out in the form of an order and the same will be communicated to the concerned person, mere file noting or a decision taken on file would have no effect. [*See:* ***Mahadeo (supra)***]. Thus, despite the said decision taken by the highest authority of State, since no order has been passed and communicated to the petitioner by the respondent authority, and such decision never saw the light of day, in that view of the matter, such decision cannot be relied upon by the petitioner.

8.5 At the same time, this Court cannot be oblivious to the aforesaid fact that the decision was in taken favor of the petitioner by the Chief Minister and Minister concerned in the year 2001 and for reasons best known to the department concerned, no formal order was either passed and communicated to the petitioner. The said act of respondent concerned bolsters the argument of the petitioner that he was victimized during the entire episode of the inquiry.

9. So far as the aspect of delay in initiating the inquiry and its conclusion is concerned, it is true that the charge leveled against the petitioner was for alleged misconduct between

April, 1982 and October, 1985 and he was subject to the first charge sheet in the year 1990 and upon its withdrawal, a fresh charge sheet in the year 1994. At the same time, the petitioner appears to have approached this Court by way of Special Civil Application No.5612 of 1998 wherein this Court, vide its order dated 16/9/1998, only directed the Inquiry Officer to conclude the inquiry on or before 31/10/1998. The Inquiry Officer issued his report on 30/10/1998, within time granted by this Court; consequently, the respondent concerned, vide its impugned order dated 16/6/1999, imposed a penalty upon the petitioner. Upon passing of the order punishment, the inquiry stand concluded. Even the first review application of the petitioner was rejected by the State vide communication dated 05/01/2000. It is true that so-called second review application of the petitioner remained pending for long time would not be ground to quash the disciplinary proceeding (inquiry), when first one rejected within reasonable time. Accordingly, after taking note of the said facts and the said order passed by this Court, I am of the view that there was no case made out by the petitioner that, due to delay, the inquiry was not concluded within a reasonable time which prejudiced his future service prospects.

10. Now adverting to the issue of disagreement of the disciplinary authority as regards charges Nos.2, 3, 4 and 15 are concerned, the reading of the show-cause notice dated 31/12/1998 as such does not state any reason for disagreement, which is *sine-qua-non*. Of course, the note detailing the reasons for disagreement was annexed to the

said show-cause notice, but it would not carry the case of the respondent further as no reason for disagreement is germane from such note except reproduction of charge and given reference of the said resolution dated 30/09/1982. As per the settled position of law, the disciplinary authority must record his reasons of disagreement by recording his tentative/proposed findings of disagreement with the inquiry report.

10.1 At this stage, it would be apt to refer to the decision of the Division Bench of this Court in the case of **Ea Singh (Edwin Annett Singh) and others (supra),** wherein, after considering the entire case law, the Division Bench has held thus:

> *"48. From the conspectus of the aforementioned observations of the Supreme Court and this Court, the following aspects are required to be maintained when the Disciplinary Authority disagrees with the findings of the Inquiry Officer.*
>
> ***(a) There has to be tentative/proposed findings of the Disciplinary Authority disagreeing with the Inquiry Officer's report recorded in the show-cause notice.***
>
> ***The show-cause notice of disagreement should be issued to the delinquent calling upon him as to "why the findings which are in his favour is/are not required to be reversed."***
>
> *(c) While issuing the show-cause notice, the expression "charges are proved" should be avoided, since the same will reflect a predetermined application of mind by the Disciplinary Authority.*
>
> *(d) Such show-cause notice shall not stipulate the imposition of a particular penalty, minor or major. The*

> *expression "why any of the penalty/punishment shall not be imposed" should be avoided.*
>
> ***(e) After considering the reply of the delinquent to the show-cause notice of disagreement, the Disciplinary Authority has to pass an order recording a definite finding of guilt reversing the findings of the Inquiry Officer, by holding the charges as proved or not proved****.*
>
> ***(f) After recording such findings, it is essential that the delinquent is issued a final show-cause notice calling upon his explanation for the imposition of punishment [Vide Lav Nigam (Supra)].***
>
> *(g) After receipt of the reply to the show-cause notice, the Disciplinary Authority has to pass a reasoned and speaking order imposing appropriate punishment prescribed under the Rules governing disciplinary proceedings.*
>
> *49. The theory of prejudice will also not apply in such cases. Thus, the procedure adopted by the Disciplinary Authority does not meet the parameters enunciated by the Supreme Court in the aforementioned decisions. Hence, the punishment order, which is premised on such a faulty approach, cannot be sustained."*
>
> (Emphasis supplied)

10.2 Apart from the aforesaid, the disciplinary authority has also committed a serious error of law by not observing the principles of natural justice, inasmuch as it has not issued a final show-cause notice before imposing the impugned order of penalty dated 16/6/1999. As held above, when the reply of the delinquent/petitioner herein is not found satisfactory and, according to the disciplinary authority, charges are proved by passing an order recording a finding of guilt and reversing the finding of the Inquiry Officer, it is essential that the delinquent is issued a final show-cause notice to call upon his

explanation for the imposition of penalty. Undisputedly, in the present case, such recourse was not adopted by the disciplinary authority, which is per se illegal.

