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**(2003) 06 MP CK 0036**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 1218/99**

Anil Padegaonkar

APPELLANT

Vs

Bharat Petroleum Corporation and Others

RESPONDENT

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**Date of Decision :** 23-06-2003

**Acts Referred:**

Bharat Petroleum Corporation Management Staff Conduct, Discipline and Appeal Rules, 1976 — Rule 3F  
Constitution of India, 1950 — Article 311

**Citation :** (2004) 1 MPHT 297 : (2004) 2 MPLJ 15

**Hon'ble Judges :** Rajendra Menon, J

**Bench :** Single Bench

**Advocate :** R.D. Jain and S.N. Seth, for the Appellant; Vivek Jain, for the Respondent

**Final Decision :** Allowed

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## Judgement

Rajendra Menon, J.

The petitioner was working as Aviation Officer in Management Cadre in Job Group "A" and was posted at Gwalior Aviation Service Station, in the year 1990 when due to certain misconduct alleged to have been committed by him, a charge-sheet dated 31-12-1993 (Annexure P-12) was issued to him. The charges levelled against the petitioner related to his acting in a manner prejudicial to the interest of the Corporation and neglect of work. The petitioner was asked to submit his reply to the aforesaid charge-sheet within ten days, vide Annexure P-13, dated 6-1-94, the Dy. General Manager, Aviation appointed Enquiry Officer to conduct an enquiry into the allegations levelled in the charge-sheet.

It is the case of the petitioner that he had asked for certain documents in order to enable him to submit the written statement but without giving him due opportunity, the enquiry was proceeded with. In the meanwhile, while the enquiry into the aforesaid charge-sheet was pending and after the said enquiry was conducted on 25-8-94, just thereafter on 14-9-94 he was placed under

suspension vide Annexure P-19 and on 27-9-94 another charge-sheet was issued to him vide Annexure P-20 and the allegations in the aforesaid charge-sheet related to absence from the appointed place of work or leaving station without permission from the competent authority or sufficient cause. This charge-sheet (Annexure P-20) is issued by the General Manager (Sales). Thereafter, enquiry was conducted into this charge-sheet also and finally on the basis of a finding of guilt submitted by the Enquiry Officer vide his report dated 6-1-1995 forwarded to the petitioner vide letter dated 17-1-95 (Annexure P-23), the services of the petitioner were dispensed with by way of punishment vide order dated 21-5-97 (Annexure P-2). The order of punishment is passed by the Director (Marketing). The petitioner filed an appeal against the aforesaid order (Annexure P-2) and vide Annexure P-25 the appeal is also rejected.

In the petition and during the course of hearing various grounds have been raised impugning the order passed against the petitioner. Grounds related to non supply of documents, not giving proper opportunity to defend in the enquiry, opportunity being not given for producing defence witnesses, perversity in the findings of the Enquiry Officer and enquiry being conducted in violation of the principles of natural justice. That apart, it is also contended that the allegations in the charge-sheet are unsustainable and the petitioner is not guilty of the charges levelled "against him.

Apart from the aforesaid submissions, on the merits of the charges and the procedure followed in the enquiry, an objection with regard to the jurisdiction and authority of the Dy. General Manager (Aviation) is issuing the charge-sheet, dated 13-12-93 (Annexure P-12) has been raised in the petition. According to the petitioner, the service conditions and the procedure for conducting departmental enquiry is provided in the Bharat Petroleum Corporation Management Staff Conduct, Discipline and Appeal Rules, 1976 (hereinafter referred to as the "Discipline Rules"). In the said rules, it is contended that the charge-sheet can be issued only by the disciplinary authority and no other authority can issue the charge-sheet. It is the case of the petitioner that initiation of departmental action in the present case having being done by a incompetent person, the entire charge-sheet (Annexure P-12) is unsustainable and this charge-sheet is liable to be quashed, the allegations in the second charge-sheet does not constitute so serious a misconduct for which he can be dismissed from service.

Shri R.D. Jain, learned Sr. Counsel appearing for the petitioner, apart from emphasizing the question with regard to jurisdiction of the Dy. General Manager in issuing the charge-sheet taking me through various documents including the proceedings of the enquiry contended that the action taken against the petitioner is unsustainable and he is entitled to be reinstated with full back wages all other consequential benefits.

