(6) As a result of the above discussion, this petition is allowed and the respondents are directed to fix the pay of the petitioners by granting them the next increment with effect from February 2, 1968, in accordance with proviso (ii) to rule 7 of the Rules and to pay them the arrears accruing therefrom. Keeping in view the circumstances of the case, I leave the parties to bear their own costs.

H. S. B.

FULL BENCH

LETTERS PATENT APPEAL

Before O. Chinnappa Reddy, Acting C.J., M. R. Sharma and Surinder Singh, JJ.

THE STATE OF HARYANA AND OTHERS,—*Appellants.*

versus

SHRI RAM CHANDER,—*Respondent.*

Letters Patent Appeal No. 20 of 1975.

August 2, 1976.

Indian Evidence Act (1 of 1872)—*Hearsay evidence—When admissible before domestic tribunals—Enquiry Officer giving detailed report on the conduct of a delinquent—Disciplinary authority agreeing with such report and imposing penalty—Such authority—Whether bound to record reasons.*

Held, that it is true that in courts of law hearsay evidence is not admissible except to the extent permitted by the Indian Evidence Act, 1872. But, this strict rule of evidence does not apply to proceedings before domestic tribunals. Hearsay evidence is "logically probative" though its probative value may be strong or weak according to the facts and circumstances of a case. If it is "logically probative", a tribunal is entitled to act upon it. Thus, while there is no bar against the reception of hearsay evidence by domestic tribunals, the extent to which such evidence may be received and used must depend upon the facts and circumstances of the case and the principles of natural justice.

(Paras 3 and 4)

Held, that where under the rules an Enquiry Officer is appointed to conduct a detailed enquiry into the guilt of the delinquent, where the Enquiry Officer submits a detailed report giving his findings and the reasons for his findings and where the disciplinary authority agrees

with the findings of the Enquiry Officer it cannot be said as a matter of law that the disciplinary authority is bound to record reasons in every case. There is a vital difference between a case where the disciplinary authority agrees with the findings of the Enquiry Officer and acts upon them and a case where the disciplinary authority disagrees with the findings of the Enquiry Officer. In the former, it is not always necessary for the disciplinary authority to record reasons while in the latter case it is necessary for the disciplinary authority to do so. Thus, where an Enquiry Officer has submitted a detailed report and the disciplinary authority accepts the findings of the Enquiry Officer and imposes a penalty it is not always necessary for the latter to record its reasons.

(Paras 6 and 8)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula and Hon'ble Mr. Justice K. S. Tiwana on 12th August, 1975, to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Acting Chief Justice Mr. O. Chinnappa Reddy, Hon'ble Mr. Justice M. R. Sharma and Hon'ble Mr. Justice Surinder Singh finally decided the case on 2nd August, 1976.

Letters Patent Appeal under *Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Rajendra Nath Mittal delivered on 25th November, 1974, in Civil Writ No. 401 of 1973.*

Mr. C. D. Dewan, Advocate-General (Haryana) with Mr. Naubat Singh, A.A.G., (Haryana), *for the Appellants.*

Mr. U. S. Sahni, Advocate, *for the Respondent.*

JUDGMENT

O. Chinnappa Reddy, A.C.J. (1)—This case has been referred to a Full Bench by Narula, C.J., and Tiwana, J., as it was thought that the observations of a Division Bench of this Court in *Tarlochan Singh* v. *State of Punjab* (1), were very wide and that the decision in that case required reconsideration. The respondent was a conductor in the Haryana Roadways, Rohtak. There was a disciplinary enquiry against him. Two charges were made. The first was that on 21st May, 1970, when he was on duty on Bus No. 1346 he failed to issue tickets to forty passengers from whom he had collected full fare and that he had embezzled the amount so collected. The second charge was that when checked he had in his pocket punched tickets of various denominations. His defence in regard to the first charge

(1) 1975 Curr. L.J. 1.

