

(2010) 07 DEL CK 0391

In the Delhi High Court

Case No : Writ Petition (C) No. 2646 of 1990

Arun Kumar Nigam

APPELLANT

Vs

Dig. Genl. Central Indus. Security Force and Others

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 20, 21
Central Civil Services (Conduct) Rules, 1964 — Rule 3.1
Central Industrial Security Force Act, 1968 — Section 11, 14, 14(1), 14(3), 15
Central Industrial Security Force Rules, 1969 — Rule 30, 31, 31(2), 31(3), 34
Constitution (Forty-Second Amendment) Act, 1976 — Article 14, 21, 311, 311(2)
Delhi Police (Appointment and Recruitment) Rules, 1980 — Rule 3
Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 14, 15, 15(1), 15(2), 15(3)
Delhi Police Act, 1978 — Section 17(1), 18, 21, 21, 3

Citation : (2010) 07 DEL CK 0391

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : Rajat Aneja and Gurmeet Singh, for the Appellant; Anjana Gosain, Veronica Mohan for Respondent Nos. 1, 2 and 6, Avnish Ahlawat and Latika Chaudhary for Respondent Nos. 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of the present writ petition, the petitioner has assailed the order dated 28th July, 1989 passed by the Commandant of the CISF Force Unit-respondent No. 2 herein imposing the punishment of the removal from service; order dated 16th November, 1989 passed by the respondent No. 1 dismissing the appeal filed by the petitioner against the same as well as the order dated 26th/27th April, 1990 dismissing the representation filed by the petitioner. The petitioner has also sought a declaration that the disciplinary proceedings held against him at the instance of respondent Nos. 3 and 4 under the Delhi Police (Punishment and Appeal) Rules, 1980 are wholly illegal, invalid, incompetent and that no disciplinary action could be taken by his employer, the Central Industrial Security Force ("CISF" hereafter) on the basis thereof. The petitioner prays for

consequential orders for reinstatement with continuity in service and all other attendant benefits as if he had continued in service throughout without a break.

2. The parties are not at variance so far as the basic facts giving rise to the instant case are concerned. The petitioner was appointed to the CISF on 4th July, 1984 and was telegraphically ordered on 4th November, 1985 to join the Delhi Police on deputation. Consequently, he reported at the 1st Battalion, Delhi Armed Police on 6th November, 1985 and was sent to the Delhi Armed Police, 6th Battalion with effect from 7th February, 1986. The petitioner was deputed by the police authorities to the office of the Foreigners Regional Registration Office ("FRRO" hereafter for brevity) arraigned as respondent No. 5 herein, and there he remained posted till his repatriation to the CISF, his parent department.

3. While the petitioner was working with the respondent No. 5, an order dated 8th June, 1987 was passed placing the petitioner under suspension with immediate effect pending enquiry into alleged misconduct.

4. It was alleged that while the petitioner was on deputation with the Delhi Police, he was posted at Immigration, shift "A" at IGI Airport, New Delhi. On 8th June, 1987, he gave immigration clearance to Palani Thurai Maheshwaran, a Sri Lankan National on his arrival in India by flight No. AI-132, when the passenger did not have a visa to enter into India. The petitioner was said to have cleared the passenger and affixed a stamp bearing No. E-7 on his passport. This very stamp had been issued to the petitioner against his signatures as per the duty roster and the flight chart.

It was further alleged that the clearance was granted in return for receipt of illegal gratification amounting to 90 USD, accepted by the petitioner. This currency was recovered from his possession on identification by the passenger and seized by SI Jawahar Singh of the Delhi Police. It was also alleged that the petitioner had destroyed/misplaced the disembarkation card of the passenger to avoid the detection.

5. Sh. Murari Lal, AFRRO/Admn. IGI Airport was ordered to conduct a preliminary enquiry under Rule 15(1) of the Delhi Police (Punishment and Appeal) Rules, 1980 on 15th June, 1987 into the allegations made against the petitioner.

6. Based on the aforementioned allegations and on the completion of the preliminary enquiry, the Additional Commissioner of Police ordered that a departmental inquiry be initiated against the petitioner u/s 21 of the Delhi Police Act, 1978. Thereafter, the petitioner submits that he received a memorandum dated 18th January, 1988 from Sh. Harbans Lal, ACP who had been entrusted with the task of holding the departmental enquiry against the petitioner. This memorandum was accompanied with a summary of allegations, memorandum of evidence and a provisional list of witnesses to be examined and documents to be relied upon. He was also permitted to inspect the same and take extracts from documents. The memorandum also permitted him to seek the assistance of another police official for the purposes of inspection. The petitioner was directed

to appear before the inquiry officer on 2nd February, 1988 to contest the allegations.

7. The summary of allegations made against the petitioner reads as follows:

Summary of Allegation

It is alleged against S.I.A.K. Nigam D-5102 (CISF No. 8444041) under suspension, that while he was on duty in immigration in shift "A" at IGI Airport, New Delhi On 8-6-87, in Rt. Wing arrival side and called in Left wing arrival side, gave immigration clearance to one Sri Lankan National Palani Thurai Maheshwaran S/o Palani Thurai. r/o 133, Cannathiday Road, Jaffna, holder of passport No. E- 264513 dated 12-10-78, issued at Colombo when he arrived at the Airport by flight No.AI-132 at 12.50 p.m from Geneva in Left wing, while he had no visa for India. The S.I. cleared this passenger with stamp No. E-7 issued to him as per duty roster and flight chart register against his signatures. When Insp.I/C shift checked the passport of this passenger it was reported that this S.I had accepted following 90 US dollars from him at the time of immigration clearance. It is also alleged that when the passenger identified SI A.K. Nigam, he produced the said 90US dollars to Insp. Jawahar Singh which were taken in possession vide seizure memo. It is further alleged that SI A.K. Nigam reportedly destroyed/misplaced the Dis-Embarkation card of the passenger.

1. B-67162124-C (10 US dollars) 2. E-01832046-A (") 3. L-21669552-B (") 4. B-59309341-C (") 5. E-54373095-A (") 6. D-59985376-A (") 7. B-27246882-A (") 8. L-56066550-A (") 9. L-21766364-B (")

The above act on the part of S.I.A.K. Nigam No. D-5102 amounts to gross misconduct, negligence and dereliction in the discharge of his official duty, which renders him liable to be dealt with Departmentally u/s 21, of the Delhi Police Act, 1978.

8. The petitioner submitted his written statement of defence on 28th January, 1988 and 7th November, 1988 denying the allegations against him.

9. The petitioner contends that the enquiry officer recorded the statements of seven prosecution witnesses.

10. On 21st October, 1988, the enquiry officer Sh. Harbans Lal, ACP framed the following charges against the petitioner:

You, S.I.A.K. Nigam No. D/5102(CSIF No. 8444041) are hereby charged that while on duty in Immigration in Shift "A" at IGI Airport, New Delhi on 8.6.87 and called from Right Wing Arrival side to left wing arrival side, you gave immigration clearance to one Palani Thurai Maheswaran, a Srilankan National who arrived by flight No. A1-132 on 8.6.87 after accepting 90 US dollars from him as illegal gratification. This passenger was holding a Srilankan Passport No. E-264513 dt. 12.10.78 issued at Colombo but he had no visa for India. You also removed disembarkation Card of the said passenger after clearing him to avoid detection.

The above act on your part amounts to grave misconduct, lack of absolute integrity, dereliction of duty, unbecoming of police officer in violation of Rule 3.1(i),(ii) and (iii) of CCS (Conduct) Rules, 1964 and is punishable u/s 21 of Delhi Police Act, 1978.

11. In a representation dated 29th September, 1988 the petitioner objected to Sh. Murari Lal taking statements of Inspector Jawahar Singh, PW-5; Sh. S.D. Sharma, ACP - PW-7 recorded in the month of August, 1987 on record after the submission of his preliminary report. The petitioner submitted that these statements were put on record only to use them against the petitioner in the disciplinary proceedings held thereafter.

12. The petitioner's evidence in defence was recorded on 24th October, 1988. On 6th December, 1988, Sh. Harbans Lal submitted his report recording findings against the petitioner.

13. In the meantime, the Deputy Commissioner of Police, FRRO passed an order dated 6th April, 1989 revoking the petitioner's suspension. The petitioner resumed his duties at the FRRO, Office Line on 7th April, 1989.

14. A subsequent order dated 13th April, 1989 was passed by the respondent No. 5 repatriating the petitioner to his parent department, pursuant to the notification dated 28th March, 1989 of the Commissioner of Police. The petitioner accordingly reported to the office of the Director General, CISF on 17th April, 1989 and was posted at the CISF Unit, ONGC, Nazira, Assam. He formally joined this unit on 12th May, 1989.

