

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr/ 1151 / (LC-IR)/ 22021/14/2019

Date : 09-10-2025

ORDER

WHEREAS under Labour Department's Order No. Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024 with reference to the Industrial Dispute between M/s. Jaya Shree Textiles, Rishra, P.O.-Prabhasnagar, District-Hooghly, PIN-712249 and its workman Shri Prabhu Nath Yadav, Jay Shree Textiles, Quarter No. DL-217, P.O.-Prabhasnagar, District-Hooghly, PIN-712249, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule of the Industrial Dispute Act' 1947 (14 of 1947), was referred for adjudication to the 3rd Industrial Tribunal, Kolkata.

AND WHEREAS the 3rd Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 19.09.2025 in Case No. 01/2016 on the said Industrial Dispute Vide e-mail dated 19.09.2025 in compliance of Section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act' 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e **wblabour.gov.in**.

By order of the Governor,


Assistant Secretary
to the Government of West Bengal

No. Labr/ 1151 /1(5)/(LC-IR)/ 22021/14/2019

Date : 09-10-2025

Copy forwarded for information and necessary action to:

1. M/s. Jaya Shree Textiles, Rishra, P.O.-Prabhasnagar, District-Hooghly, PIN-712249.
2. Shri Prabhu Nath Yadav, Jay Shree Textiles, Quarter No. DL-217, P.O.-Prabhasnagar, District-Hooghly, PIN-712249.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Deputy Secretary, IT Cell, Labour Department with request to cast the Award in the Department's website.


Assistant Secretary
to the Government of West Bengal

No. Labr/ 1151 /2(3)/(LC-IR)/ 22021/14/2019

Date : 09-10-2025

Copy forwarded for information to :

1. The Judge, 3rd Industrial Tribunal, Kolkata, N.S. Building, 1, K.S. Roy Road, Kolkata-700001 with reference to e-mail dated 19.09.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.


Assistant Secretary
to the Government of West Bengal

*In The Third Industrial Tribunal,
New Secretariat Buildings, Kolkata-700 001*

Case No. 01/2016 u/s. 2A(2)

Present: Sri Mihir Kumar Mondal
Judge, 3rd Industrial Tribunal
Kolkata

Shri Prabhu Nath Yadav Applicant
Jay Shree Textiles, Quarter No. DL-217,
P.O.-Prabhasnagar, District-Hooghly, PIN-712249.

-Vs.-

M/s. Jaya Shree Textiles, OP/Company
Rishra, P.O.-Prabhasnagar, District-Hooghly,
PIN-712249.

A W A R D

DATED : 19.09.2025

The occasion of passing the Award has arisen in view of the observation of the Hon'ble High Court, Calcutta made in the order dated 10.03.2025 passed in connection with FMA 54 of 2025 / CAN 1 of 2024 because the Hon'ble Court has been pleased to observe in para. 15 of the said order to the effect that – *“such findings would now place both the parties before the Tribunal under Section 11A of the Act of 1947 to re-establish and prove their case afresh.”* According to Section 11A of the Industrial Disputes Act, 1947 Industrial Tribunal is required to pass 'Award' exercising its power to give appropriate relief in case of discharge or dismissal of workmen.

Order dated 10.03.2025 passed in connection with FMA 54 of 2025 / CAN 1 of 2024 speaks that the Hon'ble High Court, Calcutta has been pleased to entrust this Industrial Tribunal to deal with the instant matter under Section 11A of the Industrial Disputes Act, 1947 but no scope was left for adducing evidence by the witnesses whereas scope was left for hearing by the parties to this case on the point of re-appreciation of the entire evidence on the record of Domestic Enquiry held by Enquiry Officer. Furthermore, the Hon'ble High Court, Calcutta has been pleased to leave scope for this Tribunal for independent, impartial and fair re-appreciation of evidence as available in the record of domestic enquiry.

Accordingly, this Tribunal for complying the direction of the Hon'ble Court, passed in connection with FMA 54 of 2025 / CAN 1 of 2024, fixed the case for hearing in terms of the observation of the Hon'ble High Court, Calcutta made in para. 18 of the order dated 10.03.2025 of the said matter.

Ld. Advocates for the parties to this case jointly agreed to file written notes of argument and accordingly both the parties submitted their respective written notes of argument. Subsequently, Ld. Advocates of the parties to this case made oral submission in the matter of clarification of some points from their contention made in the written notes of argument.

Ld. Advocate for the applicant/workman in the written notes of argument has contended that in terms of observation of the Hon'ble High Court, Calcutta made in the Order dated 10.03.2025 passed in connection with 54 of 2025 / CAN 1 of 2024, this Tribunal is liable to consider this case according to the provision of Section 11A of the Industrial Disputes Act, 1947

and at the same time the Ld. Advocate for the applicant/workman has expressed his view that *“this Tribunal is free to consider the materials of records which have been marked exhibits on behalf of the parties.”* It is contended that charge-sheet dated 27.11.2014, issued against the workman, was marked as Exbt.-1 and in the said charge-sheet three (3) sets of charges were framed against the workman and those are as follows :- (i) *Theft and dishonesty in connection with the employer’s business or property*; (ii) *Loss of confidence* and (iii) *Acts subversive of discipline*. It is contended that the workman denied all those charges and simultaneously claimed that on proof of the real facts it would come out that the workman is not at all guilty in respect of the alleged charges as well as it would be proved that the alleged incident was pre-planned and concocted. It is contended that the Employer i.e. OP/Company dismissed the workman from his service after holding a baseless enquiry, in which the E.O. submitted the impugned report which was prepared without application of mind. It is contended that the Hon’ble Court by its Order dated 10.03.2025 did not set aside the Enquiry proceeding and thus such Enquiry proceeding held by the Enquiry Officer remains valid. It is contended that the workman does not dispute the ‘proceeding’ of the domestic enquiry adopted by the Enquiry Officer in course of holding Enquiry but the ‘Report’, submitted by the Enquiry Officer, is found as perverse as well as, non-application of mind in the matter of preparation of such Report is well transpired and thus such ‘Report’ is liable to be quashed by this Tribunal. It is contended that out of three numbers of charges, the Charge No.1 has allegedly been proved but two other charges have not been proved, which prima facie proves the non-application of mind by the Enquiry Officer. In respect of ‘Charge No.1’ it is contended that the Employer i.e. OP/Company failed to prove any documentary evidence save and except Exbt.-4, which is the alleged GD / FIR dated 10.11.2014. It has been pointed out that the Exbt.-4 contains a mere allegation against the workman and thus it should not be treated as full proof against the allegation of theft levelled against the applicant/workman. It is contended that the article i.e. the alleged stolen materials, was missing on and from 03.11.2014 and the G.D. Entry / FIR was lodged only on 10.11.2014 but no explanation was given by any of the Management witnesses regarding delay in lodging G.D. Entry / FIR although there was responsible officers as well as Security Officers under the Company. He has pointed out that in course of cross-examination of MW-2 during domestic enquiry proceeding, he divulged (question No.53 at page-92) that Police Authority seized the stolen cable from the company’s office but in fact in course of domestic enquiry proceeding no seizure list was produced and proved by the Management with a view to establishing its claim of seizure by the Police Authority. After scanning the evidence of the Management witnesses in the domestic enquiry proceeding, it is pointed out that MW-1 in his cross-examination (question No.9 at page No.33) divulged that his duty hour was from 11 a.m. to 2 p.m. and further from 2 p.m. to 6 p.m. without any break and thus he had to perform duty on and from 10 a.m. to 6 p.m. continuously but the said MW-1 in course of his cross-examination (question No.4 at page-32) has divulged that at around 2:15 p.m. he and Rakesh Pandey caught Sri Prabhu Nath Yadav red handed at B.P. Dey Street. Ld. Advocate for the workman taking into consideration those two replies / answers of MW-1 in his cross-examination, has claimed that the MW-1 made false statements before the Enquiry Officer. Ld. Advocate for the workman has pointed out that MW-2 made self-contradictory statements in respect of Close Circuit TV because once he stated that CCTV were out of order but subsequently he stated that the Close Circuit Cameras were not out of order. Moreover, the Management of the Company failed to produce and prove the CCTV footage of the relevant period of the alleged theft of cable. Apart from that, the Management of the Company did not adduce any evidence including CCTV footage to show how the stolen article / material was removed / taken away from the residence of the workman or some other place situated inside the factory premises at the relevant period of the alleged incident. It is pointed out that CSW-1 Prabhu Nath Yadav in his evidence (question No.39 at page-107) divulged that Kajal Dutta was not ‘on duty’ on 10.11.2014 whereas Kajal Dutta in his evidence

stated that he was 'on duty' on 10.11.2014. In the light of such 'contradictory evidence', the Management ought to have produced and proved the attendance register to settle the conflict regarding the attendance of Kajal Dutta on 10.11.2014. Further, it is contended that a question (Q. No.39 at page-124), was asked to CSW-1 Prabhu Nath Yadav that what he was doing along with his family in Bandel Station whereas according to his train ticket (Exbt.-A), scheduled boarding was from Barrackpore Railway station and in the reply he stated that Bandel station was more convenient for them to board on the train. Further, the CSW-1 Prabhu Nath Yadav **denied the allegation** (in Q. No.40 at page-124) to the effect that he with some ill motive chose to board on the train at Bandel Railway station via Serampore but he was caught red handed at B.P. Dey Street, Serampore at 2:15 p.m. It is contended that in view of such self-contradictory grounds (as it is revealed from Question Nos.39 & 40 at page-124) taken by the Management of the OP/Company it is surfaced that the workman was present at Bandel Railway station at the relevant period of the incident but not at Serampore. It is contended that the Management of the Company has failed to prove the charge of theft against the workman which allegedly took place on 10.11.2014 and thus it is established that the Enquiry Officer submitted the impugned report in a biased manner without considering the materials and evidence on record and consequently it is proved that the charge-sheet was pre-planned and motivated with a view to victimize the applicant/workman. It is also contended that in the report there is no specific observation with regard to the charge No.2 and charge No.3 in the Enquiry Report. Ld. Advocate for the applicant/workman has prayed for setting aside the vague and biased charge-sheet and to reinstate the workman in his service with full back wages and other benefits.

