

(2009) 12 MAD CK 0156
In the Madras High Court
Case No : Writ Petition No. 30051 of 2007

A. Santhanam

APPELLANT

Vs

The Managing Director, Chennai Petroleum Corporation
Limited and Central Government Industrial Tribunal-cum-
Labour Court

RESPONDENT

Date of Decision : 19-12-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 311
Industrial Disputes Act, 1947 — Section 2(A)

Citation : (2009) 12 MAD CK 0156

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : V. Babu, for the Appellant; Sanjay Mohan, for Respondent 1 for Ramasubramaniam, Associates, for the Respondent

Judgement

V. Dhanapalan, J.—The Award of the Central Government Industrial Tribunal, Chennai, made in I.D. No. 1/2006 dated 18.12.2006 has been questioned in this petition, seeking to quash the same and for a consequential direction to the 1st respondent to restore the petitioner cadre from Grade-3 to Grade-5 with a consequential promotion.

2. According to the petitioner, he was a former Army man with unblemished service and the Defence Officials have issued him a Conduct Certificate, while coming out of Army as "Exemplary". Though he was a former Army man, he was appointed as a Yardman in the 1st respondent Corporation on 20.3.1985. The 1st respondent is a Company owned by the Government of India and it is considered to be State as described in Article 12 of the Constitution of India. The service of the petitioner was confirmed from 21.9.1985. He was provided with a training in Fire Fighting and thereafter, he was transferred to Fire and Safety Section of the Manufacturing Department of the 1st respondent Company. The work of the Fire and Safety Section was to carry the work of treating dry chemical powder and due to the above said nature of work, his health got deteriorated, lungs were

affected, blood vomiting followed that. Therefore, on the advice of the Medical Practitioner, he was transferred from Fire and Safety Section to another section. He had a request to post him in the A.P. Separator (OM&S). However, the company transferred him to the Invoice Cell from 6.2.1995.

3. The petitioner's further case is that Invoice Section is the Section which deals with the weighing of loaded vehicles inside the company premises at Manalai and taking print outs of invoices with gross and net weight of the loaded tankers/trucks. Since he was not having knowledge about the computers, he hesitated to join that section. But due to the advice of the superior, he joined that section wherein he was told to take out printout of invoices of gross and net weight of the loaded vehicles by pressing buttons. The printed invoice containing the reading of the weighing machine shall be sent to the Accounts Section everyday. Thereafter, he was transferred from the Invoice Cell to Maintenance Department from 17.8.1997. While he was working there, a charge sheet was served on him on 9.10.1997 stating that he had tampered with the records and caused loss to the company and further he was directed to submit his explanation within 48 hours. However, he submitted his explanation on 27.10.1997 denying all the charges. He was under the expectation that his explanation would be accepted and the charges dropped. But, to his shock and surprise, the 1st respondent company issued another charge sheet after a lapse of 2 ? months for the same alleged occurrence dated 4.2.1997. In order to substantiate the 1st charge sheet, the 2nd charge sheet was issued against law. However, he submitted his explanation to the 2nd charge sheet on 8.1.1998. Further, the charge sheet was issued in haste, directing him to submit his explanation within 48 hours, which action would go to show the urgent attitude of the 1st respondent company. The 1st respondent company without dropping the further proceedings for the 1st charge sheet has issued the second charge sheet, which is vitiated.

4. Also, it is the case of the petitioner that an Enquiry Officer was appointed and an enquiry conducted without following the principles of natural justice. The Enquiry Officer submitted his report on 3.7.1998 stating that the charges were held proved. Based on the Enquiry Report, the disciplinary authority imposed a punishment of reduction of two grades from Grade-5 to Grade-3 on 18.1.1999 without issuing any show cause notice to him before imposing any penalty. Against the order of punishment, the petitioner preferred an appeal to the 1st respondent on 10.2.1999 and it was pending more than 3 ? years and rejected on 6.9.2002. Against the rejection of his appeal by the 1st respondent, he made a complaint (Conciliation Proceedings) to the Regional Labour Commissioner, Chennai and Conciliation ended in failure. Therefore, he raised an industrial dispute before the 2nd respondent in I.D. No. 1/2006 and the same was dismissed by the 2nd respondent on 18.12.2006. The same is challenged in this writ petition on the ground that the penalty imposed by the disciplinary authority is bad in law and in violation of the principles of natural justice. The respondent without issuing a show cause notice imposed the punishment. Therefore, the charge sheets are bad in law and without dropping the first charge, the 2nd