15. The petitioner contends that he submitted further representations dated 13th May, 1989 and 26th June, 1989 to the respondent No. 2 making a prayer for a de novo enquiry to be conducted into the charge against him so as to ensure compliance with principles of natural justice and equity and objected that the proceedings conducted at the instance of the FRRO were not valid and proper. No orders were passed on these representations.

16. On the contrary, the Commandant of the CISF Unit, ONGC, Nazira proceeded to pass the impugned order dated 28th July, 1989 referring to the charge sheet (summary of allegations) issued on 18th January, 1988 and the aforementioned charge framed on 21st October, 1988 finding the acts of petitioner as amounting to "gross misconduct, negligence and dereliction in the discharge of his official duty", which rendered him liable to be dealt with u/s 21 of the Delhi Police Act, 1978.

17. It is noteworthy that while passing the said order, the respondent No. 2 relied on the enquiry proceedings, the statements of the prosecution witnesses and the cross examination by the delinquent, prosecution exhibits and the statements of defence witnesses recorded during the enquiry conducted by the Delhi Police. In addition, the disciplinary authority stated that he also examined the findings of the enquiry officer in depth. After examination of the available

material, the respondent No. 2 concluded that the petitioner was on duty in "A" shift at the Indira Gandhi International Airport at the time of the incident and had affixed the clearing stamp bearing No. "E-7" on the passport of a passenger namely Sh. Palani Thurai Maheswaran, a Sri Lankan national upon his arrival at the IGI Airport on 8th June, 1987 without any entry visa for India. The respondent No. 2 basing its findings on the statements made by the seven prosecution witnesses, the statement of the passenger and the petitioner himself, concluded that Inspector Jawahar Singh who was the Inspector in charge of the shift, had detected that the petitioner had cleared the Sri Lankan passenger after accepting a bribe of 90 US dollars from him. When confronted, the petitioner had admitted that he put the rubber stamp on his passport for clearance. This statement of the inspector has been held to have also been confirmed by the said passenger. The foreign currency was found in the possession of the petitioner by Inspector Jawahar Singh, who recorded a seizure memo dated 8th June, 1987. The departmental enquiry report has relied on the fact that the petitioner had himself admitted in a statement dated 13th July, 1987 that the passport was stamped by him and that the passenger did not have a valid visa.

18. The respondent No. 2 as the Disciplinary Authority has, however, found that there was no direct evidence so far as the charge of destroying/misplacing of the disembarkation card of the passenger was concerned and held that this allegation against the petitioner was not proved. However, removal of the card was definitely in the interest of the petitioner as the same was necessary to avoid detection. The only defence witness SI Dinesh Kumar was also disbelieved by the disciplinary authority who finally concluded that the charge against the petitioner of giving immigration clearance to the Sri Lankan national at the IGI Airport after accepting 90 USD by the petitioner stood proved. For the reason that the act of taking illegal gratification from a foreign national for illegal entry into India and giving clearance is a serious misconduct, it was held that the petitioner was not a fit person to be retained in an armed force like the CISF. As such, the respondent No. 2 awarded the punishment of removal from service with immediate effect to the petitioner.

Alongwith the order dated 28th of July, 1989, the petitioner was served with a copy of the enquiry report.

19. The petitioner then preferred a departmental appeal before the Deputy Inspector General, CISF dated 25th August, 1989. By the impugned order dated 16th November, 1989 the Deputy Inspector General, CISF, Eastern Zone, dismissed the said appeal holding the same to be devoid of merit both on facts and in law. He held that there is no procedural irregularity and that the inquiry had been conducted in accordance with the rules. He also held that the punishment awarded to the petitioner is commensurate with the proven charge.

Petitioner's contentions

20. The petitioner has assailed the orders against him inter alia on the ground that he being a member of the CISF, who was sent on deputation to Delhi Police, was subject to the same responsibilities, discipline and penalties as would have been applicable to him under the CISF Act, 1968, even while on deputation and that his alleged misconduct could not have been enquired into by the Delhi Police, much less by invoking the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. He submits that a number of other cases of persons from CISF, who had been sent on deputation to other organizations and whose conduct, while on deputation, had to be enquired into, were repatriated to the CISF and thereafter, the departmental inquiry had been held under the CISF Rules, 1969.

21. It is urged that on account of his conduct being enquired into by an incompetent authority and under rules not applicable to him, he has suffered great prejudice. The specific prejudice suffered by him, according to the petitioner, is that under the Delhi Police (Punishment and Appeal) Rules, 1980, he was not entitled to be represented through a defence assistant and the request of the petitioner in this regard was also turned down by the inquiry officer.

22. The petitioner submits that he was not served with the preliminary enquiry report conducted by Sh. Murari Lal, AFRRO despite request. He was also not given a copy of the subsequent enquiry report or an opportunity to make submissions or representations against the same by the respondent No. 2 before passing the order dated 28th July, 1989.

23. The petitioner has further submitted that he had requested the enquiry officer for permission to be represented through a defence assistant but the same was not permitted for the reason that there was no provision for the same in the Delhi Police (Punishment and Appeal) Rules, 1980 under which the enquiry was being conducted.

24. A vehement grievance has been made that no presenting officer had been appointed to put up the case on behalf of the police before Sh. Harbans Lal, ACP, during the inquiry. Placing reliance on the pronouncement of a single judge of the Kerala High Court reported at 1986 Lab.I.C. 980 P.P. Gopalan v. DIGit is contended that the enquiry officer performed the role of the prosecutor and judge rolled into one. The version of the delinquent officer and the witness in defence would therefore have been cross examined by him.

25. In this background, it is urged that the refusal of the defence assistance caused grave and serious prejudice to the petitioner's defence to the allegations made against him. The contention is that placed where he was, the petitioner could not be expected to know his rights under the rules and that a reasonable opportunity to defend himself would include the facility of a defence assistant for the enquiry to be fair and proper. Such assistance was denied to the petitioner vitiating thereby the enquiry as well as the orders passed thereon.

26. The petitioner has further submitted that he had made an objection by way of a representation dated 9th September, 1988 to the enquiry officer Sh. Harbans Lal, ACP and also submitted a representation dated 29th September, 1988 to the FRRO, Delhi Police as well as the Director General of the CISF to the effect that the petitioner could not be proceeded against by way of disciplinary proceedings on the basis of the provisions of the Delhi Police Rules, 1980 and a prayer was made to the enquiry officer not to proceed with the enquiry but to repatriate the petitioner to his parent department which was the Central Industrial Security Force, leaving the matter with regard to disciplinary action, if any, against the petitioner to the discretion of the parent department. No decision on these objections of the petitioner was ever taken.

27. The petitioner's grievance is that he has been made a scapegoat by the police personnel especially SI Jawahar Singh and that no fault is attributable to him. It is contended that the passenger in question was not produced as a witness during the enquiry, yet an alleged prior statement made by him was relied upon. The petitioner also contends that there are several contradictions in the evidence and that the enquiry officer permitted the statements recorded in the preliminary inquiry by Shri Murari Lal and his findings to be taken on record which was contrary to the rule position and in violation of principles of natural justice. The disembarkation card of this passenger which could have established the innocence of the petitioner was not produced by the respondents during the enquiry. On the contrary, loss thereof was wrongly attributed to him. It is further contended that the enquiry officer has also held that there was no material to establish that the petitioner had put the seal on the disembarkation card. The petitioner's initials also did not appear on any document and there was no recovery from him.

28. Apart from a challenge to the findings of the disciplinary enquiry and the orders of the disciplinary and appellate authority on the ground that they are based on no material or on irrelevant material, it has been staunchly contended on behalf of the petitioner that upon his repatriation, CISF was bound to conduct a de novo enquiry and ought not to have relied on the biased and prejudicial enquiry proceedings conducted by the Delhi Police.

Respondents contentions

The respondents have disputed the correctness of the afore-noticed submissions and their contentions are considered and dealt with submissionwise hereafter.

Statutory provisions, rules and regulations

29. Before examining the rival contentions, we may usefully extract the relevant statutes, rules and regulations hereafter.

Central Industrial Security Force Act, 1968:

8. Dismissal, removal etc. of members of the Force:

Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act any supervisory officer may-

(i) dismiss (remove), [order for compulsory retirement of], or reduce in rank, any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any [enrolled member] of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely:

(a) fine to any amount not exceeding seven days pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument.

[(d) withholding of increment of pay with or without cumulative effect;

(e) withholding of promotion;

(f) censure.]