In the written notes of argument Ld. Advocate for the OP/Company has narrated the alleged incident of theft in respect of large quantity of cable lying in the administrative building of the factory. It is mentioned that on **04.09.2014** 'large quantity' of cable was kept in the administrative building of the factory and on **03.11.2014** such 'large quantity' of the cable was reported to be missing and thus all security personnel including the workman Prabhu Nath Yadav, who was also working as a Jamadar (Security) in the Security Department of the Company's factory at Rishra, were enquired about the matter of such missing of 'large quantity' of cable. It is mentioned that in the meantime on 30.10.2014 the workman (security personnel) Prabhu Nath Yadav applied for leave on and from 10.11.2014 as he intended to go to his native place at Rashra, Uttar Pradesh. It is mentioned that on 10.11.2014 Sri Rakesh Pandey, Administrative Manager and Kajal Dutta, Security Guard intercepted the workman (security personnel) Prabhu Nath Yadav at a place almost near to the Serampore railway station and they asked him to open his (Prabhu Nath Yadav) **blue** coloured bag, which was carried by a rickshaw van pulled by a van puller, but initially he refused to open the bag. When the said bag was opened in his presence by Sri Rakesh Pandey and Sri Kajal Dutta, the said 'large quantity' of cable belonging to the Company was found inside the bag and at that time Sri Kajal Dutta caught hold of the hand of the workman (security personnel) Prabhu Nath Yadav but he somehow escaped from the clutches of Kajal Dutta and fled away. It is mentioned that the said 'large quantity' of cable, which was recovered, was taken to the factory under the instruction of higher officials of the Management and an FIR was lodged with the Serampore Police Station. It is mentioned that in the night of **03.11.2014 (?)** Police of Serampore Police Station visited the factory premises and seized the recovered 'large quantity' of cable. It is stated that on **27.11.2014** the Management of the Company issued a charge-sheet against the workman (security personnel) Prabhu Nath Yadav on the ground that the workman committed theft in respect of 'large quantity' of cable and thereby the Management lost confidence upon him and also an act subversive of discipline committed by the workman over the incident happened within Serampore area at about 2:15 p.m. on 10.11.2014 in which he was caught red-handed along with Company's cable, which was lost previously. It is mentioned that the workman submitted his reply to the charge-sheet on 05.12.2014 and thereafter an impartial Enquiry Officer was

appointed by the order dated 16.12.2014 for holding domestic enquiry. It is mentioned that before commencement of taking evidence in the domestic enquiry, the Management on 07.05.2015 filed an application for amendment of 'charge-sheet' with a view to make correction of an important 'date' wrongly noted there and thereafter amended charge-sheet was produced at the Enquiry. It has been pointed out that the MW-1 Kajal Dutta in his cross-examination divulged that he along with Rakesh Pandey caught red handed Prabhu Nath Yadav on B.P. Dey Street at around 2:15 p.m. and after recovery of stolen cable from the possession of Prabhu Nath Yadav, they kept such cable at the Security Office but there was no occasion for catching / apprehending the rickshaw puller as he had left the place after taking fare from Prabhu Nath Yadav as soon as Prabhu Nath Yadav got down from the rickshaw along with cable. Ld. Advocate for the OP/Company contended that such statements from MW-1 **corroborated the allegation** levelled against the workman Prabhu Nath Yadav in the charge-sheet. In page no.6 of the written notes of argument submitted on behalf of the OP/Company Ld. Advocate noted chronologically Q. No.4 and its Answer, Q. No.12 and its Answer and Q. No.13 and its Answer. It is mentioned that FIR dated 10.11.2014 was exhibited in course of domestic enquiry being identified by the witness Rakesh Pandey. It is admitted that although Police arrested the workman Prabhu Nath Yadav and seized the stolen article, which was recovered, but the 'Seizure List' was not exhibited in the domestic enquiry. It is mentioned that MW-2 in course of his deposition on 24.08.2015 divulged that all the Jamadars were aware that 'CCTV' was not working at the relevant point of time but there was CCTV facility in the administrative building and Jamadars were responsible for handling CCTV. It is mentioned that the witness (MW-1) admitted that recovered stolen article although was brought to the factory premises but entry of such cable was not recorded in any valid paper. He has pointed out that the workman being the witness in his cross-examination divulged that on the date of incident i.e. on 10.11.2014 he was in the mill upto 10:30 a.m. although he was on leave for that date as he was granted leave by the appropriate authority. It is pointed out that the CSW-1 Prabhu Nath Yadav admitted that his wife and son were intercepted at Platform No.3 of Bandel Railway Station at around 12:20 p.m. by Rakesh Pandey and Kajal Dutta and he explained that he did not board on the train from Barrackpore Station as it was more convenient for him to board the train at Bandel Station than at Barrackpore Station. It is mentioned that the *alibi* taken by the workman to get escape from the incident of theft is not trustworthy rather, such *alibi* is fragile. It is mentioned that the workman was all set to travel by Ajamgarh Express on 10.11.2014 along with his family members and his scheduled boarding on the train was Barrackpore Railway Station but he divulged that his wife and son were at Bandel Station at around 12:20 p.m. whereas the time of arrival of Ajamgarh Express at Barrackpore Station was at 11:55 a.m. It is mentioned that Rishra and Serampore Railway Stations are within the Howrah section of Eastern Railway but Barrackpore is on the Sealdah section of Eastern Railway. It is found that Ld. Advocate for the OP/Company has tried to establish in the written notes of argument by making contention that it was quite impossible for the workman Prabhu Nath Yadav and his family members to avail the Ajamgarh Express at Bandel Railway Station at about 12:20 p.m. because the arrival time of Ajamgarh Express at 11:55 p.m. is at Barrackpore Railway Station. It is contended that at the very moment the workman Prabhu Nath Yadav made it clear that he was staying in his quarter at Rishra and his wife and son returned to the residence from Bandel Railway Station, it became crystal clear that Prabhu Nath Yadav, his wife and his son all were staying at their residence at Rishra. It is contended that this Tribunal has to assess the evidence lying in the record of domestic enquiry and the Tribunal should base on the principle of preponderance of probability in the matter of assessment / appreciation of the evidence which is already on record of the domestic enquiry. He has contended that 'preponderance of probability' means a possible or probable view which is capable of a disagreement but not a completely absurd one. He has contended that the Management of the Company by adducing evidence, has been able to prove

the charges of theft, loss of confidence against the workman. It is mentioned that it has already been settled by the order of the Hon'ble High Court, Calcutta that the domestic enquiry was fair and proper and thus this Tribunal has very limited jurisdiction / scope to interfere with the domestic enquiry unless there is apparent perversity in finding of fact recorded or disproportionate punishment has been imposed. It is contended that over the allegation of theft, 'dismissal' cannot be disproportionate punishment. Ld. Advocate for the OP/Company in the written notes of argument has submitted that the order of dismissal of the workman should not be interfered and the proceeding may be disposed of in favour of the Company.

The backdrop of the present situation of this case is that the workman Prabhu Nath Yadav filed an application u/s. 2A(2) of the Industrial Disputes Act, 1947 against his employer M/s. Jaya Shree Textiles stating that his employer i.e. the OP/Company brought three numbers of charges against him by way of filing charge-sheet and thereafter domestic enquiry was started by appointment of an Enquiry Officer and in terms of the report of the Enquiry Officer, the OP/Company issued dismissal letter dated 15.06.2016 for his dismissal from the service with immediate effect and thus being aggrieved by the order of dismissal, he sought intervention of this Industrial Tribunal and prayed for holding his dismissal order as illegal, invalid and inoperative in the eye of the law and thereby to pass an Award of his reinstatement in the service with full back wages and consequential benefits. Subsequently, proceeding was started before this Tribunal to find out the validity of the domestic enquiry held by the Enquiry Officer appointed by the OP/Company. In the said procedure, evidence of both the parties were taken. The Tribunal at the end of the evidence of both the parties, heard arguments of both sides and thereafter, passed final order on the point of validity of the domestic enquiry. The then Presiding Officer of this Tribunal by order dated 07.05.2021 held that the domestic enquiry was invalid and thus he fixed the date for hearing of the case on merit. Aggrieved party filed writ petition challenging the order dated 07.05.2021. After several developments in this matter, this Tribunal received the order dated 10.03.2025 passed by the Hon'ble High Court, Calcutta in connection with FMA 54 of 2025 / CAN 1 of 2024 in the matter of this case.