was that a large number of passengers had got into the bus at Rewari and that while he was issuing tickets to the passengers as fast as he could, the bus was stopped at Tankri village by the Central Flying Squad for checking. He told the checkers that the bus was overloaded, that he had not collected the fare from the passengers and that he had yet to issue tickets. It was false to say that he had collected the fare from the passengers. In regard to the second charge, he denied that any punched tickets were recovered from him. Before the Enquiry Officer, two checkers were examined to substantiate the allegations against the respondent. No passenger was, however, examined. The two checkers deposed to their checking the bus and finding forty passengers without tickets. They stated that the passengers told them that the conductor had collected full fare from them. They also deposed to the recovery of some punched tickets from the pocket of the conductor. The conductor examined one Som Nath as a defence witness. Som Nath stated that there was a rush of passengers and that many of them had no tickets. The Enquiry Officer found the respondent guilty of both the charges and submitted his report to the General Manager, Haryana Roadways. The latter provisionally accepted the findings of the Enquiry Officer and issued a notice to the respondent to show cause why the penalty of termination of service should not be imposed upon him. The respondent submitted his explanation. Thereafter, the General Manager, Haryana Roadways, passed the order dated 17th February, 1971 terminating the services of the respondent. The respondent preferred an appeal to the State Transport Controller, Haryana. The appeal was rejected. He invoked the jurisdiction of this Court under Article 226 of the Constitution. Our learned brother R. N. Mittal, J., allowed the civil writ petition on two grounds. The first ground was that there was no legal evidence before the Enquiry Officer since no passenger had been examined and the evidence of the checkers about what the passengers told them was hearsay and, therefore, inadmissible in evidence. The learned Single Judge relied upon the decision of a Division Bench of this Court in *Tarlochan Singh's case* (supra). The second ground on which the learned Judge allowed the writ petition was that the order of termination of service was cryptic and not a speaking order. The State of Haryana has preferred this appeal.

(2) The first question for consideration is, whether the evidence of the checkers as to what they were told by the passengers was not

legal evidence in the domestic enquiry against the respondent. Time and again, it has been repeated by the Supreme Court that domestic tribunals, in the absence of statutory guidance have the right to regulate their own procedure and are also not bound by the strict rules of evidence. The rules of procedure and the rules of evidence observed in Courts are often misplaced in domestic enquiries. A Domestic tribunal whose procedure is not regulated by a statute is free to adopt a procedure of its own so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever source if it is "logically probative". In *State of Mysore* v. *Shivabasappa* (2), the Supreme Court observed as follws:—

> "Domestic tribunals exercising quasi-judicial functions are not courts and, therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information, material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedures which govern pproceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

These observations were quoted with approval in *K. L. Shinde* v. *State of Mysore* (3). It was held in the latter case that previous statements of witnesses who resiled from them at the domestic enquiry were admissible in evidence against the delinquent. The Supreme Court observed:—

> "It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three

(2) A.I.R. 1963 S.C. 375.
(3) 1976 (3) S.C.C. 76.

police constables including Akki from which they resiled but they did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act."

(3) Hearsay evidence may suffer from the following infirmities noticed by Phipson in his "Law of Evidence": (1) the irresponsibility of the original declarant, whose statements were made neither on oath, nor subject to cross-examination; (2) the depreciation of truth in the process of repetition and (3) the opportunities for fraud its admission would open; to which are sometimes added (4) the tendency of such evidence to protract legal inquiries, and (5) to encourage the substitution of weaker for stronger proofs.

Despite these infirmities Phipson considered that such evidence could not be trully called irrelevant. A belief in hearsay, he said, was often regarded as instinctive; at all events it was universally sanctioned by experience, since nine-tenths of the world's business was conducted on its basis. He further pointed out that it was significant that relaxations of the rule were constantly sanctioned by statute. We may mention here that in England considerable inroad has been made by statute recently and first-hand hearsay is now admissible in evidence in courts of law. In India too, exclusion of hearsay evidence has never been in absolute rule. There have always been exceptions to the hearsay rule even in courts of law. In fact great probative value is attached to dying declarations and retracted confessions which constitute but hearsay evidence. It is true that in courts of law hearsay evidence is not admissible except to the extent permitted by the Evidence Act. But, there is no reason why this strict rule of evidence should be applied to proceedings before domestic tribunals. Hearsay evidence is "logically probative" though its probative value may be strong or weak according to the facts and circumstances of a case. If it is "logically probative", a tribunal is entitled to act upon it. The following observations of Lord Denning, M. R., in *T. A. Miller Ltd.* v. *Minister of Housing and Local Government and another* (4), are apt and very much to the point:—

"A tribunal of this kind is master of its own procedure, provided that the rules of natural justice are applied. Most

(4) (1968) 1 Weekly Law Reports, 492.

of the evidence here was on oath, but that is no reason why hearsay should not be admitted where it can fairly be regarded as reliable. Tribunals are entitled to act on any material which is logically probative, even though it is not evidence in a court of law; see *Reg.* v. *Deputy Industrial Injuries Commissioner, Ex parte, Moore* (5). During this very week in Parliament we have had the second reading of the Civil Evidence Bill. It abolishes the rule against hearsay, even in ordinary courts of the land. It allows first-hand hearsay to be admitted in civil proceedings, subject to safeguards. *Hearsay is clearly admissible before a tribunal.* No doubt in admitting, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it: see *Board of Education* v. *Rice* (6), *Reg.* v. *Deputy Industrial Injuries Commissioner.*