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14. Deputation of the Force to industrial undertaking in public sector: (1) Subject to any general directions which may be issued, by the Central Government, it shall be lawful for the [Director General], on a request received in this behalf from the Managing Director concerned, of an industrial Undertaking in public sector, showing the necessity thereof, to depute such number of members of the Force as the [Director General] may consider necessary for the protection and security of that industrial undertaking and any installations attached thereto and the members of the Force so deputed shall be at the charge of the Managing Director:

Provided that in the case of an Undertaking owned, controlled or managed,

(i) by a Government company of which the Central government is not a member;

(ii) by a corporation established by or under a Provincial or State Act, no such request shall be entertained unless it is made with the consent of the Government of the State in which the undertaking is situate.

(2) If the [Director General] is of the opinion that circumstance necessitating the deputation of the members of the Force in relation to an Industrial Undertaking under sub Section (1) have ceased to exist, or for any other reason it is necessary so to do, he may, after informing the Managing Director of that Industrial Undertaking, withdraw the member of the Force so deputed:

Provided that the Managing Director may, on giving one month's notice in writing to the [Director General] require that the members of the Force so

deputed shall be withdrawn, and the Managing Director shall be relieved from the charge from the date of expiration of such notice or from any earlier date on which the Force is so withdrawn.

(3) Every member of the Force, while discharging his functions during the period of deputation, shall continue to exercise the same powers and be subject to the same responsibilities, discipline and penalties as would have been applicable to him under this Act, if he had been discharging those functions in relation to an industrial undertaking owned by the Central Government.

Rules 30, 34, 38 and 70 of the Central Industrial Security Force Rules, 1969 referred to during the hearings, read as under:

30. Suspension.- (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, may place a member of the force under suspension:

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A member of the Force shall be deemed to have been placed under suspension by an order of the appointing authority

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation - The period of forty-eight hours referred to in Clause (b) of this Sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon member of the Force under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the orders of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Force is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the Force shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a member of the force is suspended or is deemed to have been suspended (Whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced, against him during the continuance of that suspension, the authority competent to place him under suspension, may for reasons to be recorded by him in writing, direct that the member of the Force shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

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34. Procedure for imposing major penalties - (1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850 (37 of 1850), no order imposing on a member of the Force any of the penalties specified in Clauses (a) to (d) of Rule 31 shall be passed except after an inquiry held as far as may be in the manner hereinafter provided. (2) The disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the member of the Force and he shall be required to submit, within such time as may be specified by the disciplinary authority a written statement of his defence and also to state whether he desires to be heard in person.

Explanation. -- In this Sub-rule and in Sub-rule (3), the expression "the disciplinary authority" shall include the authority competent under these rules to impose upon the member of the Force any of the penalties specified in CIs. (e) to (h) of Rule 31.

(3) The member of the Force shall for the purpose of preparing his defence be permitted to inspect and take extracts from such official records as he may

specify, provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the disciplinary authority, such records are not relevant for the purpose or it is against the public interest to allow him access hereto.

(4) On receipt of the written statement of defence or if no such statement is received within the time specified, the disciplinary authority may itself inquire into such of the charges as are not admitted or if it considers it necessary so to do, appoint a supervisory officer or an officer not lower in rank than an Inspector, or a Board of Inquiry as the Inquiry Authority to conduct the inquiry.

(5) The member of the Force so charged may be permitted by the Inquiring Authority referred to above to present his case with the assistance of any other member of the Force approved by it.

(6) The inquiry Authority referred to above shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The member of the Force shall be entitled to cross-examine witnesses examined in support of the charges, to give evidence in person and to produce defence witnesses. If the said Inquiring Authority declines to examine any witness on the ground that his evidence is not relevant or material it shall record its reasons for the same in writing.

(7) At the conclusion of the inquiry, the inquiring authority referred to above shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor. If in the opinion of such authority, the proceedings of the inquiry establish charges different from those originally framed, it may record its findings on such charges, provided that findings on such charges shall not be recorded unless the members so charged has admitted the facts Constituting the said charges or has had an opportunity of finding himself against them.

(8) The record of the inquiry shall include (i) the charges framed against the member of the Force and the statement of allegations furnished to him under Sub-rule (2) of this rule;

(ii) the written statement of defence, if any, submitted by the member of the Force;

(iii) The oral evidence taken in the course of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the disciplinary authority and the inquiring authority referred to above in regard to the inquiry; and

(vi) a report setting out the findings on each charge and the reason therefor.

(9) The disciplinary authority shall, if it is not the Inquiring Authority referred to above, consider the record of the inquiry and record its findings on each charge.

(10)(i) If the disciplinary authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in Clauses (a) to (h) of Rule 31 should be imposed, it shall pass appropriate orders in the case.

[(ii) If it is of the opinion that any of the penalties specified in Clauses (a) to (h) of Rule 31 should be imposed, such penalty may be imposed on the basis of evidence adduced during inquiry and it shall not be necessary to give the member of the Force any opportunity of making representation on the penalty proposed.]

(11) Orders passed by the disciplinary authority shall be communicated to the member of the force who shall also be supplied with a copy of the report of the Inquiring Authority referred to above and, where the disciplinary authority is not the said Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, along with the findings of the said Inquiring Authority shall also be supplied to that member.

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38. Provisions regarding members of the Force taken from State Government, etc. - (1) Where an order of suspension is made or a disciplinary proceeding is taken against a member of the Force whose services have been borrowed from a State Government or an authority subordinate thereto or any other department of the Central Government, the authority lending his services shall forthwith be informed of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings, as the case may be. (2) in the light of the findings in the disciplinary proceedings taken against such member of the Force-

(a) if the disciplinary authority is of opinion that any of the penalties specified in Clauses (e) to (h) of Rule 31 should be imposed on him, it may, after consultation with lending authority, pass such orders in the case as it deems necessary, provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the member shall be replaced at the disposal of the lending authority;

(b) if the disciplinary authority is of opinion that any of the penalties specified in Clauses (a) to (d) of Rule 31 should be imposed on him, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it deems necessary.

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70. Other conditions of service - The supervisory officers and members of the Force shall, in respect of all other matters regarding conditions of service for which no provision or insufficient provisions has been made in these rules, be governed by the rules and order for the time being applicable to officers holding corresponding posts in the Central Government in respect of such matters.

30. Before us, it has been urged that for the reason that the CISF Rules made no provision with regard to disciplinary proceedings against deputationists, in view of Rule 70 of the then CISF Rules, the provisions relating to a person deputed/lent to another department in the Central Government would apply.

31. It therefore becomes necessary to extract Rules 20 and 21 of the Central Civil Services (Classification, Conduct and Appeal) Rules which govern these matters in the Central Government. The same read as follows:

20. Provisions Regarding Officers Lent to State Governments, Etc.

(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant

(i) if the borrowing authority is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such order thereon as it may deem necessary, or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass orders on the case as it may deem necessary:

Provided that before passing any such order the disciplinary authority shall comply with the provisions of Sub-rules (3), (4) of Rule 15.

Explanation - The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority or after

holding such further inquiry as it may deem necessary, as far as may be. in accordance with Rule 14.

21. Provisions regarding officers borrowed from State Governments, etc.

(1) Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant, if the disciplinary authority is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on him, it may, subject to the provisions of Sub-rule

(3) of Rule 15 and except in regard to a Government servant serving in the Intelligence Bureau up to the rank of Assistant Central Intelligence Officer, after consultation with the lending authority, pass such orders on the case as it may deem necessary

(i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the disciplinary authority is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action, as it may deem necessary.

(Underlining by us)

32. Reliance has been placed on provisions of the Delhi Police Act. 1978, the Delhi Police (Appointment and Recruitment) Rules. 1980 and the Delhi Police (Punishment and Appeal) Rules, 1980. The relevant provisions thereof read as under:

Delhi Police Act. 1978:

2(g) "Delhi police" or "police force" means the police force referred to in Section 3 and includes

(i) all persons appointed as special police officers under Sub-section (1) of Section 17 and additional police officers appointed u/s 18; and

(ii) all other persons, by whatever name known, who exercise any police function in any part of Delhi;

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2(m). "police officer" means any member of the Delhi Police;

"21. Powers of punishment. (1) Subject to the provisions of Art. 311 of the Constitution and the rules, the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School or any other officer of equivalent rank, may award to any police officer of subordinate rank any of the following punishments, namely:

- (a) dismissal;
- (b) removal from service;
- (c) reduction in ranks;
- (d) forfeiture of approved service;
- (e) reduction in pay;
- (f) withholding of increment; and
- (g) fine not exceeding one month's pay.