After careful reading of the solemn order dated 10.03.2025 passed by the Hon'ble Division Bench of the High Court, Calcutta in connection with FMA 54 of 2025 / CAN 1 of 2024, so far I have realized that burden on the shoulder of this Tribunal has been reduced by the solemn observation of the Hon'ble Court and this case has assumed exceptional character as the Hon'ble Court has been pleased to place this case within the purview of Section 11A of the Industrial Disputes Act, 1947 and accordingly this Tribunal has got its jurisdiction to exercise its power as vested under Section 11A of the Industrial Disputes Act, 1947. Besides that, the Hon'ble Court has been pleased to direct this Tribunal to re-appreciate the evidence lying on the record of the Domestic Enquiry independently, impartially and fairly and to assess if there is any scope for awarding punishment to the workman and further, if punishment is required / justified in view of the evidence on record, it is to be decided on the quantum of punishment i.e. how severe it should be for imposing on the workman. The observation of the Hon'ble Court, as it is found in the last portion of para. 18 of the order dated 10.03.2025, so far I have realized the meaning in simple words is that this Tribunal has to re-examine i.e. re-appreciate the evidence lying on the record of the Domestic Enquiry and this Tribunal can also look into what punishment, if any, should be imposed on the workman and prior to that the parties of this case should be given a chance to present their views / contention before this Tribunal about what punishment should be imposed on the workman and at the same time this Tribunal after re-appreciating the evidence, may decide that no punishment at all is required or if punishment is required, the Tribunal has to decide how severe it should be. Further, in view of the solemn order of the Hon'ble High Court, Calcutta, I am of the humble opinion that this Tribunal has to re-appreciate the evidence on the record of the domestic enquiry and to come to the conclusion

whether this Tribunal is conceded with the finding and report of the Enquiry Officer or differs from such finding and report on the ground of perversity, correctness and propriety but at the same time this Tribunal is not unmindful to the settled principle of law that the Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent finding on the evidence. The Hon'ble Supreme Court of India in the matter of Union and India & Ors. Versus Dalbir Singh, reported in (2021) 11 Supreme Court Cases 321 has been pleased to observe – “The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

Ld. Advocate for the OP/Company in his written notes of argument as well as in course of placing his contention in favour of the report submitted by the Enquiry Officer after holding Domestic Enquiry has put forward emphatically citing the observation of the Hon'ble Supreme Court of India in the matter of Union of India & Ors. Versus Dalbir Singh reported in (2021) 11 Supreme Court Cases 321 that in the matter of making decision in domestic enquiry or in the matter of challenge of the finding of domestic enquiry, the standard of proof is based on the principle of preponderance of probabilities. The Hon'ble Supreme Court of India in the above cited matter has been pleased to observe – “This Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.* held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”.

For better understanding, the meaning of the expression ‘preponderance of probability’, the observation of the Hon'ble Supreme Court of India in the matter of *Gastred International versus Commissioner of Customs, Kandla*, reported in 2025 SCC OnLine SC 677 is reproduced below :

“74. At this juncture it may be apposite to dwell briefly upon the meaning of the expression “preponderance of probability” in contradistinction to “proof beyond reasonable doubt”.

75. Under Section 3 of the Evidence Act, 1872, a fact is said to be proved when, after considering the matters before Page 63 of 76 it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists, which clearly indicates that the Evidence Act does not insist upon absolute standard of proof. Evidence Act also nowhere defines as to the meaning of proof based on “preponderance of probability” and “beyond reasonable doubt” which are different standards of proof.

76. Different standards of proof have evolved in criminal and civil jurisdictions in course of time considering the differential stakes involved in these proceedings. In a criminal proceeding, the stakes are higher for a defendant as it involves precious rights and liberties of

the person with a potential to lose the same if convicted of the offence charged. On the other hand, civil liability is less blameworthy, and penalty, if any, is less severe.

77. The expression “preponderance of probability” has been explained by this Court in *M. Siddiq (Ram Janmabhumi Temple-5 J) v. Mahant Suresh Das*, (2020) 1 SCC 1. In the aforesaid case, this Court applied the test of a prudent man who upon weighing the various probabilities finds that the preponderance is in favour of the existence of the particular fact. It was observed that even in the case of proof by preponderance of probability, there may be degrees of probability within that standard and “the degree depends on the subject-matter.”

It was held that,

“720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly : If therefore, the evidence is such that the court can say “we think it more probable than not”, the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence]

In *Miller v. Minister of Pensions* [*Miller v. Minister of Pensions*, (1947) 2 All ER 372.] , Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H) “(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice.” (emphasis supplied)

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, LJ in *Bater v. Bater* [*Bater v. Bater*, [1951] P. 35 (CA).] , where he formulated the principle thus : (p. 37) Page 65 of 76 “... So also, in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter.”

722. The definition of the expression “proved” in Section 3 of the Evidence Act is in the following terms: “3. ... “Proved”. — A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

723. Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:

723.1 The test of a prudent person, who acts under the supposition that a fact exists.

723.2 In the context and circumstances of a particular case.

724. Analysing this, Y.V. Chandrachud, J. (as the learned Chief Justice then was) in *N.G. Dastane v. S. Dastane* [*N.G. Dastane v. S. Dastane*, (1975) 2 SCC 326.] held : (SCC pp. 335-36, para 24) “The belief regarding the existence of a fact may, thus, be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the

court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those Page 66 of 76 which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: “the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue [Per Dixon, J, in Wright v. Wright, (1948) 77 CLR 191 (Aust).] , CLR at p. 210”; or as said by Lord Denning, “the degree of probability depends on the subject-matter”. In proportion as the offence is grave, so ought the proof to be clear [Blyth v. Blyth, [1966] A.C.

643 : [1966] 2 WLR 634 : (1966) 1 All ER 524 (HL).] , All ER at p. 536’. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.” (emphasis supplied)

725. The court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.

726. In State of U.P. v. Krishna Gopal [State of U.P. v. Krishna Gopal, (1988) 4 SCC 302 : 1988 SCC (Crl.).] , this court observed : (SCC p. 314, para 26)

“26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge.”

On scrutiny of the record of the domestic enquiry, which was initiated for the purpose of holding enquiry in the matter of charges brought against the workman Prabhu Nath Yadav in the charge-sheet dated 27.11.2014, it is found that the said enquiry proceeding was started on 23.12.2014 by the Enquiry Officer Sk. Hamedul Quader and Mr. Samarnath Mukherjee was acted as the management representative and Sri Gena Yadav was acted as the representative of the charge-sheeted employee. It is found that in course of enquiry proceeding the Management representative adduced two witnesses namely Sri Kajal Dutta and Sri Rakesh Pandey and those two witnesses were examined as MW-1 and MW-2 respectively. Those two witnesses were cross-examined by the representative of the employee. It is found that the charge-sheeted employee adduced himself as a witness in enquiry proceeding and he was examined as CSW-1. He was cross-examined by the management representative.

It is found that in course of enquiry proceeding 15 numbers of documents were produced and identified by the Management witnesses and those documents were marked as exhibited documents whereas only one document was produced and proved on behalf of the charge-sheeted employee Prabhu Nath Yadav and the said document was marked as exhibited document.

The following documents were marked as exhibited documents on behalf of the Management of the Company :-

1. FIR dated 10.11.2014	Exbt.-1
2. Incident Report dated 10.11.2014	Exbt.-2

3. e-mail dated 03.11.2014	Exbt.-3
4. purchase order dated 23.07.2014	Exbt.-4
5. Challan dated 22.08.2014	Exbt.-5
6. payment voucher dated 22.08.2014	Exbt.-6
7. Work order dated 08.07.2014	Exbt.-7
8. Gate pass dated 04.09.2014	Exbt.-8
9. charge sheet dated 27.11.2014	Exbt.-9
10. Amendment of the charge sheet dated 07.05.2015	Exbt.-10
11. Reply of the charge sheet dated 06.12.2014	Exbt.-11
12. Notice of enquiry dated 16.12.2014	Exbt.-12
13. appointment letter of the Enquiry Officer	Exbt.-13
14. Standing Orders of the Company	Exbt.-14
15. Security Department Daily Duty Register dated 10.11.2014	Exbt.-15

The following document was marked as exhibited document on behalf of the workman :