charge has been issued in order to fill up the lacunae in the first charge sheet. Therefore, the order is vitiated and no enquiry report has been served to the petitioner. The Tribunal has failed to appreciate the fact that the enquiry process suffers from vital lapses because of the non-examination of the witnesses and it was not conducted in a manner known to law and the order of the Appellate Authority is mechanical without considering the appeal of the petitioner.

5. The 1st respondent Management has filed a counter and it is stated that the 1st respondent is a Public Sector Undertaking having factory at Manali where it is manufacturing petroleum products such as Petrol, Diesel, LPG and other Petroleum and Petrochemical Products. It is also engaged in refining crude oil. According to the respondent, the petitioner joined the company on 21.3.1985 as a Yardman and held various positions in the company and at the time of degradation from Grade 5 to Grade 3, he was working as a Shift Operator in Invoice Cell. The petitioner's job as "Shift Operator" comprises preparation of weighment slips for product despatch/material receipt, preparation of invoices and preparing filling orders for product despatch.

6. In the counter, it is also stated that on 4.2.1995, when the petitioner was working in the evening shift at around 16.57 hours, prepared weighment slip for vehicle KA-05-6666 for product LNHVI to Indian Additives Limited (IAL). The said weighment slip shows the net weight of the product as 9000 Kg. It is further submitted that one Munusamy, PR 2928, who was working along with the petitioner in the Invoice Cell on the same day, had prepared a weighment slip earlier to the preparation of the weighment slip by the petitioner. But the slip prepared by the Munusamy for the same vehicle showed the net weight of the same product as 11030 Kg. The difference in net weight of the same product prepared by Munusamy and the petitioner was 2000 Kg. The invoice for the said product was prepared based on the fabricated weighment slip prepared by the petitioner i.e. for 9030 Kg. Due to the fabrication of the weighment slip, the 1st respondent has suffered a loss of 2000 Kgs of LNHVI product which act amounts to misconduct as per the Certified Standing Order of the 1st respondent. Santhanam and Munusamy have been charge sheeted vide proceedings dated 9.10.1997 and called for their explanation. The explanation submitted by the said employees on 27.10.1997 was found unsatisfactory and a joint enquiry was ordered vide notice of enquiry dated 7.11.1997. It is further stated by the 1st respondent that later, some more irregularities have been noticed in the activities of the Invoice Cell on the same day on 4.2.1997 which have been done in collusion with Munusamy and G. Rajasekaran, P.R. No. 3005, tore the weighment slip and prepared for the Truck No. TMH 1655 for LNHVI product at 16.45 hours. At the same time for the same product and for the same vehicle, Rajasekaran had prepared another weighment slip for the net weight of 9200 Kg. The original weighment slip showed the net weight for the said vehicle for the said product as 10200 Kg. The difference between the original and fabricated weightment slip was 1000 Kg. The invoice for the said product was prepared based on the fabricated weighment slip.