(4) *We are, therefore, of the view that while there is no bar against the reception of hearsay evidence by domestic tribunals, the extent to which such evidence may be received and used must depend on the facts and circumstances of the case and the principles of natural justice.* The learned counsel for the respondent invited our attention to the decision of the Supreme Court in *Jagannath Prasad Sharma* v. *The State of Uttar Pradesh and others* (7), where the learned Judges of the Supreme Court compared the U. P. Police Regulations and the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules and observed as follows:—

"There is no substantial difference between the procedures prescribed for the two forms of enquiry. The enquiry in its true nature is quasi-judicial. It is manifest from the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial. It is true by Regulation 490, the oral evidence is to be direct, but even under rule 8 of the Tribunal

(5) (1965) 1 Q.B. 465.
(6) (1911) A.C. 179.
(7) A.I.R. 1961 S.C. 1245.

> Rules, the Tribunal is to be guided by rules of equity and natural justice and is not bound by formal rules of procedure relating to evidence. It was urged that whereas the Tribunal may admit on record evidence which is hearsay, the oral evidence under the Police Regulations must be direct evidence and hearsay is excluded. We do not think that any such distinction was intended. Even though the Tribunal is not bound by formal rules relating to procedure and evidence, *it cannot rely on evidence which is purely hearsay,* because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice."

The learned counsel for the respondent wanted us to read the observations of the Supreme Court as laying down that hearsay evidence was altogether inadmissible in domestic enquiries also. We do not think that we can so read the observations of the Supreme Court. The sentence underlined by us for emphasis clearly shows that the Supreme Court was emphasising the general unreliability of hearsay evidence and the violation of the rules of natural justice involved in relying upon pure hearsay. We venture to illustrate the position as follows: If half a dozen persons go to the office of the Haryana Roadways and complain that the conductor of a certain bus collected fare from them but did not issue tickets to them and if later on the passengers are not examined as witnesses, a finding of guilt based solely upon the complaint given by the passengers would amount to a finding based on pure hearsay and would involve violation of principles of natural justice. On the other hand, where a bus is checked and it is found that tickets have not been issued to several passengers and the passengers state in the presence of the conductor that they paid the fare, the enquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves are not examined as witnesses. A finding of guilt arrived at by him would not be based on pure hearsay. It would be based on (1) the evidence of the checker that he found passengers travelling without tickets and (2) the statements made by the passengers to the checker at the time of checking. The second item of evidence alone would be hearsay but it would be hearsay of high probative value because of the circumstance, that statements were made in the presence of the conductor and on the spot. In such a case, it cannot be said that the enquiry

officer's findings are based on pure hearsay or hearsay of unreliable nature. We, do not, therefore, think that the decision of the Supreme Court in *Jagannath Prasad Sharma's case* supports the argument of the learned counsel for the respondent. The decision is in no way inconsistent with the view expressed by us. In the view we have taken, we overrule the observations to the contrary in *Tarlochan Singh's case.*

(5) The next question for consideration is, whether the order of termination of service is vitiated on the ground that it is not a speaking order. No such complaint can be made against the report of the Enquiry Officer. The report of the Enquiry Officer refers to the charges, the evidence, the conclusions and the reasons for the conclusions. On receipt of the report of the Enquiry Officer, the General Manager agreed with the conclusions of the Enquiry Officer and issued a notice to the respondent to show cause why his services should not be terminated. After receiving the explanation of the respondent, the General Manager passed the following order:—

> "I have carefully gone through the report of enquiry officer, evidence on record and reply given by Shri Ram Chander C/9 to the show cause Notice served on him,—*vide* No 338/EA, dated 1st February, 1971. Case of fraud to the tune of Rs. 42.78 committed by him is fully established. Recovery of old used tickets from his person also proves his malafide intention. I therefore, order termination of his services with effect from 17th February, 1971, forenoon."

(6) The question for consideration is, whether this order satisfies the requirements of law. It was argued by the learned counsel for the respondent that the proceeding against the respondent in so far as it related to the determination of his guilt was quasi-judicial in nature and, therefore, it was the duty of the disciplinary authority to support his order with reasons. It is true, as pointed out in *Union of India* v. *H. C. Goel* (8), that although an order of dismissal which may be passed against a Government servant found guilty of misconduct can be described as an administrative order, nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges

(8) A.I.R. 1964 S.C. 364.