1. Computerised Train Ticket	Exbt.-A
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The charge-sheet dated 27.11.2014 filed against Sri Prabhu Nath Yadav, working as a 'Jamadar' in the Security Department was marked as Exbt.-9 in course of Domestic Enquiry. On perusal of the charge-sheet (Exbt.-9) it is seen that allegation levelled against the Jamadar Prabhu Nath Yadav is that, as he was working in the post of 'Jamadar' in the Security Department and the said post was similar to 'Shift security supervisor', he had full responsibility to manage the entire Security Department in his assigned shift. It has been alleged that on 10.11.2014 at about 2:15 p.m. the Jamadar Prabhu Nath Yadav was caught red handed in Serampore area by the Administrative Manager Sri Rakesh Pandey and Security Guard Sri Kajal Dutta along with a make-shift gunny bag in his possession and on enquiry stolen electric cable weighing about 80 kgs., belonging to the Company, was found inside the said gunny bag. It has been alleged that thereafter he (Prabhu Nath Yadav) was taken to the Serampore Police Station along with the said stolen electric cable recovered from his possession. Further, it has been alleged that somehow he (Prabhu Nath Yadav) managed to free himself from the clutches of Rakesh Pandey and Kajal Dutta and fled away. It has been mentioned that the said electric cable, recovered from the possession of Prabhu Nath Yadav, was found missing from the factory on and from 03.11.2014 [the charge-sheet dated 27.11.2014 was amended by application dated 07.05.2015 (Exbt.-10) submitted by the Factory Manager as in the original charge-sheet the date of missing was mentioned as 03.10.2014]. It has been mentioned in the charge-sheet that an FIR was lodged with the Serampore Police Station and on the basis of such FIR, Prabhu Nath Yadav was arrested by the Police of Serampore Police Station and the stolen material was seized by the Police and Police took the custody of seized article. It has been mentioned in the charge-sheet that the Management of the Company held the said act of theft in respect of Company's property as major misconduct on the part of Jamadar Prabhu Nath Yadav and at the same time such act of theft by Prabhu Nath yadav, as held by the Management of the Company, casted an adverse effect upon the discipline of the Company and thus three separate charges were framed against the Jamadar Prabhu Nath Yadav. Those three charges are as follows :- **(a)** Theft and dishonesty in connection with employer's business or property; **(b)** Loss of confidence; **(c)** Acts subversive of discipline. By way of filing charge-sheet, the Management of the Company directed Jamadar

Prabhu Nath Yadav to submit his explanation within 72 hours from the date of receipt of the charge-sheet as to why strong disciplinary action should not be taken against him. It is to mention here that the charge-sheet itself contains suspension order regarding suspension of Prabhu Nath Yadav from the service of the Company w.e.f. 01.12.2014. Apart from that the Management of the Company granted subsistence allowance to the suspended Jamadar Prabhu Nath Yadav w.e.f. 01.12.2014 in compliance with the West Bengal Subsistence Allowance Act, 1969.

In compliance with the direction of the charge-sheet (Exbt.-9) the suspended Jamadar Prabhu Nath Yadav submitted his written explanation on 06.12.2014 (Exbt.-11). In the written explanation Prabhu Nath Yadav denied all the material allegations levelled against him in the charge-sheet (Exbt.-9). In the explanation he has emphatically stated that really he never committed any offence during his service tenure and previously no charge-sheet was issued against him but in the instant matter he has been falsely implicated and he was dragged in a criminal proceeding by framing a concocted story of theft against him. He has claimed that concocted and false story of theft was framed by the Administrative Manager Rakesh Pandey and Security Guard Kajal Dutta pursuant to their ill motive. He has stated in his written explanation that prior to going on authorized leave, he performed his duty till 09.11.2014 and according to the amended charge-sheet the electric cable weighing about 80 kg. was found missing on and from 03.11.2014 but none interrogated him about the missing electric cable and further he has raised question as to why the Administrative Manager Rakesh Pandey and Security Guard Kajal Dutta did not visit his residence (factory quarters within the factory premises) for the purpose of detection of missing electric cable from his residence and for its recovery, if for argument sake it is believed / accepted that he committed theft in respect of such quantity of electric cable. He has raised question why did the Security Guard and the Gate Keeper not catch him red handed between 03.11.2014 and 09.11.2014, if he had stolen away electric cable weighing about 80 kg. by removing it from administrative block. He has expressed his wonder in the matter of so called dutiful activity of Rakesh Pandey and Kajal Dutta, who were so active on 10.11.2014 to catch him with gunny bag at Bandel Station although they remained inactive between 03.11.2014 and 09.11.2014, in which span of time he remained present at the factory during duty hours and at his house during off duty. He has also expressed his wonder over the contents of the charge-sheet that he was carrying electric cable weighing about 80 kg. in a 'makeshift' gunny bag. He has raised a valid question as to why the appropriate authority of the Company did not take legal action against him by knocking the door of Police Station for recovery of stolen article i.e. electric cable weighing about 80 kg. from his house during the period 03.11.2014 to 09.11.2014, if there was reasonable suspicion against him in the matter of theft of electric cable. He has stated that while his son and wife were waiting at Bandel Railway Station on 10.11.2014, suddenly two unknown persons appeared to his wife and son and kept a sealed gunny bag in close proximity to their (son and wife) luggage and told them that the said sealed gunny bag belonged to Prabhu Nath Yadav and they (two unknown persons) disappeared but within a while Rakesh Pandey and Kajal Dutta along with some GRP / RPF personnel came and challenged his wife and son stating that Prabhu Nath Yadav committed theft of the article contained in the bag and thus his wife and son were taken to GRP office at Bandel but subsequently they were released. He has raised question if actually stolen article was recovered from the possession of his wife and son, then why no specific case was started against his son and wife. He has noted that a contradiction has transpired because his son and wife were taken to GRP office at Bandel Railway Station over the allegation that the stolen article was with them but in the charge-sheet it has been mentioned that he (Prabhu Nath Yadav) was caught red handed with the stolen article within Serampore area by Rakesh Pandey and Kajal Dutta. The workman by submitting his explanation alleged that charge-sheet was issued against him on false and fabricated grounds deliberately aiming to harass him.

It is seen that the Enquiry Officer submitted his 'Report and Finding' on conclusion of domestic enquiry held on the basis of charge-sheet dated 27.11.2014, which was amended subsequently.

On perusal of the 'report and finding' of the Enquiry Officer, nowhere it is palpable that he after considering the evidence on record of the domestic enquiry proceeding, straightway come to the conclusion that the charges levelled against the charge-sheeted employee Prabhu Nath Yadav has been sufficiently and substantially proved and it is glaring that head-wise 'charge' has not been disposed of in the said report and finding.

Now, duty casts upon this Tribunal to find out whether the Management of the Company has been able to prove and establish the charges levelled upon the workman Prabhu Nath Yadav by adducing evidence, both oral and documentary. In such process, this Tribunal should also consider the evidence of CSW-1 Prabhu Nath Yadav to see how far he has been able to refute / demolish the charge brought against him.

MW-1 Kajal Dutta during his cross-examination (Q. No.1) evaded to disclose the 'time' when Administrative Manager asked him to accompany the Administrative Manager. Again, in his answer to the Q. No.3 could not say the names of the Darwans posted at the check post while he was leaving the factory on 10.11.2014. Further, in his answer to the Q. No.6 failed to disclose the names of the Darwans posted at the check post when he returned to the factory on 10.12.2014. The MW-1 in his examination-in-chief (page 26) divulged that on 10.11.2014 he along with his Administrative Manager proceeded to Serampore by train and after alighting from the train they were proceeding through B.P. Dey Street and found that Prabhu Nath Yadav was coming by 'rickshaw van' with a blue coloured bag and he got down from rickshaw near Durga Mandir. Then and there, he along with Rakesh Pandey challenged Prabhu Nath Yadav and asked him to show the materials lying in his bag but he refused to show the materials in his bag. He has divulged that they forcibly opened the 'stitch' of the bag and found that stolen cable was inside the bag. He has divulged that he caught hold Prabhu Nath Yadav but somehow he managed to free away. He has further divulged that at that time they found that wife and son of Prabhu Nath Yadav reached at the said spot by rickshaw but they did not talk to them and thereafter Rakesh Pandey asked him to go to the factory along with recovered material by rickshaw. During cross-examination (Q. No.13), he has divulged that on the relevant date Prabhu Nath Yadav after alighting from rickshaw paid fare to the rickshaw puller and the rickshaw puller left the place and for that reason they failed to catch the rickshaw puller and to intercept the rickshaw.