The respondents have filed a reply and have refuted the aforesaid contention. It is the case of the respondents that charge-sheet is issued by the competent

person and there is no illegality in issuing the same by the Dy. General Manager (Aviation) who at the relevant time was acting as the Functional General Manager. It is the case of the respondents that as the Aviation Functional Department at the relevant time was not headed by the General Manager and being a small department, it was headed by Dy. General Manager and therefore the Dy. General Manager enjoys all the powers of the General Manager, he was not working as stop-gap arrangement. It is contended that respondent Corporation has framed a manual of delegation of authorities which came into force with effect from 15-12-87 and under the aforesaid delegation, the powers relating to suspension/charge-sheeting of Management Staff belonging to Group A and B have been delegated to various authorities including the D.G.M. (Aviation). The relevant extract of delegation of powers is filed as Annexure R-1. It is, therefore, their contention that the charge-sheet is issued by the competent person. That apart, on merit is submitted that on the basis of the evidence and material that had come on record, the charges has been proved. The enquiry was conducted in accordance with the provisions of natural justice, full and fair opportunity of defence was extended to the petitioner. He participated in the enquiry without any objection, all relevant documents and material were supplied to him and therefore there is no illegality in conducting the enquiry. It is argued that all the procedural formalities in accordance with the rules having been completed, documents claimed by the petitioner being irrelevant does not vitiate the enquiry. Shri Vivek Jain, learned Counsel appearing for the respondent Corporation placing reliance on the various judgments emphasised that there is no illegality in the manner in which enquiry was conducted, principles of natural justice have been followed and considering the scope of interference in such matters, no case is made out on the basis of which relief can be granted to the petitioner. Apart from making submission, written synopsis of citations and case law have been submitted by Shri Jain on 2-5-2003 and it is contended by him that this is not a fit case where interference is to be made into the matter. As far as the question with regard to powers and jurisdiction of the Dy. General Manager (Aviation) in issuing the charge-sheet is concerned, it is argued by Shri Jain, placing reliance on Section 19 of the General Clauses Act, 1897 that the law relating to superior of an office applies to deputies and sub-ordinates performing the duties of the office lawfully. In this regard, placing heavy reliance on a judgment of the Supreme Court in the case of Ram Kishan Vs. Union of India and others, , it is submitted by him that the objection with regard to jurisdiction of the D.G.M. is unsustainable. That apart, applying the principles of De-Facto Doctrine as enumerated by the Supreme Court in the case of Central Bank of India Vs. C. Bernard, , it is argued by Shri Jain that in the backdrop of the aforesaid Doctrine, no interference is called for in the matter of objection with regard to authority of the D.G.M. for issuing the charge-sheet. Shri Jain also pressed a great deal with regard to functional character of the person issuing the charge-sheet and submitted that it is different horn persona designata where emphasis is on function and not on rank. In support of this submission, he has relied on a Full Bench judgment of this Court in the case of Girja Shankar Shukla

Vs. Sub-Divisional Officer, Harda and Others, . That apart, it is argued by him that the Dy. General Manager having been delegated with the authority, there is no irregularity or illegality in the charge-sheet being issued by this authority. Finally, it was submitted by him that the complaint with regard to violation of the procedural provisions with regard to issuance of charge-sheet has to be considered on touchstone of prejudice and placing reliance on a judgment of this Court in the case of Shrikishan Mittal Vs. UCO Bank and Others, it is submitted by him that as no prejudice is caused to the petitioner because of issuance of charge-sheet by the Dy. General Manager (Aviation), no interference into the matter is called for.

I have heard learned Counsel for the parties at length, perused the records and the judgments relied upon by them in support of their contentions.