11. Even the impugned order of punishment dated 16/6/1999 is also a non-speaking order, inasmuch as neither any finding nor any reasons were recorded by the disciplinary authority reversing the finding of the Inquiry Officer qua charges Nos.2, 3, 4 and 15, as the case may be; rather, the disciplinary authority has accepted the guilt of the petitioner by reiterating the said charges served upon the petitioner along with the charge sheet. There is no cavil that any order passed, either by an administrative or quasi-judicial authority, must assign reasons and in the case of a non-speaking order, this Court requires to interfere. The present is a case where this Court feels that such interference is required. ***[See-Masood Ahmed Khan and others (supra)].***

12. Further, it also needs to be recorded here that the finding as regards financial irregularity recorded in the impugned order by the disciplinary authority is perverse as not germane from the charge-sheet served upon the petitioner. It is also settled law that the disciplinary authority cannot travel beyond the charge-sheet, served upon the delinquent-petitioner herein. This shows that without application of mind, the disciplinary authority has passed an order of punishment which was unfortunately confirmed by the reviewing authority by its order dated 9/7/2010.

13. At last, this Court would have appreciated the argument of Mr.Rami, learned AGP, as regards non-applicability of the resolution dated 30/9/1982 issued by the Department of Industries and Mines of the State of Gujarat, to the facts of the present case, inasmuch as the financial limit per item fixed was Rs.5,000/- (no tender process required) and not per piece of the item as considered by the Inquiry Officer, thereby held that the cost of one piece of each purchase item in question was less than Rs.5,000/-; thus, charges Nos.2 to 4 are not proved, is wrong. Yet, for following reasons, I would not like to accept such submission.

13.1 Firstly, it is recorded by the Inquiry Officer in his report that the decision regarding the purchase of different items (more than one piece of each item), totaling more than Rs.5,000/-, was a decision of the Purchase Committee and not that of the petitioner alone.

13.2 Secondly, it also remains undisputed, as not controverted by Mr.Rami, learned AGP, during the course of argument, that other committee members, though charge-sheeted, were exonerated from the charges by the Inquiry Officer and the same was accepted by the disciplinary authority. This would clearly show that the disciplinary authority has picked and chosen the officer concerned and, as such, the petitioner was made a scapegoat. ***[See-Girish Chandra Sarma (supra)].***

13.3 Thirdly, the aforesaid act of the respondent clearly proves that it is a case of discrimination at hand of the respondent – State, thereby only the petitioner was served upon the show-cause notice of disagreement dated 31/12/1998 by not agreeing with the finding of the Inquiry Officer qua said charges. Such an action of the respondent is *ex-facie* arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

13.4 Lastly, the argument so canvassed by Mr. Rami, learned AGP, was not even a reason of disagreement recorded by the disciplinary authority either at the time of issuing said notice of disagreement or when passed the impugned order of punishment.

14. Thus, in view of the aforesaid, this Court is of the view that there is basic infirmity remains on part of the disciplinary authority when it issued impugned show-cause notice and the order, and same goes to the root of the matter. In view of the foregoing reasons, the impugned order cannot be allowed to stand anymore.

CONCLUSION:

15. In view of the aforesaid observations, discussion and reasons, I am of the view that the impugned order of penalty dated 16/6/1999, as well as the order dated 9/7/2010 passed by the respondent, are unsustainable in law. Accordingly, both the aforesaid orders are hereby quashed and set aside. Having observed and held hereinabove, the impugned action

of the respondent by serving the notice dated 31/12/1998, after disagreeing with the inquiry report, is arbitrary, discriminatory and also violative of Article 14 of the Constitution of India; thus, the impugned notice dated 31/12/1998 cannot be allowed to stand anymore and accordingly, same is hereby quashed and set aside.

15.1 Consequently, the petitioner is held to be exonerated from all charges leveled against him vide the charge sheet dated 12/9/1994.

16. In light of the foregoing conclusions, the present petition is allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(MAULIK J. SHELAT, J)

GAURAV J THAKER