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framed against him are in the nature of quasi-judicial proceedings. But, it does not follow therefrom that in every case, the order of dismissal should necessarily be supported by reasons. Where under the rules an Enquiry Officer is appointed to conduct a detailed enquiry into the guilt of the delinquent, where the Enquiry Officer submits a detailed report giving his findings and the reasons for his findings and where the disciplinary authority agrees with the findings of the Enquiry Officer, it cannot be said as a matter of law that the disciplinary authority is bound to record reasons in every case. There is a vital difference between a case where the disciplinary authority agrees with the findings of the Enquiry Officer and acts upon them and a case where the disciplinary authority disagrees with the findings of the Enquiry Officer. In the former, it is not always necessary for the disciplinary authority to record reasons while in the latter case, it is necessary for the disciplinary authority to do so. The difference between the two types of cases has been brought out by Gajendragadkar, C.J., in *State of Madras* v. *A. R. Srinivasan* (9), where he observed as follows:—

> ".....In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But, where the State Government agrees with the findings of the Tribunal which are against the delinquent

(9) A.I.R. 1966 S.C. 1827.

officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case....."

(7) The learned counsel for the respondent relied upon the decision of this Court in *Bakhtawar Singh and others* v. *The State of Punjab, etc.* (10), which was affirmed by the Supreme Court in *The State of Punjab, etc.* v. *Bakhtawar Singh and others* (11). That was a case in which two members of the Electricity Board were served with notices by the State of Punjab requiring them to show cause why they should not be dismissed. After obtaining their explanations, they were dismissed. The Supreme Court held that the dismissal of one of them, Bakhtawar Singh, was liable to be set aside as he was not charged with the offence of which the Government found him guilty. In regard to the other member Rajinder Pal Abrol, it was held that the order passed against him was not a speaking order as it did not show what charges had been established against Rajinder Pal Abrol and was arbitrary to the core. The order ran as follows:—

"I have gone through the charges and the explanation furnished by Shri R. P. Abrol. From the material on the file, I am definitely of the opinion that he is not a fit person to be retained as part-time member of the Electricity Board. I, therefore, order that Shri Abrol may be removed from membership under sub-clause (iv) of clause (e) of sub-section (1) of section 10 of the Electricity Supply Act, 1948."

The defects of the order are patent. There is not even a finding of guilt recorded by the Minister. From a perusal of the order, it is not possible to discover the charges of which R. P. Abrol was thought to be guilty. More important than all this is the circumstance that there was no fulfledged enquiry by an Enquiry Officer as in the case before us. The findings recorded by the Minister were the very first

(10) A.I.R. 1971 Pb. & Haryana 220.

(11) A.I.R. 1972 S.C. 2083.

findings recorded in the matter and one would, therefore, expect a speaking order from the Minister. Where there is a fulfledged enquiry by an Enquiry Officer and findings supported by reasons are recorded by the Enquiry Officer, there is no need for the disciplinary authority to reiterate the findings and reasons given by the Enquiry Officer when he is agreeing with them. That was what was held by the Supreme Court in *A. R. Srinivasan's case.*

(8) The learned counsel for the respondent relied upon the decision of R. S. Narula, J. (as he then was) in *Vijay Singh Yadava* v. *The Stae of Haryana* (12). R. S. Narula, J., purported to follow the decision of the Punjab and Haryana High Court in *Bakhtawar Singh's case.* We have already discussed that case and we do not, therefore, consider it necessary to discuss *Vijay Singh Yadava's case further.* We would, however, like to mention that *A. R. Srinivasan's case* was not brought to the notice of R. S. Narula, J. On the authority of *A. R. Srinivasan's case,* we hold that it was not necessary for the disciplinary authority in the present case to record his reasons as he was accepting the findings arrived at by the Enquiry Officer.

(9) The learned counsel for the respondent raised two further grounds which were noot considered by the learned Single Judge. He urged that the order was one of dismissal and, therefore, the General Manager, was not competent to pass the order. The submission is without any basis. The order passed by the General Manager was one of termination of service and under the notification issued by the Transport Department of the Haryana Government, the authority competent to impose the penalty of termination of service is the General Manager. The other ground raised by the learned counsel was that the appellate authority did not give the respondent a personal hearing. The rules do not provide for a personal hearing and there is no principle of natural justice which requires that a personal hearing should be given in matters like this.

(10) In the result, the appeal is allowed, the judgment of the learned Single Judge is set aside and the civil writ petition is dismissed. There will be no order as to costs.

M. R. Sharma, J.—I agree.

Surinder Singh, J.—I agree.

N.K.S.

(12) 1971 (1) S.L.R. 720.