Before advertng to the question with regard to the merits of the case for examining the complaint made in the petition regarding violation of principles of natural justice and the enquiry being conducted without giving reasonable opportunity of defence, it is thought appropriate that the question with regard to jurisdiction of the Dy. General Manager (Aviation) in issuing the charge-sheet (Annexure P-12) dated 31- 12-93 and the consequential appointment of enquiry officer on 6- 1-94 vide Annexure P-13 by the Dy. General Manager requires consideration. Ultimately, in case it is held that the said authority was incompetent to initiate the disciplinary proceedings then it would not be necessary by this Court to look into the merits of the matter. That being so, I propose to take up the question with regard to consideration of objection raised by the petitioner challenging jurisdiction of the Dy. General Manager (Aviation) in issuing the charge-sheet dated 31-12-93 (Annexure P-12) and the order of appointing enquiry officer vide Annexure P-13 dated 6-1-94.

As already indicated hereinabove, the procedure for initiating and conducting the departmental enquiry is provided for in "The Discipline and Appeal Rules, 1976" which came into force with effect from November 1, 1976 and was amended by the Board of Directors in its Meeting No. 4/91, dated 22-8-91. The aforesaid rules contemplates a detailed procedure to be followed in the matter. Clause 3 (c) of the said rules defines the powers of various authorities and Clause 3 (e) defines a Functional Director and Functional Manager. That apart Clause (g) and Clause (h) defines disciplinary authority and competent authority. It is relevant to mention here that even though the rules came into force with effect from November 1, 1976, the definition of disciplinary authority and the Schedules specifying the disciplinary authority is incorporated on 22-8-91 by the Board of Directors. The disciplinary authority has been specifically defined in the rules. According to Schedule 6 (1) of the said rules, for persons working in Group A to D, the Functional General manager is a disciplinary authority for imposing all the penalties other than dismissal whereas the Functional Director is the disciplinary authority for imposing penalty of dismissal. From the aforesaid, it is clear that for staff in Group A, the competent disciplinary authority in case of punishment for

dismissal of service is the Functional Director and for all other persons, it is the Functional General Manager. Para 3 of the aforesaid rules consists of various sections. Sub-section A deals with various misconducts and Sub-section B prescribes the penalties that can be imposed. Sub-section C deals with the procedure for suspending an employee pending departmental enquiry and Sub-section F deals with procedure for imposing major penalties. For the present, it is only Sub-section F of this chapter which is relevant. Sub-clauses 1, 2 and 3 of this Sub-section F were incorporated/amended with effect from 22-8-91. According to Clause F (1), disciplinary authority or any authority specified in Schedule I is competent to impose any of the penalties in Rule B. Sub-clause F (2) contemplates that when the disciplinary authority is of the opinion that there are grounds to interfere into the truth of any imputation of misconduct, he may himself enquire into the matter or appoint any other public servant to interfere into the truth. Rule F (3) reads as under:--

"Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the Management Staff. The charges, together with a list of allegations on which they are based a list of documents by which and a list of witnesses by whom the charges are proposed to be sustained, shall be communicated in writing to the Management Staff who shall be required to submit within such time as may be specified by the disciplinary authority (not exceeding 15 days) a written statement whether he admits or denies any of or all the charges.

Explanation :-- It will not be necessary to show any document listed with the charge-sheet or any other documents to the Management Staff at this stage."

From the aforesaid, it is seen that when it is proposed to hold enquiry, the disciplinary authority has to frame the charges and take further action in the matter. The distinguishing feature in the aforesaid rules are that disciplinary authority is defined and specified in the rules and thereafter elaborates procedure is prescribed in Chapter 3 which includes procedure for suspension and procedure for imposing major penalties. A close scrutiny of the rules indicated that for the purpose of suspension as contained in Clause (c), the competent authority, the Functional Director/Functional Manager or the Deputy Head or the Dy. Manager or the disciplinary authority or any other authority is empowered to place a person under suspension. Even though, power of suspension is given to various authorities as per Clause C (1) in Clause F, it is only the disciplinary authority who is empowered to take any action and proceed for imposing major penalties. There is a marked difference in the rule with regard to suspension and taking disciplinary action. In Rule F (1), it is mentioned that the disciplinary authority or any authority as specified in Schedule I may suspend an employee but Rule F (3) reproduced hereinabove clearly stipulates as follows :--

"Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the

Management Staff. The charges, together with a list of allegations on which they are based a list of documents by which and a list of witnesses by whom the charges are proposed to be sustained, shall be communicated in writing to the Management Staff who shall be required to submit within such time as may be specified by the disciplinary authority (not exceeding 15 days) a written statement whether he admits or denies any of or all the charges.