7. The 1st respondent has also stated apart from the above that the petitioner had torn two more weighment slips for the trucks Nos. TSB 2649 and TSD 9099 for the product Asphalt. The original weighment slips prepared for the said trucks were 12300 Kg and 12710 Kg. respectively. The fabricated weighment slips for the said trucks were 8333 Kg and 10710 Kg. respectively. Due to the tampering of weighment slip, the petitioner had caused loss to the company to the tune of 6000 Kg. for the product ASPHALT. This being the misconduct as per the Standing orders of the 1st respondent company, the petitioner was once again charge sheeted on 29.12.1997 and called upon for his explanation for which the petitioner gave a reply on 8.1.1998. In his reply, the petitioner has given a simple reason that the weigh bridge is defective and faulty. He further stated that the supervisor while checking would notice the wrong entry if any was made and he will cancel the invoice and the cancellation will be written in the LOG Book. It was pertinent to point out here that no entries were made in the LOG Book. As the explanation given by the petitioner was found unsatisfactory, the 1st respondent initiated a domestic enquiry to probe into the charges levelled against the petitioner by appointing an Enquiry Officer. As Munusamy and Rajasekaran were also involved in the said misconduct, a joint enquiry was conducted.

8. The 1st respondent stated that the petitioner and the other delinquent employees expressed their consent to conduct the domestic enquiry by the enquiry officer appointed by the 1st respondent. In the course of the enquiry proceedings, the Enquiry Officer has explained the charges levelled against the petitioner and other delinquent employees. The petitioner and the other delinquent employees were given an opportunity to take the assistance of any of their co-employees who were in service at the time of the enquiry. An enquiry was conducted in accordance with the principles of natural justice.

9. In the enquiry, the Presenting Officer, who represented the 1st respondent filed the documents viz., Original Weighment Slips for all the vehicles and also the fabricated weighment slips for the said vehicles, invoice copies and the log sheet for the date of incident. These documents were also served on the petitioner and the other delinquent employees. There was an opportunity to defend the case and the petitioner in the enquiry has stated that he had not torn the weighment slips; the torn weighment slips are being properly filed; the Log book is being written by the Duty Supervisor; his signature is not affixed on the torn weighment slip and that the Management has cooked up the case. The petitioner had not produced any document or given any valid oral evidence to rebut the charges levelled against him. In the enquiry, one Veerapandian-P.R. No. 2303 (Deputy Manager-Computer Service) was examined for clarifying certain queries with regard to the computer system in weighbridge. The said witness has stated that during the period 1997, when the incident took place, computer language FOXPRO was used in the system. The weighment system and the preparation of invoice was in COBOL language and he further stated that the said program was user friendly program and no locking arrangements were available.

The present system is based on the program ORACLE/Developer 2000 in which addition, correction, alteration is not possible. In the course of the enquiry proceedings, the petitioner denied all the charges framed against him and stated that the 1st respondent Management had framed false allegations against him. The Enquiry Officer asked the petitioner to give the statement in writing for which the petitioner gave a negative reply which clearly shows that the petitioner statement against the 1st respondent Management is wrong. The enquiry has been conducted in accordance with the principles of natural justice.

10. The enquiry was held in five different dates. Each day enquiry proceedings were served on the delinquent employees on the same day and after the completion of the enquiry proceedings, the Enquiry Officer vide his findings dated 3.7.1998, held that the charges levelled against the petitioner were proved and forwarded a copy to the Management. Based upon the findings of the Enquiry Officer, the 1st respondent decided to impose a punishment of degradation from Grade 5 to Grade 3. Accordingly, the 1st respondent vide letter dated 18.1.1999 forwarded a copy of degradation and further reserved its right to recover a lump sum of Rs. 24,000/- towards loss incurred by the company for the act of the petitioner. It is the case of the 1st respondent that it gave an opportunity to the petitioner to prefer an appeal within 15 days from the date of the order, if at all the petitioner was aggrieved by the order and thereafter, an appeal was preferred by the petitioner only on the ground of sympathy and he has not provided any grounds as to why the report of the enquiry officer should not be accepted and why the punishment of degradation should not be imposed. The said appeal of the petitioner was rejected confirming the order of punishment on 6.9.2002 and the same was communicated to the petitioner. Aggrieved by the said order, the petitioner filed a petition u/s 2(A) of the I.D. Act before the Assistant Commissioner of Labour, Chennai. The 1st respondent participated in the conciliation proceedings by filing a counter statement. As the conciliation proceedings ended in failure, the petitioner had raised a dispute before the 2nd respondent Tribunal and the same was dismissed in I.D. No. 1 of 2006. Aggrieved by the said order of the 2nd respondent, the petitioner has filed this Writ Petition. Therefore, on appreciation of the evidence, the Tribunal has found the workman guilty and that appreciation of evidence cannot be taken up by the petitioner before this Court and the 2nd respondent has correctly held that the domestic enquiry was held in a fair and proper manner and correctly stated that the charges were proved. It is denied by the 1st respondent that the enquiry report was not served on the petitioner and the 2nd respondent also followed the procedure contemplated and accepted the report of the Enquiry Officer and findings and other documents produced before him and held that the petitioner was afforded full opportunity to participate in the enquiry and that the charges were found proved, which resulted in imposition of the punishment. Therefore, the respondent has prayed for the dismissal of the Writ Petition.