(2) Subject to the rules- (a) any police officer specified in Sub-section (1) may award the punishment of censure to any police officer of subordinate rank;

(b) the Assistant Commissioner of Police may award the punishment of censure to police officers of, or below, the rank of Sub-Inspectors of Police;

(c) any police officer of, and above, the rank of Inspector may award punishment drill not exceeding fifteen days or fatigue duty or any other punitive duty to constables.

(3) Nothing in Sub-section (1) or Sub-section (2) shall affect any police officer's liability for prosecution and punishment for any offence committed by him.

Delhi Police (Appointment and Recruitment) Rules. 1980:

3. Definitions. -- (i) "Appointing Authority¹ - in relation to Inspector of Police means the Additional Commissioner of Police and in relation to the subordinate police officers below the rank of Inspector means the Deputy Commissioner of Police including the Additional Deputy Commissioner of Police, Principal/P.T.S. or any other officers of equal rank.

(ii) Competent authority means the Commissioner of Police or any other police officer specially authorized by him under these rules to appoint a police officer of subordinate rank of Delhi Police.

(iia) "Employees" - means non-gazetted employees of the Delhi Police Force.

(iii) Probation means of period of trial of a person appointed temporarily or in an

officiating capacity against temporary or permanent post of a police of subordinate rank.

Delhi Police (Punishment and Appeal) Rules. 1980:

3. Applicability. -- (i) These rules shall be applicable to:

(a) All Officers and men of subordinate ranks i.e., Constable to Inspector.

(ii) All civilian and Class IV employees as well as all civilian officers on deputation to the Delhi Police e.g., teachers, internal auditors, Financial Advisor, Senior Psychologist, Education Adviser and other similar employees shall be governed by the CCS. (CCA) Rules, 1965 or the rules applicable in their parent departments. However, all non-gazetted Police officers on deputation to Delhi Police from Central/State police organisations shall be governed by the Delhi Police Act, 1978 and these rules.

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15. Preliminary enquiries - (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relation with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.

33. We may also set out the provisions incorporated in the CISF Rules by amendment in 2001 which have been brought to our notice. Rules 40 and 41 after the amendment of 2001 are as follows:

CISF Rules. 2001:

40. Provisions regarding enrolled members of the Force borrowed from State Governments etc. (1) where an order of suspension is made or a disciplinary proceeding is conducted against an enrolled member of the Force whose services have been borrowed from another department of the Central Government or from a State Government or an authority subordinate thereto, the authority lending his services (hereinafter in these rules referred to as the "lending authority") shall forthwith be informed of the circumstances leading to the order of suspension of the enrolled member of the Force or the commencement of the disciplinary proceedings, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against such an enrolled member of the Force, if the disciplinary authority is of the opinion that any of the penalties specified in Clauses (vi) to (x) of Rule 34 should be imposed on him, it may, subject to the provisions of Sub-rule (22) (i) of Rule 36 and after consultation with the lending authority, pass such orders on the case as it may deem necessary -

(i) provided that in the event of difference of opinion between the borrowing authority and the lending authority, the services of such enrolled member of the Force shall be re-placed at the disposal of the lending authority;

(ii) if the disciplinary authority is of the opinion that any of the penalties specified in Clauses (i) to (v) of Rule 34 should be imposed on the enrolled member of the Force, it shall replace the services of such enrolled member of the Force at the disposal of the lending authority and transmit to it the proceedings of the enquiry for such action as it may deem necessary.

41. Provisions regarding enrolled member of the Force lent to state Government etc. - (1) Where the services of an enrolled member of the Force are lent to another department of the Central Government or to a State Government or other authority [hereinafter] in this rule referred to as "borrowing authority" the borrowing authority shall have the powers of the appointing authority for the purpose of placing such enrolled member of the Force under suspension and of the disciplinary authority for the purpose of conducting a disciplinary against him; Provided that the borrowing authority shall forthwith inform the authority which lent the services of such enrolled member of the Force hereinafter in this rule referred to as "the lending authority" of the circumstances leading to the order of suspension of such enrolled member of the Force or the commencement of the disciplinary proceeding, as the case may be:

(2) In the light of findings in the disciplinary proceedings conducted against the enrolled member of the Force; (i) If the borrowing authority is of the opinion that any of the penalties specified in Clauses (vi) to (x) of Rule 34 should be imposed on such a member, it may, after consultation with the lending authority, make such orders on the case as it may deem necessary;

Provided that in the event of difference of opinion between the borrowing authority and the lending authority, the services of such enrolled member of the

Force shall be replaced at the disposal of the lending authority;

(ii) If the borrowing authority is of the opinion that any of the penalties specified in Clauses (i) to (v) of Rule 34 should be imposed on the enrolled member, it shall replace his services at the disposal of lending authority and transmit the proceedings of the enquiry and thereupon the lending authority may, if it is a disciplinary authority, pass such orders thereon as it may deem necessary, or if he is not a disciplinary authority, submit the case to the appropriate disciplinary authority which shall pass orders on the case as it may deem necessary;

Provided that before passing any such order the disciplinary authority shall comply with the provisions of Sub-rule (22) of Rule 36.

Explanation - The disciplinary authority may make an order under this Clause on the record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry as it may deem necessary, as far as may be in accordance with Rule 36.

(Underlining by us)

We may now consider the challenge by the petitioner on the contentions noticed heretofore.

Whether the Delhi Police was competent to initiate disciplinary action against the petitioner, a CISF personnel who was on deputation with it?

34. It is an admitted position that the petitioner was on deputation with the Delhi Police. Reliance has been placed by Learned Counsel for the petitioner on Section 14 of the Central Industrial Security Force Act, 1968 to say that so far as deputationists are concerned, during the period of deputation, the member of the force shall continue to exercise the same powers and be subject to the same responsibilities, discipline and penalties as would have been applicable to him under the CISF Act. The margin note to the statutory provision indicates that the section relates to "Deputation of the Force to Industrial Undertakings in public sector". Sub-section (1) refers to requests received by the Director General of the CISF from the managing director concerned of an "industrial undertaking in public sector" showing necessity for members of the force. The proviso makes a reference to undertakings owned, controlled or managed by a government company of which the central government is not a member and to a corporation established by or under or by a provincial or state government. So far as Sub-section (3) of Section 14 is concerned, it makes a reference to members of the force who are discharging functions during the period of such deputation. It is further submitted that under Sub-section (3), such deputationists would continue to exercise the same powers and be subject to the same responsibilities, discipline and penalties as if they had been discharging those functions in relation to an industrial undertaking owned by the central government. Thus, in its application, Section 14 is restricted to persons who have been sent on deputation to Industrial undertakings in the public sector and any installation

attached thereto alone.

The petitioner was admittedly on deputation with the Delhi Police which is not an industrial undertaking in the public sector or any installation attached thereto. Reliance on behalf of the petitioner on Sub-section (3) of Section 14 is therefore misconceived and it has no application so far as the petitioner who was on deputation in the Delhi Police is concerned.

35. Even if the submission of the petitioner that Section 14 of the CISF Act was applicable to his case is accepted, in our view, the fact that he continued to exercise the same powers and was subject to the same responsibilities, discipline and penalties, as applicable to the members of the CISF, does not mean that the disciplinary enquiry could not have been directed to be held, or held by Delhi Police with whom he was on deputation. Merely because the petitioner was subject to the same discipline and penalties, it does not mean that the process of a departmental enquiry to establish the breach of discipline could have been initiated only by the lending authority, i.e. the CISF. That is not the purport of Section 14(3). Section 14 does not say as to who will enforce the discipline or will enquire into the breach of discipline by a member of the force on deputation. Section 14(3) does not denude the borrowing authority of its power to enforce the discipline and to enquire into breach of discipline. To us, it appears only reasonable that the borrowing authority should enforce the discipline and if the breach of discipline has taken place by a member of the CISF who is on deputation, the borrowing authority within whose jurisdiction the breach of discipline is alleged to have taken place, should enquire into the same, as it is the borrowing authority who would be aware of the relevant facts and be in a position to produce and examine witnesses and lead evidence. We, therefore, reject the submission of the petitioner founded upon Section 14(3) of the CISF Act.

36. So far as Section 8 of the CISF Act is concerned, it empowers the supervisory officer to impose the punishments which are mentioned therein subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under the CISF Act. In the instant case, the respondent No. 2 was the Commandant of the formation where the petitioner stood posted and hence as his supervisory officer, has imposed the punishment of "removal from service". For this reason, the impugned orders cannot be faulted for violation of Section 8 of the CISF Act, 1968.