MW-2 Rakesh Pandey in his examination-in-chief (page 39) divulged that on the relevant date to work out the source information he along with Kajal Dutta left factory at around 1 p.m. and proceeded towards Serampore by train and after alighting from the train they went to B.P. Dey Street and found that Prabhu Nath Yadav was unloading a blue coloured gunny bag from a rickshaw van and thereafter as per his instruction Kajal Dutta opened the gunny bag and they found that missing cable lying inside the said bag. He has divulged that Prabhu Nath Yadav was apprehended but somehow he managed to flee away. He has divulged that thereafter he called a rickshaw and advised Kajal Dutta to take the said cable to the factory. He has also divulged that he saw wife and son of Prabhu Nath Yadav were coming by rickshaw at the time of interception of Prabhu Nath Yadav. He has divulged that (page 41) Police personnel came to the factory and seized the stolen cable and arrested Prabhu Nath Yadav. He has divulged (page 45) that there was CCTV facility in the Administrative Building and Jamadars were responsible for handling CCTV. It is found that (Q. No.31 in page 46) a leading question was put to MW-2 as the question itself suggested the answer. By putting leading question desired answer was extracted from the MW-2 that Jamadars were aware of the fact that CCTVs were out of order at the relevant time. During cross-examination MW-2 Rakesh Pandey divulged that Prabhu Nath

Yadav was residing inside the factory premises. In the answer to the Q. No.4 he failed to say where Prabhu Nath Yadav was going on 10.11.2014. He during cross-examination (Q. No.8) failed to say the name of the train by which Prabhu Nath Yadav was supposed to travel. He has divulged that the weight of the stolen cable was 80 kg. In the answer to the Q. No.15 (page 50) he evaded to deliver the direct answer to the question whether he could produce his punching card dated 10.11.2014 for the purpose of the enquiry and he answered that he could not say without consulting the concerned department. **Such answer speaks a lot that the witness did not feel himself independent at the time of his deposition before the Enquiry Officer.** He divulged (answer to Q. No.18 on page no.51) that after recovery of the stolen cable, it was brought to the factory and **kept in the Security Office** but that matter was not entered in any valid paper. In the answer to the Q. No.20, he failed to say where Prabhu Nath Yadav was supposed to reach at 2:15 p.m. according to the timing of the train as per the train ticket. He has divulged that at the relevant point of time, 44 numbers of security guards and 03 numbers of Jamadars were working in the factory. He has admitted (answer to the Q. No.30 on page-56) that he did not provide the CCTV footage of last two days as contained in Exbt.-3. The Q. No.31 (Practically it is a bunch of three questions) and its answer are reproduced below with a view to understand the 'one liner answer' to three questions in a bunch :-

Q. No.31 : Can you tell from which date the CCTV of the main road was not functioning and to whom you have informed about the same ? Specifically from the residence of Prabhu Nath Yadav ?

Answer : No camera was not out of order.

After repeated reading these 'Questions' (evidently three sets of questions put in a bunch or at a time) and 'Answer', in common parlance or in ordinary prudence it is supposed that the particular question, which is a bunch of three sets of queries, would have three distinct and different answers and it cannot be said in ordinary prudence that those three 'queries' as contained in Q. No.31, would have one common answer i.e. 'no camera was not out of order'. To my understanding, the witness by such answer intended to say 'all the cameras were working properly'.

Once again, the MW-2 has exposed vividly his lack of independence as a witness by answering to the Q. No.32 (page no.57) as he has divulged that he cannot produce the footage of CCTV of the relevant period but the Management of the Company can say whether they can produce the same or not.

It is to mention here that this witness in the answer to Q. No.15 expressed his lack of independence before the Enquiry Officer and also in the answer to Q. No.32 he has again expressed his lack of independence as a witness before the Enquiry Officer. His answers to the Q. No.15 (page no.50) and Q. No.32 (page no.57) speak a lot that he did not feel himself free and independent in his thinking and answering to the questions as witness. More clearly to say, such answers lead to the supposition that he was not an independent witness but he was the witness in the hand of Management or a speaking puppet in the hand of the Management. Apart from that, in my view Q. No.30, Q. No.31 and Q. No.32 (on page nos. 56 & 57) are correlated to each other but the witness in the answers to all those questions has never answered directly that CCTVs were not functioning. More specifically it can be said that MW-2 would have answered directly to three parts of Q. No.31 (page no.56), with a view to avoid any kind of confusion. Apart from that, the MW-2 in his answer to the Q. No.32 (page no.57) left the matter of production of CCTV footage to the discretion of the Management. In my understanding, answers to the Q. Nos.30, 31 & 32 make it evident that according to the version of MW-2 there was no question of non-functioning of CCTV cameras in the factory premises and due to the lack of his independence,

he left the matter of production of footage of CCTV cameras on the discretion of the Management as well as he sharply denied the production of CCTV recording footage in terms of Exbt.-3.

The MW-2 in his cross-examination has divulged that the cable in question was kept in the Administrative Building prior to its missing (answer to Q. No.40 on page no.89) and Security Guard was posted there. He has divulged (as it is found in page no.90) that in respect of the Administrative Building round the clock Security Guards were posted and each of the Security Guards used to perform 4 hours duty on rotation basis and they were posted there to control the access covering the entire building and after office hours Security Guards used to control access covering the entire building and they used to watch unwanted movement.

In view of such statements of MW-2 in his evidence during cross-examination, in common parlance or in ordinary prudence it is supposed that if any person, alone or along with companion was carrying out electric cable having sufficient weight of 80 kg. from the Administrative Building, such 'scene' of carrying out of heavy material (here, electric cable weighing 80 kg.), may be in packaged / baggage condition or not, from the Administrative Building, it certainly would not be out of sight of the Security Guards, who might be performing duty in course of rotation duty.

The MW-2 in his cross-examination has divulged (answer to Q. No.53 on page no.92) that the Police of Serampore P.S. seized the electric cable in question from Security Department and not from the residence of Prabhu Nath Yadav. The lack of independence of the MW-2 as witness once again, is revealed from his answer to the Q. No.58 (on page no. 93) because he was asked – *"Can you substantiate through CCTV footage that Sri Kajal Dutta entered into the factory with stolen cable by rickshaw van?"* He replied – *"It is purely the discretion of the Higher management and there is technical feasibility because the back up of the CCTV is only for 15 days."*

According to the prudence of a reasonable person or using the prudence of a reasonable person, from the answer of MW-2 to the Q. No.58, it is quite obvious that he left the matter of production of CCTV footage in the discretion of Higher management for the purpose of substantiating the claim that Sri Kajal Dutta entered into the factory with the stolen cable by rickshaw van and in addition to that he divulged that the CCTV footage was preserved for 15 days and thus there was technical issue in the matter of feasibility of production of CCTV footage. So, again it is palpable that the MW-2 did not divulge that CCTV cameras were not functioning at the relevant point of time of the alleged incident of missing of electric cable from the Administrative Building. It is to note here that the MW-2 in his examination-in-chief (Q. No.28 on page no. 45) asserted that there was CCTV facility in the Administrative Building. In my view the Q. No.28 (on page no. 45) and Q. No.58 (on page no. 93) are found as the agnate of Q. Nos. 30, 31 & 32 (on page nos. 56 & 57). If for argument sake it is believed that CCTV footage could be preserved for 15 days according to their technical system, then what prevented the Management to take technical step for preserving the CCTV footage from 03.11.2014 to 10.11.2014 for the purpose of transparency and for using the same as evidence to establish the allegation against the workman Prabhu Nath Yadav, since the Management and Rakesh Pandey, Manager, Administration had prior information and tip off that Prabhu Nath Yadav committed theft in respect of electric cable weighing 80 kg. from the Administrative Building of the factory. Even MW-2 Rakesh Pandey being the responsible officer holding the post of the Manager, Administration [MW-2 during his cross-examination in the answer to the Q. No.61 (on page no.94) divulged that he used to look after the administrative function including Security Department] would have taken appropriate steps for preserving the footage of cameras of CCTV for the period of 03.11.2014 to 10.11.2014 as he got the tip off that Prabhu Nath Yadav

committed the offence of theft in respect of electric cable lying in the Administrative Building of the factory between 03.11.2014 and 09.11.2014 and he (Prabhu Nath Yadav) was supposed to take away such stolen electric cable from his factory quarters to the outside for his personal gain. It is revealed that MW-2 Rakesh Pandey, Manager, Administration had played important and active, better to say played pivotal role in the matter of alleged interception of Prabhu Nath Yadav along with stolen electric cable weighing 80 kg. at B.P. Dey Street, Serampore on 10.11.2014 and also in the matter of recovery of stolen electric cable from the possession of Prabhu Nath Yadav after his interception. It is also revealed from his evidence that at that relevant point of time on 10.11.2014 at B.P. Dey Street, Serampore he was accompanied by Kajal Dutta, Darwan. Thus, in the matter of said alleged incident dated 10.11.2014, MW-2 Rakesh Pandey became one of the most important and vital witnesses along with Kajal Dutta, a Darwan of Security Department. It is realized after churning out the entire evidence of MW-2 that the footage of the cameras of the CCTV of the factory premises has become one of the vital pieces of evidence to substantiate the allegation against the workman Prabhu Nath Yadav. Thus, according to common parlance or in ordinary prudence, it can be said that Rakesh Pandey ought to have taken appropriate step for preservation of footage of CCTV cameras with a view to prove, particularly the alleged incident comprising the 'scene' of unauthorized taking away / removal of electric cable weighing about 80 kg. from Administrative Building by Prabhu Nath Yadav with malafide intention between 03.11.2014 and 09.11.2014 as well as the 'scene' of removal / taking away of missing electric cable weighing about 80 kg. by Prabhu Nath Yadav from his factory quarters or from the place, where such missing electric cable might be kept concealed, within the factory premises on 10.11.2014. It is found that the MW-2 avoided intentionally to disclose the nature of 'emergency situation' occurred on 10.11.2014 for which one Darwan and two Jamadars were deputed on special duty (answers to Q. Nos.64 & 65 on page no. 95). The MW-2 in his answer to Q. No.65 (on page no. 95) sharply denied to disclose the emergency situation held on 10.11.2014 at the factory premises. He did not assign the reason of his denial to disclose the 'emergency situation'. From such kind of answer by a witness to the question during cross-examination, it can be spelt out that the witness was not an independent witness and he was put into limitation by his authority prior to his deposition before the Enquiry Officer (in the above we have already discussed that from the statement of MW-2 in his evidence, it has been well transpired that MW-2 was not found as an independent witness). From the answers of MW-2 to the Q. Nos. 64 & 65 it can be explained that perhaps he (Rakesh Pandey) had arranged for special duty to work out the tip off which he received in the matter of missing of electric cable and to give effect to his suspicion against Prabhu Nath Yadav, with the aim to catch / intercept Prabhu Nath Yadav as soon as he leaves his factory quarters along with stolen electric cable. But from the evidence of MW-2 it is found that nothing such happened on 10.11.2014. From the trend of the cross-examination of MW-2 (Q. No.51, Q. No.52 and Q. No.60 on page nos. 91 & 94) it is found that the workman has claimed that the case (domestic enquiry started on the basis of charge-sheet dated 27.11.2014) started against him was concocted and the same was a result of a conspiracy hatched up by Rakesh Pandey, Kajal Dutta and three outsiders.