11. On the basis of the above pleadings, learned Counsel for the parties advanced their contentions.

12. The primary contention of the learned Counsel for the petitioner is that the enquiry and the disciplinary proceedings are in clear violation of Order 40.2 and 40.5 of the Standing Orders of the first respondent company. The learned Counsel has relied upon the following decisions:

(i) *Narmada Pd. Yadav v. State of M.P.* (2007) 1 SCC 681:

7. We have already reproduced in paragraph supra the charge framed against the appellant. There is absolutely no evidence in regard to the demand of bribe of Rs. 1000 or receipt of the same by the appellant. No satisfactory evidence was adduced to prove the charge in question. Under such circumstances, the penalty imposed by the Director General of Police demoting him from the post of Head Constable to the post of constable cannot at all be countenanced. In our opinion, the case on hand is a case of no evidence. It is also a matter of record that the appellant had an unblemished service record of 21 years and the said factor has also not been considered by the authorities while imposing the penalty. We, therefore, have no hesitation in setting aside the punishment inflicted on the appellant and allow this appeal. The period of two years mentioned hereinabove will be treated as (sic) the appellant was on duty as Head Constable and the appellant will also be entitled to all the monetary benefits for the said period.

(ii) *Director (Marketing) Indian Oil Corpn. Ltd. and Another Vs. Santosh Kumar*, :

11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set aside the order passed by the disciplinary authority and the Appellate Authority and remit the matter for fresh disposal to the disciplinary authority. The disciplinary authority shall consider the detailed representation made by the respondent and also consider the detailed report of the enquiry officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The disciplinary authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the disciplinary authority. The order passed by the High Court is set aside for the above reason. We also set aside the direction issued by the High Court ordering reinstatement into service with continuity in service and all consequential benefits. The disciplinary authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The civil appeal is disposed of accordingly. No order as to costs.

(iii) *Hardwari Lal Vs. State of U.P. and Others*, :

3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have

revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

(iv) Uma Nath Pandey and Ors. v. State of U.P. and Anr. 2009 (2) CTC 663:

8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works 1863 (143) ER 414, the principle was thus stated:

Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou" has thou not eaten of the tree whereof I commanded thee that thou shouldest not eat.

13. On the other hand, learned Counsel for the first respondent-management has contended that the punishment was imposed only after proper enquiry and due procedure and, therefore, the said punishment cannot be interfered with. In support of his contention, the learned Counsel has cited the following authorities:

(i) Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, :

The Constitution Bench observed¹ that the basic question of law which arose in the matters was whether the report of the inquiry officer appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee was required to be furnished to the employee to enable him to make representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the

punishment, if any, to be awarded to him. On the basis of the above fundamental issue, certain other incidental questions were also raised by the Constitution Bench which included the effect of non-supply of the inquiry officer's report.

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem (hear the other side). But it is equally well settled that the concept of "natural justice" is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula.

Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to M. Referring to several cases, considering the theory of "useless" or "empty" formality and noting "admitted or undisputed" facts, the Court held that the only conclusion which could be drawn was that had M been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to M.