Explanation :-- It will not be necessary to show any document listed with the charge-sheet or any other documents to the Management Staff at this stage."

The most distinguishable feature in this rule is that a specific stipulation as contained therein authorising the disciplinary authority alone to frame definite and distinct charges. That being so, the question in the present case has to be examined in the backdrop of the aforesaid specific provisions in the rules.

As already indicated hereinabove, the provisions of Rule F (3) was incorporated on 22-8-91 and the delegation of power filed vide Annexure R-1 indicates that it is of 15th December, 1987, that being so, the delegation is prior to the incorporation of the aforesaid provisions in the rules and in that view of the matter, it can not be said that the delegation of powers as contained in Annexure R-1 is applicable in the present case where the authorities specified to take action under the rules were incorporated subsequent to the delegation of powers and there being nothing on record to indicate that the power is further delegated after 22-8-91, the arguments on behalf of the respondent Corporation is misconceived. That apart, when the rules are specific with regard to the procedure to be followed and when the rules are framed by the Board of Directors, the delegation of powers as contained in Annexure R-1 which is delegated by the Chairman and Managing Director to the Director (Functional) as is evident from the document, can not be said to be a proper delegation in the matter. It is seen that the rules have been formulated by the Board of Directors and the delegation of powers is by the Chairman and Managing Director to the Director and Functional General Manager as per his note dated 2nd December, 1987 to be effected from 15th December, 1987. In that view of the matter, the arguments with regard to the powers being delegated vide Annexure R-1 can not be accepted.

Shri Vivek Jain, learned Counsel appearing for the respondents had placed great stress on the question of applicability of provisions of Section 19 of the General Clauses Act. The said provisions can not be applied for the simple reason that the rules in question being occupied by specific rules providing for specific procedure to be followed, the provisions of Section 19 of General Clauses Act can not be applied in the present case.

Shri Vivek Jain placing reliance on the judgment of Supreme Court in the case of Central Bank of India (supra) tried to emphasise that the theory of De-Facto Doctrine will be applicable. This aspect of the matter is considered in the same judgment and in Paras 6 and 7 of the said judgment, it is indicated by the

Supreme Court as under :---

"6. In our view, the submission of Shri Shetye based on the *facto* doctrine is clearly misconceived. Shri U.B. Menon can hardly be described as a person occupying or being in possession of an office to which certain duties affecting the members of the general public can be said to be attached. The *de facto* doctrine, as explained earlier, envisages that acts performed *de facto* by officers within the scope of their assumed official authority are to be regarded as binding as if they were performed by officers *de jure*. While the *de facto* doctrine saves official acts done by an officer whose appointment is found to be defective the private parties to a litigation are precluded from challenging the appointment in any collateral proceedings. But the doctrine does not come to the rescue of an intruder or usurper or a total stranger to the office. Obviously the doctrine can have no application to the case of a person who is not the holder of an office but is merely a bank employee, for that matter an ex-employee. We, therefore, see no merit in this contention."

"7. True it is that the respondent did not attribute any bias or malafides to the Enquiry Officer nor did he complain that he was in any manner prejudiced on account of the said Enquiry Officer conducting the domestic enquiry but that will not cure the defect as to his competence. Where punishment is imposed by a person who has no authority to do so the very foundation on which the edifice is built collapses and with it falls the entire edifice. It is a case more or less akin to a case tried by a Court lacking in inherent jurisdiction. We are, therefore, of the opinion that absence of bias, prejudice or malafides, is of no consequence so far as the question of competence is concerned. The two cases which were cited at the bar (i) *Delhi Cloth and General Mills Co. Ltd. v. Labour Court, Tis Hazari* and (ii) *Saran Motors* also have no application to the special facts and circumstances of this case."