37. Mr. Rajat Aneja, Learned Counsel for the petitioner has also placed strong reliance on the Rule 38 of the CISF Rules, 1969 which has been reproduced hereinabove. An examination of the rule would show that the rule making authority has thereby incorporated only a provision for initiating disciplinary proceedings against a member of the force whose services have been borrowed from a State Government or an authority subordinate thereto or any other department of the Central Government.

It is important to note that this rule makes no reference at all to a CISF personnel whose services have been lent by the CISF to another department or authority as in the case at hand.

38. The petitioner's representations to Sh. Harbans Lal, ACP dated 9th September, 1988 and 29th September, 1988, also copied to the respondent No. 1, base his objection on Section 14(3) of the CISF Act and Rule 38 of the CISF rules which have no application to the instant case.

39. On consideration of the statutory scheme, it is apparent that the CISF Act, 1969 and the rules framed thereunder make no provision at all with regard to disciplinary action relating to a member of the CISF who is on deputation with regard to misconduct committed while on deputation with another organisation.

40. Rule 70 of the CISF Rules, 1969 clearly provides that if the rules are silent or make insufficient provision for any contingency, then the rules applicable to the Central Government would have application.

41. Ms. Anjana Gosain, Learned Counsel appearing for the CISF has pointed out that in this background, reference has to be made to the Central Civil Services (Classification, Conduct and Appeal) Rules ("CCS (CCA) Rules" for brevity). Rule 21 of these rules makes the provision with regard to Central Government officers lent to the State Government. It is submitted that as per this rule when services of an enrolled member of the CISF are lent to another department or to a State Government or other authority, the borrowing authority has the powers of the appointing authority for disciplinary action against such member of the force for the purposes of conducting disciplinary proceedings.

42. In order to buttress this submission, our attention is drawn to the Rule 40 and 41 which have been incorporated pursuant to the amendments effected to the CISF Rules in 2001 and inclusion of the aforementioned Rule 41 which makes a specific provision with regard to enrolled members of the force lent to the State Government etc.

43. In view of the above rule position, we have no hesitation in holding that the rules of 1969, which were in vogue at the relevant time, made no provision for disciplinary action by the CISF in respect of misconduct committed by a CISF personnel who was on deputation to another department of the Central Government or to the State Government or other authority. Consequently, recourse was rightly had by the respondents to the residuary provision to be found in Rule 70 of the CISF Rules, 1969 read with Rule 20 and 21 of the CCS (CCA) Rules which applied. The disciplinary action in respect of a CISF deputationist could be taken by the borrowing department.

44. So far as the petitioner as a deputationist was concerned, by virtue of Rule 20 of the CCS (CCA) Rules, the Delhi Police was vested with powers of the appointing authority for the purposes of placing him under suspension and with the powers of the disciplinary authority for the purposes of conducting the

disciplinary proceedings against him.

45. As such, the disciplinary action initiated by the Delhi Police with whom the petitioner was on deputation was, therefore, clearly within the four corners of law.

46. We also find that Rule 3 of the Delhi Police (Appointment and Recruitment) Rules, 1980 governs disciplinary action so far as a person on deputation with the Delhi Police is concerned.

As per Rule 3 of the Delhi Police (Punishment and Appeal) Rules, 1980 all non-gazetted police officers on deputation to the Delhi Police from the Centre/State police organisation are governed by the Delhi Police Act, 1978. Rule 15 of these rules postulates a preliminary enquiry which is in the nature of a fact finding enquiry with the purpose of establishing the nature of default and identity of the defaulter; to gather prosecution evidence, to judge quantum of default and to bring relevant documents on record to facilitate the departmental enquiry.

In case the preliminary enquiry discloses the commission of an offence by a police officer of subordinate rank in his official relation with the police, it is provided that a departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

47. Having regard to the nature of allegations against the petitioner, Sh. Murari Lal, AFRRO was appointed to conduct the preliminary enquiry which he conducted on 15th June, 1987. The matter was brought before the Additional Commissioner of Police (Operation, Delhi) for according the necessary permission under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 to initiate the departmental enquiry against the petitioner. This permission was accorded by the Addl. Commissioner of Police by an order dated 10th November, 1987.

In this background, vide an order passed on 11th December, 1987, Sh. Harbans Lal, ACP was appointed as an enquiry officer.

48. In view of the rules framed under the Delhi Police Act, 1978 also, the Delhi Police had the jurisdiction to initiate and take disciplinary proceedings with regard to persons who are on deputation with it. Therefore, no illegality can be found in the disciplinary action which was initiated by the Delhi Police on allegations of misconduct against the petitioner.

Whether a de novo enquiry was required to be held by CISF upon the petitioner's repatriation to it?

49. It is submitted by Mr. Rajat Aneja, Learned Counsel for the petitioner, that in view of the proceedings and action of the Delhi Police being without jurisdiction, illegal and motivated, it was necessary for the respondent No. 1 to have considered the matter and directed holding of a de novo enquiry. It is urged that

it was not open to the disciplinary authority to place any reliance on either the preliminary inquiry conducted by Shri Murari Lal or the disciplinary proceedings conducted by Shri Harbans Lal.

50. The other leg of the submission is that the Delhi Police revoked the petitioner's suspension and reinstated before repatriating him in April, 1989. According to the petitioner, this fact manifests an admission on the part of the respondents that the disciplinary proceedings by the Delhi Police against CISF personnel on deputation with it were without jurisdiction.

51. The respondents on the other hand contend that the de novo enquiry which was conducted by the CISF upon the petitioner's repatriation was from the stage of passing of the final order. It is further defended that the proceedings were initiated in accordance with the rules which applied and there was no illegality in placing reliance on the enquiry proceedings conducted by the Delhi Police prior to the repatriation of the petitioner. The enquiry was consequently held from the stage of passing of the order based on the departmental enquiry initiated against him.

52. It has been explained by Ms. Avnish Ahlawat, Learned Counsel appearing for Delhi Police that the enquiry was conducted in accordance with the applicable provisions.

53. Rule 21 of the Central Civil Services (Classification, Conduct and Appeal) Rules, 1965, prescribes the procedure to be followed for awarding major punishments upon the deputationist and mandates seeking of the opinion of the lending authority.

54. Rule 21 of the CCS(CCA) Rules further requires the borrowing department to consult with the lending department on the issue of the action to be taken on the report of the disciplinary proceeding which is based on allegations of misconduct against a person who is on deputation. No prohibition for undertaking the disciplinary proceeding by the borrowing department so far as the CCS(CCA) Rules are concerned has been pointed out by Learned Counsel for the petitioner. Importantly, there is no conflict of these rules also with regard to the position which subsists under the Delhi Police Act, 1978 and the Delhi Police Rules, 1980.

55. We find that this matter was again examined by the Addl. Commissioner of Police (Opt), Delhi. In order to avoid any further complication in the matter, by the order dated 23rd October, 1988 it was decided to repatriate the petitioner to his parent department alongwith the departmental enquiry file containing the findings of the enquiry officer for taking further action by the disciplinary authority of the petitioner under the CISF. This action was clearly in consonance with the applicable rule.

56. Before repatriation, vide an order dated 6th April, 1989, the suspension order against him was revoked and he was reinstated in service. However, this order of reinstatement clearly informed the petitioner that the reinstatement was

without prejudice to the departmental enquiry pending against him and that his suspension period would be decided at the time of decision of the enquiry against him.

In our view nothing therefore turns on the revocation of the order of suspension.

57. In support of the same contention, the petitioner has also set up a plea that five or seven CISF personnel against whom allegations of misconduct were laid while they were on deputation with the Delhi Police, were repatriated for disciplinary action to the CISF. The contention is that the petitioner deserved to be identically treated.

58. It is trite that the petitioner could rest a plea for individuals discrimination only if some benefit, statutorily or legally available to him, has been wrongly denied to him. It is not so in the instant case. No plea for discrimination can be set up or is made out on a bald plea that some other personnel have been differently treated, without any further details thereof. This is more so when the applicable rules and regulations reflect no illegality in the action which was taken against the petitioner by the Delhi Police, which was the borrowing department.

59. An examination of CCS(CCA) Rules noted above would show that Rule 11 thereof provides the penalties which may be imposed on a government servant. Sub-section (i) to (iv) of Rule 11 provides minor penalties which may be imposed on the government servant. However, so far as major penalties including removal from service and dismissal from service are concerned, the same are provided from Sub-section (v) to (ix) of Rule 11. As per Rule 20 of the said rules, the borrowing authority has the powers of the appointing authority for the purpose of placing the government servant who is on deputation with it under suspension and powers of the disciplinary authority for the purposes of conducting disciplinary proceedings against him. In view thereof, even if the reliance on Rule 3 of the Delhi Police (Punishment and Appeal) Rules was to be ignored, the Delhi Police was adequately empowered by virtue of Rule 20 of the CCS(CCA) Rules to conduct disciplinary proceedings against the petitioner who was on deputation with it in respect of allegations of misconduct while on such deputation.