42. Recently, in P.D. Agrawal Vs. State Bank of India and Others, , this Court restated the principles of natural justice and indicated that they are flexible and in the recent times, they had undergone a "sea change". If there is no prejudice to the employee, an action cannot be set aside merely on the ground that no hearing was afforded before taking a decision by the authority.

44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.

45. In the instant case, no finding has been recorded by the High Court that prejudice had been caused to the delinquent employee, the writ petitioner. According to the High Court, such prejudice is "writ large". In our view, the above observation and conclusion is not in consonance with the decisions referred to above, including a decision of the Constitution Bench in B. Karunakar¹. The view of the High Court, hence, cannot be upheld. The impugned order, therefore, deserves to be set aside and is accordingly set aside.

(ii) Associated Cement Companies Ltd. Vs. T.C. Shrivastava and Others, :

7. From the rival contentions summarised above it will appear clear that the real question that arises in these appeals is, does the certified Standing Order 17

provide for second opportunity being given to a workman to show cause against the proposed punishment of dismissal, for, it was not disputed before us that if no such second opportunity is contemplated by it then the only ground on which the enquiry has been held to be invalid by the learned arbitrator and the High Court would disappear and the arbitrator could not have entered into merits of the case or interfered with the punishment of dismissal inflicted upon Rama Shanker and Barmapradhan. The question obviously depends upon the proper construction to be placed on said Standing Order 17. It may be stated that the certified Standing Order 16 enlists several acts or omissions that constitute "misconduct" and striking work either singly or with other workers without giving 14 days' previous notice, inciting whilst on the premises and (sic) worker to strike work and indulging in a gherao, (which would amount to an "act subversive of discipline or efficiency") are obviously included therein. Standing Order 17 which deals with punishments and procedure therefore runs thus:

17. A worker may be suspended for a period not exceeding 4 days or fined in accordance with the Payment of Wages Act or dismissed without notice or any compensation in lieu of notice if found guilty of misconduct defined in Standing Order 16.

All orders of suspension and fines shall be in writing setting out the misconduct for which the punishment is awarded. No officer below the rank of the Head of Department shall award the above punishment.

All dismissal orders shall be passed by the manager or acting manager who shall do so after giving the accused an opportunity to offer any explanation. Due consideration to the gravity of the misconduct and the previous record of the worker shall be given in awarding the maximum punishment.

In the event of a discharge or dismissal, the worker shall be paid-off within the second working day following the discharge or dismissal.

The question is whether when para 3 of the above Standing Order says: "all dismissal orders shall be passed by the manager or acting manager who shall do so after giving the accused an opportunity to offer any explanation", it contemplates giving of a second opportunity to the delinquent to show cause against the proposed punishment of dismissal after he has been found guilty or the opportunity spoken of is the opportunity to meet the charges in the domestic enquiry?

At the outset, the legal position as has been clarified by this Court in the Saharanpur Light Railway Co.'s case (1969) 35 FJR 207, may be stated. In the context of certain modification sought to be introduced in a Standing Order requiring a second show-cause notice this Court has observed thus (at p.220):

As regards the modification requiring a second show-cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by Courts or the Tribunals such a second

show-cause notice in the case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311. Even that has now been removed by the recent amendment of that article. To import such a requirement from Article 311 in industrial matters does not appear to be either necessary or proper and would be equating industrial employees with civil servants. In our view, there is no justification on any principle for such equation. Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial peace should be disposed of in as short a time as possible. In our view it is not possible to consider this modification as justifiable either on the ground of reasonableness or fairness and should, therefore, be set aside.