A perusal of the observations made in Para 7 negates the contents raised by Shri Jain". Similarly, decision of a Full Bench judgment in the case of *Girja Shankar Shukla* (*supra*) with regard to functional character and *persona designata* will not apply in the facts and circumstances of the present case where the rules in question clearly provides the authority to discharge the functions and a procedure has been prescribed for the same. Even if the Dy. General Manager on the relevant date was discharging the duties of a Functional General Manager, this will not help the respondents in as much as Schedule I of the Rules contemplates that it is the Functional Director who is disciplinary authority competent to imposing penalty of dismissal. That being so, the disciplinary authority in the present case is neither the Functional General Manager nor the Dy. General Manager who is alleged to have been discharging the duties of Functional General Manager of the department at the relevant time. The disciplinary authority, according to the rules in the cases for imposing of penalty of dismissal being a Functional Director, this argument of respondent is misconceived. That being so, arguments with regard to applicability of the

principles of de facto doctrine and functional character being different from persona designata can not be applied in the present case.

The question of charge-sheet being issued and initiation of departmental enquiry by various authorities has been subject matter of deliberation of various judgments. The Supreme Court in the case of Inspector General of Police and another Vs. Thavasiappan, , where after considering the law laid down by the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Shardul Singh, , in Para 9 of the said judgment it has been observed by the Supreme Court as under:--

"9. As to who shall initiate and conduct a disciplinary proceedings, the rules are silent. Rule 2-A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that the rule making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling authority and confine it to the authorities mentioned in Rule 2-A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3 (b) (i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3 (b) (i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in Clauses (d), (h), (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceeding. This rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3 (b) (i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes, apparent from the second para of that sub-rule. If it was intended by the rule making authority that the disciplinary authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3 (b) (i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3 (b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of the case in accordance



with law."

A perusal of the aforesaid indicates that the emphasis is on the rule in question. The cases considered by the Supreme Court were such where the rules were silent with regard to initiation of departmental enquiry. The rules were such which contemplated and specified the authorities who could impose the penalty but the rules were silent with regard to the persons who should initiate the departmental enquiry. The present case is totally different in as much as power and specific stipulation contained in Rule F (3) is that the disciplinary authority only is empowered to frame definite and distinct charges and thereafter appoints an enquiry officer. A complete reading of the judgment of the Supreme Court and in particular observations made in Para 9 makes it clear that if the rules provided and specify the person who is to initiate the charge-sheet, then the charge-sheet has to be issued by the said person alone. This aspect of the matter has been considered by the Supreme Court in the case of Steel Authority of India, Successor of Bokaro Steel Limited v. Presiding Officer, Labour Court at Steel Authority of India, Successor of Bokaro Steel Limited Vs. Presiding Officers, Labour Court at Bokaro Steel City, Dhanbad, and Another, and it has been emphasised in the said judgment in Paras 4 and 5 that when the rules contemplates issuance of charge-sheet by the disciplinary authority then charge-sheet served and enquiry constituted by an unauthorised person is unsustainable. The case of Director General, ESI and Anr. v. T. Abdul Razak, was considered by the Supreme Court in Director General, E.S.I. and another Vs. T. Abdul Razak, etc., and in Para 14 of the said judgment it is held as under:--

"14. The law is well settled that in accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication."

From the aforesaid judgment it is clear that if a definite rule exists with regard to the persons who is competent to issue the charge-sheet, then the charge-sheet has to be issued by the said person only. A Division Bench of this Court in the case of Manohar Singh Marwaha v. State of M.P. and Ors., 2003 (1) MPJR 12, considered the question with regard to exercise of powers under administrative law by various authorities and it has been emphasised in the aforesaid judgment that when power is given to do a certain thing in a certain manner, the thing should be done in that manner alone. Anything done contrary thereof would amount to protectoral *ultra vires*. In Para 11 of the said judgment it is held as under:--

"11. The issue in question is squarely covered by a time-tested rule, adopted and reiterated in various judicial pronouncements that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. A three Judge Bench of the Apex Court in the matter of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, Para 25) held as under :--

"25. A century ago, in *Taylor v. Taylor*, (1875) 1 Ch D 426, Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule had stood the test of time. It was applied by the Privy Council, in AIR 1936 253 (Privy Council) and later by this Court in several cases, *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, ; *Deep Chand Vs. The State of Rajasthan*, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies where, indeed the whole aim and object of the legislature would be painly defeated if the command to do the thing in particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn. PP. 362-363. The rule will be attracted with full force in the present case, because non verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b)."