60. Having conducted such disciplinary enquiry as noted above, so far as imposition of punishment is concerned, Sub-rule (ii) of Rule 20 provides that in the light of disciplinary proceedings conducted against such government servant, if the borrowing authority is of the opinion that any of the major penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the government servant, it shall place his services at the disposal of the lending authority again and transmit to it the proceedings of the enquiry. The manner in which the lending authority, which is the CISF in the instant case, is required to proceed against the deputationist is also provided in Clause (ii) of Sub-rule (2) of Rule 20. It is stipulated that the disciplinary authority may pass such orders thereon as it may deem necessary.

61. It is noteworthy that the proviso to Sub-rule (ii) of Rule 20 provides that the disciplinary authority shall comply with the provisions of Sub-rules (3) and (4) of Rule 15 of the CCS (CCA) Rules before passing such order.

62. Sub-rule (iv) of Rule 15 provides the manner in which the disciplinary authority is to proceed in the matter on the enquiry report when major penalty proceedings are involved. It stipulates that having regard to the findings of the disciplinary authority on all or any of the articles of charge and on the basis of the evidence adduced during the enquiry, if it is of the opinion that any of the major penalties should be imposed on the government servant, it shall make an order imposing such penalty and that it shall not be necessary to give the government servant any opportunity of making representations on the penalty proposed to be imposed.

63. It is noteworthy that an explanation has been provided to Rule 20 which provides that so far as the record of the enquiry transmitted to the disciplinary authority by the borrowing authority is concerned, the disciplinary authority may make an order under Rule 20 or may make such order after holding further enquiry as it may deem necessary, as far as may be in accordance with Rule 14.

64. The disciplinary authority has passed the order dated 28th July, 1989 after carefully considering the summary of allegations against the petitioner; the inquiry proceedings including the statement of the prosecution witnesses; cross-examination by the delinquent; prosecution exhibits; the statement of defence witnesses and the findings of the inquiry officer and found the petitioner guilty of the charge. In view of the defence on a consideration of the allegations of which the petitioner was found guilty and in view of the seriousness of the charge against the petitioner of having taken illegal gratification from a foreign national for entry into India without a valid visa, the disciplinary authority was of the view that he was not a fit person to be retained in the CISF and consequently awarded the punishment of removal from service.

65. In the instant case, the disciplinary authority based its orders entirely on the enquiry conducted by the enquiry officer appointed by the Delhi Police. No further enquiry was deemed necessary. It certainly cannot be contended that the procedure adopted by the disciplinary authority was contrary to the applicable statutory provisions or the rules. The objection of the petitioner on this aspect is, therefore, hereby rejected.

66. So far as grant of an opportunity of hearing before imposition of a punishment is concerned, the same was also prohibited under Rule 15(iv). It was therefore unnecessary to do so in view of Sub-rule (iv) of Rule 15 of the CCS(CCA) Rules which were applicable at that stage.

67. The disciplinary authority has therefore followed the procedure laid down under Rule 20 of the CCS (CCA) Rules.

Whether failure of the disciplinary authority to furnish a copy of the report of the

enquiry officer and an opportunity of making a representation against the same to the delinquent employee is violative of principles of natural justice?

68. In the above facts, the authority which conducted the enquiry and the disciplinary authority are not one and the same. So far as recording of evidence etc was concerned, the enquiry was conducted by an officer of the Delhi Police and the proceedings conducted by it were remitted to the CISF. The petitioner has raised a plea that apart from the aforementioned illegalities, in any case the impugned orders are not sustainable on grounds of violation of principles of natural justice. The submission is that the disciplinary authority was bound to supply a copy of the report to him before the order of punishment could be imposed on him.

69. In *Union of India and others Vs. Mohd. Ramzan Khan*, relied upon by Mr. Aneja, Learned Counsel for the petitioner, the Supreme Court had occasion to consider a similar objection. It was held that after the Constitution (42nd Amendment) Act, 1976, the second opportunity contemplated by Article 311(2) of the Constitution had been abolished. However, the principles of natural justice and fair play required supply of adverse material to the delinquent who was likely to be effected by such material. In para 18 of the judgment, the court held that where an enquiry officer has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges, whether the proposal for any particular punishment is made or not, the delinquent is entitled to a copy of such report. It has also been held that the delinquent will also be entitled to make a representation against it, if he so desires and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to change hereafter.

70. It is, however, noteworthy that in para 17 of the pronouncement in *Mohd. Ramzan Khan (supra)*, the court held that any decision or conclusion to the contrary reached by any two Judge Bench of the court would no longer be taken as laying down law but this would have prospective application and no punishment imposed shall be open to challenge on this ground. The decision in *UOI and Ors. v. Mohd. Ramzan Khan (supra)* was pronounced on 20th November, 1990.

71. The entire issue was re-visited and examined by the Constitution Bench in its Judgment reported at *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,* . also placed before us. It was held by the Constitutional Bench that the right to receive the report of the inquiry officer is an essential part of the reasonable opportunity at the first stage, which is the inquiry stage, as the findings recorded by the inquiry officer form important material placed before the disciplinary authority. This inquiry report was obviously not part of the material before the inquiry officer. It is that material which, with the evidence, is taken into consideration by the disciplinary authority to come to its conclusion. The court held that the right to receive the inquiry officer's report and to show cause against the findings in the report was independent of the right to show cause

against the penalty proposed. The right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of inquiry, i.e. before the disciplinary authority takes into consideration the findings in the report. The right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to a conclusion with regard to the guilt of the employee and proposes to award a penalty based on its conclusion. The first is the right to prove the innocence.

72. The Supreme Court had thus laid down that the denial of the right to copy of the enquiry report amounts to a denial of reasonable opportunity to defend and is a violation of the rights of the delinquent person under Articles 14 and 21 and violative of the principles of natural justice. It has been clearly held that this rule operates irrespective of whether the concerned statute provides for or whether the delinquent asks for the same or not.

Thus when the enquiry officer is not the disciplinary authority, the delinquent employee has the right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at this conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. Such right is a part of the employee's right to defend himself against the charges levelled against him.

73. So far as the present case is concerned, we find that while upholding the earlier Judgment in UOI v. Mohd. Ramzan (supra), the Constitutional Bench in B. Karunakar (Supra) also approved the direction made therein that the Judgment would have prospective application. In this regard, in paras 43, 44 of B. Karunakar's case, the Constitutional Bench directed as follows:

43. xxx It will, therefore, have to be held that notwithstanding the decision of the Central Administrative Tribunal in H.G. Patel's case (supra) and of the Gujarat High Court in Premnath K. Sharma's case (supra) and of the other courts and tribunals, the law was in an unsettled condition till at least 20th November, 1990 on which day the Mohd. Ramzan Khan's case was decided. Since the said decision made the law expressly prospective in operation made the law expressly laid down there will only to those orders of punishment which are passed by the disciplinary authority after 20th November, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in court/tribunals in respect of orders of punishment passed prior to 20th November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's case (supra). This is so notwithstanding the view taken by the different Benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K. Vashist's case (supra).

44. The need to take the law laid down in Mohd. Ramzan Khan's case (supra) prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave to the said orders should be reopened on that account. Hence we hold as above.

74. In the instant case, the petitioner was punished by an order passed on 28th July, 1989. His appeal and revision stand dismissed on 16th November, 1989 and 26th/27th April, 1990 respectively, long before 20th of November, 1990 when the decision in Union of India v. Mohd. Ramzan Khan (supra) was pronounced.

No requirement under the rules in the instant case has been pointed out which mandated furnishing a copy of the enquiry report to the delinquent. Therefore, for all these reasons, the challenge to the impugned orders in the instant case on the ground that the enquiry report before imposition of the punishment had not been furnished to the petitioner, is not available to the petitioner.

75. However, there is another aspect to the matter. Assuming that the impugned orders could be faulted for failure to supply the enquiry report to the petitioner, even this fact by itself would not be determinative of the matter or the consequences which would follow.