It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides for it either expressly or by necessary implication no enquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity. The question is whether para 3 of the Standing Order 17 provides for such second opportunity being given to the delinquent? The relevant words are "all dismissal orders shall be passed by the manager ... after giving the accused an opportunity to offer any explanation". The italicised words are wholly inappropriate to convey the idea of a second hearing or opportunity on the question of punishment but appropriate in the context of seeking an explanation in regard to the alleged misconduct charged against him. An "explanation" is to be called from the "accused" which suggests that the same is to be called for prior to the recording of a finding that the delinquent is guilty of misconduct; it is the alleged misconduct that is to be explained by him and not the proposed punishment. On a plain reading of the relevant words no second opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other words, it is clear to us that the opportunity spoken of by para 3 of Standing Order 17 is the opportunity to be given to the delinquent to meet the charges framed against him. In this connection it will be pertinent to mention that the concerned Standing Order was framed and came into force on March 1, 1946 and was duly certified on October 16, 1952 under the Industrial Employment (Standing Orders) Act, 1946 i.e. prior to the enunciation of the law by courts regarding the observance of the principles of natural justice such as issuance of a charge-sheet, holding of an enquiry, opportunity to lead evidence, etc. and it is well-known that after the enunciation of these principles model Standing Orders have been framed to provide for the detailed steps required to be undertaken during a domestic enquiry. Since the instant Standing Order was certified prior to the formulation of the above principles it merely contains a bald provision for "giving the accused an opportunity to offer any explanation". In other words, different stages in domestic enquiry were never in the contemplation of the framers of the Standing Order. That being the position it would be difficult to

attribute any intention to the framers thereof to provide for a second opportunity being given to the delinquent of showing cause against the proposed punishment. The latter part of para 3 merely casts a unilateral obligation on the concerned authority or the officer to give due consideration to the gravity of the misconduct and the previous record of the delinquent in awarding the maximum punishment.

14. I have heard the learned Counsel for the parties and also gone through the records.

15. To examine the contention of the learned Counsel for the petitioner that the enquiry and the disciplinary proceedings are in clear violation of Order 40.2 and 40.5 of the Standing Orders of the first respondent company, it is relevant to refer to those orders, which read as under:

40.2: A workman against whom an enquiry is to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and shall be given an opportunity to explain the circumstances alleged against him. Except for reason to be recorded in writing by the person holding the enquiry, the employee shall be permitted to produce witnesses in the defence and to cross-examine any witness. He shall be given an opportunity to answer the charge and permitted to be defended only by himself or by a fellow employee of the company....

40.5: If, during the enquiry, a workman is found guilty of a misconduct other than that stated in the order of suspension and/or the memorandum of charges, the workman shall be liable for punishment for such misconduct, but before any punishment is imposed on him, he shall be afforded reasonable opportunity to explain and defend himself in respect of such misconduct.

16. Keeping the above provisions in mind, if we look at the case in hand, what transpires is that the petitioner joined the first respondent company on 21.3.1985 as a Yardman and held various positions. At the time of degradation from Grade 5 to Grade 3, he was working as a Shift Operator in Invoice Cell. The petitioner's job as "Shift Operator" comprised preparation of weighment slips for product despatch/material receipt, preparation of invoices and preparing filling orders for product despatch. on 4.2.1995, when the petitioner was working in the evening shift at around 16.57 hours, he prepared weighment slip for vehicle KA-05-6666 for product LNHVI to Indian Additives Limited (IAL). The said weighment slip showed the net weight of the product as 9030 Kg.

17. That being so, one Munusamy, PR 2928, who was working along with the petitioner in the Invoice Cell on the same day, had prepared a weighment slip earlier to the preparation of the weighment slip by the petitioner. But, the slip prepared by Munusamy for the same vehicle showed the net weight of the same product as 11030 Kg. The difference in net weight of the same product prepared by Munusamy and the petitioner was 2000 Kg. The invoice for the said product was prepared based on the fabricated weighment slip prepared by the petitioner i.e. for 9030 Kg. Due to the fabrication of the weighment slip, the 1st respondent