This decision while reiterating the old rule is a timely reminder that an act done in a manner contrary to the rule would amount protectoral ultra vires."

Recently, the Supreme Court in the case of *State of U.P. and Anr. v. Chandrapal Singh and Anr.*, AIR 2003 SCW 2105, has observed that although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but the same can be provided and prescribed by rules. In case no rules have been framed, saying as to who shall initiate the departmental proceedings, then it can not be urged that it is only the appointing authority who can initiate the departmental proceedings. However, if the rules prescribed the authority then it is only the said authority who can initiate the departmental proceedings.

Applying the aforesaid principles of law in the present case in the backdrop of Rule F (3) it is clear that the charges have to be framed by the disciplinary authority and it is the disciplinary authority alone who is competent to appoint the Enquiry Officer after receipt of the written statement. The first charge-sheet (Annexure P-12) in the present case is therefore issued by an unauthorised person in as much as in matters pertaining to imposition of penalty of dismissal from service, it is only the Functional Director who is competent to issue the charge-sheet and appoint Enquiry Officer. Neither the Dy. General Manager (Aviation) nor the Functional General Manager were competent to issue the charge-sheet for this purpose. That being so, the initiation of proceedings in the present case being contrary to the provisions of rules is unsustainable. That being the position, it has to be held in the present case, the issuance of charge-sheet vide Annexure P-12 dated 31-12-93 and appointment of Enquiry Officer vide Annexure P-13 by the Dy. General Manager (Aviation) being contrary to the

Discipline and Appeal Rules is unsustainable.

During the course of hearing, Shri Vivek Jain, learned Counsel had stressed that this has to be judged in the touchstone of no prejudice being caused to the petitioner because of issuance of charge-sheet by the Dy. General Manager (Aviation), it is not a fit case where interference is called for.

The aforesaid submission is misconceived. The principle of no prejudice being caused will apply only to such procedural matters where the violation of procedure complained of is not a mandatory requirement under the rules. In the case of State Bank of Patiala and others Vs. S.K. Sharma, , it has been held that the question of prejudice will not apply in cases where the procedure or irregularity complained of is a mandatory requirement under the Rule, when mandatory rules are not followed it has been held by the Supreme Court that prejudice is deemed to have been caused and in such cases no further proof of prejudice is required.

Considering the legal position that emerges from the aforesaid discussion, it is clear that in the present case, the mandatory provisions of rules has been clearly violated and issuance of charge-sheet (Annexure P-12) and appointment of Enquiry Officer (Annexure P-13) being contrary to and in violation of the aforesaid rules is unsustainable.

The impugned order was passed taking into consideration the misconduct proved against the petitioner based on two departmental enquiries conducted against him.

As the departmental enquiry into first charge-sheet (Annexure P-12) and the consequential proceedings into the said charge-sheet is unsustainable, the question is whether initiation of departmental enquiry into the second charge-sheet also can be quashed on similar consideration. As far as the second charge-sheet is concerned, the same has been issued by the disciplinary authority empowered to impose minor penalty. The allegation in the said charge-sheet dated 27-7-94 (Annexure P-20) is also with regard to leaving the place of work unauthorisedly which is a minor misconduct and for which punishment from dismissal from service would be highly disproportionate and harsh. That being so, the order of punishment imposed upon the petitioner is quashed and the petitioner is directed to be reinstated with consequential benefit. However, the respondents are free to proceed with the enquiry into the second charge-sheet dated 27-7-94 (Annexure P-20) from the stage of submitting of report by the Enquiry Officer and if so desired can continue the enquiry into the said charge-sheet afresh from the aforesaid stage, as this Court is of the considered view that in the light of the order quashing the first charge-sheet dated 31-12-93 (Annexure P- 12) and the consequential departmental enquiry into the said charge-sheet being unsustainable, it would be more appropriate for the competent authority to reconsider the question with regard to action to be taken into the second charge-sheet dated 27-7-94 (Annexure P-20).

Accordingly, the petition is allowed and disposed of as indicated hereinabove.