76. It is trite that rules of natural justice are not embodied rules and certainly cannot be confined within the strait jacket of a rigid formula. The rules are flexible and their application would depend upon the setting and the background of the statutory provision, nature of the right which may be effected and the consequences which may entail. Its application depends upon the facts and circumstances of each case. Ref : R.S. Dass Ors. Vs. Union of India (UOI) and Others, (para 25)

77. As far back as in the case reported at A.K. Kraipak and Others Vs. Union of India (UOI) and Others, in para 20, the Supreme Court had stated that the rules of natural justice which should apply would depend on the facts and circumstances of the case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for the

same. Whenever a complaint was made before a court that a principle of natural justice had been contravened, the court had to decide whether the observance of that rule was necessary for a just decision on the facts of the case.

78. So far as the effect of non-supply of the enquiry officer's report on the delinquent is concerned, in para 30 of the pronouncement in B. Karunakar's case (supra), the majority view was stated as follows:

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(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

(Emphasis supplied)

It was therefore the majority view in B. Karunakar's case (supra) that it was incumbent upon the delinquent employee to show prejudice and that non-supply of the report of the enquiry officer to the delinquent employee would not by itself make the order of punishment null and void. The principles in this behalf were further elaborated in para 31 of the Judgment by the majority in the following terms:

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no

difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

79. In a later Judgment reported at Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, the Supreme Court had occasion to consider the effect of violation of this rule of audi alterum partem also for the reason that the enquiry report had not been furnished. In para 21 of the pronouncement, the court placed reliance on the ratio laid down in B. Karunakar's case (supra) and stated that the doctrine of natural justice required supply of a copy of the enquiry officer's report to the delinquent if such enquiry officer is other than the disciplinary authority and that non-supply would be in breach thereof. The court, however, further stated that "it is equally clear that failure to supply a report of the enquiry officer to the delinquent would not ipso facto result in the proceedings being declared null and void and the order of punishment is nonest and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot be automatically be set aside."

The Supreme Court further explained as follows:

31. At the same time, however, effect of violation of rule of audi alteram partem has to be considered. Even if hearing is not afforded to the person who is sought to be affected or penalized, can it not be argued that notice would have served no purpose" or "hearing could not have made difference" or "the person could not have offered any defence whatsoever". In this connection, it is interesting to note that under the English Law, it was held before few years that non-compliance with principles of natural justice would make the order null and void and no further inquiry was necessary.

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36. The recent trend, however, is of "prejudice". Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.

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39. In B. Karunakar, this Court considered several cases and held that it was only if the Court/Tribunal finds that the furnishing of the report "would have made a difference" to the result in the case that it should set aside the order of punishment. The law laid down in B. Karunakar was reiterated and followed in subsequent cases also vide State Bank of Patiala and others Vs. S.K. Sharma, ; M.C. Mehta Vs. Union of India (UOI) and Others, .

80. In Haryana Financial Corpn v. Kailash Chander Ahuja (Supra) the court also placed reliance on its earlier pronouncement in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, . In this case, the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. 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 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.

81. The court also placed reliance on the pronouncement reported at (2006) 8 SCC 76 P.D. Agarwal v. SBI to reiterate the principle that if there was 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. In this case, the enquiry report was in favour of the appellant but the disciplinary authority proposed to differ with such conclusions.

82. On a detailed consideration of the several judicial precedents, in Haryana Financial Corpn. v. Kailash Chander Ahuja (Supra) the Apex Court clearly

declared the law that even though supply of the report of the enquiry 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. The court held that "the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of the report of the enquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice has 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" (para 44).

83. These are the principles which would guide adjudication of the issues raised by the petitioner before us. The objection of the petitioner based on the non-supply of the enquiry report by the disciplinary authority has to be examined from the aspect as to whether the petitioner has been able to show that any prejudice or miscarriage of justice has resulted to him on account of the failure of the service of the report of the enquiry officer and consequently whether the order of punishment could be held to be therefore vitiated.

84. The petitioner challenges the proceedings of the departmental inquiry on the contention that he was not afforded a reasonable opportunity to defend himself and that the Delhi Police did not supply copies of the statement of witnesses recorded ex parte at the pre-enquiry stage as well as the documents which were relied upon to establish the charges before commencement of the enquiry. It is further submitted that the preliminary inquiry report was also not furnished before the same was brought on record and thereby the petitioner was denied a reasonable opportunity to exonerate himself. It is contended that the enquiry proceedings were therefore vitiated on grounds of violation of principles of natural justice. In support of these contentions, the petitioner has placed reliance on the pronouncement of the Apex Court reported at Kashinath Dikshita Vs. Union of India (UOI) and Others, .

85. The petitioner urges grave and serious prejudice to his defence and rights on the grounds noticed hereafter. It is submitted that under Rule 34 of the CISF Rules, 1969, a definite charge on the basis of allegations on which the enquiry is proposed to be held is required to be framed by the disciplinary authority. This charge alongwith the statement of allegations is served upon the delinquent official who is given opportunity to submit a written statement of defence. This opportunity is denied to the delinquent in the event of an enquiry being conducted under the Delhi Police (Punishment and Appeal) Rules, 1980. In an enquiry conducted into the Delhi Police Rules of 1980, the enquiry officer issues a summary of allegations without any requirement of submission of reply or explanation or written statement of defence which could be considered before proceeding further.

86. Mr. Aneja, Learned Counsel for the petitioner has further contended that under Rule 34(6) of the CISF Act, the evidence is required to be led in its entirety

on the charges in question and the delinquent officer has a right to cross examine the witness(s) without any requirement of framing a charge afresh after the evidence of the prosecution. Under the Delhi Police Rules, a charge is framed after recording the evidence of the prosecution and an opportunity is given to the delinquent official to lead his evidence.

87. It is also submitted that Rule 34(5) of the CISF Rules contains a specific provision allowing assistance of any other member of the force to the delinquent official during the course of enquiry which is absent under the police rules whereas no such provision exists in the Delhi Police Rules.

88. As briefly noticed hereinabove, the petitioner has laid a challenge to the testimony of the witnesses and the evidence brought on record by the enquiry officer. Several contradictions and anomalies have been suggested. The petitioner has also assailed prior statements attributed to two witnesses Shri S.D. Sharma and SI Jawahar Singh on the ground that the same has been procured on 11th August, 1987 and on 10th August, 1987 respectively which is after the conclusion of the preliminary enquiry. A very vehement argument has been laid that the disciplinary proceedings against the petitioner were motivated at the instance of the officials of the Delhi Police who wished to save their own skin. A vehement grievance has been made that the Srilankan national who was allegedly cleared by the petitioner, was permitted to leave without taking any action against him. It is urged that a statement was attributed to the Srilankan passenger which was permitted to be exhibited on the record of the disciplinary enquiry and relied upon in finding the petitioner guilty. It is the petitioner's submission that such statement could not have been relied upon without production of the Srilankan in the enquiry and without giving opportunity to the petitioner to cross-examine him.

89. The petitioner also has challenged the preparation of the seizure memo effected by SI Jawahar Singh and urged that the currency allegedly recovered from the petitioner has not been produced on record. These matters of evidence were required to be placed before and examined during the course of the enquiry proceedings and cannot be gone into by us at this stage.

It has been vehemently contended that the entire action against the petitioner is concocted and that this aspect is manifested from the fact that no action at all was taken against the Srilankan passenger who was permitted to return. However, this allegation remained wholly unsubstantiated in the enquiry proceedings.

90. We find no merit in these submissions. In the facts of this case, it would have been unreasonable to expect the production of a foreign national at the stage of conduct of enquiry, since he had been permitted to leave India as he did not have the visa to enter into India. It was not even the petitioner's case that the statement attributed to the Sri Lankan National was not his. No allegation of malice has been substantiated against the Sri Lankan National.

We find that even if the statement attributed to the Sri Lankan national was ignored the charge against the petitioner stands substantiated and established in the other evidence led in the enquiry. It needs no elaboration that the minimum requirement of rules of natural justice is that there must be some evidence which points to the guilt of the accused in respect of the charges alleged against him. It is no doubt true that in the disciplinary enquiry proceedings, the standard of proof that is required is that of preponderance of probability and not proof beyond doubt.

91. Perusal of the departmental enquiry report reveals that the petitioner was granted an opportunity to cross-examine the seven prosecution witnesses, namely, PW-1 Inspector Tej Ram No. D-1/85, Immigration IGI Airport, N. Delhi, PW 2 Inspector Budh Ram No. D/399, Immigration IGI Airport, N. Delhi, PW 3 SI Inder Mohan No. D/5031, Immigration IGI Airport, N. Delhi, PW 4 SI Vijay Kumar Yadav No. D/5066, Immigration IGI Airport, New Delhi, PW-5 Inspector Jawahar Singh No. D/1457, Immigration IGI Airport, New Delhi, PW 6 Sh. Murari Lal, AFRRO, IGI Airport, New Delhi, PW 7 Sh. S.D. Sharma, AFRRO (Retd), IGI Airport, New Delhi.