The workman examined himself as CSW-1. The CSW-1 in his examination-in-chief divulged that he has been residing inside the factory premises in the Darwan Quarters No.217 situated near LIC building. It is revealed from his evidence (answers to the Q. Nos.5 and 6 on page no. 99) that there were five security posts between his quarter and check-post and those posts were (i) LIC building; (ii) Worsted plant, (iii) Factory gate, (iv) main building and (v) check-post and there were four CCTV cameras between his quarter and check-post. He has denied the allegation that Rakesh Pandey and Kajal Dutta caught him red handed at about 2:15 p.m. along with 80 kg. of cable (answer to Q. No.12 on page no. 100). He has divulged that Security Department of the Company did not lodge any 'diary' (GDE) to the Police Station in the

matter of missing of electric cable in question (answer to Q. No.14). He has divulged that according to Exbt.-3 the weight of missing electric cable was approx. 100 kg. but according to the Exbt.-2 (incident report) the weight of the electric cable lying inside the main Administrative Building was 80 kg. (answer to Q. No.16 on page no. 101). He has denied the allegation (answer to Q. No.19 on page no. 102) that Rakesh Pandey and Kajal Dutta caught him red handed on B.P. Dey Street, near Durga Mandir along with 80 kg. of electric cable at about 2:15 p.m. on 10.11.2014. He has divulged that his signature was not obtained in the seizure list (answer to Q. No.26 on page no. 104). He has divulged that CCTV footage, from which it might be seen that he was going out from the factory premises along with 80 kg. of electric cable, was not produced at the domestic enquiry proceeding (answer to the Q. No.28 on page no. 105). He has stated that 80 kg. of electric cable in question was seized from the factory premises. He has divulged that Rakesh Pandey was involved in a dispute regarding claim of dowry from his younger brother's wife and to show off his power he used to depute four Darwans of the factory at his residence under the guise of Police to which he raised protest and Rakesh Pandey threatened him to teach a lesson (answer to Q. No.37 on page nos. 106 & 107). He has denied the claim of the Management (in answer to Q. No.6 on page no. 111) that there was only one CCTV camera between his quarters and check post and he divulged that there were four CCTV cameras (he has corroborated his earlier statement made in the answer to Q. No.6 of his examination-in-chief on page no. 99). In answer to the Q. No.7 he has reiterated the locations of CCTV cameras within the factory premises as he stated in his answer to Q. No.5 on page no. 99. He has denied the suggestion of the Management (Q. No.8 on page no. 111) that except the CCTV camera of check post, no other CCTV cameras were covering the thoroughfare. He has divulged that only the Factory Manager was empowered to lodge any 'Diary' about the missing and theft of materials from the premises of the Company (answer to the Q. No.16 on page no. 115). He has divulged in his answer to Q. No.30 (on page no.118) that *'No CCTV camera was not out of order on 10.11.2014'*. So, his statement reveals that all the CCTV cameras were functioning on 10.11.2014. Again, in his reply to Q. No.33 (on page no. 122) he divulged that Rakesh Pandey stated to him that on 10.11.2014 all the CCTV cameras were functioning although he was on leave on that date. He has divulged in his answers to the Q. Nos.37, 38, 39, 40 & 41 (on page nos. 123 & 124) that he was discouraged to undertake the journey according to his train ticket (Exbt.-1) as he got to know that Rakesh Pandey and Kajal Dutta stopped and intercepted his wife and son on platform no. 3 of Bandel Railway Station at around 12:20 p.m. levelling a false allegation. It is found that the Management admitted in Q. No.39 that his family members were present at Bandel Station although according to Exbt.-A their scheduled boarding on train was from Barrackpore Station. He has denied the suggestion of the Management that he intended to board on the train at Bandel Railway Station via Serampore and he was caught red handed at B.P. Dey Street at 2:15 p.m. Again, he has denied the suggestion of the Management that he made false statement in his written objection against charge-sheet as well as he was caught red handed with stolen cable at B.P. Dey Street, Serampore.

During domestic enquiry fifteen numbers of documents were produced from the Management side and those documents were marked as Exbt.-1 to Exbt.-15. On scrutiny of the exhibited documents, it is found that no 'seizure list' by the Police of Serampore P.S. in respect of seizure of alleged stolen and subsequently recovered electric cable weighing about 80 kg. was produced and marked as 'exhibited document' in course of domestic enquiry. On perusal of Exbt.-2 and Exbt.-9 it is found that allegedly Prabhu Nath Yadav was carrying a blue bag / (makeshift) gunny bag containing stolen electric cable and he was caught and intercepted by Rakesh Pandey and Kajal Dutta on B.P. Dey Street, Serampore on 10.11.2014 and thereafter stolen electric cable was recovered from his possession. According to Exbt.-9 (charge-sheet) an FIR was lodged with Serampore P.S. and thereafter Police personnel of Serampore P.S. seized the stolen material and arrested Prabhu Nath Yadav on the allegation of theft. During domestic

enquiry MW-2 Rakesh Pandey has categorically divulged that Police personnel came to the factory and seized the stolen cable and arrested Prabhu Nath Yadav whereas MW-1 Kajal Dutta in his evidence has stated that on 10.11.2014 when he along with Rakesh Pandey was proceeding through B.P. Dey Street, Serampore found that Prabhu Nath Yadav was coming on a rickshaw van with a 'blue coloured bag'. He has divulged that he heard that an FIR was lodged against Prabhu Nath Yadav and Police personnel came to the factory in the night of the date of the incident and arrested Prabhu Nath Yadav from his quarter. It is found that MW-1 did not speak about seizure of stolen article by Police of Serampore P.S. It is found that MW-2 has also stated that Prabhu Nath Yadav was carrying one 'blue coloured gunny bag' on 10.11.2014 by a rickshaw van on B.P. Dey Street. The Management during cross-examination of CSW-1 asked whether he signed on the seizure list or on the seized material and he answered in the negative. Apart from that, in the 'typed information to the Inspector-in-Charge, Serampore P.S.' dated 10.11.2014 i.e. in Exbt.-1, it was alleged that on 10.11.2014 Prabhu Nath Yadav was caught red handed at Serampore area while he had in his possession about 80 kg. of electric cable in his bag. So, we have got from Exbt.-1, Exbt.-2 and Exbt.-9 that allegedly Prabhu Nath Yadav was caught red handed with a Bag [blue bag / (makeshift) gunny bag] whereas from the evidence of MW-1 and MW-2 it appears that allegedly Prabhu Nath Yadav was intercepted while he was carrying 80 kg. of electric cable by blue coloured gunny bag / blue coloured bag. So, it is clear that both the witnesses divulged that they found blue coloured gunny bag or blue coloured bag under the possession of Prabhu Nath Yadav on 10.11.2014 on B.P. Dey Street, Serampore. In spite of all such statements / evidence, the Management did not make any whisper about the fate of such 'Bag / blue coloured gunny bag / blue coloured bag', whatever may be, during domestic enquiry although such 'Bag' assumed the character of a vital piece of evidence in the matter of alleged recovery of stolen electric cable weighing 80 kg. from the possession of Prabhu Nath Yadav as well as in the matter of proving the allegation of theft in respect of electric cable weighing about 80 kg. from the Administrative Building. During argument before this Tribunal, Ld. Advocate for the OP/Company failed to give any satisfactory explanation about such fate of the 'Bag' by which Prabhu Nath Yadav was allegedly carrying the stolen material. Most important to note that according to Exbt.-9 stolen material was 'seized' by the Police of Serampore P.S. Further, MW-2 has also divulged that stolen electric cable weighing about 80 kg., which was recovered by him and Kajal Dutta, was seized by the Police of Serampore P.S. by preparing seizure list. Apart from that, during cross-examination, CSW-1 was asked whether he signed on the seizure list or on the seized material.