suffered a loss of 2000 Kgs of LNHVI product, which act amounted to misconduct as per the Certified Standing Orders of the 1st respondent. Therefore, Santhanam, petitioner herein, and Munusamy had been chargesheeted vide proceedings dated 9.10.1997 and called for explanation. The explanation submitted by the said delinquents on 27.10.1997 was found unsatisfactory and a joint enquiry was ordered vide notice of enquiry dated 7.11.1997. Later, some more irregularities were noticed in the activities of the Invoice Cell on the same day on 4.2.1997 which were done in collusion with Munusamy and G. Rajasekaran, P.R. No. 3005, who tore the weighment slips prepared for the Truck No. TMH 1655 for LNHVI product at 16.45 hours. At the same time, for the same product and for the same vehicle, Rajasekaran had prepared another weighment slip for the net weight of 9200 Kg. The original weighment slip showed the net weight for the said vehicle for the said product as 10200 Kg. The difference between the original and fabricated weighment slip was 1000 Kg. The invoice for the said product was prepared based on the fabricated weighment slip.

18. That apart, the petitioner had torn two more weighment slips for the trucks Nos. TSB 2649 and TSD 9099 for the product Asphalt. The original weighment slips prepared for the said trucks were 12300 Kg and 12710 Kg. respectively. However, the fabricated weighment slips for the said trucks were 8333 Kg and 10710 Kg. respectively. Due to the tampering of weighment slip, the petitioner had caused loss to the company to the tune of 6000 Kg. for the product Asphalt.

19. That being the misconduct, as per the Standing orders of the 1st respondent company, the petitioner was once again chargesheeted on 29.12.1997 and called upon for explanation, for which the petitioner gave a reply on 8.1.1998. In his reply, the petitioner gave a simple reason that the weigh bridge was defective and faulty. He further stated that the supervisor while checking would notice the wrong entry if any was made and he would cancel the invoice and the cancellation would be written in the LOG Book. It is significant to note here that no entries were made in the LOG Book. As the explanation given by the petitioner was found unsatisfactory, the 1st respondent initiated a domestic enquiry to probe into the charges levelled against the petitioner by appointing an Enquiry Officer. As Munusamy and Rajasekaran were also involved in the said misconduct, a joint enquiry was conducted.

20. The petitioner and the other delinquent employees expressed their consent to conduct the domestic enquiry by the enquiry officer appointed by the 1st respondent. In the course of enquiry proceedings, the Enquiry Officer explained the charges levelled against the petitioner and other delinquent employees. The petitioner and the other delinquent employees were also given an opportunity to take the assistance of any of their co-employees who were in service at the time of the enquiry.

21. In the enquiry, the Presenting Officer, who represented the 1st respondent, filed the documents viz., Original Weighment Slips for all the vehicles and also the fabricated weighment slips for the said vehicles, invoice copies and the log

sheet for the date of incident. Those documents were also served on the petitioner and the other delinquent employees. Though an opportunity was given to the petitioner to defend his case, he had not produced any document or given any valid oral evidence to rebut the charges levelled against him.

22. When it was the case of the petitioner that weigh bridge was faulty, it was for him to establish the same, which was, admittedly, not done. However, in the enquiry, one Veerapandian-P.R. No. 2303, Deputy Manager-Computer Service, was examined for clarifying certain queries with regard to the computer system in weigh bridge. The said witness stated that during the period 1997, when the incident took place, computer language FOXPRO was used in the system; the weighment system and the preparation of invoice were in COBOL language; the said program was a user friendly program and no locking arrangements were available. The said witness also stated that the present system is based on the program ORACLE/Developer 2000 in which, addition, correction, or alteration is not possible. In addition, one Mr. S. Venkatachalam, Manager (Maintenance) was also examined, who deposed to the effect that there was no locking arrangement of the computer system in the weigh bridge during February 1997, during which period the incident took place. He also deposed that persons, who have working knowledge of computer, can add or change the weighment data.