The petitioner elected not to cross-examine PWs 1, 2 and 4 in spite of the opportunity being granted to him. The PWs 3, 5, 6 and 7 were cross-examined by him. The evidence has been briefly summed up in the departmental inquiry report. 92. The report explicitly states that the petitioner was given (a) a list of documents; (b) a list of witnesses; (c) the copies of the listed documents including statements of witnesses recorded during the preliminary enquiry; (d) copies of available and relevant additional documents well in advance. All listed documents including statements of PW 5 recorded during preliminary enquiry were supplied enabling effective cross-examination by the petitioner.

Furthermore, most of the additional documents demanded by the petitioner vide communication dated 28th January, 1988 were supplied to him prior to the departmental enquiry under clear receipt. Only a few documents were not supplied for the following reasons: (a) They were not recorded/prepared during preliminary enquiry or otherwise, (b) Some statements not supplied as they were not found relevant since those PWs were not cited as PWs during the departmental enquiry, (c) Disembarkation card was destroyed/misplaced by petitioner. However a photocopy had been supplied.

It has been pointed out that all listed documents including statement of PW 5 recorded during the preliminary enquiry were supplied for effective cross-examination. Only the preliminary enquiry report was not supplied as it was in the nature of an inter-departmental communication and the enquiry officer himself did not rely upon it.

Moreover, the respondents vide letter dated 18th January, 1988 provided the provisional list of documents relied upon to the petitioner and also informed that he can inspect and take extracts within three days and even could demand

copies of additional documents.

The petitioner has admitted that the statements were provided to him concerning the preliminary enquiry along with summary of allegations on his demand. He has relied upon the statements recorded after Preliminary Enquiry findings to contend his innocence in his representation dated 29th September, 1988.

Thus on perusal of the communications dated 18th January, 1988, 28th January, 1988 and the departmental enquiry report, it is clear that the respondents have from time to time provided the petitioner with all the relevant documents and have also responded to all the demands for documents made by him. The petitioner thus has been given reasonable opportunity to access the documents well before the departmental enquiry proceedings.

93. The respondents object to re-examination of the evidence led before the enquiry officer in the present proceedings and contend that the scope of judicial review of this Court in the enquiry proceedings is narrow and it cannot examine the evidence as if it was examining an appeal against the order of disciplinary authority.

There is force in this submission. Ref.: Govt. of A.P. and Others Vs. Mohd. Narsullah Khan,

94. The respondents have contended that in accordance with the rules, the petitioner was furnished a copy of the inquiry report along with the findings dated 28th July, 1989 passed against him by the disciplinary authority against him.

95. We, however, find that the procedure followed by the Delhi Police has been prescribed under the rules framed in exercise of statutory powers applicable to the enquiry has been followed. It has been held hereinabove that in view of the petitioner being on deputation with the Delhi Police, he was liable to be proceeded against in terms of the Delhi Police (Punishment and Appeal) Rules, 1980.

96. It is contended by Ms. Anjana Gosain, Learned Counsel appearing for the respondent Nos. 1 and 2 that the due and fair procedure was followed during the enquiry.

97. Copy of the summary of allegations was duly served upon the petitioner. The petitioner was clearly put to notice of the case against him.

98. It is noteworthy that the respondent No. 2 has noticed that Sh. Harbans Lal, ACP was appointed enquiry officer in accordance with Section 21 of the Delhi Police Act, 1978. It has also been noticed that Rule (3) Sub-rule (ii) of the Delhi Police Rules, 1980 provides that all non-gazetted police officers on deputation from the Central/State police organisation shall be governed by the Delhi Police Act, 1978.

The record laid before us would show that the petitioner submitted a statement

of defence on 28th January, 1988 and after the closure of the prosecution evidence on 7th November, 1988 denying the charges which have been considered by the disciplinary authority.

99. The petitioner was given full opportunity to cross examine the witnesses. As noticed above, the petitioner took considered decisions to cross examine some of the witnesses and not to cross-examine others also. With his written statement dated 21st October, 1988, the petitioner submitted a list of one defence witness who was examined by him on 24th October, 1988. It is further submitted that copies of the statements of witnesses recorded during the preliminary enquiry were also made available to the petitioner sufficiently in advance for his conducting an effective cross examination of the witnesses when they appeared in the witness box. The petitioner has displayed familiarity with the implications of law and an understanding of the nuances thereof as well as of all procedural aspects. No prejudice resulted at all in the proceedings to the petitioner for the reason that during the enquiry proceedings, the witnesses reiterated the statements made by them during the preliminary enquiry and the petitioner had ample opportunity to challenge these statements recorded at the preliminary enquiry while cross examining the prosecution witnesses at the disciplinary enquiry. Therefore, from the procedural angle, it cannot be held that any right of the petitioner was violated during the enquiry or that the same was conducted either in violation of any statutory provision or of principles of natural justice. It is also not possible to hold that any prejudice resulted to the petitioner in these circumstances.

100. The petitioner does not dispute that the procedure prescribed under the Delhi Police Rules has been followed. The submission is that following this procedure has prejudiced the rights and defence of the petitioner.

101. Perusal of the record would show that no such objection has been taken by the petitioner in his communication dated 28th January, 1988 or in the revision dated 6th December, 1989. The petitioner has cross examined the witnesses examined on behalf of the department extensively and has at no point of time expressed any difficulty or complained that he was prejudiced on any count on the ground that he did not have a defence assistant. The representations and defence statement submitted by him, display knowledge and awareness of legal provisions and procedure. Even before us, the petitioner has not said anything more than what he stated before the authorities. No prejudice to the petitioner at all by the procedure adopted by the respondents is disclosed or made out. Moreover, since the rules for conduct of disciplinary proceedings under the Delhi Police Act were applicable, as the enquiry was conducted by Delhi Police, the petitioner cannot have a grievance that the rules under the CISF Act would have been more favourable to him.

102. As noticed hereinabove, a person assailing the disciplinary proceedings and action against him has to establish prejudice which has resulted to him. Other than pointing out provisions of the CISF Rules, and a bald assertion that he has

been seriously prejudiced by invocation of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980, no prejudice at all is disclosed. It needs no elaboration that bald assertions of prejudice without anything more are not sufficient to conclude that prejudice has resulted to the petitioner rendering the proceedings against him illegal. Ref.: Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, .

103. It is trite that so far as assistance, legal or otherwise, is concerned, the same has to be in terms of the rules governing the enquiry. The petitioner has not pointed out any rule violation. In the facts aforementioned, in any event, the petitioner is unable to also support the plea of prejudice by the procedure followed in the enquiry.

104. So far as the enquiry against the petitioner is concerned, the same was conducted in accordance with the Delhi Police (Punishment and Appeal) Rules, 1980 by an enquiry officer appointed by the Delhi Police. The disciplinary authority conducted the enquiry proceedings from the stage of consideration of the enquiry report and passing of the order based on the proceedings of the enquiry which were transmitted by the Delhi Police to it. There was no requirement of furnishing the preliminary enquiry report to the petitioner. Only such of the statements/evidence and documents on which the Department sought to place reliance in the course of the enquiry proceedings were required to be furnished to the petitioner under the applicable rules. The petitioner has neither pointed out which of those documents/evidences were not supported to him nor has he pointed out how he has been prejudiced due to the alleged non supply of any documents/evidence.

105. The petitioner assailed the order dated 28th July, 1989 by way of an appeal dated 25th August, 1989 to the Deputy Inspector General of the CISF, Eastern Zone, Calcutta. This appeal came to be dismissed by an order dated 16th November, 1989. The petitioner's revision dated 6th December, 1989 was rejected by an order passed on 26th/27th April, 1990. The petitioner has assailed these orders dismissing the appeal and the revision not only on the grounds of jurisdiction but on merits as well as on the ground that the orders failed to record reasons.

In support of these contentions, the petitioner has relied on the pronouncement of the Supreme Court reported at Ram Chander Vs. Union of India (UOI) and Others, .

106. The petitioner has assailed the aforesaid orders also on the ground that the same disclose no reasons. We find that the appellate and revisional authorities have agreed with the findings of the disciplinary authority and consequently this objection of the petitioner is devoid of legal merit.

107. In view of the detailed discussion on the objections to findings of the disciplinary authority, the challenge to the orders of the appellate and revisional authority on the same grounds noticed above is devoid of merit and is hereby

rejected.

In view of the above discussion, we find no merit in this writ petition which is hereby dismissed.