We have got from the documentary evidence that Police of Serampore P.S. visited the factory premises and seized the stolen material. Further, it is evident from the available evidence on record that the Management Representative in the domestic enquiry proceeding led evidence to the effect that the Police of Serampore P.S. seized stolen - recovered electric cable by preparing seizure list on the night of 10.11.2014. In view of such evidence, both documentary and oral, regarding 'seizure list' in respect of the stolen, subsequently recovered, electric cable weighing about 80 kg., it has become justifiable to opine, applying the prudence of a reasonable person, that the Management Representative was under an obligation to ensure the transparency by producing the 'purported seizure list dated 10.11.2014', to have the same duly identified by the competent witness and to cause it to be marked as an exhibit. Such course of action was necessary not only for substantiating the claim of the Management that the stolen material had, in fact, been seized, but also for lending credence to the testimony of the witness examined on behalf of the Management.

The fact remains that it is surfaced from the evidence on record that a 'seizure list' was prepared by the Police of Serampore Police Station on 10.11.2014 in the night while the stolen - recovered electric cable was seized by them. In view of such evidence it is to opine here that in

fact 'seizure' of any article by Police Authority cannot be completed / materialized sans preparation of valid seizure list by Police Authority. Thus, there should not be any doubt to opine that so called 'seizure list' in respect of electric cable weighing 80 kg., which was recovered after missing from the Administrative Building, assumed the character of a vital piece of evidence in the matter of proving the allegation of theft against Prabhu Nath Yadav.

So, in my considered opinion, applying the prudence of a reasonable person, it is perceived that the Management Representative ought to have taken due care, in the interest of transparency and fairness, to produce the copy of the so called/purported seizure list dated 10.11.2014, to have it identified by appropriate witness, and to get the same exhibited as a document for the purpose of justifying the claim of the Management that stolen material was seized and also for substantiating the version of witnesses.

Thus, in course of domestic enquiry proceeding, which was held on the basis of charge-sheet dated 27.11.2014 (Exbt.-9), production of the said purported 'seizure list' in respect of electric cable weighing 80 kg. allegedly stolen away by Prabhu Nath Yadav from the Administrative Building of the factory, was necessary. But in fact, such seizure list was not produced by the Management representative in course of the domestic enquiry proceeding considering the same as a vital step to prove the allegation against Prabhu Nath Yadav. In my considered view, as also in common parlance and in the prudence of an ordinary person, the statement or evidence that the seizure of stolen material (electric cable) was effected by the Police of Serampore P.S. by preparing seizure list on 10.11.2014, appears wholly improbable and difficult to believe. In other words, such statement or evidence cannot stand in the test of credibility in the absence of the production of seizure list itself.

It is found that one computer typed information to the Inspector-in-Charge, Serampore Police Station by Rakesh Pandey, Manager-Administration on 10.11.2014 on the letter pad of Aditya Birla Nuvo was marked as Exbt.-1 in the domestic enquiry proceeding. On perusal of Exbt.-1 it appears that the said photocopy of the document contains a 'photocopy impression of the seal' of Serampore P.S. and an initial signature with the date 10.11.2014. From the experience gathered over the years in the judicial system, it is usually seen that when a Police officer receives information in writing and finds that it relates to the commission of a cognizable offence, the substance thereof is entered in a book to be kept by such Police officer in such form as the State Government may prescribe in this behalf. Thereafter, on registration of such 'information' in the book kept in the Police Station, a copy of the registered information in the prescribed format is given to the informant free of cost. Apart from that, it is normally and regularly found that whenever Officer-in-Charge of a Police Station, after applying his mind starts a specific criminal case on the allegation of commission of cognizable offence, the 'case number' and the sections of IPC or under other law are written on the typed / written information and the competent Police Officer puts his signature with date as a mark of 'receiving endorsement' on the said written / typed information. From the record of the domestic enquiry, it is found that the Management representative in course of holding such enquiry by Enquiry Officer did not produce any copy of typed / written information to the Inspector-in-Charge, Serampore P.S., containing allegation of theft against Prabhu Nath Yadav in respect of the electric cable, having 'receiving endorsement' by the Police officer of Serampore P.S. with the mention of specific Police case number and Penal Section(s).

The alleged incident of theft in respect of electric cable from the Administrative Building of the OP/Company took place at the fag end of the year 2014. In the year 2014 Code of Criminal Procedure, 1973 remained effective / was in force for application by the law enforcing agency of the State. The Section 154 of the Code of Criminal Procedure, 1973 provides the provision for giving information relating to the commission of a cognizable offence to a Officer-

in-Charge of a Police Station. The 'information' which is given at the first point of time to the Police is called 'first information'. According to Section 154(1) Cr.P.C. an information relating to the commission of a cognizable offence may be given orally or in writing to the officer-in-charge of a Police Station and every such information, whether given in writing or orally, which has been reduced to writing by the officer-in-charge of a Police Station or under his direction, duly signed by the informant in both such cases, are required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. According to Section 154(2) – *"A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost to the informant."*

In the matter of Mohd. Yusuf versus Smt. Afaq Jahan & Anr., reported in 2006 SCC(CRI) 460, the Hon'ble Supreme Court of India has been pleased to observe - *"After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code."*

In view of above discussion in the matter of Section 154(1) and 154(2) of the Code of Criminal Procedure, 1973, in my understanding occasion has arisen to clarify that an 'information' relating to the commission of a cognizable offence given to the officer-in-charge of a Police Station in writing **may not be abruptly termed** as 'F.I.R.'. Such information at the first point of time assumes the character of 'F.I.R.' only after registration of such 'information' in a book kept by the officer-in-charge of the Police Station. Usually a copy of 'First Information Report' i.e. in short, 'F.I.R' is given free of cost to the informant in terms of Section 154(2) of the Code of Criminal Procedure, 1973.

Here in this instant case, as discussed above, the Management of the OP/Company failed to produce the copy of the document which was supposed to be supplied to the 'informant' i.e. Rakesh Pandey, Manager-Administration of the OP/Company (Aditya Birla Nuvo Ltd., Unit of Jaya Shree Textiles) by the Officer-in-Charge of Serampore P.S. on 10.11.2014 under the provision of Section 154(2) Cr.P.C. at the time of domestic enquiry proceeding. It is to mention here that only such document i.e. copy of FIR supplied u/s. 154(2) Cr.P.C. can be used to show that specific criminal case for commission of cognizable offence has been started against the offender / wrong doer.

Moreover, the Exbt.-1 does not contain 'receiving endorsement' which was supposed to be put by competent Police Officer of concerned P.S. containing the number of specific Police case with section(s) of IPC as a mark of starting a specific case against the offender, if Police case was actually registered on such typed complaint by Serampore P.S. The Hon'ble Supreme Court of India in the matter of Union of India and Others vs. Dalbir Singh, reported in (2021) 11 Supreme Court Cases 321 has been pleased to observe – *"The writ petitioner General Duty Constable in the Central Reserve Police Force ("CRPF"). **FIR No.16 of 1993 was lodged against the writ petitioner** for an offence under Sections 302, 307 of the Penal Code, 1860 (for short "IPC") and Section 27 of the Arms Act, 1959 when the writ petitioner was accused to have fired from his service revolver from Head Constable Shri Harish Chander and Deputy Commandant Shri Hari Singh resulting in the death of Shri Harish Chander and injuries to Shri Hari Singh."*

So, it is found that, in the adjudged matter before the Hon'ble Supreme Court of India, it was shown / demonstrated that a specific Police Case had been registered against the concerned employee, being FIR No.16 of 1993, and the Court was satisfied that such a case had indeed been instituted against a party to the dispute, leaving no manner of doubt on this aspect. Here in this case, the Management of the Company claimed in the charge-sheet dated 27.11.2014 that an

FIR was lodged with the Serampore P.S. against Prabhu Nath Yadav and he was arrested by the Police of Serampore P.S. and stolen material was also seized by the Police and two of its witnesses i.e. MW-2 in his examination-in-chief stated that Police from Serampore P.S. came to the factory and arrested Prabhu Nath Yadav as an FIR was lodged with the Serampore P.S. on 10.11.2014 whereas MW-1 only stated that Police from Serampore P.S. came to the factory on the night of the incident and arrested Prabhu Nath Yadav from his quarters. Here it is necessary to mention again that during domestic enquiry in course of examination-in-chief of MW-2 *the copy of FIR dated 10.11.2014* was produced by the Management representative and the said *copy of FIR dated 10.11.2014* was identified by the MW-2 and the said document in photocopy was marked as Exbt.-1. So, it is evident that the Management of the Company relied upon the photocopy of the FIR (*the term 'FIR' was used by the Management of the Company to identify the photocopy of a typed complaint against Prabhu Nath Yadav submitted to the Inspector-in-Charge, Serampore P.S. on 10.11.2014*) dated 10.11.2014 with the view to prove the charges brought against the workman Prabhu Nath Yadav by the charge-sheet dated 27.11.2014 in the domestic enquiry proceeding held by the Enquiry Officer appointed by the Company. But considering the discussion made in the above in the matter of actual 'F.I.R' and copy of a written / typed information with 'receiving endorsement' by the officer-in-charge of a Police Station, it is found from the record of the domestic enquiry that the Management of the Company did not take proper care to produce any actual 'F.I.R' or written / typed information having appropriate 'receiving endorsement' by the Police Officer of Serampore P.S. with a view to prove the charges levelled against Prabhu Nath Yadav in the charge-sheet dated 27.11.2014 (Exbt.-9).