23. The enquiry was held on five different dates. The enquiry proceedings of each day were served on the delinquent employees on the same day and after the completion of the enquiry proceedings, the Enquiry Officer, vide his findings dated 3.7.1998, held that the charges levelled against the petitioner were proved and forwarded a copy to the management. Based upon the findings of the Enquiry Officer, the management of the first respondent decided to impose a punishment of degradation from Grade 5 to Grade 3 on the petitioner. Accordingly, the management, vide its order dated 18.1.1999, forwarded a copy of degradation and further reserved his right to recover a lump sum of Rs. 24,000/- towards loss incurred by the company for the act of the petitioner. The said order also gave an opportunity to the petitioner to prefer an appeal to the Chairman and Managing Director, within 15 days from the date of the order, if at all he was aggrieved by the order.

24. Thereafter, an appeal was preferred by the petitioner only on the ground of sympathy and he had not provided any grounds as to why the report of the enquiry officer should not be accepted and why the punishment of degradation should not be imposed. The said appeal of the petitioner was rejected confirming the order of punishment on 6.9.2002 and the same was communicated to the petitioner. Aggrieved by the said order, the petitioner filed a petition u/s 2(A) of the I.D. Act before the Assistant Commissioner of Labour, Chennai. As the conciliation proceedings ended in failure, the petitioner had raised a dispute before the 2nd respondent Tribunal.

25. The Tribunal, on appreciation of the evidence, vide the order impugned in I.D. No. 1 of 2006, dated 18.12.2006, found the workman guilty, holding that the

domestic enquiry was held in a fair and proper manner and that the charges were proved.

26. It is also unambiguous from the penalty order, dated 18.01.1999, that the petitioner was served with the enquiry report vide the letter of the management, dated 29.07.1998. Further, as could be seen from my findings in the foregoing paragraphs, the petitioner was given an opportunity to take the assistance of any of the co-employees, which the petitioner did not avail, and he was also given an opportunity with regard to the punishment. All these factors would indicate that the enquiry was conducted in accordance with the principles of natural justice.

27. In view of all the above factual aspects, the contention of the learned Counsel for the petitioner that the enquiry and the disciplinary proceedings were in violation of Order 40.2 and 40.5 of the Standing Orders of the first respondent company cannot be acceded to.

28. This Court, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of this Court, it would appropriately mould the relief, either directing the disciplinary authority or the appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

29. While it is one thing to say that the order passed by the statutory authority is wholly arbitrary and violative of Article 14 of the Constitution and thus liable to be set aside, it is another thing to say that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior court while exercising its power of judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists.

30. The above two ratios have been laid down in *B.C. Chaturvedi Vs. Union of India and others*, , and *The Commissioner of Police and Others Vs. Syed Hussain*, , respectively, which are subsequently followed by the Supreme Court in its recent decision in *Ramanuj Pandey Vs. The State of M.P. and Others*, .

31. It is not the case of the petitioner that he alone was singled out for the punishment and the co-delinquents had been let off. In fact, the co-delinquents, who were charged along with the petitioner, were also awarded the punishment.

32. However, coming to the quantum of punishment, while the co-delinquents were awarded the punishment of grade reduction from Grade-IV to Grade-III, the petitioner was awarded the punishment of grade reduction from Grade-V to Grade-III, which means in respect of co-delinquents, only one grade was reduced, whereas with regard to the petitioner, two grades were reduced. Besides, while a sum of Rs. 16,000/- each was ordered to be recovered from the

co-delinquents towards loss of company's property, a sum of Rs. 24,000/- was ordered to be recovered from the petitioner for the same. So, there is a discrimination in awarding punishment among the delinquents. The said discrimination necessitates this Court to interfere with the quantum of punishment imposed on the petitioner. Accordingly, the punishment of grade reduction from Grade-V to Grade-III in addition to recovery of a sum of Rs. 24,000/- towards loss of company's property imposed on the petitioner is altered to one of grade reduction from Grade-V to Grade-IV and the recovery of sum from Rs. 24,000/- to Rs. 16,000/-, as in the case of co-delinquents. The disciplinary authority is, therefore, directed to pass the order accordingly.

33. With the above modification in the quantum of punishment, this Writ Petition is disposed of. No costs.