In my considered view, Management of the Company has failed to demonstrate / show and establish that any specific Police Case was registered against Prabhu Nath Yadav on the basis of their information allegedly furnished to the Inspector-in-Charge, Serampore P.S. regarding the theft of electric cable weighing 80 kg. The plea advanced by the Management on this score is therefore found to be wholly untenable and devoid of merit. It is worth saying that this finding, by necessary implication, demolished the very foundation of the Management's case in the matter of domestic enquiry proceeding.

The Hon'ble Supreme Court of India in the matter of workmen of Messrs Firestone Tyre versus Management and Ors., reported in 1973 AIR 1227 has been pleased to observe – *"The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicates that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer, establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. (1). case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is 'correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so: and now it is the satisfaction of the Tribunal that finally decides the matter."*

The Hon'ble Supreme Court of India in the matter of **Union of India and Ors. Versus Dalbir Singh**, reported in (2021) 11 Supreme Court Cases 321 has been pleased to observe – *"A three-Judge Bench of this Court in State of Haryana & Anr. v. Rattan Singh was dealing with*

the issue of non-examination of passengers when the allegation against the conductor was non-issuance of the tickets. This Court held that in a domestic enquiry, strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and that all materials which are (1977) 2 SCC 491 logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. This Court held as under:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.

.....

“8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short ‘the Evidence Act’]. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

On scrutiny of the record of the domestic enquiry it is noticed that no satisfactory and cogent explanation was submitted by the ‘Management representative’ during domestic enquiry regarding the reason why the matter of ‘missing’ of electric cable weighing about 80 kg. was not reported to the local P.S. between 03.11.2014 and 09.11.2014 and also prior to alleged recovery on 10.11.2014. Apart from that, it is surfaced from the materials on record that the Management Representative although led evidence through his two witnesses that specific ‘information’ was submitted to the Inspector-in-Charge, Serampore P.S. alleging recovery of electric cable weighing about 80 kg. from the possession of Prabhu Nath Yadav on 10.11.2014 at about 2:15 p.m. within Serampore area while he was travelling by rickshaw van and subsequently such recovered electric cable was brought to the Security Office within factory premises and Police of Serampore P.S. seized such electric cable by preparing seizure list but in reality during domestic enquiry the ‘Management Representative’ did not file any cogent and satisfactory document to

establish that ‘specific Police case’ was started on the basis of the said ‘information’ and also to establish that actually ‘seizure’ was taken place by preparing ‘seizure list’ because no ‘seizure list’ dated 10.11.2014 was brought in the record as exhibited document. Naturally, a valid question arises how the Enquiry Officer got himself satisfied and believed the version of the Management and the witnesses that specific Police case was started against Prabhu Nath Yadav by the Officer-in-Charge of Serampore P.S. acting on the ‘typed information’ dated 10.11.2014 submitted by Rakesh Pandey, Manager-Administration as well as purported ‘seizure’ of electric cable weighing 80 kg. done by the Police of Serampore P.S. from Security Office of the Company by preparing ‘seizure list’ in absence of copy of FIR, supposedly supplied by the concerned P.S. u/s. 154(2) of the Code of Criminal Procedure, 1973 or the copy of such ‘information’ with a receiving endorsement, mentioning the specific Police case number and the purported ‘seizure list dated 10.11.2014’ in the record of the domestic enquiry.

The Hon’ble Supreme Court of India in the matter of **Union and India & Ors. Versus Dalbir Singh**, reported in **(2021) 11 Supreme Court Cases 321** has been pleased to observe – “22. In another judgment reported as *B.C. Chaturvedi v. Union of India*, it was held that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is to examine as to whether the enquiry was held by a competent officer or whether rules of natural justice are complied with.

.....

 28. the burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct.”

The Hon’ble Supreme Court of India in the matter of **Deputy General Manager (Appellate Authority) and Others versus Ajai Kumar Srivastava**, reported in **(2021) 2 Supreme Court Cases 612** has been pleased to observe – “It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

.....

 It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.”

The Hon’ble Supreme Court of India in the matter of **Standard Chartered Bank versus R.C. Srivastava**, reported in **(2021) 19 Supreme Court Cases 281** has been pleased to observe –

“The scope of judicial review in the matter of domestic enquiry is to examine whether the procedure in holding domestic enquiry has been violated or the principles of natural justice has been complied with, or any perversity in the finding of guilt recorded during the course of domestic enquiry has been committed.”

According to Exbt.-9 (charge-sheet dated 27.11.2014) three separate charges were framed against Jamadar Sri Prabhu Nath Yadav but after going through the ‘Report and Finding’ dated 19.03.2016 submitted by the Enquiry Officer, it is evident that the Enquiry Officer refrained from making charge wise discussion (for reasons best known to the Enquiry Officer!) for the purpose of making decision on those charges and to reach to the conclusion or his finding in respect of the domestic enquiry proceeding, whereas he simply reached the conclusion and made his finding that the Management succeeded to prove the charges levelled against the charge-sheeted employee Sri Prabhu Nath Yadav sufficiently and substantially.

It is transpired from the ‘manner’ by which the conclusion reached at or finding made by the Enquiry Officer, compels me to opine that the decision made by the Enquiry Officer is found as perverse and cannot stand in the judicial review.

Now, after taking an overview of the discussion made by this Tribunal in the above it is evident and can be said without hesitation that the manner of making decision by the Enquiry Officer in the domestic enquiry, **is perfunctory because it has been found that the Enquiry Officer reached the conclusion or finding, based on no evidence, better to say there is no credible and substantial evidence.** It would not be an overstatement if it is said that the Enquiry Officer reached on the conclusion and made finding after holding domestic enquiry on the basis of conjecture or surmise in absence of appropriate and proper evidence against the workman Prabhu Nath Yadav. The discussion made by this Tribunal in the above in course of re-appreciation of the evidence on the record of domestic enquiry goes to show that the Enquiry Officer committed perversity in the matter of the conclusion that he reached or made finding in the domestic enquiry proceeding. Moreover, it is evident from the materials on record coupled with the evidence on record of the Domestic Enquiry Proceeding that the Management representative was unable to establish the allegation against the delinquent employee *by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee* [as observed by the Hon’ble Supreme Court of India, reported in (2021) 2 Supreme Court Cases 612].

In view of the discussion made in the above, there should not be any hesitation to hold that the dismissal order dated 15.06.2016 *[as mentioned in para. 17 of the application u/s. 2A(2) of the Industrial Disputes Act, 1947 submitted by Shri Prabhu Nath Yadav on 05.09.2016]* was not justified and the said dismissal order is liable to be set aside.

Hence,

it is,

Ordered

that the dismissal order dated 15.06.2016 issued to Shri Prabhu Nath Yadav, Jamadar under Jaya Shree Textiles by Ranjan Banerjee, Senior Vice President (HR & IR) & Factory Manager, Jaya Shree Textiles, a Unit of Aditya Birla Nuvo Ltd. is hereby set aside since the said dismissal order is found as not justified.

The workman Shri Prabhu Nath Yadav has to be reinstated in his service and thus the Company i.e. Jaya Shree Textiles is directed to reinstate the workman Shri Prabhu Nath Yadav in his service and to his existing post as on 15.06.2016 as according to the dismissal order dated 15.06.2016 he was dismissed from the service of the Company with immediate effect i.e. from the close of working hours of 15.06.2016.

Since the applicant/workman Shri Prabhu Nath Yadav was dismissed from the close of working hours of 15.06.2016, he was made deprived from earning his salary, allowances and other benefits from the OP/Company as its workman, and so he is entitled to get full back wages till the date of his reinstatement by the OP/Company with all other incidental or consequential benefits.

The OP/Company i.e. Jaya Shree Textiles is directed to pay the workman Shri Prabhu Nath Yadav the back wages i.e. his salary on and from 16.06.2016 to the date of his reinstatement at the rate of his last drawn salary along with subsequent increment, if any, according to his entitlement and other benefits.

Here it is made clear that the entire amount which Shri Prabhu Nath Yadav has received from the OP/Company against interim relief u/s. 15(2)(b) of the Industrial Disputes Act, 1947 (*i.e. the entire amount which the workman has received from the OP/Company in terms of the direction as contained in the para. 20 of the order dated 10.03.2025 passed by the Hon'ble High Court, Calcutta*) is liable to be deducted from the whole amount of back wages, which will be paid to the workman by the OP/Company complying the direction of this Award.

In view of the findings and the decision rendered on the instant matter u/s. 11A of the Industrial Disputes Act, 1947, the application filed u/s. 2A(2) of the said Act is hereby disposed of.

This is the award of this Industrial Tribunal in this case.

In view of letter No.Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024 of the Assistant Secretary, Labour Department, I.R. Branch, Government of West Bengal, New Secretariat Buildings, 12th Floor, the PDF copy of the Award be sent to the Labour Department, Government of West Bengal through e-mail ID(wblabourcourt@gmail.com) for information.

Dictated and corrected
sd/-
Judge

sd/-
(Mihir Kumar Mondal)
Judge
Third Industrial Tribunal
Kolkata
19.09.2025